

Dear Senators PATRICK, Guthrie, Ward-Engelking, and
Representatives BARBIERI, Clow, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Finance:

IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act (2004) - Proposed Rule (Docket
No. 12-0108-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 08/21/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/18/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee
FROM: Principal Legislative Research Analyst - Ryan Bush
DATE: August 2, 2018
SUBJECT: Department of Finance

IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act (2004) - Proposed Rule (Docket No. 12-0108-1801)

Summary and Stated Reasons for the Rule

This proposed rule change by the Department of Finance eliminates an exemption for the implementation of a federal securities issuer that no longer exists. This rule also adds the Securities Industry Essentials examination to the list of examination requirements. The Department states that this addition has been adopted by both federal and state securities regulators.

Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was not conducted because the rule is simple in nature. There is no fiscal impact associated with this rulemaking.

Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Department in Sections 30-14-605 and 30-14-608, Idaho Code.

cc: Department of Finance
James Burns

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

DOCKET NO. 12-0108-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 30-14-605 and 30-14-608, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2018.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 59 (12.01.08.059) is being eliminated as it provided for the implementation of a federal securities issuer exemption that no longer exists.

Rule 103 (12.01.08.103) is being amended to address recent changes in uniform securities examinations as adopted by both federal and state securities regulators.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for this rule as it is simple in nature and negotiation would be ineffective.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Burns at (208) 332-8080, jim.burns@finance.idaho.gov, or securitiesrules@finance.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2018.

DATED this 3rd day of July, 2018.

James A. Burns
Securities Bureau Chief
Department of Finance
800 Park Blvd.
PO Box 83720 Boise, ID 83720-0031
Office: (208) 332-8080
Fax: (208) 332-8099

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0108-1801
(Only Those Sections With Amendments Are Shown.)

~~059. NOTICE FILINGS FOR TRANSACTIONS UNDER REGULATION D, RULE 505 (RULE 59).~~
~~(RESERVED)~~

~~01. Exempt Securities. Pursuant to Section 30-14-203(1), Idaho Code, transactions that are exempt securities under 17 CFR 230.505 are exempt from Section 30-14-301, Idaho Code. As a condition of this exemption, the issuer shall comply with the requirements in Subsection 059.02 of this rule. (3-24-05)~~

~~02. Disqualification. Unless upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that the exemption provided by Subsection 059.01 be denied, the exemption shall not be available for the offer or sale of securities if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: (4-11-06)~~

~~a. Is subject to any of the disqualifications under 17 CFR 230.262, as in effect on August 24, 2005; (3-29-17)~~

~~b. Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involved in an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance; (3-29-17)~~

~~c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-24-05)~~

~~d. Is currently subject to 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. (3-24-05)~~

~~03. Exceptions. Subsection 059.02 of this rule shall not apply if: (3-24-05)~~

~~a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; (3-24-05)~~

~~b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or (3-24-05)~~

~~c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under Subsection 059.02 of this rule. (3-29-17)~~

~~04. Notice Filings for Rule 505. The notice filing required for transactions in Idaho under 17 CFR 230.505, shall consist of the following: (3-24-05)~~

~~a. One (1) copy of the SEC filed electronic Form D; (3-29-17)~~

~~b. Copy of the private placement memorandum. (3-29-17)~~

~~c. Each notice shall be filed with the Department no later than ten (10) business days prior to effecting a sale in Idaho. (3-24-05)~~

~~05. **Amendments.** During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate. (3-24-05)~~

~~06. **Nonaccredited Investors.** 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: (3-24-05)~~

~~a. 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. (3-24-05)~~

~~b. 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. (3-24-05)~~

~~07. **Due Diligence.** 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. (3-24-05)~~

~~08. **Disclosure.** 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. (3-24-05)~~

~~09. **Denial, Suspension, Revocation, Condition or Limitation of Exemption.** Any issuer relying on the exemption under Regulation D, Rule 505 may be subject to the enforcement remedies provided in Section 30-14-204, Idaho Code, if it fails to satisfactorily address issues raised by the Department in comment letters or otherwise. (3-24-05)~~

~~10. **Issuer Agent Registration.** Pursuant to Section 30-14-402(b)(9), Idaho Code, an individual who represents an issuer who effects transactions that are exempt securities under 17 CFR 230.505 and exempt from Section 30-14-301, Idaho Code, is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with FINRA, or affiliated with a broker-dealer registered in another state, with the SEC or FINRA, then such person must also be similarly registered in Idaho. (3-29-17)~~

(BREAK IN CONTINUITY OF SECTIONS)

103. EXAMINATION REQUIREMENTS (RULE 103).

01. Examination Required. The following examinations are required for the following applicants: (3-24-05)

pass: **a.** Broker-dealer agent application. General agents of securities broker-dealers are required to take and (3-24-05)

i. The applicable FINRA examinations; and (3-29-17)()

ii. Either the Series 63 or the Series 66 examination. (3-24-05)

b. Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: (3-24-05)

i. The Series 65; or (3-24-05)

ii. The Series 66 ~~and, the~~ Series 7, ~~and the Securities Industry Essentials~~ examinations. ~~(3-24-05)~~()

c. Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-FINRA broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-FINRA broker-dealers application are required to take and pass: (3-29-17)

i. The applicable FINRA examination; and (3-29-17)

ii. Either the Series 63 or the Series 66 examination. (3-24-05)

d. Sales of Viaticals. Persons selling viatical investments are required to take and pass the Securities Industry Essentials and Series 7 examinations. ~~(3-24-05)~~()

02. Specialized Examination Authority. Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. (3-24-05)

03. Investment Adviser Representatives - Waiver. An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination requirement if the applicant currently holds one (1) of the following designations: (3-24-05)

a. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; (3-24-05)

b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; (3-24-05)

c. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; (3-24-05)

d. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; (3-24-05)

e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or (3-24-05)

f. Such other professional designation as the Administrator may by rule or order recognize. (3-24-05)

04. Waiver. The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. (3-24-05)