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**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, "Rules Pursuant to the Idaho Securities Act". 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, P.O. Box 83720, Boise, Idaho 83720-0031. 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) 332-8000, Administration; and (208) 332-8004, Securities Bureau. The telephone number of the facsimile machine is (208) 332-8099. 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. (11-1-98)

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).
Section 30-1403, Idaho Code. (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 Subsections 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 (2) 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).

Section 30-1407, Idaho Code.

(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).

Sections 30-1407, 30-1410, Idaho Code.

(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 Section 30-1413, Idaho Code. (7-1-93)

022. IMPLEMENTATION OF IARD (Rule 22).

01. Designation. Pursuant to Section 30-1407, Idaho Code, the Director designates the web-based Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Director. (3-13-02)

02. Use Of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Director pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings: (3-13-02)

a. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (3-13-02)

b. When Filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Director when all fees are received and the filing is accepted by IARD on behalf of the state. (3-13-02)

03. Electronic Filing. Notwithstanding Subsection 022.02 of these rules, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Director. Any documents or fees required to be filed with the Director that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Director. (3-13-02)

04. Hardship Exemptions. This Section provides two (2) "hardship exemptions" from the requirements to make electronic filings as required by the rules. (3-13-02)

a. Temporary Hardship Exemption.

(3-13-02)

i. Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically. (3-13-02)

ii. To request a temporary hardship exemption, the investment adviser must file Form ADV-H which can be found at 17- CFR 279.3 in paper format with the Director where the investment adviser's principal place of business is located, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due. (3-13-02)

iii. Effective Date -- Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Director of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Director. (3-13-02)

b. Continuing Hardship Exemption. (3-13-02)

i. Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. (3-13-02)

ii. To apply for a continuing hardship exemption, the investment adviser must file Form ADV-H which can be found at 17- CFR 279.3 in paper format with the Director at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the Form ADV-H must be filed with the Director where the investment adviser's principal place of business is located. The Director who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H. (3-13-02)

iii. Effective Date -- Upon Approval. The exemption is effective upon approval by the Director. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H is filed. If the Director approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted. (3-13-02)

c. Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the Director where the investment adviser's principal place of business is located, which decision will be followed by the securities regulator in the other state(s) where the investment adviser is registered. (3-13-02)

023. APPLICATION FOR INVESTMENT ADVISER REGISTRATION (Rule 23).

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-1407, Idaho Code, shall be made by completing Form ADV which can be found at 17 C.F.R. 279.1 in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following: (3-13-02)

a. Proof of compliance by the investment adviser with the examination requirements of Subsection 040.02 of these rules; (3-13-02)

b. Such information required to be submitted pursuant to Sections 30-1407 and 30-1408, Idaho Code; (3-13-02)

c. The fee required by Section 30-1437, Idaho Code; and; (3-13-02)

d. Any other information the Director may reasonably require. (3-13-02)

02. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD. The application for annual renewal registration shall include the fee required by Section 30-1411, Idaho Code. (3-13-02)

03. Updates And Amendments. (3-13-02)

- a.** An investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the investment adviser's Form ADV; (3-13-02)
- b.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (3-13-02)
- c.** Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV. (3-13-02)

04. Completion Of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-1407 or 30-1411, Idaho Code, until the required fee and all required submissions have been received by the Director. (3-13-02)

024. APPLICATION FOR INVESTMENT ADVISER REPRESENTATIVE REGISTRATION (Rule 24).

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-1407, Idaho Code, shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with IARD. The application for initial registration also shall include the following: (3-13-02)

- a.** Proof of compliance by the investment adviser representative with the examination requirements of Rule 040 of these rules; and (3-13-02)
- b.** The fee required by Section 30-1437, Idaho Code. (3-13-02)

02. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with IARD. The application for annual renewal registration shall include the fee required by Section 30-1411, Idaho Code. (3-13-02)

03. Updates And Amendments. (3-13-02)

- a.** The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. (3-13-02)
- b.** An investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4; and (3-13-02)
- c.** An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-13-02)

04. Completion Of Filing. An application for initial or renewal registration is not considered filed for purposes of Sections 30-1407 or 30-1411, Idaho Code, until the required fee and all required submissions have been received by the Director. (3-13-02)

025. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS (Rule 25).

