

# Table of Contents

## 12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT

000. LEGAL AUTHORITY (Rule 0). .....	4
001. TITLE AND SCOPE (Rule 1). .....	4
002. WRITTEN INTERPRETATIONS--AGENCY ACCESS--FILINGS (Rule 2). .....	4
003. ADMINISTRATIVE APPEALS (Rule 3). .....	4
004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4). .....	4
005. DEFINITIONS (Rule 5). .....	4
006. -- 009. (RESERVED). .....	5
010. ADVERTISING (Rule 10). .....	5
011. -- 019. (RESERVED). .....	6
020. IMPLEMENTATION OF CRD (Rule 20). .....	6
021. TEMPORARY AGENT TRANSFER (Rule 21). .....	6
022. -- 029. (RESERVED). .....	6
030. NET CAPITAL REQUIREMENTS OF BROKER-DEALERS (Rule 30). .....	6
031. FINANCIAL REQUIREMENTS OF INVESTMENT ADVISERS (Rule 31). .....	6
032. -- 039. (RESERVED). .....	7
040. EXAMINATION REQUIREMENTS (Rule 40). .....	7
041. -- 049. (RESERVED). .....	7
050. SPECIALIZED EXAMINATIONS--LIMITED LICENSES (Rule 50). .....	7
051. -- 059. (RESERVED). .....	7
060. BROKER-DEALER, SALESMAN, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE NOTICE REQUIREMENTS (Rule 60). .....	7
061. CURRENT INFORMATION REGARDING BROKER-DEALERS AND INVESTMENT ADVISERS (Rule 61). .....	7
062. -- 069. (RESERVED). .....	8
070. BROKER-DEALER--INVESTMENT ADVISER--SALESMAN-AND INVESTMENT ADVISER REPRESENTATIVE APPLICATIONS (Rule 70). ...	8
071. CIRCUMVENTION OF DENIAL ORDERS PROHIBITED (Rule 71). .....	8
072. -- 079. (RESERVED). .....	8
080. PART-TIME SALESMAN (Rule 80). .....	8
081. NOTIFICATION OF OUTSIDE BUSINESS ACTIVITIES--SELLING AWAY (Rule 81). .....	8
082. -- 099. (RESERVED). .....	8
100. RECORDS REQUIRED OF BROKER-DEALERS (Rule 100). .....	8
101. RECORDS REQUIRED OF INVESTMENT ADVISERS (Rule 101). .....	8
102. -- 109. (RESERVED). .....	8
110. DISHONEST OR UNETHICAL PRACTICES (Rule 110). .....	8
111. GENERAL DEFINITION (RULE 111). .....	9
112. CONFIRMATION OF TRANSACTION (Rule 112). .....	9
113. DISCLOSURE OF CONTROL (Rule 113). .....	9
114. DISCLOSURE OF INTEREST IN DISTRIBUTIONS (Rule 114). .....	9
115. SALES AT THE MARKET (Rule 115). .....	10
116. DISCRETIONARY ACCOUNTS (Rule 116). .....	10

117. DEALING WITH CUSTOMERS (Rule 117). .....	10
118. UNSUITABLE RECOMMENDATIONS (Rule 118). .....	12
119. SUPERVISION OF SALESMEN, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES (Rule 119). .....	12
120. COMPENSATION OF INVESTMENT ADVISERS (Rule 120). .....	13
121. CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS BY INVESTMENT ADVISERS (Rule 121). .....	13
122. DISCLOSURE OF CAPACITY (Rule 122). .....	14
123. DISCLOSURE OF BID AND ASK PRICE (Rule 123). .....	14
124. NASD RULES OF FAIR PRACTICE (Rule 124). .....	15
125. WAIVER BY DIRECTOR (Rule 125). .....	15
126. -- 129. (RESERVED). .....	15
130. REIMBURSEMENT FOR PROMOTION EXPENSE (Rule 130). .....	15
131. -- 139. (RESERVED). .....	16
140. OPTIONS AND WARRANTS (Rule 140). .....	16
141. -- 149. (RESERVED). .....	17
150. SUBSCRIPTION AGREEMENT (Rule 150). .....	17
151. -- 159. (RESERVED). .....	17
160. PROSPECTUS (Rule 160). .....	17
161. REGISTRATION FORM FOR SMALL CORPORATE OFFERINGS - Form U-7. ....	17
162. -- 169. (RESERVED). .....	17
170. OPINION OF COUNSEL (Rule 170). .....	17
171. -- 179. (RESERVED). .....	18
180. ESCROW (Rule 180). .....	18
181. -- 199. (RESERVED). .....	18
200. IMPOUND OF FUNDS (Rule 200). .....	18
201. -- 209. (RESERVED). .....	18
210. NOTICE OF TERMINATION OF OFFERING (Rule 210). .....	18
211. -- 219. (RESERVED). .....	19
220. QUARTERLY REPORTS (Rule 220). .....	19
221. -- 229. (RESERVED). .....	19
230. FINANCIAL STATEMENTS (Rule 230). .....	19
231. -- 239. (RESERVED). .....	19
240. PROMOTIONAL SECURITIES (Rule 240). .....	19
241. -- 249. (RESERVED). .....	19
250. APPROVED EXCHANGES (Rule 250). .....	19
251. -- 259. (RESERVED). .....	19
260. RESTRICTIVE LEGENDS (Rule 260). .....	19
261. -- 269. (RESERVED). .....	20
270. EXEMPTIONS FROM REGISTRATION (Rule 270). .....	20
271. -- 279. (RESERVED). .....	23
280. RECOGNIZED SECURITIES MANUALS (Rule 280). .....	23
281. -- 299. (RESERVED). .....	23

300. INTERPRETATIONS/DEFINITIONS (Rule 300). .....	23
301. -- 309. (RESERVED). .....	25
310. REGISTRATION OR EXEMPTION OF "BLIND POOL" OFFERINGS PROHIBITED (Rule 310). .....	25
311. -- 319. (RESERVED). .....	25
320. APPLICATIONS; NOTICE OF INTENDED IDAHO BROKER-DEALER OR SALESMAN (Rule 320). .....	25
321. -- 329. (RESERVED). .....	25
330. USE OF UNREGISTERED NAMES BY BROKER-DEALERS AND INVESTMENT ADVISERS (Rule 330). .....	25
331. -- 339. (RESERVED). .....	26
340. RENEWAL OF REGISTRATIONS OF BROKER-DEALERS, SALESMEN, INVESTMENT ADVISERS OR INVESTMENT ADVISER REPRESENTATIVES; NOTICE OF NAME CHANGES (Rule 340). .....	26
341. -- 349. (RESERVED). .....	26
350. NOTICE OF AFFILIATION OF INVESTMENT ADVISERS WITH BROKER- DEALERS/ISSUERS/SALESMEN (Rule 350). .....	26
351. -- 359. (RESERVED). .....	26
360. NOTIFICATION OF OPENING OR CLOSING OF BRANCH OFFICES (Rule 360). .....	26
361. -- 379. (RESERVED). .....	27
380. BANK DISCOUNT BROKERAGE SERVICE (Rule 380). .....	27
381. -- 389. (RESERVED). .....	28
390. EXEMPT MINING OFFERINGS, FINANCIAL REPORTS, ADVERTISING (Rule 390). .....	28
391. -- 399. (RESERVED). .....	28
400. ADMINISTRATIVE PENALTIES (Rule 400). .....	28
401. -- 409. (RESERVED). .....	28
410. COOPERATION WITH OTHER AGENCIES (Rule 410). .....	28
411. -- 419. (RESERVED). .....	29
420. CONFIDENTIALITY (Rule 420). .....	29
421. -- 429. (RESERVED). .....	30
430. RECORDS OPEN FOR PUBLIC INSPECTION (Rule 430). .....	30
431. -- 999. (RESERVED). .....	30

**IDAPA 12  
TITLE 01  
Chapter 08**

**12.01.08 - RULES PURSUANT TO THE IDAHO SECURITIES ACT**

**000. LEGAL AUTHORITY (Rule 0).**

This chapter is promulgated pursuant to Section 30-1448, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE (Rule 1).**

The title of this chapter is the Securities Rules of the Idaho Department of Finance; and may be cited as IDAPA 12.01.08. These rules implement statutory intent with respect to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals and others. (7-1-93)

**002. WRITTEN INTERPRETATIONS--AGENCY ACCESS--FILINGS (Rule 2).**

Written interpretations of these rules are available by mail from the Department of Finance, Statehouse Mail, Boise, Idaho 83720. The street address of the agency is Department of Finance, Joe R. Williams Building, 700 West State Street, Boise, Idaho. The telephone numbers of the agency include (208) 334-3313 - Administration; and (208) 334-3678 - Securities Bureau. The telephone number of the facsimile machine is (208) 334-2216. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. (7-1-93)

**003. ADMINISTRATIVE APPEALS (Rule 3).**

Administrative appeals are not available within the agency. (7-1-93)

**004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4).**

All rules contained in this chapter are public records. (7-1-93)

