

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 492

BY BUSINESS COMMITTEE

AN ACT

RELATING TO THE UNIFORM SECURITIES ACT OF 2004; AMENDING SECTION 30-14-102, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 30-14-202, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-14-302, IDAHO CODE, TO PROVIDE CORRECT CITATIONS, TO REMOVE REFERENCE TO DOCUMENTS INCLUDED IN A NOTICE FILING, TO REMOVE A REFERENCE TO A LATE FEE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-14-402, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE, TO PROVIDE A CORRECT CITATION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-14-412, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-14-501, IDAHO CODE, TO PROHIBIT THE DIVERSION OF INVESTOR FUNDS FROM THEIR INTENDED USE IN CONNECTION WITH A SECURITIES TRANSACTION; AMENDING SECTION 30-14-502, IDAHO CODE, TO PROHIBIT THE DIVERSION OF INVESTOR FUNDS FROM THEIR INTENDED USE BY ONE PROVIDING INVESTMENT ADVICE; AMENDING SECTION 30-14-603, IDAHO CODE, TO PROVIDE A STATUTE OF LIMITATION FOR CIVIL SECURITIES ACTIONS BY THE DEPARTMENT OF FINANCE; AND AMENDING SECTION 30-14-611, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 30-14-102, Idaho Code, be, and the same is hereby amended to read as follows:

30-14-102. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Administrator" means the director of the Idaho department of finance or his designee.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by a rule adopted or an order issued under this chapter.

(3) "Bank" means:

(a) A banking institution organized under the laws of the United States;

(b) A member bank of the federal reserve system;

(c) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a), and which is

1 supervised and examined by a state or federal agency having supervision  
 2 over banks, and which is not operated for the purpose of evading this  
 3 chapter; and

4 (d) A receiver, conservator, or other liquidating agent of any insti-  
 5 tution or firm included in subparagraph (a), (b) or (c) of this subsec-  
 6 tion.

7 (4) "Broker-dealer" means a person engaged in the business of effecting  
 8 transactions in securities for the account of others or for the person's own  
 9 account. The term does not include:

10 (a) An agent;

11 (b) An issuer;

12 (c) A bank, a trust company organized or chartered under the  
 13 laws of this state, or a savings institution if its activities  
 14 as a broker-dealer are limited to those specified in subsections  
 15 3(a)(4)(~~B~~) (i) through (vi), (viii) through (x), and (xi) if limited  
 16 to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securi-  
 17 ties exchange act of 1934 (15 U.S.C. 78c(a)(4) and (5)) or a bank that  
 18 satisfies the conditions described in subsection 3(a)(4)(E) of the se-  
 19 curities exchange act of 1934 (15 U.S.C. 78c(a)(4));

20 (d) An international banking institution; or

21 (e) A person excluded by a rule adopted or an order issued under this  
 22 chapter.

23 (5) "Depository institution" means:

24 (a) A bank; or

25 (b) A savings institution, trust company, credit union or similar in-  
 26 stitution that is organized or chartered under the laws of a state or  
 27 of the United States that is authorized to receive deposits, and that  
 28 is supervised and examined by an official or agency of a state or the  
 29 United States if its deposits or share accounts are insured to the max-  
 30 imum amount authorized by statute by the federal deposit insurance cor-  
 31 poration, the national credit union share insurance fund, or a succes-  
 32 sor authorized by federal law. The term does not include:

33 (i) An insurance company or other organization primarily engaged  
 34 in the business of insurance;

35 (ii) A morris plan bank; or

36 (iii) An industrial loan company.

37 (6) "Federal covered investment adviser" means a person registered un-  
 38 der the investment advisers act of 1940, as cited in section 30-14-103, Idaho  
 39 Code.

40 (7) "Federal covered security" means a security that is, or upon com-  
 41 pletion of a transaction will be, a covered security under section 18(b) of  
 42 the securities act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted  
 43 pursuant to that provision.

44 (8) "Filing" means the receipt under this chapter of a record by the ad-  
 45 ministrator or a designee of the administrator.

46 (9) "Fraud," "deceit," and "defraud" are not limited to common law de-  
 47 ceit.

48 (10) "Guaranteed" means guaranteed as to payment of all principal and  
 49 all interest.

1 (11) "Institutional investor" means any of the following, whether act-  
 2 ing for itself or for others in a fiduciary capacity:

3 (a) A depository institution, a trust company organized or chartered  
 4 under the laws of this state, or an international banking institution;

5 (b) An insurance company;

6 (c) A separate account of an insurance company;

7 (d) An investment company as defined in the investment company act of  
 8 1940, as cited in section 30-14-103, Idaho Code;

9 (e) A broker-dealer registered under the securities exchange act of  
 10 1934, as cited in section 30-14-103, Idaho Code;

11 (f) An employee pension, profit-sharing, or benefit plan if the plan  
 12 has total assets in excess of ten million dollars (\$10,000,000) or  
 13 its investment decisions are made by a named fiduciary, as defined in  
 14 the employee retirement income security act of 1974, that is a bro-  
 15 ker-dealer registered under the securities exchange act of 1934, an  
 16 investment adviser registered or exempt from registration under the  
 17 investment advisers act of 1940, an investment adviser registered under  
 18 this chapter, a depository institution, or an insurance company;

