

## ARTICLE 4. UNIFORM SECURITIES

### Rule 1. General Provisions

#### 710 IAC 4-1-1 Definitions

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 1. The following definitions apply throughout this article unless the context otherwise requires:

(1) "Affiliate of or person affiliated with a specified person" means a person who directly, or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) "Aggregate offering price" means the sum of all:

- (A) cash;
- (B) services;
- (C) property;
- (D) notes;
- (E) cancellation of debt; or
- (F) other consideration;

received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time or, in the absence of sales, on the fair value as determined by an accepted standard.

(3) "Applicant" means the issuer, broker-dealer, agent, or other person executing the application.

(4) "Associated person" means:

- (A) a partner;
- (B) an officer;
- (C) a director;
- (D) a salesperson;
- (E) a trader;
- (F) a manager; or
- (G) any employee;

handling funds or securities or soliciting transactions or accounts for a broker-dealer.

(5) "Branch office" means any location where one (1) or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding the following:

- (A) Any location that is established solely for customer service or back office type, or both, functions where no sales activities are conducted and that is not held out to the public as a branch office.
- (B) Any location that is the associated person's primary residence, provided the following:
  - (i) Only one (1) associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at that location.
  - (ii) The location is not held out to the public as an office, and the associated person does not meet with customers at that location.
  - (iii) Neither customer funds nor securities are handled at that location.
  - (iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the associated person.
  - (v) The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3010.
  - (vi) Electronic communications are made through the broker-dealer's electronic system.
  - (vii) All orders are entered through the designated branch office or an electronic system.
  - (viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the broker-dealer.
  - (ix) A list of residence locations is maintained by the broker-dealer.

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- (C) Any location, other than a primary residence, that is used for securities business for less than thirty (30) days in one (1) calendar year, provided that the broker-dealer complies with the provisions of clause (B).
  - (D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office.
  - (E) Any location that is not used primarily to engage in nonsecurities activities and in which the associated person or persons effects not more than twenty-five (25) securities transactions in any one (1) calendar year; provided that any advertisement or sales literature identifying the location also sets forth the address and telephone number of the location from which the associated person or persons conducting business at the nonbranch location are directly supervised.
  - (F) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers.
  - (G) A temporary location established in response to a business continuity plan.
- (6) "Commissioner" means the Indiana securities commissioner appointed under IC 23-19-6-1(a).
  - (7) "Division" means the Indiana securities division.
  - (8) "Initiation of proceedings" or "order for proceedings" means any:
    - (A) summary order issued under IC 23-19-2-4(a), IC 23-19-3-6, or IC 23-19-4-12;
    - (B) ex parte order issued under IC 23-19-6-4; or
    - (C) notice of hearing issued at the instance of the commissioner.
  - (9) "National securities association" means an association registered with the U.S. Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).
  - (10) "National securities exchange" means an exchange registered with the U.S. Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).
  - (11) "Net liquid capital" means net capital as defined in Rule 15c3-1(c) (2) (17 CFR 240.15c3-1(c)(2)) under the Securities Exchange Act of 1934, promulgated by the U.S. Securities and Exchange Commission.
  - (12) "Offering" means all offers and sales of securities by an issuer that are integrated and considered as part of a single offering of securities by the issuer. Offers and sales that are made more than six (6) months before the start of a putative offering under IC 23-19-2-2(14) or are made more than six (6) months after completion of a putative offering will not be considered part of that offering, so long as during those six (6) month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class of those offered or sold under IC 23-19-2-2(14), other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 (17 CFR 230.405) under the Securities Act of 1933. If the issuer offers or sells securities within the six (6) month periods, the determination as to whether separate sales of securities are part of the same offering depends on the particular facts and circumstances of the sales, including the following:
    - (A) Whether the sales are part of a single plan of financing.
    - (B) Whether the sales involve issuance of the same class of securities.
    - (C) Whether the sales have been made at or about the same time.
    - (D) Whether the same type of consideration is received.
    - (E) Whether the sales are made for the same general purpose.
  - (13) "Office of supervisory jurisdiction" means any office of a broker-dealer at which one (1) or more of the following functions takes place:
    - (A) Order execution or market making, or both.
    - (B) Structuring of public offerings or private placements.
    - (C) Maintaining custody of customers' funds or securities, or both.
    - (D) Final acceptance (approval) of new accounts on behalf of the broker-dealer.
    - (E) Review and endorsement of customer orders under clause (D).
    - (F) Final approval of advertising or sales literature for use by persons associated with the broker-dealer, except for an office that solely conducts final approval of research reports.
    - (G) Responsibility for supervising the activities of persons associated with the broker-dealer at one (1) or more other branch offices of the broker-dealer.
  - (14) "Officer" means and shall be limited to the:
    - (A) president;
    - (B) first vice president;
    - (C) secretary; and

(D) treasurer;

of a corporation or the equivalent positions in another type of business organization.

(15) "Purchaser representative" means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(A) Is not an affiliate, director, officer, or other employee of the issuer, or beneficial owner of ten percent (10%) or more of any class of the equity securities or ten percent (10%) or more of the equity interest in the issuer, except where the purchaser is a:

- (i) relative of the purchaser representative by blood, marriage, or adoption and not more remote than a first cousin;
- (ii) trust or estate in which the purchaser representative and any person related to the purchaser as specified in item (i), collectively, have more than fifty percent (50%) of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or
- (iii) corporation or other organization of which the purchaser representative and any persons related to the purchaser as specified in item (i) or (ii), collectively, are the beneficial owners of more than fifty percent (50%) of the equity securities (excluding directors' qualifying shares) or equity interests.

(B) Has the knowledge and experience in financial and business matters that the person is capable of evaluating:

- (i) alone;
- (ii) together with other purchaser representatives of the purchaser; or
- (iii) together with the purchaser;

the merits and risks of the prospective investment.

(C) Is acknowledged by the purchaser, in writing, during the course of the specific transaction, to be the purchaser's purchaser representative in connection with evaluating the merits and risks of the specific prospective investment.

(D) Discloses to the purchaser, in writing, prior to the acknowledgment specified in clause (C), any material relationship between himself or herself or his or her affiliates and the issuer or its affiliates that:

- (i) then exist;
- (ii) is mutually understood to be contemplated; or
- (iii) has existed at any time during the previous two (2) years;

and any compensation received or to be received as a result of the relationship.

(16) "Secretary of state" means the secretary of state of Indiana.

(17) "Underwriter" includes any individual or organization that offers securities for the direct or indirect benefit of the issuer of the securities whether on a firm or best-efforts basis.

*(Securities Division; 710 IAC 4-1-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-1-2 Filing date**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 2. An application, notice, or report under IC 23-19 shall not be considered filed until all required forms and fees are received by the commissioner. *(Securities Division; 710 IAC 4-1-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-1-3 Forms**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 3. Where an application, notice, or report is required to be filed under IC 23-19 or this article the:

- (1) application;
- (2) notice; or
- (3) report;

shall be filed on the forms prescribed by the commissioner. *(Securities Division; 710 IAC 4-1-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**Rule 2. Exemptions**

**710 IAC 4-2-1 Nonpublic offering exemption**

Authority: IC 23-19-6-5

Affected: IC 23-19-2-2

Sec. 1. (a) For purposes of calculating the number of purchasers under IC 23-19-2-2(14), the following rules shall apply:

(1) The following purchasers shall be excluded:

(A) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser.

(B) Any trust or estate in which a purchaser and any of the persons related to the purchaser (as specified in clause (A) or (C)) collectively have more than fifty percent (50%) of the beneficial interest (excluding contingent interests).

(C) Any corporation or other organization of which a purchaser and any of the persons related to the purchaser (as specified in clause (A) or (B)) collectively are beneficial owners of more than fifty percent (50%) of the equity securities (excluding directors' qualifying shares) or equity interest.

(2) A corporation, partnership, or other entity shall be counted as one (1) purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of IC 23-19-2-2(14).

(b) The issuer must satisfy all necessary provisions of IC 23-19-2-2(14) for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the purchasers under IC 23-19-2-2(14) regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(c) In all offerings and sales under IC 23-19-2-2(14), the issuer shall make available to each purchaser and to his or her purchaser representatives, if any, at a reasonable time prior to his or her purchase of securities, the opportunity to:

(1) ask questions and receive answers concerning the terms and conditions of the offering;

(2) inspect and copy all material documents relating to the offering; and

(3) obtain any additional information that the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under IC 23-19-2-2(14).

(d) Offers and sales that are exempt under IC 23-19-2-2(14) may not be combined with offers and sales exempt under any other section or provision of IC 23-19, provided, however, that this limitation shall not require an issuer to make an election and an issuer failing to satisfy IC 23-19-2-2(14) may claim the availability of any other applicable exemption. In any proceeding involving the availability of an exemption under IC 23-19-2-2(14), the burden of proving compliance with the conditions of the exemption is upon the person claiming it. In view of the:

(1) objectives of IC 23-19-2-2(14); and

(2) purposes and policies underlying IC 23-19;

the exemption under IC 23-19-2-2(14) is not available to any issuer with respect to any transaction that, although in compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in IC 23-19-2-2(14). (*Securities Division; 710 IAC 4-2-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-2-2 Disqualifications from use of nonpublic offering exemption**

Authority: IC 23-19-2; IC 23-19-6-5

Affected: IC 23-19-2-2; IC 23-19-2-4

Sec. 2. (a) In consideration for issuing an order under IC 23-19-2-4 denying, suspending application of, conditioning, limiting, or revoking an exemption provided by IC 23-19-2-2(14), the commissioner may review:

(1) whether the issuer, or any of its directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of equity securities has been convicted in any jurisdiction within five (5) years prior to the commencement of the offering of any felony or misdemeanor:

(A) in connection with the purchase or sale of any security or commodity; or

(B) involving the making of any false filing relating to any security or offering;

(2) whether any person described in subdivision (1) is subject to any order, judgment, or decree of any court or regulatory authority of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court or regulatory authority of competent jurisdiction, entered within five (5) years prior to the commencement of the offering, permanently restraining or enjoining the person from engaging in or continuing any conduct

or practice (including making use of any exemption):

(A) in connection with the purchase or sale of any security or commodity; or

(B) involving the making of any false filing relating to any security or offering; or

(3) any other factor the commissioner considers appropriate.