01. Notice Filing. The notice filing for a federal covered adviser pursuant to Section 30-1406, Idaho Code, shall be filed with IARD on an executed Form ADV which can be found at 17 C.F.R. 279.1. A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-1406, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. (3-13-02)

02. Portions Of Form ADV Not Yet Accepted By IARD. Until IARD provides for the filing of Part 2 of Form ADV, the Director will deem filed Part 2 of Form ADV if a federal covered adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Director. Because the Director deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Director unless requested.

(3-13-02)

03. Renewal. The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-1411, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by Section 30-1411, Idaho Code, is filed with and accepted by IARD on behalf of the state. (3-13-02)

04. Updates And Amendments. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV. (3-13-02)

026. TRANSITION SCHEDULE FOR CONVERSION TO IARD (Rule 26).

01. Electronic Filing of Form ADV. (3-13-02)

a. By January 1, 2002, each investment adviser registered or required to be registered under the Act must resubmit its Form ADV electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under Subsection 022.04 of these rules; (3-13-02)

b. If the amendment to Form ADV is made after January 1, 2002, or at an earlier date if an investment adviser has filed its Form ADV (or any amendments to Form ADV) electronically with IARD, the registrant must file amendments to Form ADV required by this section electronically with IARD, unless it has been granted a hardship exemption under Subsection 022.04 of these rules. (3-13-02)

02. Electronic Filing of Form U-4. By January 1, 2002, for each investment adviser representative registered or required to be registered under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under Subsection 022.04 of these rules. (3-13-02)

027. WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATION (Rule 27).

01. Application Withdrawal. Withdrawal from registration as an investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Director by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Director may nevertheless institute a revocation or suspension proceeding under Section 30-1413, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (3-13-02)

02. Investment Adviser. The application for withdrawal of registration as an investment adviser shall be completed by following the instructions on Form ADV-W which can be found at 17 C.F.R. 279.2 and filed upon Form ADV-W with IARD. (3-13-02)

03. Investment Adviser Representative. The application for withdrawal of registration as an investment adviser representative shall be completed by following the instructions on Form U-5 and filed upon Form U-5 with IARD. (3-13-02)

028. -- 029. (RESERVED).

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

Section 30-1407(3), Idaho Code. 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).

Section 30-1407(3), Idaho Code. (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).

Section 30-1407, Idaho Code.

(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. 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)

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

04. 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).

Section 30-1407, Idaho Code. 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).

Section 30-1408, Idaho Code.

(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).

Section 30-1410, Idaho Code. 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).

Sections 30-1407 and 30-1408, Idaho Code. 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).

Section 30-1413, Idaho Code. 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. NOTIFICATION OF OUTSIDE BUSINESS ACTIVITIES--SELLING AWAY (Rule 80).

Section 30-1413, Idaho Code. 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)

081. -- 099. (RESERVED).

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

Section 30-1412, Idaho Code. 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).

Section 30-1412, Idaho Code. 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).

Sections 30-1413(7), 30-1403, and 30-1404, Idaho Code. 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 (3) 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 (1) 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).

Section 30-1423, Idaho Code.

(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: (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. -- 149. (RESERVED).

150. SUBSCRIPTION AGREEMENT (Rule 150).

Section 30-1423(12), Idaho Code. 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).

Section 30-1423(12), Idaho Code.

(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 ten (10) pt. modern type, with financial data or other statistical or tabular matter at least as large as eight (8) pt. (all type shall be leaded at least two (2) 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).

Section 30-1423(14), Idaho Code.

(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. -- 209. (RESERVED).

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

Section 30-1429, Idaho Code.

(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).

Section 30-1430(1), Idaho Code. 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).