19 (g) A plan established and maintained by a state, a political subdivi-  
 20 sion of a state, or an agency or instrumentality of a state or a politi-  
 21 cal subdivision of a state for the benefit of its employees, if the plan  
 22 has total assets in excess of ten million dollars (\$10,000,000) or its  
 23 investment decisions are made by a duly designated public official or  
 24 by a named fiduciary, as defined in the employee retirement income se-  
 25 curity act of 1974, that is a broker-dealer registered under the secu-  
 26 rities exchange act of 1934, an investment adviser registered or exempt  
 27 from registration under the investment advisers act of 1940, an invest-  
 28 ment adviser registered under this chapter, a depository institution,  
 29 or an insurance company;

30 (h) A trust, if it has total assets in excess of ten million dollars  
 31 (\$10,000,000), its trustee is a depository institution, and its partic-  
 32 ipants are exclusively plans of the types identified in paragraph (f) or  
 33 (g) of this subsection, regardless of the size of their assets, except  
 34 a trust that includes as participants self-directed individual retire-  
 35 ment accounts or similar self-directed plans;

36 (i) An organization described in section 501(c)(3) of the Internal  
 37 Revenue Code (26 U.S.C. 501(c)(3)), a corporation, a Massachusetts  
 38 trust or similar business trust, a limited liability company, or a  
 39 partnership, not formed for the specific purpose of acquiring the se-  
 40 curities offered, with total assets in excess of ten million dollars  
 41 (\$10,000,000);

42 (j) A small business investment company licensed by the small business  
 43 administration under section 301(c) of the small business investment  
 44 act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million  
 45 dollars (\$10,000,000);

46 (k) A private business development company as defined in sec-  
 47 tion 202(a)(22) of the investment advisers act of 1940 (15 U.S.C.  
 48 80b-2(a)(22)) with total assets in excess of ten million dollars  
 49 (\$10,000,000);

50 (l) A federal covered investment adviser acting for its own account;

1 (m) A "qualified institutional buyer" as defined in rule 144A(a) (1),  
 2 other than rule 144A(a) (1) (i) (H), adopted under the securities act of  
 3 1933 (17 CFR 230.144A);

4 (n) A "major U.S. institutional investor" as defined in rule  
 5 15a-6(b) (4) (i) adopted under the securities exchange act of 1934 (17  
 6 CFR 240.15a-6);

7 (o) Any other person, other than an individual, of institutional char-  
 8 acter with total assets in excess of ten million dollars (\$10,000,000)  
 9 not organized for the specific purpose of evading this chapter; or

10 (p) Any other person specified by a rule adopted or an order issued un-  
 11 der this chapter.

12 (12) "Insurance company" means a company organized as an insurance com-  
 13 pany whose primary business is writing insurance or reinsuring risks under-  
 14 written by insurance companies and which is subject to supervision by the in-  
 15 surance commissioner or a similar official or agency of a state.

16 (13) "Insured" means insured as to payment of all principal and all in-  
 17 terest.

18 (14) "International banking institution" means an international finan-  
 19 cial institution of which the United States is a member and whose securities  
 20 are exempt from registration under the securities act of 1933.

21 (15) "Investment adviser" means a person that, for compensation, en-  
 22 gages in the business of advising others, either directly or through publi-  
 23 cations or writings, as to the value of securities or the advisability of in-  
 24 vesting in, purchasing or selling securities or that, for compensation and  
 25 as a part of a regular business, issues or promulgates analyses or reports  
 26 concerning securities. The term includes a financial planner or other per-  
 27 son that, as an integral component of other financially related services,  
 28 provides investment advice to others for compensation as part of a business  
 29 or that holds itself out as providing investment advice to others for compen-  
 30 sation. The term does not include:

31 (a) An investment adviser representative;

32 (b) A lawyer, accountant, engineer or teacher whose performance of  
 33 investment advice is solely incidental to the practice of the person's  
 34 profession;

35 (c) A broker-dealer or its agents whose performance of investment ad-  
 36 vice is solely incidental to the conduct of business as a broker-dealer  
 37 and that does not receive special compensation for the investment ad-  
 38 vice;

39 (d) A publisher of a bona fide newspaper, news magazine, or business or  
 40 financial publication of general and regular circulation;

41 (e) A federal covered investment adviser;

42 (f) A bank, a trust company organized or chartered under the laws of  
 43 this state, or a savings institution;

44 (g) Any other person that is excluded by the investment advisers act of  
 45 1940 from the definition of investment adviser;

46 (h) Any person who offers accountancy services to the public and who  
 47 holds a valid, unrevoked and unsuspended license under the provisions  
 48 of chapter 2, title 54, Idaho Code, designating said person as a certi-  
 49 fied public accountant or a licensed public accountant; or

(i) Any other person excluded by a rule adopted or an order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(a) Performs only clerical or ministerial acts;

(b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(c) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a) and is:

(i) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a); or

(ii) Not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(25)); or

(d) Is excluded by a rule adopted or an order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(a) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(b) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(c) The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for

1 value. The term does not include a tender offer that is subject to section  
2 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

3 (20) "Person" means an individual; corporation; business trust; es-  
4 tate; trust; partnership; limited liability company; association; joint  
5 venture; government; governmental subdivision, agency, or instrumentality;  
6 public corporation; or any other legal or commercial entity.