(b) Subsection (a) shall not apply to an offering of securities if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption under IC 23-19-2-2(14) be denied. Any determination by the commissioner shall be without prejudice to any other action by the commissioner in any other proceeding or matter with respect to the issuer or any other person. (*Securities Division; 710 IAC 4-2-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

### **710 IAC 4-2-3 Limitations on scope of exemption**

Authority: IC 23-19-6-5

Affected: IC 23-19-2-2; IC 23-19-3-1

Sec. 3. (a) The exemption provided by IC 23-19-2-2(14) is only an exemption for the specific offering from the registration requirements of IC 23-19-3-1. It is not an exemption for the securities being offered and sold, which means that the securities may not subsequently be offered or sold unless:

(1) subsequently registered; or

(2) an exemption from registration then exists.

IC 23-19-2-2(14) does not provide an exemption from any section of IC 23-19 other than IC 23-19-3-1, including the antifraud and civil liability provisions.

(b) Issuers are reminded of their obligation to provide to purchasers and the commissioner further material information, if any, as may be necessary to make the information required under IC 23-19-2-2(14), in light of the circumstances under which it is furnished, not misleading. (*Securities Division; 710 IAC 4-2-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

### **710 IAC 4-2-4 Indiana uniform limited offering exemption**

Authority: IC 23-19-2

Affected: IC 23-19

Sec. 4. (a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of IC 23-19-5-1.

(b) In view of:

(1) the objective of this section; and

(2) the purposes and policies underlying IC 23-19;

the exemption created by this section is not available to any issuer with respect to any transaction that, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

(c) Nothing in this section is intended to relieve broker-dealers or agents from the:

(1) due diligence;

(2) suitability; or

(3) know your customer;

standards or any other requirements of law otherwise applicable to these persons.

(d) By authority delegated to the commissioner by IC 23-19-2-3 to create a rule, any offer or sale of securities offered or sold in compliance with 17 CFR 230.504, or 17 CFR 230.505 including any offer or sale made exempt by application of 17 CFR 230.508(a), as made effective in SEC Release No. 33-6389, 47 FR 11,251 (1982), and as amended in SEC Release Nos. 33-6437, 47 FR 54,764 (1982), 33-6663, 51 FR 36,385 (1986), 33-6758, 53 FR 7,866 (1988), and 33-6825, 54 FR 11,369 (1989), and which satisfies the following further conditions and limitations is determined to be exempt from the registration provisions of IC 23-19-3-1:

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under IC 23-19-4-6(a). It is a defense to a violation of this subsection if the issuer sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not properly registered.

- (2) The disqualifications found in section 2 of this rule shall apply to this section as well as IC 23-19-2-2(14).
- (3) The issuer shall file with the commissioner a notice on Form D (17 CFR 239.500) as follows:
- (A) Not later than ten (10) full business days prior to the receipt of consideration or the delivery of a subscription agreement by an investor in this state that results from an offer being made in reliance upon this exemption.
  - (B) The notice shall be accompanied by the information furnished by the issuer to offerees. This filing requirement is not intended to provide the basis for a fairness type of review of the offering.
  - (C) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.
- (4) In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one (1) of the following conditions is satisfied:
- (A) The investment is suitable for the purchaser upon the basis of facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For purposes of this condition only, it may be presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable.
  - (B) The purchaser, either alone or with his or her purchaser representative or representatives, has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment.
- (5) A failure to comply with a term, condition, or requirement of subdivisions (1), (3), and (4) will not result in loss of the exemption from the requirements of IC 23-19-3-1 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:
- (A) the failure to comply:
    - (i) did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and
    - (ii) was insignificant with respect to the offering as a whole; and
  - (B) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subdivisions (1), (3), and (4).
- (6) The commissioner may:
- (A) increase the number of purchasers; or
  - (B) waive any other conditions of this exemption.
- (e) Transactions that are exempt under this section may not be combined with offers and sales exempt under any other rule or section of IC 23-19; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.
- (f) The exemption authorized by this section shall be known and may be cited as the Indiana uniform limited offering exemption or IULOE. (*Securities Division; 710 IAC 4-2-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-2-5 Section 18(b)(4)(D), federal covered security notice filing requirement**

Authority: IC 23-19-2

Affected: IC 23-19-5-1; IC 23-19-6-11

Sec. 5. (a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of IC 23-19-5-1.

(b) In view of the:

- (1) objective of this section; and
- (2) purposes and policies underlying IC 23-19;

the exemption created by this section is not available to any issuer with respect to any transaction that, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

(c) Nothing in this section is intended to relieve broker-dealers or agents from the:

- (1) due diligence;
- (2) suitability; or
- (3) know your customer;

standards or any other requirements of law otherwise applicable to these persons.

(d) An issuer of a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is required to submit a notice filing, which shall include a Form D, and any other documents required by the commissioner not later than fifteen (15) days after the first sale of the federal covered security in this state or the first business day following the fifteenth day after the first sale of the federal covered security in this state if the fifteenth day is a holiday or weekend.

(e) Transactions that are exempt under this section may not be combined with offers and sales exempt under any other rule or section of IC 23-19; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption. *(Securities Division; 710 IAC 4-2-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-2-6 Solicitations of interest prior to the filing of a registration statement or notice of claim of exemption from registration under section 4 of this rule**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 6. (a) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving an offering circular, or information to be provided under section 4(d)(3)(B) of this rule, for the security is exempt from registration under IC 23-19-3-1 if all of the following conditions are satisfied:

(1) The issuer:

(A) is or will be a business entity organized under the laws of:

(i) one (1) of the states or possessions of the United States; or

(ii) one (1) of the provinces or territories of Canada;

(B) is engaged in or proposes to engage in a business other than petroleum exploration, production, mining, or other extractive industries; and

(C) is not a blind pool or other offering for which the specific business or properties cannot now be described.

(2) The offeror intends to register the security in this state or file a claim of exemption from registration under section 3 of this rule and conduct its offering under either 17 CFR 230.251 or 17 CFR 230.504.

(3) Ten (10) business days prior to the initial solicitation of interest under this section, the offeror files with the commissioner a solicitation of interest form, to be adopted by order of the commissioner, along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the following:

(A) The script of any broadcast to be made.

(B) A copy of any notice to be published.

(4) Five (5) business days prior to usage, the offeror files with the commissioner any amendments to the materials described in subdivision (3) or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(5) No solicitation of interest form, script, advertisement, or other material that the offeror has been notified by the commissioner not to distribute is used to solicit indications of interest.

(6) Except for scripted broadcasts and published notices, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form:

(A) at or before the time of the communication; or

(B) within five (5) calendar days from the communication.

(7) During the solicitation of interest period, the offeror does not solicit or accept money or a commitment to purchase securities.

(8) No sale is made until seven (7) calendar days after delivery to the purchaser of a final offering circular or final documents to be provided under section 4(d)(3)(B) of this rule, or the delivery of a preliminary offering circular or preliminary documents to be provided under section 4(d)(3)(B) of this rule.

(9) The offeror does not know, and, in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent (10%) shareholders, or promoters is subject to one (1) of the disqualifying provisions of section 2 of this rule.

(b) A failure to comply with any condition of subsection (a) will not result in the loss of the exemption from the requirements of IC 23-19-3-1 for any offer to a particular individual or entity if the offeror shows the following:

(1) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity.

(2) The failure to comply was insignificant with respect to the offering as a whole.

(3) A good faith and reasonable attempt was made to comply with all applicable conditions of subsection (a).

(c) Where an exemption is established only through reliance upon subsection (b), the failure to comply shall be actionable as a violation of IC 23-19 by the commissioner under IC 23-19-6-4 and constitute grounds for denial or revocation of the exemption as to a specific security or transaction.

(d) Failure to comply with this subsection will not result in the loss of the exemption from IC 23-19-3-1, but shall be a violation of IC 23-19, be actionable by the commissioner under IC 23-19-6-4, and constitute grounds for denying or revoking the exemption as to a specific security or transaction. The offeror shall comply with the following requirements:

(1) Any published notice or script for broadcast must contain at least the following:

(A) The identity of the chief executive officer, or person performing similar function, of the issuer.

(B) A brief and general description of its business and products.

(C) The following legends:

(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF OFFERING DOCUMENTS THAT INCLUDE COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

(iv) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING IS REGISTERED OR EXEMPTED BY THE SECURITIES AND EXCHANGE COMMISSION AND THE INDIANA SECURITIES DIVISION.

(2) All communications with prospective investors made in reliance on this rule must cease after a registration statement or notice under section 4 of this rule is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule.