**005. DEFINITIONS (Rule 5).**

01. Act. The Idaho Securities Act. (7-1-93)
02. CRD. Central Registration Depository. (7-1-93)
03. Department. The Idaho Department of Finance. (7-1-93)
04. Director. The Director of the Department. (7-1-93)
05. Form ADV. The Uniform Application for Investment Adviser Registration. (7-1-93)
06. Form BD. The Uniform Application for Broker-Dealer Registration. (7-1-93)
07. Form BDW. The Uniform Request for Withdrawal from Registration as a Broker-Dealer. (7-1-93)
08. Form D. The federal form entitled "Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and/or Uniform Limited Offering Exemption." (7-1-93)
09. Form U-4. The Uniform Application for S try Registration or Transfer. (7-1-93)
10. Form U-5. The Uniform Request for Withdrawal of Security Industry Registration or Transfer. (7-1-93)
11. Form U-7. The Uniform Small Corporate Offering Registration Form. (7-1-93)
12. Form S-18. A federal securities registration form of that number. (7-1-93)
13. NASAA. The North American Securities Administrators Association, Inc. (7-1-93)

14. NASD. The National Association of Securities Dealers, Inc. (7-1-93)
15. NASDAQ. The National Association of Securities Dealers Automated Quotations. (7-1-93)
16. NMS. The National Market System operated by the NASD. (7-1-93)
17. SEC. The U.S. Securities and Exchange Commission. (7-1-93)
18. S.E.C.O. The General Securities Representative examination given for persons not members of the NASD. (7-1-93)
19. TAT. The Temporary Agent Transfer Program. (7-1-93)
20. UIALE. The Uniform Investment Adviser Law Examination. (7-1-93)
21. USASLE. The Uniform Securities Agent State Law Examination. (7-1-93)

**006. -- 009. (RESERVED).**

**010. ADVERTISING (Rule 10).**  
Idaho Code Section 30-1403. (7-1-93)

01. Radio Television Advertisements. No licensed broker-dealer, investment adviser, salesman, investment adviser representative, issuer or person representing an issuer shall in this state broadcast or cause to be broadcast by radio or television any advertising matter containing any representation relative to any securities unless a copy of the text of the proposed advertising or representation together with a statement showing the authorship of the text of said advertising or representation, the time, place and date the same is proposed to be broadcast has been filed with the Director at least three (3) business days prior to its use. The same shall not be used after notice has been given by the director that in his opinion it contains any statement that is false or misleading or otherwise likely to deceive. This rule does not apply to quotations of market prices without comment. (7-1-93)

02. Print Advertisements. All subscription agreements, written literature, sales scripts, and advertising proposed to be used directly or indirectly in connection with the offer, sale, or advisability of purchasing or selling securities in Idaho shall be filed with the Director at least three (3) business days prior to its use, unless excluded by the terms of an effective registration permit. The same shall not be used after notice has been given by the Director that in his opinion it contains any statement that is false or misleading or otherwise likely to deceive a reader thereof. (7-1-93)

03. Advertising Exemptions. The filings listed in Sections 010.01 and 010.02 above are not required if the materials have been submitted to the NASD, SEC or other regulatory agency with substantially similar requirements, or if the materials relate to securities exempted under Sections 30-1434(1)(a), (b), (c), (g), (h) and (j), Idaho Code, or transactions exempted under Section 30-1435 (1)(h), Idaho Code. (7-1-93)

04. Antifraud Criteria. The following statement of policy is designated to describe those areas of advertising practice which are susceptible to abuse and to specify the proper limits of advertising within those areas. This rule is not intended as an approval or authorization of any advertising material which is misleading, deceptive or unfair even though such advertising may appear to be in accordance with the provisions of this policy. Nor is this statement intended to prevent or hinder the use of factual statements or representations fairly and fully presented. The two primary criteria for determining whether or not advertising is deceptive, unfair, or fraudulent are: (7-1-93)

- a. Are the statements, factual presentations and the representations contained therein true? (7-1-93)
- b. Does the material omit to state any material information necessary to make any other statement, factual presentation, or representation contained therein, in the light of circumstances under which it is made, not misleading? (7-1-93)

**011. -- 019. (RESERVED).**

**020. IMPLEMENTATION OF CRD (Rule 20).**

Idaho Code Section 30-1407. (7-1-93)

01. Use of CRD System. Forms U-4, U-5, BD, and BDW shall be used to register or terminate salesmen or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect NASD registration as well as registration, termination, and renewal in the state. (7-1-93)

02. Registrations Not Automatic. A filing of Form U-4 or BD with the CRD system does not constitute an automatic registration in Idaho. Subsequent to the filing of Form U-4, the system will generate approval notices or deficiency letters based on a review of an application by the state. **BROKER-DEALERS SHOULD NOT CONSIDER SALESMEN REGISTERED UNTIL SUCH APPROVAL FROM THE STATE OF IDAHO HAS BEEN RECEIVED BY THEM THROUGH CRD.** (7-1-93)

**021. TEMPORARY AGENT TRANSFER (Rule 21).**

Idaho Code Sections 30-1407, 30-1410. (7-1-93)

01. TAT Program. Transfer of agents from one broker-dealer to another shall be effected pursuant to, and in accordance with, the NASAA/CRD TAT program which allows for an automatic temporary license. (7-1-93)

02. Temporary License Expiration. An agent may not transact business in Idaho after the expiration of a temporary license unless a permanent license has been issued. In all cases, the Director retains the right to deny, suspend, or revoke a temporary license for the causes listed in Idaho Code Section 30-1413. (7-1-93)

**022. -- 029. (RESERVED).**

**030. NET CAPITAL REQUIREMENTS OF BROKER-DEALERS (Rule 30).**

Idaho Code Section 30-1407(3). Every registered broker-dealer shall have and maintain an adjusted net capital in compliance with 17 CFR 240.15c3-1 under the Securities Exchange Act of 1934, as currently amended. (7-1-93)

**031. FINANCIAL REQUIREMENTS OF INVESTMENT ADVISERS (Rule 31).**

Idaho Code Section 30-1407(3). (7-1-93)

01. Net Asset Requirement. Every registered investment adviser licensed after the effective date of these rules who is not required to have a surety bond on file with the Director, shall have and maintain tangible net assets in excess of five thousand dollars (\$5,000). (7-1-93)

02. Limited Definitions. For purposes of this rule, the following terms shall have the following meanings: (7-1-93)

a. "Net assets" or, in the case of an individual, "net worth," means the excess of assets over liabilities, as determined by generally accepted accounting principles. (7-1-93)

b. "Tangible net assets" means the net assets of an investment adviser registered or required to be registered reduced by the following: (7-1-93)

i. Prepaid expenses, except as to items properly classified as current assets under generally accepted accounting principles; (7-1-93)

ii. Deferred charges; (7-1-93)

iii. Goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of intangible nature; and (7-1-93)

iv. Homes, furnishings, and automobiles and any personal items not readily marketable, in the case of an individual, or advances or loans to stockholders and officers, in the case of a corporation, or advances or loans to

partners, in the case of a partnership. (7-1-93)

**032. -- 039. (RESERVED).**

**040. EXAMINATION REQUIREMENTS (Rule 40).**

Idaho Code Section 30-1407. (7-1-93)

01. Salesmen. The form of the written examination required as a condition of registration of new and transfer salesmen, after January 1, 1987, shall be the form as adopted and given by the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Boston Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia Stock Exchange, the NASD, or the S.E.C.O., and in addition to the above, the NASAA USASLE, commonly known as USASLE, or Series 63. (7-1-93)

02. Broker/Dealer - Qualifying Officer. The form of the written examination required as a condition of registration of broker-dealers shall be the form as adopted for the principal's examination by one of the above listed exchanges or the NASD and a minimum grade of seventy percent (70%) on the NASAA USASLE, commonly known as USASLE or Series 63. (7-1-93)

03. Investment Adviser - Qualifying Officer. The form of written examination required as a condition of registration of investment advisers, after January 1, 1992, shall be a minimum grade of eighty-five percent (85%) on the NASAA UIALE, commonly known as UIALE or Series 65. (7-1-93)

04. Investment Adviser Representative. Applicants for registration as investment adviser representatives shall pass the Series 65 examination. (7-1-93)

05. Waiver. The Director, in his absolute discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. (7-1-93)

**041. -- 049. (RESERVED).**

**050. SPECIALIZED EXAMINATIONS--LIMITED LICENSES (Rule 50).**

Idaho Code Section 30-1407. Applicants who have passed an examination administered by the NASD, which tests their knowledge in a specialized field of securities business, will be allowed to furnish proof of passing such an examination as a condition of registration as a broker-dealer or agent. However, any license issued pursuant to a specialized examination will be restricted, and the licensee will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. (7-1-93)

**051. -- 059. (RESERVED).**

**060. BROKER-DEALER, SALESMAN, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE NOTICE REQUIREMENTS (Rule 60).**

Idaho Code Section 30-1408. (7-1-93)

01. Litigation Notice. Any broker-dealer, salesman, investment adviser, or investment adviser representative shall notify the Director in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer, salesman, investment adviser, or investment adviser representative. (7-1-93)

02. Notice of Address. Every broker-dealer, salesman, investment adviser, or investment adviser representative shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (7-1-93)

**061. CURRENT INFORMATION REGARDING BROKER-DEALERS AND INVESTMENT ADVISERS (Rule 61).**

Idaho Code Section 30-1410. All broker-dealers and investment advisers must assure that current and accurate

information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the appropriate Form BD, on the CRD system, or Form ADV or by direct notice to the Department. (7-1-93)