7 (21) "Place of business" of a broker-dealer, an investment adviser, or a  
8 federal covered investment adviser means:

9 (a) An office at which the broker-dealer, investment adviser, or  
10 federal covered investment adviser regularly provides brokerage or in-  
11 vestment advice or solicits, meets with, or otherwise communicates with  
12 customers or clients; or

13 (b) Any other location that is held out to the general public as a loca-  
14 tion at which the broker-dealer, investment adviser, or federal covered  
15 investment adviser provides brokerage or investment advice or solici-  
16 its, meets with, or otherwise communicates with customers or clients.

17 (22) "Predecessor act" means the act repealed by section 30-14-702,  
18 Idaho Code.

19 (23) "Price amendment" means the amendment to a registration statement  
20 filed under the securities act of 1933 or, if an amendment is not filed, the  
21 prospectus or prospectus supplement filed under the securities act of 1933  
22 that includes a statement of the offering price, underwriting and sell-  
23 ing discounts or commissions, amount of proceeds, conversion rates, call  
24 prices, and other matters dependent upon the offering price.

25 (24) "Principal place of business" of a broker-dealer or an investment  
26 adviser means the executive office of the broker-dealer or investment ad-  
27 viser from which the officers, partners or managers of the broker-dealer or  
28 investment adviser direct, control and coordinate the activities of the bro-  
29 ker-dealer or investment adviser.

30 (25) "Record," except in the phrases "of record," "official record,"  
31 and "public record," means information that is inscribed on a tangible  
32 medium or that is stored in an electronic or other medium and is retrievable  
33 in perceivable form.

34 (26) "Sale" includes every contract of sale, contract to sell, or dis-  
35 position of, a security or interest in a security for value. "Offer to sell"  
36 includes every attempt or offer to dispose of, or solicitation of an offer  
37 to purchase, a security or interest in a security for value. Both "sale" and  
38 "offer to sell" include:

39 (a) A security given or delivered with, or as a bonus on account of, a  
40 purchase of securities or any other thing constituting part of the sub-  
41 ject of the purchase and having been offered and sold for value;

42 (b) A gift of assessable stock involving an offer and sale; and

43 (c) A sale or offer of a warrant or right to purchase or subscribe to an-  
44 other security of the same or another issuer and a sale or offer of a se-  
45 curity that gives the holder a present or future right or privilege to  
46 convert the security into another security of the same or another is-  
47 suer, including an offer of the other security.

48 (27) "Securities and exchange commission" means the United States secu-  
49 rities and exchange commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security":

(a) Includes both a certificated and an uncertificated security;

(b) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or other specified period;

(c) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;

(d) Includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(e) Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement, life settlement or senior settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate with the record an electronic symbol, sound or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 2. That Section 30-14-202, Idaho Code, be, and the same is hereby amended to read as follows:

1        30-14-202. EXEMPT TRANSACTIONS. The following transactions are ex-  
 2        empt from the requirements of sections 30-14-301 through 30-14-306, Idaho  
 3        Code, and section 30-14-504, Idaho Code:

4        (1) An isolated nonissuer transaction, whether or not effected by or  
 5        through a broker-dealer;

6        (2) A nonissuer transaction by or through a broker-dealer registered,  
 7        or exempt from registration under this chapter, and a resale transaction by  
 8        a sponsor of a unit investment trust registered under the investment company  
 9        act of 1940, in a security of a class that has been outstanding in the hands of  
 10       the public for at least ninety (90) days, if, at the date of the transaction:

11       (a) The issuer of the security is engaged in business, the issuer is  
 12       not in the organizational stage or in bankruptcy or receivership, and  
 13       the issuer is not a blank check, blind pool, or shell company that has  
 14       no specific business plan or purpose or has indicated that its primary  
 15       business plan is to engage in a merger or combination of the business  
 16       with, or an acquisition of, an unidentified person;

17       (b) The security is sold at a price reasonably related to its current  
 18       market price;

19       (c) The security does not constitute the whole or part of an unsold al-  
 20       lotment to, or a subscription or participation by, the broker-dealer as  
 21       an underwriter of the security or a redistribution;

22       (d) A nationally recognized securities manual or its electronic equiv-  
 23       alent designated by any rule adopted or an order issued under this chap-  
 24       ter or a record filed with the securities and exchange commission that  
 25       is publicly available and contains:

26           (i) A description of the business and operations of the issuer;

27           (ii) The names of the issuer's executive officers and the names of  
 28           the issuer's directors, if any;

29           (iii) An audited balance sheet of the issuer as of a date within  
 30           eighteen (18) months before the date of the transaction or, in the  
 31           case of a reorganization or merger when the parties to the reorga-  
 32           nization or merger each had an audited balance sheet, a pro forma  
 33           balance sheet for the combined organization; and