(3) A preliminary offering circular or preliminary information supplied under section 4(d)(3)(B) of this rule may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(e) The commissioner may waive any condition of this section, in writing, upon application by the offeror and cause having been shown. The following shall not be deemed to be a waiver of any condition of this section or deemed to be a confirmation by the commissioner of the availability of this section:

(1) Compliance with this section.

(2) Attempted compliance with this section.

(3) The absence of any objection or order by the commissioner with respect to any offer of securities undertaken under this section.

(f) Issuers on whose behalf indications of interest are solicited under this section may not make offers or sales in reliance on IC 23-19-2-2(14) until six (6) months after the last communication with a prospective investor made under this section. (*Securities Division; 710 IAC 4-2-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

### **Rule 3. Securities Registration**

#### **710 IAC 4-3-1 Filing of original application; power of attorney**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 1. (a) The completed application for registration, together with exhibits and all other documents included as a part of the application, shall be submitted to the commissioner.

(b) The application for registration shall be completed by the applicant or an authorized officer of a corporate applicant.

(c) If any name is signed on an application for registration pursuant to a power of attorney, copies of the power of attorney shall be filed with the application for registration. In addition, if the name of any officer signing on behalf of the applicant or attesting the applicant's seal is signed pursuant to a power of attorney, certified copies of a resolution of the applicant's board of directors



authorizing the signature shall also be filed with application for registration. (*Securities Division; 710 IAC 4-3-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-3-2 Paper, printing, and language**

Authority: IC 23-19-6-5

Affected: IC 23-19-3-3; IC 23-19-3-4

Sec. 2. (a) Insofar as practicable any application for registration filed on paper shall be filed on unglazed white paper of good quality, eight and one-half (8 1/2) inches by eleven (11) inches in size. The following may be on larger paper, if folded to eight and one-half (8 1/2) inches by eleven (11) inches in size:

- (1) Tables.
- (2) Charts.
- (3) Maps.
- (4) Financial statements.

The prospectus may be on smaller paper if the applicant so desires, but in no event shall it be smaller than five (5) inches by eight (8) inches.

(b) The application for registration and, insofar as practicable, all papers and documents filed as a part thereof shall be printed. However, the application and other offering materials may be submitted in any suitable format, at the direction of the commissioner. All copies of any material shall be:

- (1) clear;
- (2) easily readable; and
- (3) suitable for repeated reproduction.
- (c) The application shall be in the English language. If any:
  - (1) exhibit;
  - (2) other paper; or
  - (3) document;

filed with the application for registration is in a foreign language, it shall be accompanied by a translation into the English language and a certification as to the accuracy of the translation. (*Securities Division; 710 IAC 4-3-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-3-3 Contents of all applications for registration**

Authority: IC 23-19-6-5

Affected: IC 23-19-3-3; IC 23-19-3-4

Sec. 3. Every application for registration shall be on the form prescribed by the commissioner or on the "Uniform Application to Register Securities" currently in use and shall contain the following information:

- (1) The type of registration requested (qualification or coordination).
- (2) The name and address of the applicant and, if the issuer is not the applicant, the interest of the applicant in the offering.
- (3) The name and address of the issuer.
- (4) A:
  - (A) description of the securities to be offered in Indiana, including the number of shares or units of each kind of security;
  - (B) statement of the kinds of security;
  - (C) price per unit for each kind of security; and
  - (D) total offering price for each kind of security.
- (5) The underwriting discounts or commissions to be paid per share or unit.
- (6) The states other than Indiana in which a registration statement or similar document has been or will be filed in connection with the offering.
- (7) A statement as to the existence at any time of any:
  - (A) order;
  - (B) judgment; or
  - (C) decree;

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as to the offering entered by any state or federal regulatory authorities or court and a statement as to any jurisdiction in which an application for registration of the offering has been withdrawn.

*(Securities Division; 710 IAC 4-3-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**Rule 4. Disclosure Requirements**

**710 IAC 4-4-1 Prospectus**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 1. (a) The prospectus shall be prepared in clearly legible copies. If printed, it shall be set in Times New Roman type of at least 10-point, modern type (except that financial statements and other statistical or tabular matter may be set in Times New Roman type as small as 8-point). A prospectus in the final form approved by the commissioner shall be deemed to have met all requirements of this subsection.

(b) As a general rule photographs are not permissible in prospectuses unless necessary to a fair understanding of the subject. The same is true of conceptions or renderings of:

- (1) artists;
- (2) architects; or
- (3) engineers;

that may be misleading in that there is no assurance of completion of the structure or because of lack of accuracy of the conception or rendering. However, accurate maps or surveys are permissible where appropriate. Established corporate symbols or trademarks may be used, provided they do not create misleading impressions.

(c) The information set forth in a prospectus should be presented in a clear and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. The information required in a prospectus need not follow the order of the items or topics set forth in these rules. The information shall not, however, be set forth in a manner that obscures any of the required information or any information necessary to keep the required information from being incomplete or misleading.

(d) The prospectus shall include all material information not expressly required that is necessary under the circumstances to make the statements not misleading and shall include all information material to an evaluation of the offered security. *(Securities Division; 710 IAC 4-4-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-4-2 Contents of prospectus**

Authority: IC 23-19-6-5

Affected: IC 23-19-3-4

Sec. 2. (a) The prospectus, other than an offering circular to be utilized pursuant to a Regulation A offering pursuant to the Securities Act of 1933, filed as a part of any application for registration by qualification shall contain the following material which shall appear on the front page of the prospectus:

	NAME OF ISSUER		
	Address		
	Total Shares Offered		
	(Same in Indiana if different from above)		
	Underwriting or Selling Commission	Net Proceeds to Issuer After Expenses Estimated at \$ _____	
Per Share or Unit:	\$	\$	\$
Aggregate:	\$	\$	\$

THESE ARE SPECULATIVE SECURITIES

THE INDIANA SECURITIES DIVISION HAS NOT IN ANY WAY PASSED UPON THE MERITS OR QUALIFICATIONS OF OR RECOMMENDED OR GIVEN APPROVAL TO, THE SECURITIES HEREBY OFFERED, OR

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PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

NAME OF UNDERWRITER

NAME OF RESIDENT AGENT

Address

Address

The date of this prospectus is:

(b) If applicable, the following additional material shall appear on the front page:

IN CONNECTION WITH THIS OFFERING THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF (identify each class of securities in which this type of transaction may be effected) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. THE STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

(A statement that the securities are offered only to bona fide residents of the state of Indiana and any other restrictions on the purchase or resale of the offered securities.)

(c) A table of contents shall appear on the inside front cover. The table of contents shall list the items or topics contained in the prospectus, which shall, to the extent appropriate, appear in substantially the following order and shall contain the following information:

TABLE OF CONTENTS

Table with 2 columns: Item Name and Page. Items include Introduction, The Company, The Purpose of the Offering and Use of Proceeds, Management's Discussion and Analysis of Financial Condition, Description of the Business, Dividends, Capitalization, Dilution, Marketability and Price Range of Offered Securities, Management and Principal Stockholders, Control, Remuneration and Transactions with Management, Options and Warrants, Escrow of Proceeds, Pending or Anticipated Litigation, Material Contracts, Underwriter, Broker-Dealer or Plan of Distribution, Selling Stockholders, Legal Opinions, Experts, Opinion of Independent Accountants, Financial Statements.

(d) The following information shall, to the extent applicable, appear in the prospectus under appropriate captions or headings:

- (1) The introductory paragraph should contain a brief statement covering the following areas (if applicable): (A) The corporation will face competition that will have substantially greater capital and more experienced management. (B) Success or failure of a new corporation depends largely on the ability of management. (C) Securities of small, newly-established corporations are not readily marketable after the primary issue is closed and often remain not marketable until a time as the corporation has established a large number of shareholders. (D) The corporation is under no obligation to repurchase securities once sold and does not intend to make any repurchases. (2) The following information about the issuer: (A) The name, address, and form of organization of the issuer. (B) The state or foreign country in which organized and the date of its organization.

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- (C) If the issuer has not yet begun business, a statement to that effect, a statement as to any events on which the beginning is contingent, and a statement as to the expected date of commencement.
- (D) A statement as to the general character of its business or businesses and the places where the business or businesses are conducted.
- (E) A statement of the general competitive conditions in the industry in which the issuer is or will be engaged.
- (F) If the issuer or its shareholders are subject to any unusual:
  - (i) federal;
  - (ii) state; or
  - (iii) local;

tax treatment, a statement as to the effect of this treatment.

- (3) A statement as to the application of the proceeds of the offering as set out in IC 23-19-3-4(b)(9), other than the raising of funds for the application.
- (4) A section on management's discussion and analysis of financial condition containing the following information:
  - (A) A discussion of the issuer's:
    - (i) financial condition;
    - (ii) changes in financial condition; and
    - (iii) results of operations.

The discussion shall provide information as specified in clause (B)(i) through (B)(iii) and also shall provide any other information that the issuer believes to be necessary to an understanding of its financial condition. Discussions of liquidity and capital resources may be combined whenever the two (2) topics are interrelated. Where in the issuer's judgment a discussion of segment information or of other subdivisions of the issuer's business would be appropriate to an understanding of the business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(B) Required discussion of the following:

- (i) Identify any known liquidity issues including:
  - (AA) trends;
  - (BB) demands;
  - (CC) commitments;
  - (DD) events; or
  - (EE) uncertainties;

that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(ii) The following concerning capital resources:

(AA) A description of the issuer's material commitments for capital expenditures as of the end of the latest fiscal period, with an indication of the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(BB) A description of any known material trends, favorable or unfavorable, in the issuer's capital resources. Include in that description any expected material changes in the mix and relative cost of the resources. The discussion shall consider changes between equity, debt, and any off-balance sheet financing arrangements.