**062. -- 069. (RESERVED).**

**070. BROKER-DEALER--INVESTMENT ADVISER--SALESMAN-AND INVESTMENT ADVISER REPRESENTATIVE APPLICATIONS (Rule 70).**

Idaho Code Sections 30-1407 and 30-1408. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (7-1-93)

**071. CIRCUMVENTION OF DENIAL ORDERS PROHIBITED (Rule 71).**

Idaho Code Section 30-1413. A broker-dealer, investment adviser, salesman, or investment adviser representative may not circumvent the imposition of an order denying registration or revoking registration by withdrawing the application through the CRD system after such order has been issued. Such action will not be recognized by the Director, and will have no effect on the outcome of the order. (7-1-93)

**072. -- 079. (RESERVED).**

**080. PART-TIME SALESMAN (Rule 80).**

Idaho Code Section 30-1408. An applicant for registration as securities salesman who does not plan to devote full time to the position, shall submit a letter from his present employer granting permission to engage as a part-time securities salesman. (7-1-93)

**081. NOTIFICATION OF OUTSIDE BUSINESS ACTIVITIES--SELLING AWAY (Rule 81).**

Idaho Code Section 30-1413. Any salesman or investment adviser representative associated with a broker-dealer or investment adviser registered under this Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm. (7-1-93)

**082. -- 099. (RESERVED).**

**100. RECORDS REQUIRED OF BROKER-DEALERS (Rule 100).**

Idaho Code Section 30-1412. Pursuant to provisions of the Act: (7-1-93)

01. Current Books and Records. Every broker-dealer shall make and keep current books and records relating to his business in compliance with 17 CFR 240.17a-3 under the Securities Exchange Act of 1934, as currently amended. (7-1-93)

02. Records to be Preserved by Broker-Dealers. Every broker-dealer shall preserve books and records in compliance with 17 CFR 240.17a-4 under the Securities Exchange Act of 1934, as currently amended. (7-1-93)

**101. RECORDS REQUIRED OF INVESTMENT ADVISERS (Rule 101).**

Idaho Code Section 30-1412. Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current books and records in compliance with 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. (7-1-93)

**102. -- 109. (RESERVED).**

**110. DISHONEST OR UNETHICAL PRACTICES (Rule 110).**

Idaho Code Sections 30-1413(7), 30-1403, and 30-1404. The terms "dishonest or unethical practices," separately or in any combination thereof, shall include but not be limited to those acts or practices defined herein as deceptive or manipulative. These acts or practices may also constitute a "scheme to defraud" as used in Sections 30-1403(1) and 30-1404(1), Idaho Code, or "operate as a fraud or deceit" as used in Section 30-1403(3), Idaho Code and Section 30-1404 (2), Idaho Code. As used in this rule, the term "associate" means any partner, officer or director of a broker-dealer or investment adviser. (7-1-93)



**111. GENERAL DEFINITION (RULE 111).**

A "Deceptive or Manipulative Act or Practice" is defined to include: (7-1-93)

01. Fraudulent Acts, Practices. Any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. (7-1-93)

02. Untrue Statements or Omissions. The making of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. (7-1-93)

03. Director Approval. Any representation by a person that the registration of any person or security with the Director or the failure of the Director to deny or revoke such registration indicates in any way that the Director has passed upon or approved the financial standing, business or conduct of any person or the merits of any security or any transaction or transactions therein. (7-1-93)

**112. CONFIRMATION OF TRANSACTION (Rule 112).**

01. Deceptive or Manipulative. The term "Deceptive or Manipulative" as used in these rules is defined to include any act of any broker-dealer, salesman or associate designed to effect with or for the account of a customer, any transaction in, or to induce the purchase or sale by such customer of any security, other than U. S. Tax Savings Notes, U. S. Defense Savings Stamps, or U. S. Defense Savings Bonds, Series E, F and G, unless such broker-dealer, salesman or associate, at or before the completion of each such transaction, gives or sends to such customer at a bona fide address written notification disclosing: (7-1-93)

a. Whether he is acting as a broker-dealer, salesman or associate for such customer, as a broker-dealer, salesman or associate for some other person, or as a broker-dealer, salesman or associate for both such customers and some other persons; and (7-1-93)

b. In any case in which he is acting as a broker-dealer, salesman or associate for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction. (7-1-93)

02. Bona Fide Address. As used in these rules, the term "Bona Fide Address" means the last known home address, business address, or post office box of a customer. Copies of the notification may be mailed to an accountant, adviser, bank, or such other person or firm as authorized in writing by the customer. The address of a broker dealer, salesman or associate, unless the transaction is for the account of the salesman or associate, is not a "Bona Fide Address" for a customer within the meaning of these rules. (7-1-93)

**113. DISCLOSURE OF CONTROL (Rule 113).**

The term "Deceptive or Manipulative" as used in these rules is defined to include any act of any broker-dealer, investment adviser, salesman, investment adviser representative, or associate controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction, or to induce the purchase or sale by such customer of such security, unless such broker-dealer, investment adviser, salesman, investment adviser representative, or associate, before entering into any contract with or for such customer for the purchase or sale, or recommendation of the purchase or sale, of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction. (7-1-93)

**114. DISCLOSURE OF INTEREST IN DISTRIBUTIONS (Rule 114).**

The term "Deceptive or Manipulative" as used in these rules is defined to include any act of any broker-dealer, salesman or associate who is acting for a customer or for both such customer and some other person, or of any broker-dealer, salesman or associate who received or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which

such broker-dealer, salesman or associate is participating or is otherwise financially interested unless such broker-dealer, salesman or associate at or before the completion of each such transaction, gives or sends to such customer written notification of the existence of such participation or interest. (7-1-93)

**115. SALES AT THE MARKET (Rule 115).**

The term "Deceptive or Manipulative" as used in these rules is defined to include any representation made to a customer by a broker-dealer, salesman or associate that such security is being offered to such customer "At the Market" or at a price related to the market price, unless such broker-dealer, salesman or associate knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution. (7-1-93)

**116. DISCRETIONARY ACCOUNTS (Rule 116).**

01. Churning. The term "Deceptive or Manipulative Act or Practice" as used in these rules is hereby defined to include any act of any broker-dealer, investment adviser, salesman, investment adviser representative, or associate designed to effect for any customer's account with respect to which he is vested with any discretionary power, any transactions or purchases or sales which are excessive in size or frequency in view of the financial resources and character of such account. (7-1-93)

02. Transaction Records. The term "Deceptive or Manipulative Act or Practice" as used in these rules, is hereby defined to include any act of any broker-dealer, investment adviser, salesman, investment adviser representative, or associate designed to effect for any customer's account with respect to which such broker-dealer, investment adviser, salesman, investment adviser representative, or associate is vested with any discretionary power, any transaction or purchase or sale, unless immediately after effecting such transaction such broker-dealer, investment adviser, salesman, investment adviser representative, or associate makes a record of such transaction, which record includes the name of such customer; the name, amount and price of the security; and the date and time when such transaction took place (7-1-93).

**117. DEALING WITH CUSTOMERS (Rule 117).**

The term "Deceptive or Manipulative Act or Practice," as used in these rules is hereby defined to include: (7-1-93)

01. Penny Stocks. Recommending speculative low-priced securities to customers without knowledge of or attempt to obtain information concerning the customers' investment objectives, their financial situation and other necessary data. (7-1-93)

02. Short Term Mutual Funds. Short-term trading in mutual fund shares which have a sales or redemption charge without consideration of the investor's best interest. (7-1-93)

03. Churning. Inducing trading in any customer account which is excessive in frequency in view of the financial resources and character of the account; or recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment. (7-1-93)

04. Best Market. In any transaction for or with a customer failing to use reasonable diligence to ascertain the best interdealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. (7-1-93)

05. Third Parties. In any transaction for or with a customer, interjecting a third party between a broker-dealer, salesman or associate and the best available market, except in cases where the broker-dealer, salesman or associate can demonstrate that, to his knowledge at the time of the transaction, the total cost or proceeds of the transaction, as confirmed to the broker-dealer, salesman or associate acting for, or with the customer, was better than the prevailing interdealer market for the security. (7-1-93)

06. Bona Fide Distribution. Failing to make a bona fide public distribution at the public offering price of securities of a public offering which immediately trade at a premium in the secondary market, regardless of whether such securities are acquired by the broker-dealer as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member, or otherwise. (7-1-93)

07. Fictitious Accounts. Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of "hot issues." (7-1-93)

08. Unauthorized Transactions. Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon. (7-1-93)

09. Bribery. Giving, permitting to be given, or offering to give, directly or indirectly, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service or similar publication, of any matter which has, or is intended to have an effect upon the market price of any security; provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising. (7-1-93)

10. Loss Guarantees. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer, salesman or associate or in any securities transaction effected by the broker-dealer, salesman or associate with or for such customer. (7-1-93)

11. Profit/Loss Sharing. Sharing directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer, salesman or associate or any other broker-dealer, unless such broker-dealer, salesman or associate obtains prior written authorization from the broker-dealer carrying the account; and unless such a broker-dealer, salesman or associate shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer, salesman or associate; provided, however, that this Section shall not apply to accounts of the immediate family of such broker-dealer, salesman or associate. For purposes of this rule, "Immediate Family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer, salesman or associate otherwise contributes directly or indirectly. (7-1-93)