34           (iv) An audited income statement for each of the issuer's two (2)  
 35           immediately previous fiscal years or for the period of existence  
 36           of the issuer, whichever is shorter, or, in the case of a reorga-  
 37           nization or merger when each party to the reorganization or merger  
 38           had audited income statements, a pro forma income statement; and

39       (e) Any one (1) of the following requirements is met:

40           (i) The issuer of the security has a class of equity securities  
 41           listed on a national securities exchange registered under section  
 42           6 of the securities exchange act of 1934 or designated for trading  
 43           on the national association of securities dealers automated quo-  
 44           tation system;

45           (ii) The issuer of the security is a unit investment trust regis-  
 46           tered under the investment company act of 1940;

47           (iii) The issuer of the security, including its predecessors, has  
 48           been engaged in continuous business for at least three (3) years;  
 49           or



(iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(a) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(b) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years of the issuer or any predecessor, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing as provided in section 30-14-202A, Idaho Code, or otherwise;

1 (10) A transaction between the issuer or other person on whose behalf  
2 the offering is made and an underwriter, or among underwriters;

3 (11) A transaction in a note, bond, debenture or other evidence of in-  
4 debtedness secured by a mortgage or other security agreement if the note,  
5 bond, debenture or other evidence of indebtedness is offered and sold with  
6 the mortgage or other security agreement as a unit;

7 (12) A transaction by an executor, administrator of an estate, sheriff,  
8 marshal, receiver, trustee in bankruptcy, guardian or conservator;

9 (13) A sale or offer to sell to:

10 (a) An institutional investor;

11 (b) A federal covered investment adviser; or

12 (c) Any other person exempted by a rule adopted or an order issued under  
13 this chapter;

14 (14) A sale or an offer to sell securities of an issuer, if the transac-  
15 tion is part of a single issue in which:

16 (a) Not more than ten (10) purchasers are present in this state during  
17 any twelve (12) consecutive months, other than those designated in sub-  
18 section (13) of this section;

19 (b) A general solicitation or general advertising is not made in con-  
20 nection with the offer to sell or sale of the securities;

21 (c) A commission or other remuneration is not paid or given, directly  
22 or indirectly, to a person other than a broker-dealer registered under  
23 this chapter or an agent registered under this chapter for soliciting a  
24 prospective purchaser in this state; and

25 (d) The issuer reasonably believes that all the purchasers in this  
26 state, other than those designated in subsection (13) of this section,  
27 are purchasing for investment;

28 (15) A transaction under an offer to existing security holders of the  
29 issuer, including persons that at the date of the transaction are holders of  
30 convertible securities, options or warrants, if a commission or other remu-  
31 neration, other than a standby commission, is not paid or given, directly or  
32 indirectly, for soliciting a security holder in this state;

33 (16) An offer to sell, but not a sale, of a security not exempt from reg-  
34 istration under the securities act of 1933 if:

35 (a) A registration or offering statement or similar record as required  
36 under the securities act of 1933 has been filed, but is not effective, or  
37 the offer is made in compliance with rule 165 adopted under the securi-  
38 ties act of 1933 (17 CFR 230.165); and

39 (b) A stop order of which the offeror is aware has not been issued  
40 against the offeror by the administrator or the securities and exchange  
41 commission, and an audit, inspection or proceeding that is public and  
42 that may culminate in a stop order is not known by the offeror to be pend-  
43 ing;

44 (17) An offer to sell, but not a sale, of a security exempt from regis-  
45 tration under the securities act of 1933 if:

46 (a) A registration statement has been filed under this chapter, but is  
47 not effective;

48 (b) A solicitation of interest is provided in a record to offerees in  
49 compliance with a rule adopted by the administrator under this chapter;  
50 and

1 (c) A stop order of which the offeror is aware has not been issued by the  
2 administrator under this chapter and an audit, inspection or proceeding  
3 that may culminate in a stop order is not known by the offeror to be pend-  
4 ing;

5 (18) A transaction involving the distribution of the securities of an  
6 issuer to the security holders of another person in connection with a merger,  
7 consolidation, exchange of securities, sale of assets, or other reorganiza-  
8 tion to which the issuer, or its parent or subsidiary and the other person, or  
9 its parent or subsidiary, are parties;

10 (19) A rescission offer, sale or purchase under section 30-14-510,  
11 Idaho Code;

12 (20) An offer or sale of a security to a person not a resident of this  
13 state and not present in this state if the offer or sale does not constitute  
14 a violation of the laws of the state or foreign jurisdiction in which the of-  
15 feree or purchaser is present and is not part of an unlawful plan or scheme to  
16 evade this chapter;

17 (21) Employees' stock purchase, savings, option, profit-sharing, pen-  
18 sion, or similar employees' benefit plan, including any securities, plan in-  
19 terests, and guarantees issued under a compensatory benefit plan or compen-  
20 sation contract, contained in a record, established by the issuer, its par-  
21 ents, its majority-owned subsidiaries, or the majority-owned subsidiaries  
22 of the issuer's parent for the participation of their employees including  
23 offers or sales of such securities to:

24 (a) Directors; general partners; trustees, if the issuer is a business  
25 trust; officers; consultants; and advisers;