(iii) The following concerning results of operations:

(AA) A description of any unusual events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

(BB) A description of any known trends or uncertainties that have had or that the registrant reasonably expects will have a material impact, whether favorable or unfavorable, on net sales, revenues, or income from continuing operations. If the issuer knows of events that will cause a material change in the relationship between costs and revenues (including known future increases in costs of labor or materials,

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price increases, or inventory adjustments), the change in the relationship shall be disclosed.

(CC) To the extent that the financial statements disclosure of material increases in net sales or revenues, including a narrative discussion of the extent to which the increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

(DD) For the three (3) most recent fiscal years of the issuer, or for those fiscal years in which the issuer has been engaged in business, whichever period is shorter, a discussion of the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

(5) A description of the business and property of the issuer including the following:

(A) A description of the general development of the business of the registrant, its subsidiaries, and any predecessor or predecessors during the past five (5) years, or a shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

(i) In describing developments, information shall be given as to matters including the following:

(AA) The year in which the registrant was organized and its form of organization.

(BB) The nature and results of any bankruptcy, receivership, or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger, or consolidation of the registrant or any of its significant subsidiaries.

(CC) The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business.

(DD) Any material changes in the mode of conducting the business.

(ii) Describe, if formulated, the issuer's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the issuer's second fiscal quarter. Describe, if formulated, the issuer's plan of operation for the remainder of the fiscal year and for the first six (6) months of the next fiscal year if the registration statement is filed subsequent to the end of the second fiscal quarter. If the information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan should include matters as the following:

(AA) A statement in narrative form indicating the issuer's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six (6) months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the issuer. The specific reasons for the opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and sources of cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, the budget should be furnished to the division as supplemental information, but not as a part of the registration statement.

(BB) An explanation of material product research and development to be performed during the period covered in the plan.

(CC) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(DD) Any anticipated material changes in number of employees in the various departments including research and development, production, sales, or administration.

(EE) Other material areas that may be peculiar to the registrant's business.

(B) A narrative description of the business including the following:

(i) A description of the business done and intended to be done by the issuer and its subsidiaries. The description should include, if material to an understanding of the registrant's business, a discussion of the following:

(AA) The principal products produced and services rendered and the principal markets for and methods of distribution of the products and services.

(BB) The status of a product or service if the issuer has made public information about a new product or service that would require the investment of a material amount of the assets of the registrant or is otherwise material.

(CC) The estimated amount spent during each of the last two (2) fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of the years on material

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customer-sponsored research activities relating to the development of new products, services, or techniques or the improvement of existing products, services, or techniques.

(DD) The number of persons employed by the issuer indicating the number employed full time.

(EE) The material effects that compliance with federal, state, and local provisions that have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment may have upon the capital expenditures, earnings, and competitive position of the registrant and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for the further periods as the registrant may deem material.

(ii) A description of those distinctive or special characteristics of the issuer operations or industry that may have a material impact upon the registrant's future financial performance. Examples of factors that might be discussed include the following:

(AA) Dependence on one (1) or a few major customers or suppliers (including suppliers of raw materials or financing).

(BB) Existing or probable governmental regulation.

(CC) Expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions, or royalty agreements.

(DD) Unusual competitive conditions in the industry.

(EE) Cyclicity of the industry.

(FF) Anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(C) A brief statement on the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any of the property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

(6) A statement of the cash and stock dividends paid by the issuer during the year of the application and for at least five (5) preceding years. If no dividends were paid, state that fact.

(7) A statement of the long-term and short-term debt and each class of capital stock or other interest in the issuer before the offering and after the offering and application of proceeds. Present this information in substantially the same tabular form as follows:

	Outstanding As of _____, 20__	After the Offering
Short-term debt:	\$	
Long-term debt:		
Notes to banks	\$	
Notes to others	\$	
_____% Convertible Debentures due	\$	
Total long-term debt:	\$	
Capital Stock		
Preferred stock par		
\$ _____	_____ shares	_____ shares
_____ shares authorized		
_____ % cumulative dividend preference		
Common stock par		
\$ _____	_____ shares	_____ shares
_____ shares authorized		

(8) An explanation where common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters, and affiliated persons of common equity acquired by them in transactions during the past five (5) years, or that they have the right to acquire, a comparison of the public contribution under the proposed public offering and the effective cash contribution of these persons. In these cases, and in other instances where common equity securities are being registered by a registrant that has had losses in each of its last three (3)

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fiscal years and there is a material dilution of the purchasers' equity interest, the following shall be disclosed:

- (A) The net tangible book value per share before and after the distribution.
  - (B) The amount of the increase in the net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered.
  - (C) The amount of the immediate dilution from the public offering price that will be absorbed by the purchasers.
- (9) A section describing the securities issued, including an explanation of the following:
- (A) Whether the securities offered consist of:
    - (i) capital stock;
    - (ii) the rights of security holders as to voting;
    - (iii) dividends;
    - (iv) liquidation; and
    - (v) any other material rights or restrictions.
  - (B) If the securities offered are debt securities, the rights of the purchasers as to:
    - (i) interest;
    - (ii) interest payment dates;
    - (iii) convertibility;
    - (iv) redemption (including the existence or lack of a sinking fund provision); and
    - (v) the degree of subordination, if any;

should be carefully enumerated in addition to any other material facts regarding the rights of holders.
  - (C) The names and addresses of the registrar and transfer agent should be stated, if applicable.
- (10) A statement on the marketability and price range of offered securities, that shall include the following:
- (A) A statement as to what provisions, if any, have been made to provide for the marketing of the offered security by purchasers in the offering. If a broker-dealer has made or has agreed to make a market for the securities, a statement as to the name and capitalization of the broker-dealer. If the broker-dealer is a member of the Financial Industry Regulatory Authority, a statement to that effect may be made in lieu of enumerating the capitalization of the broker-dealer.
  - (B) A statement on the range of the bid price for the offered security in any regularly maintained market (if any) during the year of application and the preceding five (5) years.
  - (C) If there has been no regularly maintained market for the offered security, state the price at which any shares or units have been sold by the issuer or applicant during the year of application and the five (5) preceding years. State whether any of the shares or units were issued to any person identified under subdivision (11) to any member of the family of that person or to any trust or corporation or other business entity in which that person or any member of his or her family has a beneficial or ownership interest, and set out the consideration given.
- (11) A description of management and principal shareholders including the following:
- (A) A list of each:
    - (i) officer;
    - (ii) director;
    - (iii) holder of more than ten percent (10%) of the voting shares in the issuer; and
    - (iv) employee who makes a significant contribution to the business of the issuer;

and supply a brief description of the business background of each person. Do not include nonbusiness positions unless particularly relevant to the business of the issuer. Include the names of all corporations (including those no longer in existence) that each person has served as director or officer and a very brief statement of the business of each corporation. Include any conviction of a misdemeanor or felony involving fraud in any form and any civil or criminal litigation involving any federal or state securities law to which any person is or has been a party.
  - (B) Provide in tabular form the following information as to each person identified in clause (A). Present holdings shall be as of a specified date within thirty (30) days prior to the filing of the application. Shares subscribed for shall be added. The fourth column of the table is necessary only in companies formed within two (2) years of the filing of the application.

Name	No. of Shares Owned As Of _____, 20____	Cash Price As Of _____, 20____	% of Shares If Offering Sold	% of Cash Paid In If Offering Sold	% of Shares If All Options or Warrants Exercised
Total for group					

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Total for public  
Grand Total

Name	Total Subscription	Unpaid Balance
Total		

(C) If all shares subscribed for by any person identified in clause (A) have not been fully paid for or have been issued for less than par or stated value as of the date of filing of the application, also include the following table, as well as a statement of the opinion of counsel for the issuer as to the present or contingent liabilities of those persons to the issuer: "The following persons had not yet fully paid for \_\_\_\_\_ shares for which they had subscribed as of \_\_\_\_\_, 20 \_\_\_\_\_, and that are shown as owned by those persons in the above table."

Name	Total Subscription	Unpaid Balance
Total		

(D) If any of the persons identified in clause (A) has purchased any of the shares shown as owned in the table required by clause (B) from any person other than the issuer, the table shall show the cash price paid for the shares and include a footnote indicating from whom the shares were purchased and what consideration the issuer received for their initial issue.

(E) Shares owned by or for the benefit of any:

- (i) person;
- (ii) spouse;
- (iii) child;
- (iv) brother;
- (v) sister; or
- (vi) parent;

of that person shall be deemed owned by the person for purposes of inclusion in the table required by clause (B). An explanatory footnote to the table shall be included if any shares are so treated.

(F) A column "% of Shares Subject to Option or Warrant" shall be included only if options or warrants are issued. If it is included, a footnote shall refer to "options and warrants" at the appropriate page in the prospectus.

(12) A statement of the percentage of voting power to be held by persons identified under subdivision (11). Include a statement of the ability of the persons to control the corporation if they vote as a unit.

(13) A statement on remuneration and transactions with management including the following:

(A) In tabular form:

- (i) total salary;
- (ii) commissions; or
- (iii) other remuneration;

paid by the issuer or any parent, affiliate, or subsidiary of the issuer to any person identified in subdivision (11), or any person to whom payments totaling twenty-five thousand dollars (\$25,000) or more were made during the twelve (12) months prior to the filing of the application, and the estimated total of the payments in the next twelve (12) months.

