

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 418

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM SECURITIES ACT; AMENDING SECTION 30-14-402, IDAHO
2 CODE, TO REVISE REFERENCES TO FEDERAL LAW; AMENDING SECTION 30-14-411,
3 IDAHO CODE, TO REVISE REFERENCES TO FEDERAL LAW; AND AMENDING SECTION
4 30-14-605, IDAHO CODE, TO REVISE REFERENCES TO FEDERAL LAW AND TO MAKE
5 TECHNICAL CORRECTIONS.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 30-14-402, Idaho Code, be, and the same is
9 hereby amended to read as follows:

10 30-14-402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Regis-
11 tration requirement. It is unlawful for an individual to transact business
12 in this state as an agent unless the individual is registered under this
13 chapter as an agent or is exempt from registration as an agent under subsec-
14 tion (b) of this section.

15 (b) Exemptions from registration. The following individuals are ex-
16 empt from the registration requirement of subsection (a) of this section:

17 (1) An individual who represents a broker-dealer in effecting transac-
18 tions in this state limited to those described in section 15(~~h~~i) (~~23~~) of
19 the securities exchange act of 1934 (15 U.S.C. 78o(~~h~~i) (~~23~~));

20 (2) An individual who represents a broker-dealer that is exempt under
21 section 30-14-401(b) or (d), Idaho Code;

22 (3) An individual who represents an issuer with respect to an offer or
23 sale of the issuer's own securities or those of the issuer's parent or
24 any of the issuer's subsidiaries, and who is not compensated in connec-
25 tion with the individual's participation by the payment of commissions
26 or other remuneration based, directly or indirectly, on transactions in
27 those securities;

28 (4) An individual who represents an issuer and who effects transactions
29 in the issuer's securities exempted by section 30-14-202, Idaho Code,
30 other than section 30-14-202(14), Idaho Code;

31 (5) An individual who represents an issuer that effects transactions
32 solely in federal covered securities of the issuer, provided how-
33 ever that an individual who effects transactions in a federal covered
34 security under section 18(b)(3) ~~or~~, 18(b)(4)(D), or 18(b)(4)(F) of
35 the securities act of 1933 (15 U.S.C. 77r(b)(3) ~~or~~, 77r(b)(4)(D), or
36 77r(b)(4)(F)) is not exempt if the individual is compensated in connec-
37 tion with the agent's participation by the payment of commissions or
38 other remuneration based, directly or indirectly, on transactions in
39 those securities;

40 (6) An individual who represents a broker-dealer registered in this
41 state under section 30-14-401(a), Idaho Code, or exempt from registra-
42 tion under section 30-14-401(b), Idaho Code, in the offer and sale of

1 securities for an account of a nonaffiliated federal covered investment
 2 adviser with investments under management in excess of one hundred mil-
 3 lion dollars (\$100,000,000) acting for the account of others pursuant
 4 to discretionary authority in a signed record;

5 (7) An individual who represents an issuer in connection with the pur-
 6 chase of the issuer's own securities;

7 (8) An individual who represents an issuer and who restricts participa-
 8 tion to performing clerical or ministerial acts; or

9 (9) Any other individual exempted by a rule adopted or an order issued
 10 under this chapter.

11 (c) Registration effective only while employed or associated. The reg-
 12 istration of an agent is effective only while the agent is employed by or
 13 associated with a broker-dealer registered under this chapter or an issuer
 14 that is offering, selling or purchasing its securities in this state.

15 (d) Limit on employment or association. It is unlawful for a broker-
 16 dealer, or an issuer engaged in offering, selling or purchasing securities
 17 in this state, to employ or associate with an agent who transacts business in
 18 this state on behalf of broker-dealers or issuers unless the agent is regis-
 19 tered under subsection (a) of this section or is exempt from registration un-
 20 der subsection (b) of this section.

21 (e) Limit on affiliations. Unless prohibited by a rule adopted or an
 22 order issued under this chapter, an individual may act as an agent for more
 23 than one (1) broker-dealer or one (1) issuer at a time.