26 (b) Family members who acquire such securities from those persons  
27 through gifts or domestic relations orders;

28 (c) Former employees, directors, general partners, trustees, offi-  
29 cers, consultants and advisers if those individuals were employed by or  
30 providing services to the issuer when the securities were offered; and

31 (d) Insurance agents who are exclusive insurance agents of the issuer,  
32 or the issuer's subsidiaries or parents, or who derive more than fifty  
33 percent (50%) of their annual income from those organizations;

34 (22) A transaction involving:

35 (a) A stock dividend or equivalent equity distribution, whether the  
36 corporation or other business organization distributing the dividend  
37 or equivalent equity distribution is the issuer or not, if nothing of  
38 value is given by stockholders or other equity holders for the dividend  
39 or equivalent equity distribution other than the surrender of a right to  
40 a cash or property dividend if each stockholder or other equity holder  
41 may elect to take the dividend or equivalent equity distribution in  
42 cash, property or stock;

43 (b) An act incident to a judicially approved reorganization in which  
44 a security is issued in exchange for one (1) or more outstanding secu-  
45 rities, claims, or property interests, or partly in such exchange and  
46 partly for cash; or

47 (c) The solicitation of tenders of securities by an offeror in a ten-  
48 der offer in compliance with rule 162 adopted under the securities act  
49 of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by a rule adopted or an order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by a rule adopted or an order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 52, title 67, Idaho Code, the administrator, by rule adopted or an order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

SECTION 3. That Section 30-14-302, Idaho Code, be, and the same is hereby amended to read as follows:

30-14-302. NOTICE FILING. (a) Required filing of records. With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under sections 30-14-201 through 30-14-203, Idaho Code, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with section 30-14-611, Idaho Code, signed by the issuer and the payment of a fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts;

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission; and

(4) Each series or portfolio of an investment company offering shall be required to make a separate notice filing. Separate notice filings for classes of an investment company are not required so long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) of this section is effective for one (1) year commencing on

1 the later of the notice filing or the effectiveness of the offering filed  
 2 with the securities and exchange commission. On or before expiration, the  
 3 issuer may renew a notice filing by filing a copy of those records filed by  
 4 the issuer with the securities and exchange commission that are required  
 5 by rule or order under this chapter to be filed and by paying a renewal fee  
 6 of three hundred dollars (\$300) for mutual funds and one hundred dollars  
 7 (\$100) for unit investment trusts. A previously filed consent to service of  
 8 process complying with section 30-14-611, Idaho Code, may be incorporated by  
 9 reference in a renewal. A renewed notice filing becomes effective upon the  
 10 expiration of the filing being renewed.

11 (c) Notice filings for federal covered securities under section  
 12 18(b)(4) (~~d~~D). With respect to a security that is a federal covered secu-  
 13 rity under section 18(b)(4) (~~d~~D) of the securities act of 1933 (15 U.S.C.  
 14 77r(b)(4) (~~d~~D)), a rule or order under this chapter may require a notice fil-  
 15 ing by or on behalf of an issuer to include a copy of form D, ~~including the~~  
 16 ~~appendix, as promulgated by the securities and exchange commission, and a~~  
 17 ~~consent to service of process complying with section 30-14-611, Idaho Code,~~  
 18 ~~signed by the issuer not later than fifteen (15) days after the first sale of~~  
 19 ~~the federal covered security in this state and the payment of a fee of fifty~~  
 20 ~~dollars (\$50.00); and the payment of a fee of fifty dollars (\$50.00) for any~~  
 21 ~~late filing.~~

22 (d) Stop orders. Except with respect to a federal security under sec-  
 23 tion 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)), if the ad-  
 24 ministrator finds that there is a failure to comply with a notice or fee re-  
 25 quirement of this section, the administrator may issue a stop order suspend-  
 26 ing the offer and sale of a federal covered security in this state. If the  
 27 deficiency is corrected, the stop order is void as of the time of its issuance  
 28 and no penalty may be imposed by the administrator.

29 SECTION 4. That Section 30-14-402, Idaho Code, be, and the same is  
 30 hereby amended to read as follows:

31 30-14-402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Regis-  
 32 tration requirement. It is unlawful for an individual to transact business  
 33 in this state as an agent unless the individual is registered under this  
 34 chapter as an agent or is exempt from registration as an agent under subsec-  
 35 tion (b) of this section.