(B) Include any material transactions between the issuer and any person identified in subdivision (11) or any corporation in which that person has an interest as:

- (i) an officer;
- (ii) a director; or
- (iii) a shareholder.

(14) A statement whether any options or warrants to purchase any securities of the issuer are outstanding or proposed to be issued. If there are options or warrants, state the reason for their issue and present in tabular form the following information:

Name of Holder	Shares Subject to Option or Warrant	Option or Warrant Price	Date of Issue	Date of Expiration
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(15) A description of the escrow of proceeds setting forth the relevant terms of any escrow provisions relating to the proceeds of the offering, including the:

- (A) name of the escrow agent;
- (B) percentage of proceeds to be escrowed;
- (C) length of the escrow term; and



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(D) conditions for release of the proceeds.

(16) A statement setting forth any pending or threatened litigation involving:

- (A) the issuer;
- (B) its officers;
- (C) its directors; or
- (D) its promoters;

that may materially affect the issuer's business or ability to commence business.

(17) A statement setting forth a brief description of any contracts with:

- (A) customers;
- (B) suppliers; or
- (C) others;

that are of sufficient importance to the issuer that their termination would materially affect the issuer's business.

(18) A statement setting forth the names and addresses of every underwriter or recipient of a finder's fee, including (separately):

- (A) cash;
- (B) securities;
- (C) contracts; or
- (D) anything of value to accrue in connection with the sale of the securities.

If discounts, commissions, or fees are to be variable, state the basis for determination and the maximum and minimum amounts. Briefly state the terms of the underwriting arrangements or plan of distribution, including whether the underwriting is on a best efforts or firm commitment basis and whether exclusive or nonexclusive.

(19) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, a statement of:

- (A) the names;
- (B) the addresses;
- (C) the amounts of securities held by those persons as of the date of the prospectus;
- (D) a description of any material interest in any transaction with the:
  - (i) issuer;
  - (ii) predecessor;
  - (iii) affiliate; or
  - (iv) subsidiary;

effected or proposed to be effected within the past three (3) years; and

(E) their reasons for making the offering.

(20) A statement of the name and address of counsel who has advised the issuer with respect to the legality of the offering and matters relating to IC 23-19. Include an opinion that the security when sold will be:

- (A) legally issued;
- (B) fully paid; and
- (C) nonassessable;

or, if a debt security, that it will be a binding obligation of the issuer.

(21) A statement including the names and addresses of any professional or other experts, other than the counsel and accountants identified elsewhere, on whose opinion reliance has been placed in preparing any part of the prospectus.

(22) A section including the following statement: "The issuer will hold its annual meeting of shareholders at a time and place to be specified in a notice of meeting mailed at least ten (10) days prior to the meeting. An annual report to shareholders, including audited financial statements, will be distributed prior to each annual meeting."

(23) A section incorporating a report of an independent certified public accountant or firm of public accountants based on an examination of the issuer's financial statements in accordance with generally accepted auditing standards, including tests of the accounting records and other auditing procedures as considered necessary under the circumstances and an opinion that the financial statements fairly present the financial position of the issuer and the results of its business operations for the periods stated therein.

(24) The financial statements required under IC 23-19-3-4(b).

*(Securities Division; 710 IAC 4-4-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-4-3 Changes in circumstances**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3-5

Sec. 3. If at any time during the effective period or registration any statement contained in the registration statement becomes materially inaccurate or misleading as of that time, the applicant shall within five (5) days thereafter file with the commissioner a sworn statement of the changes in the circumstances and the amendments necessary to render the registration statement complete and not misleading. The statement shall become a part of the application. Within five (5) days thereafter, the commissioner shall rule as to the necessity for inclusion of the changes in the prospectus under section 4 of this rule. The inclusion, if ruled necessary, upon approval by the commissioner may be by addendum to the prospectus then in use, provided it is conspicuously affixed to the appropriate portion of the prospectus. (*Securities Division; 710 IAC 4-4-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-4-4 Petition for ruling as to materiality**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3-5

Sec. 4. (a) An applicant may file a petition for a ruling as to materiality of any information. The petition shall:

- (1) be sworn;
- (2) set forth the information on which a ruling is requested; and
- (3) state the basis for the applicant's belief that the information is not material.

(b) A ruling by the commissioner on the materiality of information shall be:

- (1) based solely on the representations in the petition; and
- (2) valid only to the extent that the representations are true and complete.

(c) If the commissioner rules that the information is material, the information shall be included in the prospectus. If the commissioner rules that the information is not material, the prospectus shall not be deemed in violation of section 1 or 2 of this rule by virtue of the omission of the information.

(d) The commissioner may decline to rule on any petition filed under this section. (*Securities Division; 710 IAC 4-4-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**Rule 5. Reporting Requirements**

**710 IAC 4-5-1 Annual report**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 1. Within ninety (90) days after the close of its fiscal year, each issuer with an effective registration shall file an annual report with the commissioner. The annual report shall be accompanied by the issuer's audited financial statement for the preceding fiscal year. (*Securities Division; 710 IAC 4-5-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-5-2 Quarterly financial statements**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 2. Each issuer with an effective registration by qualification shall file quarterly financial statements within forty-five (45) days after the close of each calendar quarter. (*Securities Division; 710 IAC 4-5-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-5-3 Final affidavit**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3-5

Sec. 3. Within thirty (30) days after termination of a registered offering, the applicant shall file a final affidavit with the commissioner stating the number of units sold in the offering and the number of units sold in Indiana. (*Securities Division; 710 IAC 4-5-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-5-4 Reports to securities holders**

Authority: IC 23-19-6-5  
Affected: IC 23-19-5-4

Sec. 4. Each issuer of securities registered by qualification that is also the applicant or is controlled by the applicant shall distribute an annual report to the holders of its securities. The report shall include audited financial statements, including profit and loss statements for the past five (5) years. The report shall be distributed not less than ten (10) days in advance of the annual meeting that shall be held not later than five (5) months after the close of each fiscal year. The undertaking shall:

- (1) be included in the prospectus; and
- (2) remain in effect through the first fiscal year ending after termination of the registration.

(*Securities Division; 710 IAC 4-5-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-5-5 Filing of advertising and sales literature**

Authority: IC 23-19-6-5  
Affected: IC 23-19-5-4

Sec. 5. (a) A copy of any:

- (1) advertisement;
- (2) pamphlet;
- (3) circular;
- (4) letter;
- (5) article;
- (6) communication published in any:
  - (A) newspaper;
  - (B) magazine; or
  - (C) periodical;
- (7) script of any:
  - (A) recording;
  - (B) radio; or
  - (C) television announcement or broadcast;
- (8) sales-kit;
- (9) pitch-kit;
- (10) film clip; or
- (11) other communication through facsimile or other electronic means;

to be used in connection with a registration of securities by qualification must be filed with the commissioner at least five (5) business days prior to issuance, release, circulation, or distribution.

(b) The documents listed in subsection (a) shall include any written communication with existing security holders of the issuer, other than proxy statements. (*Securities Division; 710 IAC 4-5-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-5-6 Contents of advertisement, article, or communication relating to registered securities**

Authority: IC 23-19-6-5  
Affected: IC 23-19-5-4

Sec. 6. No advertisement, article, or communication relating to securities registered by qualification, published in any newspaper, magazine, pamphlet, or periodical or used in any demonstration or display, recording, radio or television announcement or broadcast, or advertising communicated by means of electronic communication or facsimile shall contain more than the following:

- (1) Date of issuance or release.

- (2) Name and address of issuer.
- (3) Identity or title of securities.
- (4) Per unit offering price.
- (5) Amount of offering.
- (6) Brief statement of the general character of the business.
- (7) Address where a prospectus may be obtained.

*(Securities Division; 710 IAC 4-5-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**Rule 6. Merit Standards**

**710 IAC 4-6-1 Maximum commissions**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3-6

Sec. 1. Commissions allowable to broker-dealers and underwriters must in every instance be reasonable and justified and in no case shall exceed twelve and one-half percent (12 1/2%) of the offering price of the security. The following will be considered as commissions for the purpose of this section:

- (1) Options, warrants, and other transactions or conversion rights reserved or granted in connection with the sale of securities.
- (2) Payment of the underwriter's expenses incident to the offering, including advertising, traveling, and promotional expenses.
- (3) Any other thing of value accruing to the broker-dealer or underwriter.

*(Securities Division; 710 IAC 4-6-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-6-2 Options and warrants; unfair practices**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3

Sec. 2. The statement of policy on Options and Warrants of the North American Securities Administrators Association, as effective January 1, 2009, is incorporated into this article by reference. *(Securities Division; 710 IAC 4-6-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-6-3 Promotional shares**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 3. The statement of policy on Promotional Shares of the North American Securities Administrators Association, as effective January 1, 2009, is incorporated into this article by reference. *(Securities Division; 710 IAC 4-6-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-6-4 Nonvoting common stock; unfair practices**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 4. Unless preferential treatment as to dividends and liquidation is provided with respect to the publicly offered securities or the differentiation is otherwise justified, the offering or proposed offering of equity securities of an issuer having more than one (1) class of equity securities authorized or outstanding shall be considered unfair and inequitable to public investors if the class of equity securities offered to the public either has no voting rights or has less than equal voting rights in proportion to the number of shares of each class outstanding on all matters, including the election of members to the board of directors of the issuer. *(Securities Division; 710 IAC 4-6-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-6-5 Preferred stock and debentures; unfair practices**

Authority: IC 23-19-6-5

Affected: IC 23-19-3-6

Sec. 5. (a) The offering or proposed offering of preferred stock of an issuer shall be considered unfair and inequitable to public investors if the net earnings of the issuer for its last fiscal year prior to the public offering, exclusive of nonrecurring items, are insufficient to pay the dividends on the securities proposed to be offered to the public.