Section 30-1430(2), Idaho Code. 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. ADOPTION OF NASAA STATEMENT OF POLICY (Rule 231).

01. Statements Of Policy For Offerings Registered. The following North American Securities Administrators Association (NASAA) Statements of Policy for offerings registered pursuant to Sections 30-1420 and 30-1423, Idaho Code, are adopted: (11-1-98)

- a. Loans and other material affiliated transaction, as adopted with amendments through November 18, 1997; (11-1-98)
- b. Options and warrants, as adopted with amendments through September 28, 1999; (3-30-01)
- c. Corporate securities definitions, as adopted with amendments through September 28, 1999; (3-30-01)
- d. Impoundment of proceeds, as adopted with amendments through September 28, 1999; (3-30-01)
- e. Preferred stock, as adopted with amendments through April 27, 1997; (11-1-98)
- f. Promotional shares, as adopted with amendments through September 28, 1999; (3-30-01)
- g. Promoters' equity investment, as adopted with amendments through April 27, 1997; (11-1-98)
- h. Specificity in use of proceeds, as adopted with amendments through September 28, 1999; (3-30-01)
- i. Underwriting expenses, underwriter's warrants, selling expenses, and selling securities holders, as adopted with amendments through September 28, 1999; (3-30-01)
- j. Unsound, financial condition, as adopted with amendments through September 28, 1999; and (3-30-01)
- k. Unequal voting rights, as adopted October 24, 1991. (11-1-98)

02. Compliance With Requirements. An offering registering pursuant to Sections 30-1420 and 30-1423, Idaho Code, that falls within one (1) or more of the statements of policy listed in Subsection 231.01 of this Section must comply with the requirements of said statement of policy or policies. (11-1-98)

03. Publications Of Statements Of Policy. The statements of policy referred to in Subsection 231.01 of this Section are found in CCH NASAA Reports published by Commerce Clearing House. Copies are also available at the Idaho Department of Finance. (11-1-98)

232. -- 249. (RESERVED).

250. APPROVED EXCHANGES (Rule 250).

Section 30-1434(1)(h), Idaho Code. 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).

Section 30-1435(1), Idaho Code. (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 (1) 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 (1) 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 270.02.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. DESIGNATED MATCHING SERVICES.

01. In General. Sections 30-1416 through 30-1433A, Idaho Code, shall not apply to any offer or sale of a security by an issuer in a transaction that meets the requirements of Section 271. A designated matching service shall not be deemed a broker-dealer subject to registration within the meaning of the Idaho Securities Act or the rules thereunder. (4-5-00)

02. Definitions. The following words and terms, when used in Section 271, shall have the following meanings, unless the context clearly indicates otherwise. (4-5-00)

a. Designated Matching Service. Means a matching service designated by the Director under this Section. (4-5-00)

b. Designated Matching Service Facility. Means a computer system operated, or a seminar or meeting conducted, by a designated matching service. (4-5-00)

c. Individual Accredited Investor. Means any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his or her purchase, exceeds one million dollars (\$1,000,000) or any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two (2) most recent years or joint income with that person’s spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year. In addition each purchaser must evidence such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The term “individual accredited investor” shall also include any self-directed employee benefit plan with investment decisions made solely by persons that are “individual accredited investors” as defined in this paragraph and the individual retirement account of any such individual accredited investor. (4-5-00)

d. Investor Member. Means an investor who has been properly qualified by and uses a designated matching service. Either of the following investors may be properly qualified: any institutional investor as described

in Section 30-1435(1)(h), Idaho Code, or an individual accredited investor as defined in this rule. (4-5-00)

e. Issuer Member. Means an issuer who uses a designated matching service facility. (4-5-00)

f. Summary Business Plan. Means a brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan. (4-5-00)