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

38 (1) An individual who represents a broker-dealer in effecting trans-  
 39 actions in this state limited to those described in section 15(h)(2) of  
 40 the securities exchange act of 1934 (15 U.S.C. 78o(h)(2));

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

43 (3) An individual who represents an issuer with respect to an offer or  
 44 sale of the issuer's own securities or those of the issuer's parent or  
 45 any of the issuer's subsidiaries, and who is not compensated in connec-  
 46 tion with the individual's participation by the payment of commissions  
 47 or other remuneration based, directly or indirectly, on transactions in  
 48 those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 30-14-202, Idaho Code, other than sections ~~30-14-202(11)~~ and 30-14-202(14), Idaho Code;

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, provided however that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4) (~~d~~D) of the securities act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4) (D)) is not exempt 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;

(6) An individual who represents a broker-dealer registered in this state under section 30-14-401(a), Idaho Code, or exempt from registration under section 30-14-401(b), Idaho Code, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

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

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

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

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

SECTION 5. That Section 30-14-412, Idaho Code, be, and the same is hereby amended to read as follows:

30-14-412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF REGISTRATION. (a) Disciplinary conditions -- Applicants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, ~~or a~~ of any partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

1 (b) Disciplinary conditions -- Registrants. If the administrator  
 2 finds that the order is in the public interest and subsection (d) of this sec-  
 3 tion authorizes the action, an order issued under this chapter may revoke,  
 4 suspend, condition or limit the registration of a registrant and, if the reg-  
 5 istrant is a broker-dealer or investment adviser, ~~or a~~ or a of any partner, offi-  
 6 cer, director or person having a similar status or performing similar func-  
 7 tions, or a person directly or indirectly in control, of the broker-dealer or  
 8 investment adviser. Provided however, the administrator may not:

9 (1) Institute a revocation or suspension proceeding under this subsec-  
 10 tion based on an order issued under a law of another state that is re-  
 11 ported to the administrator or a designee of the administrator more than  
 12 one (1) year after the date of the order on which it is based; or

13 (2) Under subsection (d) (5) (A) or (B) of this section, issue an order  
 14 on the basis of an order issued under the securities act of another state  
 15 unless the other order was based on conduct for which subsection (d) of  
 16 this section would authorize the action had the conduct occurred in this  
 17 state.

18 (c) Disciplinary penalties -- Registrants. If the administrator finds  
 19 that the order is in the public interest and subsections (d) (1) through (6),  
 20 (8), (9), (10), (12) or (13) of this section authorizes the action, an order  
 21 under this chapter may censure, impose a bar or suspension from associa-  
 22 tion with a broker-dealer or investment adviser registered in this state,  
 23 or impose a civil penalty in an amount not to exceed five thousand dollars  
 24 (\$5,000) for each violation, on a registrant and, if the registrant is a  
 25 broker-dealer or investment adviser, a partner, officer, director or person  
 26 having a similar status or performing similar functions, or a person di-  
 27 rectly or indirectly in control, of the broker-dealer or investment adviser.

28 (d) Grounds for discipline. A person may be disciplined under subsec-  
 29 tions (a) through (c) of this section if the person:

30 (1) Has filed an application for registration in this state under this  
 31 chapter or the predecessor act within the previous ten (10) years,  
 32 which, as of the effective date of registration or as of any date after  
 33 filing in the case of an order denying effectiveness, was incomplete in  
 34 any material respect or contained a statement that, in light of the cir-  
 35 cumstances under which it was made, was false or misleading with respect  
 36 to a material fact;

37 (2) Willfully violated or willfully failed to comply with this chapter  
 38 or the predecessor act or a rule adopted or an order issued under this  
 39 chapter or the predecessor act within the previous ten (10) years;

40 (3) Has been convicted of any felony or within the previous ten (10)  
 41 years has been convicted of a misdemeanor involving a security, a com-  
 42 modity future or option contract, or an aspect of a business involving  
 43 securities, commodities, investments, franchises, insurance, banking  
 44 or finance;

45 (4) Is enjoined or restrained by a court of competent jurisdiction in an  
 46 action instituted by the administrator under this chapter or the pre-  
 47 decessor act, a state, the securities and exchange commission, or the  
 48 United States from engaging in or continuing an act, practice or course  
 49 of business involving an aspect of a business involving securities,  
 50 commodities, investments, franchises, insurance, banking or finance;

1 (5) Is the subject of an order, issued after notice and opportunity for  
2 hearing by:

3 (A) The securities, depository institution, insurance or other  
4 financial services regulator of a state or by the securities and  
5 exchange commission or other federal agency denying, revoking,  
6 barring or suspending registration as a broker-dealer, agent,  
7 investment adviser, federal covered investment adviser, or in-  
8 vestment adviser representative;

9 (B) The securities regulator of a state or the securities and ex-  
10 change commission against a broker-dealer, agent, investment ad-  
11 viser, investment adviser representative, or federal covered in-  
12 vestment adviser;

13 (C) The securities and exchange commission or a self-regulatory  
14 organization suspending or expelling the registrant from member-  
15 ship in the self-regulatory organization;

16 (D) A court adjudicating a United States postal service fraud or-  
17 der;

18 (E) The insurance regulator of a state denying, suspending or re-  
19 voking registration as an insurance agent; or

20 (F) A depository institution regulator suspending or barring the  
21 person from the depository institution business;

22 (6) Is the subject of an adjudication or determination, after notice  
23 and opportunity for hearing, by the securities and exchange commis-  
24 sion, the commodity futures trading commission; the federal trade  
25 commission; a federal depository institution regulator, or a deposi-  
26 tory institution, insurance or other financial services regulator of a  
27 state that the person willfully violated the securities act of 1933, the  
28 securities exchange act of 1934, the investment advisers act of 1940,  
29 the investment company act of 1940, or the commodity exchange act, the  
30 securities or commodities law of a state, or a federal or state law under  
31 which a business involving investments, franchises, insurance, banking  
32 or finance is regulated;