(b) The offering or proposed offering of debt securities, including:

- (1) debentures;
- (2) notes; and
- (3) bonds;

of an issuer, shall be considered unfair and inequitable to public investors if the cash flow of the issuer as adjusted for nonrecurring items and the issuance of the debt securities is insufficient to cover the interest on the securities proposed to be offered to the public.

(c) Issuers in the promotional, exploratory, or developmental stage will not normally qualify to issue preferred stock or debt securities. (*Securities Division; 710 IAC 4-6-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-6-6 Offerings of securities with high price to earnings multiples**

Authority: IC 23-19-6-5

Affected: IC 23-19-3-6

Sec. 6. (a) Additional information shall be required to be submitted with the applications for registration of equity securities where the proposed offering price exceeds a prescribed multiple of recent earnings of the issuer.

(b) In the case of application for registration of shares of common stock, where the maximum or proposed offering price exceeds a multiple of twenty-five (25) times the net earnings per share or another multiple as the commissioner may prescribe from time to time, the information prescribed in subsections (c) and (d) shall be submitted with the application as justification for the offering price.

(c) Where there is no existing public market for the shares, comparative information shall be submitted justifying the fairness of the proposed offering price in relation to the current market prices of the shares of companies comparable to the issuer in terms of:

- (1) size;
- (2) industry;
- (3) products; and
- (4) other relevant factors.

Submission of an underwriter's memorandum on the issuer containing the foregoing information, prepared in connection with the proposed offering, shall satisfy the requirements of this subsection.

(d) Where there is an existing public market for the shares, information shall be submitted justifying the adequacy of the public market, including:

- (1) the number of shares owned by public shareholders;
- (2) the number of shares traded during each of the preceding six (6) months;
- (3) the number of transactions during each of the months;
- (4) the number of shareholders at the beginning and end of the period;
- (5) the names and locations of dealers regularly making a market in the shares and the newspapers; and
- (6) financial publications where the shares are regularly quoted.

If there has been a significant increase in the price/earnings multiple of the issuer over the period, additional information shall be submitted accounting for the increase.

(e) The information prescribed above shall not be required in the case of shares of common stock listed on any national securities exchange recognized by state law, nor in the case of shares of common stock of a newly organized issuer with no history of earnings.

(f) No registration of equity securities shall provide directly or indirectly, for increases in the price of the securities offered based on the amount of securities sold in the offering. (*Securities Division; 710 IAC 4-6-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-6-7 Commissions on installment sales**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 7. Commissions on installment sales contracts for the purchase of securities shall be charged only to that part of the sales price represented by cash paid in and not deducted entirely from the initial payments. (*Securities Division; 710 IAC 4-6-7; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-6-8 Statements of policy**

Authority: IC 23-19-6-5  
Affected: IC 23-19-3-3; IC 23-19-3-4

Sec. 8. The following statements of policy of the North American Securities Administrators Association, Inc., as effective June 1, 2009, are incorporated into this article by reference:

- (1) Cattle-feeding programs.
- (2) Church bonds.
- (3) Commodity pool programs.
- (4) Equipment programs.
- (5) Health care facility offerings.
- (6) Oil and gas programs.
- (7) Real estate investment trusts.
- (8) Real estate programs.
- (9) Unsound Financial Condition.
- (10) Underwriting Expenses and Underwriter's Warrants.
- (11) Promoter's Equity Investment.
- (12) Loans and Other Material Affiliated Transactions.
- (13) Corporate Securities Definitions.
- (14) Debt Securities.
- (15) Church Extension Fund Securities.
- (16) Impoundment of Proceeds.
- (17) Use of Proceeds.

(*Securities Division; 710 IAC 4-6-8; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**Rule 7. Broker-Dealers**

**710 IAC 4-7-1 Safe harbor rule**

Authority: IC 23-19-6-5  
Affected: IC 23-19-1-2

Sec. 1. An affiliated person of an issuer will not be deemed to be transacting business as a broker-dealer within the meaning of IC 23-19-1-2(3) if the person effects sales of the issuer's securities in an offering and the person:

- (1) has not sold securities of the same or another issuer in the twelve (12) months immediately preceding the first sale in the offering; or
- (2) has sold only securities of the same or other affiliated issuers, and the issuer and each affiliated issuer is an investment company registered under the Investment Company Act of 1940, provided that the associated person restricts his or her participation to any one (1) or more of the following activities:
  - (A) preparing any written communication or delivering the communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser if the content of the communication is approved by:
    - (i) a partner;
    - (ii) an officer; or

- (iii) a director;  
of the issuer;
- (B) responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser if the content of the responses are limited to information contained in a registration statement or other offering document; or
- (C) performing ministerial and clerical work involved in effecting any transaction.

*(Securities Division; 710 IAC 4-7-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-2 Examination for registration**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 2. (a) Unless specifically exempt, as hereinafter provided, the broker-dealer examinations in the form and content prescribed or approved by the commissioner must be taken and passed by every principal of a broker-dealer in order to test the principal's knowledge of:

- (1) the securities business;
- (2) state securities laws; and
- (3) the responsibilities of a supervisor in the securities business;

before the applicant will be considered eligible for registration.

(b) The commissioner shall establish or approve the standards for a minimum acceptable grade in determining each applicant's qualification for registration under this provision. The examination requirements for broker-dealer applicants shall be higher than those for agent applicants.

(c) Upon failure to receive a minimum passing grade the principal of the broker-dealer applicant may retake the examination on the next date available. A second failure, or failure to take or retake the examination within a thirty (30) day period from the date the broker-dealer application was filed, shall be sufficient grounds for denial of the broker-dealer application and an order to that effect may be entered by the commissioner. The broker-dealer applicant shall be considered ineligible for licensing during a period of three (3) months, at which time a new broker-dealer application may be filed and its eligibility reexamined. The original filing fee shall not be refunded nor applied to a subsequent application for registration under this provision. However, if the:

- (1) broker-dealer applicant is qualified;
- (2) broker-dealer applicant meets the requirements of subsection (d); and
- (3) principal of that applicant who fails the examination qualifies for an exemption under subsection (f);

then the broker-dealer application shall not be denied.

(d) The following are the examination requirements for principals of a broker-dealer:

- (1) In the case of:
  - (A) a partnership;
  - (B) a corporation; or
  - (C) another association;
- (2) at least two (2):
  - (A) partners;
  - (B) officers;
  - (C) directors; or
  - (D) persons occupying a similar position;
- (3) must satisfy the examination requirement.

(4) However, only one (1) of those persons must satisfy the examination requirement if the broker-dealer maintains no branch offices and employs no more than ten (10) agents.

(e) An application shall be deemed incomplete until there is a showing of compliance with the examination requirements or an exemption from those requirements.

(f) The examination requirements may be waived by a proper showing or certification that the applicant:

- (1) has:
  - (A) taken an examination in the form and content approved by the commissioner within the preceding two (2) years; and
  - (B) passed the examination with the minimum acceptable passing grade for broker-dealer applicants; or

(2) has:

- (A) taken an examination in the form and content prescribed or approved by the commissioner;
- (B) attained an acceptable passing grade; and
- (C) thereafter, remained continuously in the securities business, duly licensed by another state;

prior to making application.

*(Securities Division; 710 IAC 4-7-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-3 Books and records**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-1

Sec. 3. (a) A broker-dealer that:

(1) is subject to the record keeping requirements of Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)); and

(2) maintains its books and records in accordance with those rules;

is not subject to this section.

(b) Each registered broker-dealer shall make and keep current the following books and records:

(1) Blotters (or other records of original entry) must:

(A) contain an itemized daily record of all:

- (i) purchases and sales of securities;
- (ii) receipts and deliveries of securities (including certificate numbers);
- (iii) receipts and disbursements of cash; and
- (iv) other debits and credits; and

(B) show the:

- (i) account for which each transaction was effected;
- (ii) name and amount of securities;
- (iii) unit and aggregate purchase or sale price (if any);
- (iv) trade date; and
- (v) name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all:

- (A) assets;
- (B) liabilities;
- (C) income;
- (D) expense; and
- (E) capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or officers all:

- (A) purchases;
- (B) sales receipts;
- (C) deliveries of securities and commodities for the account;
- (D) debits; and
- (E) credits to the account.

(4) Ledgers (or other records) reflecting the following:

- (A) Securities in transfer.
- (B) Dividends and interest received.
- (C) Securities borrowed and securities loaned.
- (D) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in the collateral).
- (E) Securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by the broker-dealer for his or her account or for the account of the broker-dealer's:



- (A) customers;
- (B) partners; or
- (C) officers;

and showing the location of all securities long, and offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the following:

- (A) Terms and conditions of the order or instructions and of any modification or cancellation.
- (B) The account for which entered.
- (C) The time of entry.
- (D) The price at which executed.
- (E) To the extent feasible, the time of execution or cancellation.

Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term "instruction" shall be deemed to include instructions between partners or officers and employees of a broker-dealer. The term "time of entry" shall be deemed to mean the time when the broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or officers of the broker-dealer.