03. Application. A person may apply to the Director to be a designated matching service by filing such forms as required by the Director. No designation will be made unless the applicant demonstrates that it: (4-5-00)

a. Owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members; (4-5-00)

b. Will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in Subsection 271.03.a.; (4-5-00)

c. Will make a reasonable factual inquiry to determine whether an investor member is properly qualified; (4-5-00)

d. Is a governmental entity, quasi-governmental entity, an institution of higher education or an Idaho nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education; (4-5-00)

e. Does not employ any person required to be registered under the Act as a broker-dealer, investment adviser, salesman, or agent; (4-5-00)

f. Does not have, and does not employ any person who has a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility; (4-5-00)

g. Charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member; (4-5-00)

h. Agrees to not use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof; and (4-5-00)

i. Meets such other conditions as the Director considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Idaho Securities Act and the rules thereunder. (4-5-00)

04. Designation Consistent With Act. Designation under Section 271 is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of the Idaho Securities Act or rules thereunder. (4-5-00)

05. Withdrawal Of Designation. The Director, upon ten (10) days notice and hearing before the Director or a hearing officer, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in Section 271. (4-5-00)

06. Disqualifications. (4-5-00)

a. No exemption under Section 271 shall be available for the securities of any issuer if the issuer: (4-5-00)

i. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state

securities administrator; (4-5-00)

ii. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit or a misdemeanor involving financial fraud; (4-5-00)

iii. Is the subject of any state or federal administrative enforcement order, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (4-5-00)

iv. Is the subject of any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (4-5-00)

b. For purposes of Section 271, the term “issuer” includes: (4-5-00)

i. Any of the issuer’s predecessors or any affiliated issuer; (4-5-00)

ii. Any of the issuer’s directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote or the power to dispose or direct the disposition of such securities); (4-5-00)

iii. Any of the issuer’s promoters presently connected with the issuer in any capacity, including: (4-5-00)

(1) Any person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or (4-5-00)

(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of Subsection 271.06.b.iii. if such person does not otherwise take part in founding and organizing the enterprise; or (4-5-00)

iv. Any underwriter of the issuer. (4-5-00)

c. The exemption under Section 271 is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. (4-5-00)

07. Notice Of Transaction. The issuer shall file with the Director a notice of transaction, a consent to service of process, and a copy of its summary business plan within fifteen (15) days after the first sale in this state. (4-5-00)

272. -- 279. (RESERVED).

280. RECOGNIZED SECURITIES MANUALS (Rule 280).
Section 30-1435(1), Idaho Code. (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. (11-1-98)

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 (3) years before an offer or sale of a security hereunder claimed to be exempt sponsored one (1) 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. Section 30-1406, Idaho Code. 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. Section 30-1402(12), Idaho Code. 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. Section 30-1402(12), Idaho Code. “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. Section 30-1435(1)(d), Idaho Code. (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. Section 30-1435(1)(o), Idaho Code. 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. Section 30-1402(2), Idaho Code. 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. Section 30-1402(10), Idaho Code. Solely for the purpose of complying with the registration requirements of Section 30-1416, Idaho Code, 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).
Sections 30-1417, 30-1420, 30-1423, 30-1434, 30-1435, Idaho Code. 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).
Sections 30-1406, 30-1416, 30-1431, Idaho Code. 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 (1) 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).
Sections 30-1402 and 30-1406, Idaho Code. (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).
Sections 30-1410 and 30-1411, Idaho Code. (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, notice of such an intent must be submitted to the Department either before or within a reasonable time after the

effective date of the change. The name change will not be effective in this state until the notice is received. Any notice of a name change must include a copy of the rider to be attached to the investment adviser's surety bond, if such bond is required, reflecting the name change. (11-1-98)

341. -- 349. (RESERVED).

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

Section 30-1404, Idaho Code. 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).
Section 30-1434(1)(m), Idaho Code. (7-1-93)

01. 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).
Sections 30-1413, 30-1437, 30-1442, Idaho Code. (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).
Sections 30-1440, 30-1441, 30-1450, Idaho Code. (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 (1) 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).
Section 30-1440, Idaho Code. (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).

Section 30-1453, Idaho Code. 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).

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