33 (7) Is insolvent, either because the person's liabilities exceed the  
34 person's assets or because the person cannot meet the person's obliga-  
35 tions as they mature, provided however that the administrator may not  
36 enter an order against an applicant or registrant under this paragraph  
37 (7) without a finding of insolvency as to the applicant or registrant;

38 (8) Refuses to allow or otherwise impedes the administrator from con-  
39 ducting an audit or inspection under section 30-14-411(d), Idaho Code,  
40 or refuses access to a registrant's office to conduct an audit or in-  
41 spection under section 30-14-411(d), Idaho Code;

42 (9) Has failed to reasonably supervise an agent, investment adviser  
43 representative or other individual, if the agent, investment adviser  
44 representative or other individual was subject to the person's supervi-  
45 sion and committed a violation of this chapter or the predecessor act or  
46 a rule adopted or an order issued under this chapter or the predecessor  
47 act within the previous ten (10) years;

48 (10) Has not paid the proper filing fee within thirty (30) days after  
49 having been notified by the administrator of a deficiency, provided



1 however that the administrator shall vacate an order under this para-  
2 graph (10) when the deficiency is corrected;

3 (11) After notice and opportunity for a hearing, has been found within  
4 the previous ten (10) years:

5 (A) By a court of competent jurisdiction to have willfully vio-  
6 lated the laws of a foreign jurisdiction under which the business  
7 of securities, commodities, investment, franchises, insurance,  
8 banking or finance is regulated;

9 (B) To have been the subject of an order of a securities regula-  
10 tor of a foreign jurisdiction denying, revoking or suspending the  
11 right to engage in the business of securities as a broker-dealer,  
12 agent, investment adviser, investment adviser representative or  
13 similar person; or

14 (C) To have been suspended or expelled from membership by or par-  
15 ticipation in a securities exchange or securities association op-  
16 erating under the securities laws of a foreign jurisdiction;

17 (12) Is the subject of a cease and desist order issued by the securities  
18 and exchange commission or issued under the securities, commodities,  
19 investment, franchise, banking, finance or insurance laws of a state;

20 (13) Has engaged in dishonest or unethical practices in the securities,  
21 commodities, investment, franchise, banking, finance or insurance  
22 business within the previous ten (10) years; or

23 (14) Is not qualified on the basis of factors such as training, experi-  
24 ence and knowledge of the securities business. Provided however, in the  
25 case of an application by an agent for a broker-dealer that is a member  
26 of a self-regulatory organization or by an individual for registration  
27 as an investment adviser representative, a denial order may not be based  
28 on this paragraph (14) if the individual has successfully completed  
29 all examinations required by subsection (e) of this section. The ad-  
30 ministrator may require an applicant for registration under section  
31 30-14-402 or 30-14-404, Idaho Code, who has not been registered in a  
32 state within the two (2) years preceding the filing of an application in  
33 this state to successfully complete an examination.

34 (e) Examinations. A rule adopted or an order issued under this chap-  
35 ter may require that an examination, including an examination developed or  
36 approved by an organization of securities regulators, be successfully com-  
37 pleted by a class of individuals or all individuals. An order issued under  
38 this chapter may waive, in whole or in part, an examination as to an indi-  
39 vidual and a rule adopted under this chapter may waive, in whole or in part,  
40 an examination as to a class of individuals if the administrator determines  
41 that the examination is not necessary or appropriate in the public interest  
42 and for the protection of investors.

43 (f) Summary process. The administrator may suspend or deny an appli-  
44 cation summarily; restrict, condition, limit or suspend a registration; or  
45 censure, bar, or impose a civil penalty on a registrant before final deter-  
46 mination of an administrative proceeding. Upon the issuance of an order, the  
47 administrator shall promptly notify each person subject to the order that  
48 the order has been issued, the reasons for the action, and that within fif-  
49 teen (15) days after the receipt of a request in a record from the person the  
50 matter will be scheduled for a hearing. If a hearing is not requested and

1 none is ordered by the administrator within thirty (30) days after the date  
 2 of service of the order, the order becomes final by operation of law. If a  
 3 hearing is requested or ordered, the administrator, after notice of and op-  
 4 portunity for hearing to each person subject to the order, may modify or va-  
 5 cate the order or extend the order until final determination.

6 (g) Procedural requirements. An order issued may not be issued under  
 7 this section, except under subsection (f) of this section, without:

8 (1) Appropriate notice to the applicant or registrant;

9 (2) Opportunity for hearing; and

10 (3) Findings of fact and conclusions of law in a record in accordance  
 11 with chapter 52, title 67, Idaho Code.

12 (h) Control person liability. A person that controls, directly or in-  
 13 directly, a person not in compliance with this section may be disciplined by  
 14 order of the administrator under subsections (a) through (c) of this section  
 15 to the same extent as the noncomplying person, unless the controlling person  
 16 did not know, and in the exercise of reasonable care could not have known, of  
 17 the existence of conduct that is a ground for discipline under this section.