12. Delivery Delays. Causing any unreasonable delay in the delivery of a security purchased by a customer, or failing to take necessary action to correct such delay or insure prompt delivery of such securities after their purchase. Any delay of sixty (60) days or more shall be presumed to be unreasonable. The burden shall then be on the broker-dealer, salesman, associate, or investment adviser to show otherwise, to the satisfaction of the Director. (7-1-93)

13. False Inside Information. In connection with an offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or salesman is in possession of material, non-public information which would impact on the value of the security. (7-1-93)

14. Contradictory Recommendations. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor. (7-1-93)

15. Margin Accounts. Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. (7-1-93)

16. Separation of Customer Securities. Failing to segregate customers' free securities or securities held in safekeeping. (7-1-93)

17. Hypothecating Customer Securities. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by regulations of the SEC. (7-1-93)

18. Unreasonable Fees. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. (7-1-93)

19. Customer Communications. Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint. (7-1-93)

20. Loans From Customers. Borrowing money or securities from a customer unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "Immediate Family" shall include parents, mother-in-law or father-in-law, husband, wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children. (7-1-93)

**118. UNSUITABLE RECOMMENDATIONS (Rule 118).**

It shall constitute a "Deceptive or Manipulative Act or Practice," as used in these rules for any broker-dealer, investment adviser, salesman, investment adviser representative, or associate to recommend to a customer the purchase, sale or exchange of any security, unless such broker-dealer, investment adviser, salesman, investment adviser representative, or associate shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker-dealer, investment adviser, salesman, investment adviser representative, or associate. (7-1-93)

**119. SUPERVISION OF SALESMEN, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES (Rule 119).**

01. Supervision Required. Every broker-dealer and investment adviser shall exercise diligent supervision over the securities activities of all of his salesmen, investment adviser representatives and employees. (7-1-93)

02. Subject to Supervision. Every salesman and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. (7-1-93)

03. Written Compliance Procedure. As part of his responsibility under this rule, every broker-dealer shall establish, maintain and enforce written procedure, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-1412, Idaho Code: (7-1-93)

a. The review and written approval by the designated supervisor of the opening of each new customer account; (7-1-93)

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities; (7-1-93)

c. The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; (7-1-93)

d. The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver," net capital, credit extensions and financial reports; (7-1-93)

e. The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; (7-1-93)

f. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated salesman or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and (7-1-93)

g. The prompt review and written approval of the handling of all customer complaints. As used in these rules, "complaint" is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, salesman or associate in connection with the solicitation or execution of a transaction or the disposition of funds of that customer. (7-1-93)

04. Investment Adviser Procedures. Every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted to comply with the following duties as applicable to the business of the investment adviser: (7-1-93)

a. The review and written approval by the designated supervisor of the opening of each new customer account; (7-1-93)

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; (7-1-93)

c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; (7-1-93)

d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; (7-1-93)

e. The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. (7-1-93)

#### **120. COMPENSATION OF INVESTMENT ADVISERS (Rule 120).**

01. Contents of Client Contract. The term "Deceptive or Manipulative Act or Practice," as used in these rules is hereby defined to include entering into, extending, or renewing any investment advisory contract, or in any way performing any investment advisory contract entered into, extended or renewed after the effective date of this rule, if such contract: (7-1-93)

a. Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; (7-1-93)

b. Fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or (7-1-93)

c. Fails to provide, in substance, that the investment adviser if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change. (7-1-93)

02. Contract. As used in this rule, "Investment Advisory Contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or grading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. (7-1-93)

#### **121. CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS BY INVESTMENT ADVISERS (Rule 121).**

It shall constitute a "Deceptive or Manipulative Act or Practice," within the meaning of these rules, for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:(7-1-93)

01. Separate Safekeeping. All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from

risk of destruction or other loss; and (7-1-93)

02. Client Funds Accounts. All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds; and (7-1-93)

03. Trust Accounts. Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; (7-1-93)

04. Account Records. The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and (7-1-93)

05. Notice to Client. Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and (7-1-93)

06. Quarterly Statements. Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period. (7-1-93)

**122. DISCLOSURE OF CAPACITY (Rule 122).**

It shall constitute a "Deceptive or Manipulative Act or Practice," within the meaning of these rules for an investment adviser acting as principal for his own account, knowingly to sell any security to or purchase any security from a client for whom he is acting as investment adviser, or acting as broker-dealer for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. (7-1-93)

**123. DISCLOSURE OF BID AND ASK PRICE (Rule 123).**

01. Deceptive/Manipulative Practices. Unless the transaction is exempt under Subsection 123.01.b. hereof, it shall constitute a "Deceptive or Manipulative Act or Practice," as used in these rules for any broker-dealer or salesman in connection with the solicitation of a purchase of a designated security to: (7-1-93)

a. Fail to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents. (7-1-93)

b. Fail to include with the confirmation, in a form satisfactory to the Director, a written explanation of the bid and ask price. (7-1-93)

02. Exemptions. For purposes of this section, the following shall be exempt transactions: (7-1-93)

a. Transactions in which the price of the designated security is five dollars (\$5) or more, exclusive of costs or charges; provided, however, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars (\$5) or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars (\$5) or more; (7-1-93)

b. Transactions that are not recommended by the broker-dealer or agent; (7-1-93)

c. Transactions by a broker-dealer whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three (3) months, and during eleven (11) or more of the preceding twelve (12) months, did not exceed five percent (5%) of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and, who has not

executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve (12) months; (7-1-93)

d. Any transaction or transactions that, upon prior written request or upon its own motion, the Director conditionally or unconditionally exempts as not encompassed within the purposes of this section. (7-1-93)

03. Designated Securities. For purposes of this section, the term "designated security" shall mean any equity security other than a security: (7-1-93)

a. Registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to 17 CFR 11Aa3-1; (7-1-93)

b. Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system; (7-1-93)

c. Issued by an investment company under the Investment Company Act of 1940; (7-1-93)

d. That is a put option or call option issued by The Options Clearing Corporation; or (7-1-93)

e. Whose issuer has net tangible assets of four million dollars (\$4,000,000) as demonstrated by financial statements dated less than fifteen (15) months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and (7-1-93)

i. In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02; or (7-1-93)

ii. In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the Commission pursuant to 17 CFR 241.12g3-2(b); or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction. (7-1-93)

**124. NASD RULES OF FAIR PRACTICE (Rule 124).**

Any substantial violation of NASD Rules of Fair Practice or similar rules established by other self-regulatory organizations shall also constitute a violation of these rules. (7-1-93)

**125. WAIVER BY DIRECTOR (Rule 125).**

The Director may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular salesman, broker-dealer or investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest. (7-1-93)

**126. -- 129. (RESERVED).**

**130. REIMBURSEMENT FOR PROMOTION EXPENSE (Rule 130).**

Idaho Code Section 30-1423. (7-1-93)

01. Standard. Ordinarily reimbursement of the promoters for necessary expenditures in connection with the incorporation of the applicant may be provided for among the items for which the proceeds from the sale of stock to the public may be paid out of the funds required to be impounded by condition of the permit. However, if the promoters make expenditures on behalf of and for the benefit of the applicant other than the usual expenses necessary for the incorporation of any company, when such additional expenditures for acquisition of real and personal property and business contracts are to be assumed and paid by the applicant, then the amount of promotional stock to be issued may be required to be proportionately reduced. (7-1-93)

02. Cost of Selling - Definition. When used in connection with the Act, "costs of selling" shall include commissions, salaries, advertising and all other expense directly or indirectly incurred in connection with the sale of securities, excluding, however, (7-1-93)

a. Attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations; (7-1-93)

b. Other expenses incurred in connection with such qualifications and compliance with such laws and regulations; (7-1-93)

c. Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, auditors and of engineers, appraisers and other experts. Cost of selling as defined under this Act shall not exceed fifteen percent (15%) except in the case of small mining issues as provided under Section 30-1434(1)(m), Idaho Code. (7-1-93)

03. Basis of Selling Expenses. In the sale of securities, other than those of Investment Companies, as defined in the Investment Company Act of 1940, and securities listed on a national securities exchange, commissions to broker-dealers or salesmen, as well as all other expenses of selling, chargeable to purchaser, shall be based only on cash actually paid by such purchaser, and not upon the amount of securities sold or subscriptions taken, and there shall be no default or penalty provisions, in any stock purchase agreement, or stock subscription agreement. (7-1-93)

**131. -- 139. (RESERVED).**

**140. OPTIONS AND WARRANTS (Rule 140).**

Idaho Code Section 30-1423(8). Applications for the registration of securities are subject to the following: (7-1-93)

01. General. Warrants or stock purchase options, and all other rights to acquire stock or other securities must be justified by the applicant notwithstanding any of the following provisions. (7-1-93)

02. Percent Limitation. Unless good cause for an exception is shown, options to purchase shares, excluding options to employees specified in Subsections 140.06 and 140.07 of this rule, shall not be in excess of ten percent (10%) of the common shares to be outstanding, if the entire public offering is sold. (7-1-93)

03. Five (5) Year Limitation. Unless good cause for an exception is shown, an option to purchase shares shall not be exercisable after the expiration of five (5) years from the date such option is granted. (7-1-93)