24 SECTION 2. That Section 30-14-411, Idaho Code, be, and the same is
 25 hereby amended to read as follows:

26 30-14-411. POSTREGISTRATION REQUIREMENTS. (a) Financial require-
 27 ments. Subject to section 15(~~hi~~) of the securities exchange act of 1934 (15
 28 U.S.C. 78o(~~hi~~)) or section 222 of the investment advisers act of 1940 (15
 29 U.S.C. 80b-~~2218a~~), a rule adopted or an order issued under this chapter may
 30 establish minimum financial requirements for broker-dealers registered or
 31 required to be registered under this chapter and investment advisers regis-
 32 tered or required to be registered under this chapter.

33 (b) Financial reports. Subject to section 15(~~hi~~) of the securities ex-
 34 change act of 1934 (15 U.S.C. 78o(~~hi~~)) or section 222(b) of the investment
 35 advisers act of 1940 (15 U.S.C. 80b-~~2218a~~), a broker-dealer registered or
 36 required to be registered under this chapter and an investment adviser reg-
 37 istered or required to be registered under this chapter shall file such fi-
 38 nancial reports as are required by a rule adopted or an order issued under
 39 this chapter. If the information contained in a record filed under this sub-
 40 section is or becomes inaccurate or incomplete in a material respect, the
 41 registrant shall promptly file a correcting amendment.

42 (c) Recordkeeping. Subject to section 15(~~hi~~) of the securities ex-
 43 change act of 1934 (15 U.S.C. 78o(~~hi~~)) or section 222 of the investment
 44 advisers act of 1940 (15 U.S.C. 80b-~~2218a~~):

45 (1) A broker-dealer registered or required to be registered under
 46 this chapter and an investment adviser registered or required to be
 47 registered under this chapter shall make and maintain the accounts,
 48 correspondence, memoranda, papers, books and other records required by
 49 a rule adopted or an order issued under this chapter;

1 (2) Broker-dealer records required to be maintained under subsection
2 (c) (1) of this section may be maintained in any form of data storage ac-
3 ceptable under section 17(a) of the securities exchange act of 1934 (15
4 U.S.C. 78q(a)) if they are readily accessible to the administrator; and

5 (3) Investment adviser records required to be maintained under subsec-
6 tion (c) (1) of this section may be maintained in any form of data storage
7 required by a rule adopted or an order issued under this chapter.

8 (d) Audits or inspections. The records of every person issuing or guar-
9 anteeing any securities subject to the provisions of this chapter, if such
10 person is registered or required to be registered under this chapter, and of
11 every broker-dealer, agent, investment adviser or investment adviser rep-
12 resentative registered or required to be registered under this chapter are
13 subject to such reasonable periodic, special or other audits or inspections
14 by a representative of the administrator, within or without this state, as
15 the administrator considers necessary or appropriate in the public interest
16 and for the protection of investors. An audit or inspection may be made at
17 any time and without prior notice. The administrator may copy, and may re-
18 move for audit or inspection copies of, all records the administrator rea-
19 sonably considers necessary or appropriate to conduct the audit or inspec-
20 tion. The administrator may assess a reasonable charge for conducting an au-
21 dit or inspection under this subsection.

22 (e) Custody and discretionary authority bond or insurance. Subject to
23 section 15(~~hi~~) of the securities exchange act of 1934 (15 U.S.C. 78o(~~hi~~)) or
24 section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-2218a),
25 a rule adopted or an order issued under this chapter may require a broker-
26 dealer or investment adviser that has custody of or discretionary author-
27 ity over funds or securities of a customer or client to obtain insurance or
28 post a bond or other satisfactory form of security in an amount not to ex-
29 ceed twenty-five thousand dollars (\$25,000). The administrator may deter-
30 mine the requirements of the insurance, bond or other satisfactory form of
31 security. Insurance or a bond or other satisfactory form of security may not
32 be required of a broker-dealer registered under this chapter whose net capi-
33 tal exceeds, or of an investment adviser registered under this chapter whose
34 minimum financial requirements exceed, the amounts required by rule or order
35 under this chapter. The insurance, bond or other satisfactory form of secu-
36 rity must permit an action by a person to enforce any liability on the insur-
37 ance, bond or other satisfactory form of security if instituted within the
38 time limitations in section 30-14-509(j) (2), Idaho Code.