(9) A record in respect of each cash and margin account with the broker-dealer containing the name and address of the beneficial owner of the account and, in the case of a margin account, the signature of the owner, provided that, in the case of a joint account or an account of a corporation, the records are required only in respect of the person or persons authorized to transact business for the account.

(10) A record of all:

- (A) puts;
- (B) calls;
- (C) spreads;
- (D) straddles; and
- (E) other options in which the broker-dealer has any direct or indirect interest or that the broker-dealer has granted or guaranteed;

containing at least an identification of the security and the number of units involved.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness, and net liquid capital as of the trial balance date. However, the trial balances and computations shall be prepared currently at least once a month.

(12) A questionnaire or application for employment executed by each associated person of the broker-dealer, and this questionnaire or application shall be approved in writing by an authorized representative of the broker-dealer and shall contain at least the following information with respect to the person:

- (A) The:
  - (i) name;
  - (ii) address;
  - (iii) Social Security number; and
  - (iv) starting date of employment or other association with the member or broker-dealer.

(B) Date of birth.

(C) The educational institutions attended and whether or not he or she graduated.

(D) A complete, consecutive statement of all business connections for at least the preceding ten (10) years, including reason for leaving each prior employment and whether the employment was part time or full time.

(E) A record of any denial of membership or registration and of any disciplinary action taken or sanction imposed by any federal or state agency or by any national securities exchange or national securities association, including any findings of any disciplinary action or violation of any law.

(F) A record of any:

- (i) denial;
- (ii) suspension;
- (iii) expulsion; or
- (iv) revocation;

of membership or registration of any broker-dealer with which the applicant was associated in any capacity when the action was taken.

(G) A record of any permanent or temporary injunction entered against the applicant or any broker-dealer with which the applicant was associated in any capacity at the time the injunction was entered.

(H) A record of any:

- (i) arrests;
- (ii) indictments; or
- (iii) convictions;

for any felony or any misdemeanor, except minor traffic offenses, of the applicant.

(I) A record of any other name or names by which the applicant has been known or that the applicant has used.

(13) The records specified in subdivisions (1) through (12), inclusive, shall not be required with respect to any cash transaction of one hundred dollars (\$100) or less involving only subscription rights or warrants that by their terms expire within ninety (90) days after the issuance thereof.

(c) Every broker-dealer subject to subsection (b) shall preserve for a period of six (6) years, the first two (2) years in an easily accessible place, all records required to be made under subsection (b)(1), (b)(2), (b)(3), and (b)(5).

(d) Every broker-dealer subject to subsection (b) shall preserve for a period of three (3) years, the following:

(1) All records required to be made under subsection (b)(4) and (b)(6) through (b)(9).

(2) All checkbooks, bank statements, canceled checks, and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer.

(4) Originals of all communications received and copies of all communications sent by the broker-dealer (including interoffice memoranda and communications) relating to his or her business.

(5) All:

- (A) trial balances;
- (B) computations of aggregate indebtedness;
- (C) net liquid capital (and working papers in connection therewith);
- (D) financial statements;
- (E) branch office reconciliations; and
- (F) internal audit working papers;

relating to the business of the broker-dealer.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by the broker-dealer relating to his or her business, including agreements with respect to any account.

(e) Every broker-dealer subject to subsection (b) shall preserve for a period of not less than six (6) years after the closing of any account cards or records that relate to the terms and conditions with respect to the opening and maintenance of the account.

(f) Every broker-dealer subject to subsection (b) shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all:

- (1) articles of incorporation or charter;
- (2) minute books; and
- (3) stock certificate books.

(g) Every broker-dealer subject to subsection (b) shall maintain and preserve in an easily accessible place all records required under subsection (b)(12) until at least three (3) years after the associated person has terminated his or her employment and any other connection with the broker-dealer.

(h) If a person who has been subject to subsection (b) ceases to be registered under IC 23-19-4, the person shall for the remainder of the periods of time specified in this section continue to preserve the records that he or she preserved under this section. *(Securities Division; 710 IAC 4-7-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-4 Reports made by brokers**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-1; IC 23-19-4-11

Sec. 4. (a) For every broker-dealer registered under IC 23-19-4, the following are the requirements for filing reports:

(1) Every broker-dealer subject to this rule shall prepare and submit to the securities division upon request reports of financial condition containing the information required:

- (A) as of a date within sixty (60) days of the date of filing an application for a license as a broker-dealer; and
- (B) annually as of the close of the broker-dealer fiscal year.

(2) The annual reports shall be prepared not more than sixty (60) days after the date as of which the firm's financial condition is reported. If the applicant or licensee is registered with the Securities and Exchange Commission as a broker-dealer, the reports of financial condition as filed with the agency shall be deemed to be in compliance herewith.

(b) Each report of financial condition prepared under subsection (a) shall be prepared in accordance with the following requirements:

(1) The report of a broker-dealer shall be certified by a certified public accountant or a public accountant who in fact shall be independent, except a report prepared under subsection (a)(2) that is not required to be certified under the rules of the Securities and Exchange Commission.

(2) Attached to the report shall be an oath or affirmation.

(A) This oath of affirmation shall demonstrate that:

- (i) to the best knowledge and belief of the person making the oath or affirmation, the financial statement and supporting schedules are true and correct; and
- (ii) neither the broker-dealer nor any:

- (AA) partner;
- (BB) officer; or
- (CC) director;

as the case may be;

has any proprietary interest in any account classified solely as that of a customer.

(B) This oath or affirmation shall be made before a person duly authorized to administer the oaths or affirmations.

(C) If the broker-dealer is a:

- (i) sole proprietorship, the oath or affirmation shall be made by the proprietor;
- (ii) partnership, it shall be made by a general partner; and
- (iii) corporation, it shall be made by a duly authorized officer.

(3) If statements of financial condition furnished pursuant to the requirements of broker-dealer reports are bound separately from the balance of the report and are deemed confidential under Rule 17a-5 under the Securities Exchange Act of 1934 (17 CFR 240.17a-5), they shall be deemed confidential, except that they shall be available for official use by:

- (A) any official or employee of the United States or any state;
- (B) national securities exchanges and national securities associations of which the person preparing the report is a member; and

(C) any other person to whom the commissioner authorizes disclosure of the information as being in the public interest.

Nothing contained in this subdivision shall be deemed to limit the rules of any national securities association or national securities exchange that gives to customers of a broker-dealer the right, upon request to the broker-dealer, to obtain information relative to its financial condition.

(c) The requirements for the use of certain statements filed with the Securities and Exchange Commission and national securities exchanges are as follows:

(1) Any broker-dealer who is subject to the provisions of subsection (a) may prepare in lieu of the report required by that subsection a copy of any financial statements that he or she is, or has been, required to file with any national securities exchange of which he or she is a member, provided that the financial statements reflect the financial condition as of a date not more than sixty (60) days prior to the date required in subsection (a) by the division, and the report as filed with the division meets the requirements of this rule and contains the information called for by it.

(2) At the request of any broker-dealer who is an investment company registered under the Investment Company Act of 1940, or a sponsor or depositor of a registered investment company who effects transactions in securities only with, or on behalf of,

the registered investment company, the commissioner shall accept any statement of his or her financial condition filed pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-29) and the rules and regulations promulgated by the commissioner.

(d) In the event any broker-dealer finds that he or she cannot prepare his or her report for any year within the time specified in subsection (a) or (c) without undue hardship, he or she may file with the division an application for an extension of time to a specified date, which shall not be more than ninety (90) days after the date as of which his or her financial condition is reported. The application shall:

- (1) state the reasons for the requested extension; and
- (2) contain an agreement to prepare the report on or before the specified date.

*(Securities Division; 710 IAC 4-7-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-5 Principal office**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 5. (a) The broker-dealer license shall be displayed prominently at all times at the principal place of business of the broker-dealer.

(b) A broker-dealer having its principal office in Indiana shall:

- (1) be open for the transaction of business during regular office hours;
- (2) maintain facilities for the reception of telephone calls and visits from the public; and
- (3) be open for inspection and examination by the division.

(c) For a nonresident office, a broker-dealer having its principal office in another state:

- (1) must be registered or qualified to engage in the securities business in that state; and
- (2) shall be open for inspection and examination by the division.

*(Securities Division; 710 IAC 4-7-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-6 Branch offices**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 6. (a) Any broker-dealer that maintains an office in Indiana must designate another office to act as the office of supervisory jurisdiction for that office. Each office in Indiana shall be supervised by a person at the office of supervisory jurisdiction for that office.

(b) The manager of an office of supervisory jurisdiction shall be:

- (1) responsible for supervision of the offices designated by the broker-dealer; and
- (2) qualified by examination as a broker-dealer under section 2 of this rule.

(c) The broker-dealer shall notify the division in writing prior to the opening, relocation, or closing of a branch office. Notice via the central registration depository is sufficient to meet this requirement. The notification shall include the following information:

- (1) The address of the branch office.
- (2) The anticipated date of opening, relocation, or closing.
- (3) The address of the office of supervisory jurisdiction designated for that branch office.
- (4) The name of the manager of the office of supervisory jurisdiction.
- (d) The broker-dealer must implement the following:

(1) The firm must establish and implement procedures and systems for supervision over the activities of:

- (A) agents;
- (B) employees; and
- (C) Indiana office operations;

that are reasonably designed to achieve compliance with applicable state and federal securities laws and regulations.