04. Options to Underwriters, Promoters, Officers, Directors and Other Associated Persons. Ordinarily options to underwriters, promoters, officers, directors and other associated persons as compensation, in whole or in part, for the sale of securities will be considered with disfavor, unless: (7-1-93)

a. Selling expenses, commissions, and discounts, including the value of such options to be issued, are not unreasonable. (7-1-93)

b. The aggregate number of shares subject to the exercise of options including options issued to underwriters should not exceed the ten percent (10%) limitation contained in Subsection 140.02 of this rule. (7-1-93)

c. They are issued to the managing underwriter under a firm underwriting agreement and are not assignable or transferable, except between partners of the managing underwriter. (7-1-93)

d. The initial exercise price of the options is at least equal to the public prospectus with a "step up" of the exercise price of ten percent (10%) each year they are outstanding. (7-1-93)

e. The option or warrants are issued by a relatively small company in the promotional stage where it appears from all of the facts and circumstances that the issuance of such options is necessary to obtain competent investment banking service, provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be, in the absence of such options or warrants. (7-1-93)

05. Selling Shareholder. The same tests shall be applied to options issued by selling shareholders as



have been set out above unless evidence indicates that the selling shareholders are so separated from the corporate entity and so lacking in control of the corporate entity as to require more liberal treatment. (7-1-93)

06. Restricted or Qualified Stock Options. Restricted stock options or qualified stock options to employees which qualify under the provisions of the United States Internal Revenue Code will be considered justified if reasonable in number and method of exercise. (7-1-93)

07. Other Employees' Options. Options to employees or their nominees pursuant to stock purchase funds or profit sharing plans will be considered justified if reasonable in number and method of exercise. (7-1-93)

**141. -- 149. (RESERVED).**

**150. SUBSCRIPTION AGREEMENT (Rule 150).**

Idaho Code Section 30-1423(12). The subscription agreement shall contain, among other things, an acknowledgment by the subscriber that he has received a copy of the prospectus. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer and be subject to the inspection of the Director. (7-1-93)

**151. -- 159. (RESERVED).**

**160. PROSPECTUS (Rule 160).**

Idaho Code Section 30-1423(12). (7-1-93)

01. Printed Prospectus Requirements. Where registration is by qualification, the Director shall require the use of a prospectus and that such subscription agreement include a statement by the securities purchaser that he has received the prospectus. The prospectus may be printed, mimeographed, lithographed, or typewritten, or prepared by any similar process which will result in clear legible copies. If printed, it shall be set in clear Roman Type at least as large as 10 pt. modern type, with financial data or other statistical or tabular matter at least as large as 8 pt. (all type shall be leaded at least two points). (7-1-93)

02. Amendments. The prospectus shall be amended whenever there are material changes which would affect the offering to the public and in no event shall it be revised less often than every twelve (12) months to reflect recent financial information and other changes. (7-1-93)

03. Disclosure. The prospectus must disclose all material facts affecting the sale of securities and shall contain the same kind of information as would be required under Part I of Form S-18 Registration Statement under the Securities Act of 1933 and Regulation S-K, 17 CFR 229.10, et seq., as currently amended. (7-1-93)

**161. REGISTRATION FORM FOR SMALL CORPORATE OFFERINGS - Form U-7.**

As an optional method of registration, corporations issuing securities exempt from registration with the SEC under 17 CFR 230.504 may utilize the Form U-7 as the disclosure document for the offering provided that the issuer complies with all conditions set forth in, and provides all information required by, Parts III, IV and V of the Instructions for Use of Form U-7. To qualify for use of Form U-7, the issuer must comply with each of the requirements set forth in Part II of the Instructions for Use of Form U-7. (7-1-93)

**162. -- 169. (RESERVED).**

**170. OPINION OF COUNSEL (Rule 170).**

Idaho Code Section 30-1423(14). (7-1-93)

01. Opinion Required. Where registration is by qualification, there shall be submitted a signed or conformed copy of an opinion of counsel as to the legality of the form and status of the existence of the registrant and an opinion as to the legality of the security being registered. (7-1-93)

02. Opinions for Extractive Industries. If the Director deems it necessary or advisable in the public interest or for the protection of investors, he may require an issuer engaged in mining, gas or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the

property by issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. He may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. (7-1-93)

**171. -- 179. (RESERVED).**

**180. ESCROW (Rule 180).**

Idaho Code Section 30-1428. Promotional shares may be required to be placed in escrow with an escrow holder first to be approved by the Director. (7-1-93)

01. Consent to Transfer. Escrowed shares or any interest therein shall not be sold or transferred until the written consent of the Director shall have been first obtained. (7-1-93)

02. Waivers. Promotional shares shall carry a waiver of dividend rights and rights to participate in the distribution of assets in the event of liquidation or dissolution in favor of the shareholders who have paid cash or its equivalent for their shares. Such waivers shall remain in effect so long as the Director requires. (7-1-93)

03. Voting Rights. Promotional securities of a new enterprise selling and issuing a single class of securities for financing purposes shall have no greater voting rights than the securities issued for cash or its equivalent. (7-1-93)

**181. -- 199. (RESERVED).**

**200. IMPOUND OF FUNDS (Rule 200).**

Idaho Code Section 30-1428(2). (7-1-93)

01. Use of Depository. Whenever the Director orders the impound of funds pursuant to provisions of the Act, checks for the payment of securities shall be made payable to the depository. The depository shall release the percentage not subject to the impound to the issuer. In addition to the requirements of disclosure of the impound agreement in the prospectus, the prospectus shall contain a statement that checks shall be made payable to the named depository and a concise statement that the named depository is performing the limited function of depository and this fact in no way means that the depository has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction. (7-1-93)

02. Release of Funds from Impound. In order to release funds impounded under the provisions of the Act, the following must be submitted to the Director: (7-1-93)

a. A letter from the depository stating the amount of money that has been deposited in the impound fund. (7-1-93)

b. A sworn statement from the issuer that all the amounts specified by the impound agreement have been deposited in that fund and that no proceeds from the sales of the securities, except the amount not subject to the impound agreement, have been expended; and, a complete explanation as to the proposed use of the proceeds when and if they are released. (7-1-93)

**201. -- 209. (RESERVED).**

**210. NOTICE OF TERMINATION OF OFFERING (Rule 210).**

Idaho Code Section 30-1429. (7-1-93)

01. Change of Officers. An issuer who has completed or discontinued the sale of securities registered with the Department shall notify the Director in writing to that effect. Until such notice has been given, notices of all withdrawals or changes of officers, directors, trustees, partners or other principal members of registrants shall be made to the Director as soon as possible, but within five (5) days, after such withdrawals or changes in the personnel of such organization shall become effective. (7-1-93)

02. Permit Revocation. The Director may revoke or suspend any applicant's permit for the sale of

securities in the event the issuer is sold and the buying persons, corporations or partnerships do not register under the Act. (7-1-93)

**211. -- 219. (RESERVED).**

**220. QUARTERLY REPORTS (Rule 220).**

Idaho Code Section 30-1430(1). Pursuant to the provisions of the Act, the person who filed the registration statement for registration by qualification shall file quarterly reports during the time the securities remain registered if ordered by the Director. Such reports are due within thirty (30) days following the end of the issuer's quarter on forms prescribed and furnished by the Director. Failure to comply with this rule could be grounds for suspension or revocation of a permit. (7-1-93)

**221. -- 229. (RESERVED).**

**230. FINANCIAL STATEMENTS (Rule 230).**

Idaho Code Section 30-1430(2). Financial statements required to be filed by provisions of the Act shall, at the discretion of the Director, be certified by a certified public accountant who is not an employee, officer, or a member of the board of directors of the issuer or a major stockholder of the securities of the issuer. Such financial statements are due within ninety (90) days following the end of the issuer's fiscal year. (7-1-93)

**231. -- 239. (RESERVED).**

**240. PROMOTIONAL SECURITIES (Rule 240).**

Idaho Code Section 30-1431(9). (7-1-93)

01. Valuation of Consideration. Securities issued for services rendered, patents, copyrights or other intangibles, the value of which has not been established to the satisfaction of the Director by means such as an established earning record, or which are issued for a monetary consideration substantially lower than the consideration for which shares are sold for principal financing purposes, may be treated as promotional securities. The amount of promotional stock will be determined by facts and circumstances in each particular application, but ordinarily issuance of promotional shares will be restricted to such quantity as will tend to establish an ultimate equality of participation between shares sold for cash, or its equivalent, and promotional shares. (7-1-93)

02. Limitations. Promotional securities shall ordinarily be limited in class to common shares and in no event should represent an ultimate right of participation in excess of fifty percent (50%). (7-1-93)

**241. -- 249. (RESERVED).**

**250. APPROVED EXCHANGES (Rule 250).**

Idaho Code Section 30-1434(1)(h). The NASDAQ/NMS--except that the Director may withdraw this exemption if he or she determines that the listing requirements for the system have been so changed from those contained in the Securities Act Release No. 33-6810, 53 Federal Register 52550 (Dec. 28, 1988), as amended with the agreement of all parties to the agreement described in that release, or insufficiently applied that the protection of investors contemplated by the requirements is no longer afforded--and the Chicago Board of Options Exchange, the Philadelphia Stock Exchange, and the Pacific Coast Stock Exchange are approved. Any security listed or approved for listing upon notice of issuance on these exchanges, or any security of the same issuer which is of senior or substantially equal rank, or any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to the foregoing, or any option listed on any exchange representing the right to buy or sell a security listed on an approved exchange shall be exempt from Sections 30-1416 through 30-1433, Idaho Code, provided that Section 30-1434, Idaho Code, is otherwise complied with and the broker-dealer is registered in this state. (7-1-93)