39 (f) Requirements for custody. Subject to section 15(~~hi~~) of the securi-
40 ties exchange act of 1934 (15 U.S.C. 78o(~~hi~~)) or section 222 of the invest-
41 ment advisers act of 1940 (15 U.S.C. 80b-2218a), an agent may not have cus-
42 tody of funds or securities of a customer except under the supervision of a
43 broker-dealer and an investment adviser representative may not have custody
44 of funds or securities of a client except under the supervision of an invest-
45 ment adviser or a federal covered investment adviser. A rule adopted or an
46 order issued under this chapter may prohibit, limit, or impose conditions on
47 a broker-dealer regarding custody of funds or securities of a customer and on
48 an investment adviser regarding custody of securities or funds of a client.

49 (g) Investment adviser brochure rule. With respect to an investment
50 adviser registered or required to be registered under this chapter, a rule

1 adopted or an order issued under this chapter may require that information or
 2 other record be furnished or disseminated to clients or prospective clients
 3 in this state as necessary or appropriate in the public interest and for the
 4 protection of investors and advisory clients.

5 (h) Continuing education. A rule adopted or an order issued under
 6 this chapter may require an individual registered under section 30-14-402
 7 or 30-14-404, Idaho Code, to participate in a continuing education program
 8 approved by the securities and exchange commission and administered by a
 9 self-regulatory organization or, in the absence of such a program, a rule
 10 adopted or an order issued under this chapter may require continuing educa-
 11 tion for an individual registered under section 30-14-404, Idaho Code.

12 SECTION 3. That Section 30-14-605, Idaho Code, be, and the same is
 13 hereby amended to read as follows:

14 30-14-605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEAR-
 15 INGS. (a) Issuance and adoption of forms, orders, and rules. The administra-
 16 tor may:

17 (1) Issue forms and orders and, after notice and comment, may adopt and
 18 amend rules necessary or appropriate to carry out this chapter and may
 19 repeal rules, including rules and forms governing registration state-
 20 ments, applications, notice filings, reports, and other records;

21 (2) By rule, define terms, whether or not used in this chapter, but
 22 those definitions may not be inconsistent with this chapter; and

23 (3) By rule, classify securities, persons, and transactions and adopt
 24 different requirements for different classes.

25 (b) Findings and cooperation. Under this chapter, a rule or form may
 26 not be adopted or amended, or an order issued or amended, unless the admin-
 27 istrator finds that the rule, form, order, or amendment is necessary or ap-
 28 propriate in the public interest or for the protection of investors and is
 29 consistent with the purposes intended by this chapter. In adopting, amend-
 30 ing, and repealing rules and forms, section 30-14-608, Idaho Code, applies
 31 in order to achieve uniformity among the states and coordination with fed-
 32 eral laws in the form and content of registration statements, applications,
 33 reports, and other records, including the adoption of uniform rules, forms,
 34 and procedures.

35 (c) Financial statements. Subject to section 15(~~h~~i) of the securities
 36 exchange act and section 222 of the investment advisers act of 1940, the ad-
 37 ministrator may require that a financial statement filed under this chap-
 38 ter be prepared in accordance with generally accepted accounting principles
 39 in the United States and comply with other requirements specified by rule
 40 adopted or an order issued under this chapter. A rule adopted or an order is-
 41 sued under this chapter may establish:

42 (1) Subject to section 15(~~h~~i) of the securities exchange act and sec-
 43 tion 222 of the investment advisors act of 1940, the form and content of
 44 financial statements required under this chapter;

45 (2) Whether unconsolidated financial statements must be filed; and

46 (3) Whether required financial statements must be audited by an inde-
 47 pendent certified public accountant.

48 (d) Interpretative opinions. The administrator may provide interpre-
 49 tative opinions or issue determinations that the administrator will not in-

1 stitute a proceeding or an action under this chapter against a specified per-
2 son for engaging in a specified act, practice, or course of business if the
3 determination is consistent with this chapter. A rule adopted or an order
4 issued under this chapter may establish a reasonable charge for interpreta-
5 tive opinions or determinations that the administrator will not institute an
6 action or a proceeding under this chapter.

7 (e) Effect of compliance. A penalty under this chapter may not be im-
8 posed for, and liability does not arise from, conduct that is engaged in or
9 omitted in good faith believing it conforms to a rule, form, or order of the
10 administrator under this chapter.

11 (f) Presumption for public hearings. A hearing in an administrative
12 proceeding under this chapter must be conducted in public unless the admin-
13 istrator for good cause consistent with this chapter determines that the
14 hearing will not be so conducted.