18 (i) Limit on investigation or proceeding. The administrator may not  
 19 institute a proceeding under subsection (a), (b) or (c) of this section based  
 20 solely on material facts actually known by the administrator unless an in-  
 21 vestigation or the proceeding is instituted within one (1) year after the ad-  
 22 ministrator actually acquires knowledge of the material facts.

23 SECTION 6. That Section 30-14-501, Idaho Code, be, and the same is  
 24 hereby amended to read as follows:

25 30-14-501. GENERAL FRAUD. It is unlawful for a person, in connection  
 26 with the offer, sale, or purchase of a security, directly or indirectly:

27 (1) To employ a device, scheme, or artifice to defraud;

28 (2) To make an untrue statement of a material fact or to omit to state a  
 29 material fact necessary in order to make the statements made, in light of the  
 30 circumstances under which they were made, not misleading; ~~or~~

31 (3) To engage in an act, practice, or course of business that operates  
 32 or would operate as a fraud or deceit upon another person; or

33 (4) To divert investor money to the personal use of the issuer, offeror  
 34 or seller, or to pay prior investors without specifically disclosing that  
 35 use before receiving the investor's money.

36 SECTION 7. That Section 30-14-502, Idaho Code, be, and the same is  
 37 hereby amended to read as follows:

38 30-14-502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE. (a)  
 39 Fraud in providing investment advice. It is unlawful for a person that  
 40 advises others for compensation, either directly or indirectly or through  
 41 publications or writings, as to the value of securities or the advisability  
 42 of investing in, purchasing or selling securities or that, for compensation  
 43 and as part of a regular business, issues or promulgates analyses or reports  
 44 relating to securities:

45 (1) To employ a device, scheme, or artifice to defraud another person;

46 ~~or~~

(2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or

(3) To divert investor money to the personal use of the issuer, offeror or seller, or to pay prior investors without specifically disclosing that use before receiving the investor's money.

(b) Rules defining fraud. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive or manipulative.

(c) Rules specifying contents of advisory contract. A rule adopted or an order issued under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

SECTION 8. That Section 30-14-603, Idaho Code, be, and the same is hereby amended to read as follows:

30-14-603. CIVIL ENFORCEMENT. (a) Civil action instituted by administrator. If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or an order issued under this chapter.

(b) Relief available. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act; and

(D) Ordering the payment of prejudgment and postjudgment interest; or

(3) Order such other relief as the court considers appropriate.

1 (c) No bond required. The administrator shall not be required to post a  
2 bond in an action or proceeding under this chapter.

3 (d) Statute of limitation. If the administrator brings a civil action  
4 under this section, such action must be instituted within three (3) years  
5 from the discovery by the administrator of the facts constituting the al-  
6 leged violation.

7 SECTION 9. That Section 30-14-611, Idaho Code, be, and the same is  
8 hereby amended to read as follows:

9 30-14-611. SERVICE OF PROCESS. (a) Signed consent to service of  
10 process. A consent appointing the administrator the person's agent for  
11 service of process in a noncriminal action or proceeding against the person,  
12 or the person's successor or personal representative under this chapter or  
13 a rule adopted or an order issued under this chapter after the consent is  
14 filed, has the same force and validity as if the service were made person-  
15 ally on the person filing the consent. ~~From July 1, 2005, and thereafter,~~  
16 ~~Registrants~~ shall be required to submit a consent to service of process only  
17 if there has been a material change.

18 (b) Conduct constituting appointment of agent for service. If a per-  
19 son, including a nonresident of this state, engages in an act, practice, or  
20 course of business prohibited or made actionable by this chapter or a rule  
21 adopted or an order issued under this chapter and the person has not filed a  
22 consent to service of process under subsection (a) of this section, the act,  
23 practice, or course of business constitutes the appointment of the adminis-  
24 trator as the person's agent for service of process in a noncriminal action  
25 or proceeding against the person or the person's successor or personal rep-  
26 resentative.

27 (c) Procedure for service of process. Service under subsection (a) or  
28 (b) of this section may be made by providing a copy of the process to the of-  
29 fice of the administrator, but it is not effective unless:

30 (1) The plaintiff, which may be the administrator, promptly sends no-  
31 tice of the service and a copy of the process, return receipt requested,  
32 to the defendant or respondent at the address set forth in the consent  
33 to service of process or, if a consent to service of process has not been  
34 filed, at the last known address, or takes other reasonable steps to  
35 give notice; and

36 (2) The plaintiff files an affidavit of compliance with this subsection  
37 in the action or proceeding on or before the return day of the process,  
38 if any, or within the time that the court, or the administrator in a pro-  
39 ceeding before the administrator, allows.

40 (d) Service in administrative proceedings or civil actions by adminis-  
41 trator. Service pursuant to subsection (c) of this section may be used in a  
42 proceeding before the administrator or by the administrator in a civil ac-  
43 tion in which the administrator is the moving party.

44 (e) Opportunity to defend. If process is served under subsection (c)  
45 of this section, the court, or the administrator in a proceeding before the  
46 administrator, shall order continuances as are necessary or appropriate to  
47 afford the defendant or respondent reasonable opportunity to defend.