**251. -- 259. (RESERVED).**

**260. RESTRICTIVE LEGENDS (Rule 260).**

Securities which are exempt under Sections 30-1434(1)(l) or (m), Idaho Code, or issued in exempt transactions under Sections 30-1435 (1)(a), (b), (i) or (j), Idaho Code, shall include a legend in the prospectus or private placement

memorandum and on the certificate or other document evidencing the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities. This legend shall be in capital letters in bold face at least as high as ten (10) pt. modern type. Language pertaining to restricted securities, as adopted by the NASAA under the Uniform Disclosure Guideline--Legends, is deemed acceptable for compliance with this rule. (7-1-93)

**261. -- 269. (RESERVED).**

**270. EXEMPTIONS FROM REGISTRATION (Rule 270).**  
Idaho Code Section 30-1435(1). (7-1-93)

01. Limited Offering. Section 30-1435, Idaho Code, provides that the provisions of Sections 30-1416 through 30-1433, Idaho Code, shall not apply to any isolated transaction or sales not involving a public offering, whether effected through a broker-dealer or not. The purpose of this rule is to provide an objective standard for determining when securities sales qualify as a private or limited offering and to provide for uniform treatment among the states and the SEC relating to such exemptions. This rule shall not constitute the exclusive means by which securities sales may so qualify. Securities sales involving a private or limited offering may be made without compliance with this rule if such sales completely satisfy all criteria set forth in Idaho court decisions interpreting Sections 30-1435 (1)(a) and (b), Idaho Code, in effect at the time the exemption under Sections 30-1435 (1)(a) and (b), Idaho Code, is to be relied upon. Nothing in this rule precludes the Director from commenting on any aspect of an offering to encourage compliance with the antifraud requirements of Section 30-1403, Idaho Code. (7-1-93)

02. Regulation D exemption. Any offering or sale of securities offered or sold in compliance with Regulation D, 17 CFR 230.501 through 230.503, 230.505 and 230.506, including any offer or sale made exempt by application of federal Rule 508(a), adopted under the Securities Act of 1933, as made effective in Release No. 33-6389, and as amended in SEC Release Nos. 33-6437, 33-6663, 33-6758 and 33-6825 as such rules may be amended, and which also satisfies the following conditions and limitations, is exempt from registration: (7-1-93)

a. No commission, finders fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser or in connection with sales of securities in reliance upon this rule unless such person is either registered in this state as a broker-dealer or salesman or completes a special notice registration as provided below. Notwithstanding the foregoing, if such person is registered as a broker-dealer or salesman in another state or with the NASD, or affiliated with a broker-dealer registered in another state, with the SEC or NASD, then such person must also be similarly registered in Idaho. (7-1-93)

i. Notice registration is accomplished by filing the uniform notice registration form with the Director no later than ten (10) business days prior to the first sale of securities in this state and becomes effective ten (10) business days after receipt unless objected to by the Director. (7-1-93)

ii. The registration provided for herein may be denied or revoked for the same reasons, except for special examination requirements, that the similar class of registration may be denied or revoked under the Act. (7-1-93)

iii. Persons registered in accordance with the notice registration provided for herein are registered only for the offering for which exempt transaction status is sought and registration remains effective only until such time as the offering is completed. (7-1-93)

iv. No person may be registered under notice registration more than twice in any twelve (12) consecutive month period. (7-1-93)

v. It is a defense to a violation of Subsection 270.02.a. of this rule if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state. (7-1-93)

b. No exemption under this rule shall be available for the securities of any issuer, if any of the parties described in the Securities Act of 1933, Regulation A, 17 C.F.R. 230.252 Sections (c), (d), (e) or (f): (7-1-93)

- i. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the filing of the notice required under this exemption. (7-1-93)
- ii. Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud, deceit, or intentional wrongdoing including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud. (7-1-93)
- iii. Is currently subject to any state administrative order or judgment entered by that state's securities administrator within five (5) years prior to the filing of the notice required under this exemption or subject to any state's administrative order or judgment in which fraud, deceit, or intentional wrongdoing, including but not limited to making untrue statements of material facts and omitting to state material facts, was found if the order or judgment was entered within five (5) years prior to the filing of the notice required under this exemption. (7-1-93)
- iv. Is currently subject to any state's administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities. (7-1-93)
- v. Is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state, entered within five (5) years prior to the commencement of the offering. (7-1-93)
- vi. The prohibitions of Subsections 270.02.b.i. through 270.02.b.iii. and 270.02.b.v. of this rule, shall not apply if the party subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party. (7-1-93)
- vii. Any disqualification caused by this rule is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. (7-1-93)
- viii. It is a defense to a violation of Subsection 270.02.b. of this rule if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this section existed. (7-1-93)
- c. The issuer shall file with the Director a notice on Form D, 17 C.F.R. 239.500: (7-1-93)
- i. No later than ten (10) business days prior to the receipt of consideration by the offeror or the return to an offeror of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under federal Rule 503 of Regulation D, 17 C.F.R. 230.503, to be filed with the SEC. (7-1-93)
- ii. Unless otherwise available, included with or in the initial notice shall be a consent to service of process. (7-1-93)
- iii. Every notice on Form D shall be manually signed by a person duly authorized by the issuer. (7-1-93)
- iv. The notice shall contain an undertaking by the issuer to furnish to the Director upon written request the information furnished by the issuer to offerees, except where the Director pursuant to rule or order requires that the information furnished by the issuer to any offeree be filed with the notice as described in Subsection 270.02.c.i. of this rule, and any subsequent amendments thereto. (7-1-93)
- d. Every notice on Form D filed pursuant to Subsection 270.02.c.i. of this rule, shall be accompanied by a nonrefundable examination fee as required by Section 30-1437(6), Idaho Code. (7-1-93)

e. In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry, shall believe that one of the following conditions is satisfied: (7-1-93)

i. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable. (7-1-93)

ii. The purchaser either alone or with her purchaser representative(s) has such knowledge and experience in financial and business matters that she is or they are capable of evaluating the merits and risks of the prospective investment. (7-1-93)

f. Nothing in this rule is intended to relieve registered securities broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered person. (7-1-93)

g. Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act. (7-1-93)

h. Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all the conditions for this exemption, the issuer may claim the availability of any other applicable exemption. (7-1-93)

i. In any proceeding involving this rule, the burden of proving the exemption or exception from a definition or condition is upon the person claiming it. The Director may by order deny or revoke the availability of the exemption pursuant to this rule. Upon the entry of such an order, the Director shall promptly notify the issuer and broker-dealer(s) that it has been entered and of the reasons therefor and that within twenty (20) days of the receipt of a written request, the matter will be set for hearing. If no hearing is requested and none is ordered by the Director, the order will remain in effect until it is modified or vacated by the Director. If a hearing is requested or ordered, the Director, after notice of and an opportunity to be heard is given to all interested persons, may modify or vacate the order or extend it until final determination. Neither compliance nor attempted compliance with this rule nor the absence of any objection or order by the Director with respect to any offering of securities undertaken pursuant to this rule shall be deemed an approval of any securities offered pursuant to this rule. (7-1-93)

j. In view of the objective of this rule and the purposes and policies underlying the Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or other conditions or limitations explicitly stated in this rule. (7-1-93)

k. A failure to comply with a term, condition or requirement of Subsections 270.02.a., and 270.02.d. through 02.n. of this rule, will not result in loss of the exemption from the requirements of Section 30-1416, Idaho Code, for any offer or sale to a particular individual or entity if the person relying on the exemption shows: (7-1-93)

i. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and, (7-1-93)

ii. The failure to comply was insignificant with respect to the offering as a whole; and, (7-1-93)

iii. A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subsections 270.02.a., and 270.02.d. through 270.02.n. of this rule. (7-1-93)

l. Where an exemption is established only through reliance upon Subsection 270.02.k. of this rule, the failure to comply shall nonetheless be actionable by the Director under Section 30-1442, Idaho Code. (7-1-93)

m. The Director may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption. (7-1-93)

n. The exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption." (7-1-93)

03. Isolated Transactions. Section 30-1435 (1)(a), Idaho Code, refers to "any isolated transaction." A transaction is presumed to be "isolated" if it is one of not more than three (3) securities transactions during the prior twelve (12) month period by the person claiming the exemption. For purposes of this rule, "transaction" shall include an "offer to buy," "offer," or "offer to sell" as defined in Section 30-1402(10), Idaho Code. The presumption contained herein shall in no way limit or restrict the operation and effect of Section 30-1435(1)(i), Idaho Code. (7-1-93)

**271. -- 279. (RESERVED).**

**280. RECOGNIZED SECURITIES MANUALS (Rule 280).**

Idaho Code Section 30-1435(1). (7-1-93)

01. Manuals. The following securities manuals are recognized under the provisions of the Act: Standard and Poor's Corporation Records and Daily News Section, Moody's Manuals, Walkers Manual of Western Corporations, Best's Life Insurance, Best's Insurance. (7-1-93)

02. Exemption Timing. The exemption shall not be available for any security until ninety (90) days after the initial public offering of such security by the issuer or an underwriter unless the offering was either registered under this Act or was otherwise exempt. (7-1-93)

03. Conditions of Exemption. The exemption is available only if the issuer has been in business for at least twelve (12) months and the manual contains all of the information required by statute. (7-1-93)

