

Dear Senators PATRICK, Agenbroad, Ward-Engelking, and  
Representatives DIXON, DeMordaunt, 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. 12-0108-1901).

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 10/24/2019. 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 11/22/2019.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*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 Drafting Attorney - Ryan Bush

**DATE:** October 4, 2019

**SUBJECT:** Department of Finance

IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act (2004) - Proposed Rule (Docket No. 12-0108-1901)

#### Summary and Stated Reasons for the Rule

The Department of Finance submits notice of proposed rulemaking at IDAPA 12.01.08 - Rules Pursuant to the Uniform Securities Act. This rule change updates references to federal law and makes minor technical corrections.

#### 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 Section 30-14-605, Idaho Code.

cc: Department of Finance  
Lisa Baker

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may 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. 12-0108-1901

#### 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. This action is authorized pursuant to Sections 30-14-605, Idaho Code, and 30-14-608, Idaho Code, SB 1006 (2019).

**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 October 16, 2019.

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:

The proposed rule updates references to federal law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Not applicable

**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:

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature as it merely updates references to incorporated federal laws.

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Patricia Highley at (208) 332-8077.

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 October 23, 2019.

Dated this 30th day of August, 2019.

Patricia Highley  
Senior Securities Analyst  
Idaho Department of Finance, Securities Bureau  
800 Park Blvd., Suite 200  
P.O. Box 83720  
Boise, Idaho 83720-0031  
Office: (208) 332-8077  
Fax: (208) 332-8099

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0108-1901**  
**(Only Those Sections With Amendments Are Shown)**

**053. FEDERAL COVERED SECURITIES (RULE 53).**

**01. Investment Company Notices. (3-24-05)**

**a.** Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. (3-24-05)

**b.** Content of Notice. Each required notice shall include the following: (3-24-05)

**i.** A properly completed Form NF; (3-24-05)

**ii.** A consent to service of process (Form U-2); (3-24-05)

**iii.** A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts; and (3-29-17)

**iv.** Notification of SEC effectiveness. (3-24-05)

**c.** Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: (3-24-05)

**i.** A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; (3-24-05)

**ii.** A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (3-24-05)

**iii.** A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. (3-24-05)

**d.** Amendments. Amendment filings are required for the following: (3-24-05)

**i.** Issuer name change; (3-24-05)

**ii.** Address change for contact person; and (3-24-05)

**iii.** Notification of termination or completion. (3-24-05)

**e.** Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. (3-29-17)

**02. Regulation D Rule 506 Notice Filing. (3-24-05)**

**a.** Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, ~~shall be~~ are required to file a notice with the Department or with EFD pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (3-29-17)( )

**b.** Terms of Notice Filing. The issuer shall file with the Department or with EFD no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (3-29-17)

i. One (1) copy of the SEC-filed Form D; and (3-29-17)

ii. The notice filing fee of fifty dollars (\$50). (3-24-05)

iii. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. (3-24-05)

**c.** Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing ~~as required in Subsection 053.02.b. of this rule~~ with an additional fifty dollars (\$50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (3-24-05)( )

**d.** Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(~~DF~~) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(~~DF~~)) 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)**

**083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION (RULE 83).**

**01. Broker-Dealer Agents.** Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: (3-24-05)

**a.** With CRD, a completed Form U-4; (3-24-05)

**b.** With CRD, the filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)

**c.** With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; (3-24-05)

**d.** With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary; (3-24-05)

**e.** With the Department, Subsections 083.01.a. through 083.01.d. of this rule, for any agent of a non-FINRA member. (3-29-17)

**02. Agents of Issuer.** (3-24-05)

**a.** Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: (3-24-05)

i. A completed Form U-4; (3-24-05)

ii. The fee specified in Section 30-14-410, Idaho Code; (3-24-05)

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; (3-24-05)

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company ~~shall be~~ **is** liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter; (~~3-24-05~~)(      )

v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

**b.** An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to “qualified purchasers” as that term may be defined by the SEC), ~~18(b)(4)(D) (commonly known as Regulation A, Tier 2)~~, or 18(b)(4)(~~DF~~) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions. (~~3-24-05~~)(      )

**c.** Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer’s securities without ~~being required~~ **having** to pass such written examination or file an agent’s bond as required by Subsection 083.02.a.iii. and 02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. (~~3-24-05~~)(      )

**03. Incomplete Applications.** 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. (3-24-05)

**04. Annual Renewal.** (3-24-05)

**a.** Broker-Dealer Agent. Agents of FINRA members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-FINRA members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-29-17)

**b.** Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

**05. Updates and Amendments.** (3-24-05)

**a.** A broker-dealer agent or agent of issuer must file with CRD, or with this Department, in accordance with the instructions in Form U-4, any amendments to the broker-dealer agent’s or issuer agent’s Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to 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 Form U-4 or by direct notice to the Department. (3-24-05)

**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. (3-29-17)

**c.** Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator 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. (3-24-05)

**d.** Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

**e.** Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department 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. (3-24-05)

**06. Completion of Filing.** An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all *required* amendments, including submissions requested by the Department, have been received by the Department. (~~3-24-05~~)(    )

**07. Deferral of Effectiveness.** The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**095. INVESTMENT ADVISER BROCHURE RULE (RULE 95).**

An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275.204-3 under the Investment Advisers Act of 1940, deliver to each advisory client and prospective advisory client with a written disclosure statement that may be either a copy of Part 2 of its Form ADV which complies with 17 CFR 275.204-1(b) of the Investment Advisers Act of 1940, or a written document containing at least the information then so required by Part 2 of Form ADV. (~~3-29-17~~)(    )