04. Unit Investment Trust. This exemption is also available if the issuer is a unit investment trust registered under Section 8 of the Investment Company Act of 1940 and has a sponsor that has at all times throughout the three years before an offer or sale of a security hereunder claimed to be exempt sponsored one or more registered unit investment trusts, the aggregate total assets of which have exceeded one hundred million dollars (\$100,000,000). (7-1-93)

05. Blind Pools. This exemption is not available if there has been a buyout of, consolidation with or merger of the business with a "shell," "blank check," or "blind pool" company, or a change in corporate purpose of the issuer for the purpose of avoiding the registration requirements under this Act. If there has been a merger with a "shell," "blank check," or "blind pool" company, it is presumed to be for the purpose of avoiding registration requirements. (7-1-93)

**281. -- 299. (RESERVED).**

**300. INTERPRETATIONS/DEFINITIONS (Rule 300).**

01. Transact Business. Idaho Code, Section 30-1406. For purposes of the Act, "to transact business" shall mean to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It shall also mean any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers or investment adviser representatives, "transact business" shall include preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. (7-1-93)

02. Annuity Contract. Idaho Code, Section 30-1402(12). That portion of Section 30-1402(12), Idaho Code, that states that a security "does not include any... annuity contract under which an insurance company promises to pay money, either in a lump sum, or periodically for life or some other specified period," is interpreted to mean

annuity contracts or optional annuity contracts that meet all of the following conditions: (7-1-93)

a. The annuity or optional annuity contract is issued by a corporation (the "insurer"), which is subject to the supervision of the Idaho Department of Insurance; (7-1-93)

b. The insurer assumes the investment risk under the contract. The insurer shall be deemed to assume the investment risk under the contract if: (7-1-93)

i. The value of the contract does not vary according to the investment experience of a separate account; and (7-1-93)

ii. The insurer for the life of the contract: guarantees the principal amount of purchase payments and interest credited thereto, less any deduction, without regard to its timing, for sales, administrative or other expenses, or charges; and credits a specified rate of interest, as defined in 17 CFR 230.151(c), to net purchase payments and interest credited thereto; and (7-1-93)

iii. The insurer guarantees that the rate of any interest to be credited in excess of that described in Subsection 300.02.b. of this section will not be modified more frequently than once per year; (7-1-93)

c. The contract is not marketed primarily as an investment. (7-1-93)

03. Investment Contract. Idaho Code, Section 30-1402(12). "Investment contract" as used in Section 30-1402(12), Idaho Code, includes, but is not limited to, either or both of the following: (7-1-93)

a. Any investment in a common enterprise with the expectation of profit to be derived primarily through the managerial efforts of someone other than the investor. In this Section, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or of a third party (also known as vertical commonality); (7-1-93)

b. Any investment by which an offeree furnishes value to an offeror and a portion of this value is subjected to the risks of the enterprise, and the furnishings of said value are induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above said value, will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. (7-1-93)

04. Unsolicited Order or Offer. Idaho Code, Section 30-1435(1)(d). (7-1-93)

a. "Unsolicited order or offer" as used in Section 30-1435(1)(d), Idaho Code, means that an order or offer to buy is regarded as unsolicited if: (7-1-93)

i. The broker-dealer has not made a direct solicitation that the customer purchase the security; and (7-1-93)

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner which would bring its recommendation to the customer; and (7-1-93)

iii. The broker-dealer has not volunteered information on the issuer to the customer; and (7-1-93)

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. (7-1-93)

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer, shall be regarded as a solicited order. (7-1-93)

c. Any claim of exemption pursuant to Section 30-1435(1)(d), Idaho Code, shall be supported by the broker-dealer's certificate that the transaction in question was, in fact, unsolicited. (7-1-93)



05. Offered and Sold as a Unit. Idaho Code, Section 30-1435(1)(o). That portion of Section 30-1435(1)(o), Idaho Code, that provides an exemption for certain secured transactions if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, "is offered and sold as a unit," is defined to mean an offer and sale of the entire mortgage, deed of trust, or agreement to a single purchaser at a single sale. (7-1-93)

06. An Individual Who Represents an Issuer. Idaho Code, Section 30-1402(2). That portion of Section 30-1402, Idaho Code, that refers to "an individual who represents an issuer" does not include a person who is employed by, associated or affiliated with a broker-dealer or investment adviser. It also does not include a person who is registered as a salesman or investment adviser representative with the SEC, NASD, or any state. (7-1-93)

07. Offer. Idaho Code Section 30-1402(10). Solely for the purpose of complying with the registration requirements of Idaho Code Section 30-1416, information regarding securities which is broadcast by, or on behalf of, issuers, on or through the Internet, the World Wide Web or a similar proprietary or common carrier electronic system (such systems hereinafter being referred to collectively as the "Internet"), shall not be considered an "offer" of those securities if the following conditions are met: (7-1-97)

- a. The Internet broadcast indicates that the securities are not being offered to residents of Idaho; (7-1-97)
- b. The Internet broadcast is not specifically directed to any person in Idaho by, or on behalf of, the issuer of the securities; and (7-1-97)
- c. No sales of the issuer's securities are made in Idaho as a result of the Internet broadcast until such time as the securities which are the subject of the broadcast have been registered or qualify for an exemption under the Idaho Securities Act. (7-1-97)

**301. -- 309. (RESERVED).**

**310. REGISTRATION OR EXEMPTION OF "BLIND POOL" OFFERINGS PROHIBITED (Rule 310).** Idaho Code Sections 30-1417, 30-1420, 30-1423, 30-1434, 30-1435. An offering in which it is proposed to issue stock or other equity interest without an allocation of proceeds to sufficiently identifiable properties or objectives shall be considered a "blind pool" offering and one in which the duty to provide full disclosure cannot be met. Because of the inability or failure to make full disclosure, the Department is of the position that the offering would work a fraud upon purchasers and, therefore, the offering may not be registered or qualify for an exemption from registration in Idaho. (7-1-93)

**311. -- 319. (RESERVED).**

**320. APPLICATIONS; NOTICE OF INTENDED IDAHO BROKER-DEALER OR SALESMAN (Rule 320).** Idaho Code Sections 30-1406, 30-1416, 30-1431. At the time of filing of an application for registration of any security required to be registered in Idaho, written notice shall be provided to the Department of the name of at least one broker-dealer or salesman, registered as such in this state, that is intended or qualified to offer or sell such security in Idaho. The Director may deny or revoke effectiveness of any registration pending receipt of the notice or may hold the application without further review until the notice has been received. (7-1-93)

**321. -- 329. (RESERVED).**

**330. USE OF UNREGISTERED NAMES BY BROKER-DEALERS AND INVESTMENT ADVISERS (Rule 330).** Idaho Code Sections 30-1402 and 30-1406. (7-1-93)

01. Broker-Dealers. Upon prior written request, the Director, in his discretion, may allow use by a broker-dealer of the name of an entity which is not registered with the Department as a broker-dealer if, in all communications and advertising, a notation is prominently displayed indicating that all securities transactions are made through a named registered broker-dealer. However, any and all payments received must be in the name of the

registered broker-dealer. The Director may impose any further conditions or restrictions on the use of the nonregistered name that he deems appropriate for the protection of the public. Except as provided in this rule, the use of unregistered names by a broker-dealer is prohibited. (7-1-93)

02. Investment Advisers. All advising, transactions, communications, and advertising regarding securities and the conducting of business as an investment adviser must be accomplished under the name of an investment adviser that is currently registered with the Department. No use of a name other than the one currently registered with the Department shall be allowed. (7-1-93)

**331. -- 339. (RESERVED).**

**340. RENEWAL OF REGISTRATIONS OF BROKER-DEALERS, SALESMEN, INVESTMENT ADVISERS OR INVESTMENT ADVISER REPRESENTATIVES; NOTICE OF NAME CHANGES (Rule 340).**

Idaho Code Sections 30-1410 and 30-1411. (7-1-93)

01. Applications Prior to Expiration. The purpose of this rule is to make clear the requirement that an application for the renewal of the registration of a broker-dealer, salesman, investment adviser, or investment adviser representative must be filed with the Department before the registration expires, which is the thirty-first (31st) day of December next following such registration, per the provisions of Sections 30-1410 and 30-1411, Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer, salesman, investment adviser, or adviser representative to reapply for registration with the Department in accordance with the requirements of the Act. (7-1-93)

02. Change of Name. If a registered broker-dealer or investment adviser desires to change its name, in connection with a renewal, written notice of such an intent must be submitted to the Department in writing, at least thirty (30) days before it will be allowed to renew its registration utilizing the new name. Any desired name change, not in connection with a renewal, must be submitted to the Department in writing either before or within a reasonable time after the effective date of the change. However, the name change will not be effective in this state until the notice is received. Any notice of a name change, whether in connection with a renewal or otherwise, must include a copy of the rider to be attached to the broker-dealer's or investment adviser's surety bond, reflecting the name change. (7-1-93)

**341. -- 349. (RESERVED).**

**350. NOTICE OF AFFILIATION OF INVESTMENT ADVISERS WITH BROKER-DEALERS/ISSUERS/SALESMEN (Rule 350).**

Idaho Code Section 30-1404. If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Director of any material changes concerning any affiliation. Compliance with Part II of Uniform Form ADV and delivery of Part II of that form, or of a separate brochure or document containing substantially the same information that meets the requirements of the federal brochure rule, will be deemed to be in compliance with this rule. (7-1-93)

**351. -- 359. (RESERVED).**

**360. NOTIFICATION OF OPENING OR CLOSING OF BRANCH OFFICES (Rule 360).**

01. Notice. Any broker-dealer or investment adviser, licensed as such with the Department, shall notify the Director in writing no later than thirty (30) days before the opening or closing of any branch office. For purposes of this rule, "branch office" is defined to include any location where any of the broker-dealer's or investment adviser's business is conducted on a regular basis outside the broker-dealer's or investment adviser's main office or principal place of business including, but not limited to, any financial institutions, residences, or seasonal offices used by the broker-dealer or investment adviser and its agents. (7-1-93)

02. Branch Managers. At the same time that the above-mentioned notice is given concerning the opening of any branch office, the broker-dealer or investment adviser will also inform the Director as to the identity

of the branch manager for that particular branch. The broker-dealer or investment adviser is under a continuing obligation to keep the Director timely informed in writing of any change in branch managers for all of the firm's branch offices. (7-1-93)

**361. -- 379. (RESERVED).**

**380. BANK DISCOUNT BROKERAGE SERVICE (Rule 380).**

01. Purpose. The purpose of this rule is to create a procedure to allow banks and other financial institutions to offer their customers discount brokerage services through a registered broker-dealer. For the purposes of such an arrangement, the bank or other financial institution shall not be required to register as a broker-dealer nor shall its employees be required to register as salespersons if all of the following conditions are met: (7-1-93)

a. All advertising materials, correspondence, and other literature used by the bank or financial institution in Idaho must state that the bank or financial institution is not a licensed broker-dealer in Idaho and that the customer will be a securities brokerage customer of a particular named broker-dealer registered as such in this state. (7-1-93)

b. Bank and other financial institution employees must perform only clerical and ministerial functions in connection with brokerage transactions unless they are qualified as salespersons of the registered broker-dealer, and registered as such under the provisions of the Act. The clerical and ministerial functions are limited to the following: (7-1-93)

i. Bank and other financial institution employees may not assist in the preparation of new account forms by customers. (7-1-93)

ii. Bank and other financial institutions may not accept customer checks or securities certificates in settlement of securities transaction orders placed directly with the registered broker-dealer. (7-1-93)

iii. Bank and other financial institution employees may deliver blank new account forms, and written instructions on their preparation, to the customers and may witness signatures. (7-1-93)

iv. Customers of the discount brokerage service must contact the broker-dealer directly to make their securities transactions, and must not call the bank or financial institution, concerning such transactions. The bank must refer all securities related questions to the registered broker-dealer's office for disposition. (7-1-93)

v. All securities certificates must be issued by the registered broker-dealer directly to the customer, and not by or through the bank or financial institution or its employees. (7-1-93)

c. Bank and other financial institution employees must not receive compensation for brokerage services, either directly or indirectly, unless they are qualified as registered salespersons of the broker-dealer. (7-1-93)

d. The services must be provided by the broker-dealer on a basis in which the customers are fully disclosed, i.e., all accounts are kept in the individual customer's name rather than in the bank's or other financial institution's name. (7-1-93)

e. The Department must timely be notified in writing of any agreement, and any material changes in that agreement, entered into between the bank or other financial institution and a broker-dealer to provide these services, and copies of the agreement shall be sent to the Department. (7-1-93)

f. The books and records of the broker-dealer must be kept separate from those of the bank or other financial institution. (7-1-93)

02. Waiver. Any portion of the above stated conditions and requirements may be waived by the Director in his discretion upon written request and a showing of good cause by the person or entity making the request.

(7-1-93)

**381. -- 389. (RESERVED).**

**390. EXEMPT MINING OFFERINGS, FINANCIAL REPORTS, ADVERTISING (Rule 390).**

Idaho Code Section 30-1434(1)(m).

(7-1-93)

01. Quarterly Reports. The first quarterly financial report required pursuant to Section 30-1434(1)(m)(v), Idaho Code, shall be filed ninety (90) days from the date the exemption was granted, on forms available from the Director, and subsequent reports shall be filed every ninety (90) days thereafter. If such reports are not filed within two (2) weeks after the due date, the Director may revoke the exemption, as provided in Section 30-1434(2), Idaho Code. It shall be the sole responsibility of the issuer to obtain the proper report forms from the Director and to make timely filings.

(7-1-93)

02. Advertising. The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained.

(7-1-93)

03. Offering Circulars. All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Director adequate to satisfy the antifraud provisions of the Act.

(7-1-93)

**391. -- 399. (RESERVED).**

**400. ADMINISTRATIVE PENALTIES (Rule 400).**

Idaho Code Sections 30-1413, 30-1437, 30-1442.

(7-1-93)

01. Available Penalties. If the Director finds that any person has engaged in any act or practice constituting a violation of any provision of the Act or any rule or order thereunder, the Director may, in lieu of or in addition to any other specific powers granted therein:

(7-1-93)

a. Issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation;

(7-1-93)

b. Censure that person if that person is a licensed broker-dealer, salesman, investment adviser or investment adviser representative.

(7-1-93)

02. Sanctions Not Summary. These above penalties may not be assessed summarily but only upon consent, or in a final order issued after a hearing held after appropriate notice to all interested parties and entry of written findings of fact and conclusions of law. Any such final order shall include a finding that the sanction is appropriate for the violation.

(7-1-93)

**401. -- 409. (RESERVED).**

**410. COOPERATION WITH OTHER AGENCIES (Rule 410).**

Idaho Code Sections 30-1440, 30-1441, 30-1450.

(7-1-93)

01. Cooperating Agencies. To encourage uniform interpretation and administration of the Act and effective securities regulation and enforcement, the Director may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the SEC, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self regulatory organization, any national or international organization of securities officials or agencies, and any state or federal governmental law enforcement or regulatory agency.

(7-1-93)

02. Nature of Cooperation. The cooperation authorized by Subsection 410.01 of this rule includes, but is not limited to:

(7-1-93)

a. Providing subpoena assistance to other states. If another state requests assistance in obtaining

information from persons in this state concerning activities constituting an alleged violation, which activities for which the information is sought would be a violation of the Act had the activities occurred in this state, the Director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state or jurisdiction; (7-1-93)

- b. Making a joint license or registration examination or investigation; (7-1-93)
- c. Holding a joint administrative hearing; (7-1-93)
- d. Filing and prosecuting a joint civil or administrative proceeding; (7-1-93)
- e. Sharing and exchanging personnel; (7-1-93)
- f. Sharing and exchanging information and documents subject to the restrictions of Rule 420 of these rules; and (7-1-93)
- g. Formulating, in accordance with the Idaho Administrative Procedure Act, chapter 52, title 67, Idaho Code, rules or proposed rules on matters such as statements of policy, guidelines, and interpretative opinions and releases. (7-1-93)

**411. -- 419. (RESERVED).**

**420. CONFIDENTIALITY (Rule 420).**

Idaho Code Section 30-1440. (7-1-93)

01. Confidential Information. To the extent allowable by Idaho law, the following shall be kept confidential and not subject to public disclosure: (7-1-93)

- a. The identity of any complainant or informant, and the substance of any complaint or information received by the Department relating to any possible violations of the Act. (7-1-93)
- b. The existence, status, progress, and/or result of any investigations concerning possible violations of the Act. (7-1-93)
- c. The identity and the substance or content of any information provided to the Department by any person that may be under investigation for a possible violation of any provision of the Act. (7-1-93)
- d. Any information pertaining to the above that has been received from any other federal or state entity or governmental subdivision. (7-1-93)
- e. Any other information pertaining to the above, or otherwise, which the Director deems should be kept confidential and not subject to public disclosure. (7-1-93)
- f. Any information or documents constituting trade secrets or commercial or financial information of a person for which that person is entitled to, and has asserted, a claim of confidentiality or privilege authorized by law. (7-1-93)
- g. Any information or documents which are the subject of a court order, issued by a court of competent jurisdiction, requiring that the information or documents be kept confidential. (7-1-93)

02. Waiver. Any portion of the above stated policy may be waived by the Director in his discretion upon written request and a showing of good cause by the person or entity requesting disclosure. This rule does not create any privilege or diminish any privilege existing at common law, by statute, rule, or otherwise. In addition, the above stated policy may be waived by the Director in the course of any litigation regarding violations of the Act, and otherwise as provided in Section 30-1440, Idaho Code. (7-1-93)

**421. -- 429. (RESERVED).**

**430. RECORDS OPEN FOR PUBLIC INSPECTION (Rule 430).**

Idaho Code Section 30-1453. The following records shall be open and available for public inspection: (7-1-93)

01. Securities Applications. Applications to register securities, applications or notices pertaining to exemptions, registration statements, and all related documents filed with the Director, except as specified in this rule, are open for public inspection. Excluded from public inspection are comment letters, correspondence, and investigative materials, or other information or documents as addressed in Section 420 of these rules, generated with respect to the registration of any security, unless made public by the Director. (7-1-93)

02. Licensee Applications. Applications of persons for registration in this state as broker-dealers, salespersons, or investment advisers. (7-1-93)

03. Official Documents. Official documents in connection with any administrative actions initiated by the Department of Finance. (7-1-93)

04. Other Information. Any other information or documents not limited by the application of Rule 420. of these rules or declared to be confidential by the Director. (7-1-93)

**431. -- 999. (RESERVED).**