(2) The firm must provide appropriate initial and periodic refresher training to:

- (A) supervisors;
- (B) employees; and

- (C) representatives;  
regarding the firm's procedures and systems.
- (3) The firm must provide additional specialized training to supervisors in the procedures and systems referred to in subdivision (1).
- (4) The firm must take action to correct misconduct. The misconduct may be indicated by, but is not limited to:
  - (A) activities of unauthorized personnel;
  - (B) churning;
  - (C) unauthorized trading;
  - (D) low level of production but high expenses;
  - (E) garnishment of wages;
  - (F) regulatory actions;
  - (G) prior disciplinary history of one (1) or more customer complaints; and
  - (H) recent customer complaints.
- (5) The firm must have an adequate system to track and monitor the status of customer complaints as required by FINRA rules. Compliance with these rules includes, but is not limited to, compliance audits with documentation and corrective action, and the following concerning customer complaints:
  - (A) Prompt review.
  - (B) Investigation.
  - (C) Disclosure.
- (6) The firm must establish a policy for disciplinary action.
- (7) The firm must designate a properly qualified supervisor for each employee at an office.
- (8) The designated supervisor must effectively execute any supervisory duties. To that end, the firm must limit the number of employees that a designated supervisor is responsible for at any time to ensure that the supervisor can effectively execute the supervisory duties.
- (9) The firm must conduct annual compliance examinations, announced and unannounced, of offices with documentation and corrective action.
- (10) The firm must establish and implement procedures and systems for reasonable oversight of supervisors.
- (e) When a firm designates an office of supervisory jurisdiction, the office of supervisory jurisdiction shall be responsible for the day to day implementation of subsection (d)(1) through (d)(10).
- (f) Every branch office located in Indiana shall be open for inspection and examination by the division. (*Securities Division; 710 IAC 4-7-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-7-7 Notice of changes in circumstances**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-11

Sec. 7. Every broker-dealer or applicant shall immediately notify the division in writing of any material change in any information, exhibits, or schedules disclosed in its application. A correction amendment shall be filed at the time of, or prior to, the occurrence or discovery of the change. Material changes include, but are not limited to, the following:

- (1) Change in:
  - (A) firm name;
  - (B) ownership;
  - (C) management;
  - (D) control; or
  - (E) any of its:
    - (i) partners;
    - (ii) officers; or
    - (iii) persons in similar positions.
- (2) Change in principal office address.
- (3) Change in principal office or branch office managers, provided the offices are located in Indiana.
- (4) Change in the:

- (A) type of entity;
  - (B) general plan or character of the broker-dealer business;
  - (C) method of operation; or
  - (D) type of securities in which it is dealing or trading.
- (5) Insolvency, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature.
- (6) Change with the net liquid capital or bond requirements, including:
- (A) dissolution;
  - (B) liquidation; or
  - (C) noncompliance.
- (7) Termination of business or discontinuance of activities as a broker-dealer.
- (8) The broker-dealer or applicant is the subject of:
- (A) an order, proceeding, or the institution of a proceeding by or in any:
    - (i) civil court;
    - (ii) criminal court; or
    - (iii) administrative agency;involving any aspect of the securities business;
  - (B) any felony; or
  - (C) a U.S. Post Office fraud order.

*(Securities Division; 710 IAC 4-7-7; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-7-8 Expiration and renewal of registration**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-6

Sec. 8. (a) All broker-dealer registrations expire January 1 of each year.

(b) Renewal applications shall be accepted after November 1 and prior to January 1 of the following year. No renewal applications shall be accepted after January 1. Renewal applications become effective by operation of law thirty (30) days after filing unless sooner approved by the commissioner. During the period after the broker-dealer registration has expired (January 1) and before the effectiveness of the renewal application, the broker-dealer shall have no authority to transact securities business.

(c) The commissioner may designate a central depository for filing of applications and renewals by broker-dealers that are members of a national securities association. *(Securities Division; 710 IAC 4-7-8; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**Rule 8. Agents**

**710 IAC 4-8-1 Licensure; dual registration**

Authority: IC 23-19-6-5

Affected: IC 23-19-4

Sec. 1. (a) The broker-dealer or issuer with whom an agent is employed must certify on the agent's application that the applicant is in all respects qualified to be licensed.

(b) An agent of an issuer may sell only those securities that are actually issued by that issuer. He or she may not take securities in trade except as provided in the prospectus.

(c) An agent of a broker-dealer may buy and sell only the securities being bought and sold for and through that broker-dealer. He or she may not buy and sell securities without acting through the broker-dealer with whom he or she is licensed.

(d) No person may register as an agent of more than one (1) broker-dealer unless the written consent of each the broker-dealer to the dual registration is filed with the commissioner.

(e) The commissioner may designate a central depository for filing of applications and renewals by agents of broker-dealers who are members of a national securities association. *(Securities Division; 710 IAC 4-8-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-8-2 Examination for licensure**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 2. (a) Unless specifically exempt, as provided in subsection (e), an agent examination in the form and content prescribed or approved by the commissioner must be taken and passed by every agent in order to test his or her knowledge of the securities business and state securities laws before the applicant will be considered eligible for registration.

(b) The commissioner shall establish or approve the standards for a minimum acceptable passing grade in determining each applicant's qualifications for registration under this section.

(c) Upon failure to receive a minimum passing grade, the applicant may retake the examination on the next date available. In the event of a second failure or failure to take or retake the examination within a thirty (30) day period from the date the application was filed, this will be considered sufficient grounds for denial of the agent application and an order denying the registration may be entered by the commissioner. The applicant will be considered ineligible for licensing during a period of three (3) months, at which time a new application may be filed and his or her eligibility reexamined. The original filing fee shall not be refunded nor applied to subsequent applications for registration under this subsection.

(d) An application shall be deemed incomplete until there is a showing of compliance with the examination requirement or an exemption from those requirements.

(e) The examination requirements may be waived by a proper showing or certification that the applicant:

- (1) is not to be actively engaged in the general sales of securities;
- (2) has within the preceding two (2) years taken an examination in the form and content approved by the commissioner and has passed the examination with the minimum acceptable passing grade for agent applicants;
- (3) has taken an examination in the form and content approved by the commissioner and, thereafter, prior to making the application, has remained continuously in the securities business, duly licensed by another state; or
- (4) was properly registered as an agent within the two (2) years immediately preceding the date of application.

*(Securities Division; 710 IAC 4-8-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-8-3 Notice of changes in circumstances**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-6

Sec. 3. (a) Every agent or applicant shall immediately notify the division in writing of any material changes in any:

- (1) information;
- (2) exhibits; or
- (3) schedules;

disclosed in his or her application. A correction amendment shall be filed at the time of the occurrence or discovery of the change.

(b) Material changes include, but are not limited to, the following:

- (1) Change of address.
- (2) Termination of agency with the broker-dealer or issuer with whom licensed.
- (3) The filing of a criminal charge or civil action against the applicant in which a:
  - (A) fraudulent;
  - (B) dishonest; or
  - (C) unethical;

act is alleged, a violation of IC 23-19 is alleged, or a violation of IC 23-19 is involved.

(4) The agent or applicant is the subject of:

- (A) an order;
- (B) a proceeding; or
- (C) an institution of a proceeding;

by or in any court or administrative agency, involving any aspect of the securities business, any felony, or a U.S. Post Office fraud order.

*(Securities Division; 710 IAC 4-8-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-8-4 Expiration, renewal, and termination or suspension of registration**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 4. (a) All agent registrations expire January 1 of each year.

(b) Renewal applications shall be accepted after November 1 and prior to January 1 of the following year. No renewal applications will be accepted after January 1. Renewal applications become effective by operation of law thirty (30) days after filing unless sooner approved by the commissioner. During that period after the agent registration has expired (January 1) and before the effectiveness of the renewal application, the agent shall have no authority to transact securities business.

(c) Termination or suspension of a broker-dealer or issuer registration for any reason shall automatically terminate or suspend the agent registration. (*Securities Division; 710 IAC 4-8-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**Rule 9. Investment Advisers**

**710 IAC 4-9-1 Investment adviser registration application**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 1. (a) An application for registration as an investment adviser filed under IC 23-19 must be filed on Form ADV, the Uniform Application for Investment Adviser Registration promulgated by the U.S. Securities and Exchange Commission (SEC) at 17 CFR 279.1, or any successor form, in accordance with the instructions contained therein, with the commissioner or with a central registration depository system designated by the commissioner. The application must include the following:

- (1) Proof of compliance by the investment adviser with the examination requirements under section 6 of this rule unless exempted therein.
- (2) The financial statements required by IC 23-19 and section 12 of this rule, including a copy of the balance sheet for the most recent fiscal year prepared in accordance with generally accepted accounting principles.
- (3) The fee required under IC 23-19.
- (4) Consent to service of process required under IC 23-19.
- (5) Any other information required under IC 23-19 or these rules or requested by the commissioner.

(b) A Form ADV filed by an investment adviser partnership that is not registered when the form is filed and that succeeds to and continues the business of a predecessor partnership registered as an investment adviser shall be deemed to be an amendment if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

(c) A Form ADV filed by an investment adviser corporation that is not registered when the form is filed and that succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

- (d) A Form ADV filed by an investment adviser:
- (1) corporation;
  - (2) partnership;
  - (3) sole proprietorship; or
  - (4) other entity;

that is not registered when the form is filed and that succeeds to and continues the business of a predecessor entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

(e) An application for renewal registration as an investment adviser must be filed with the commissioner or with a central registration depository system designated by the commissioner no later than December 31 of each year. The application:

- (1) must be accompanied by the fee required under IC 23-19; and
- (2) shall also include any amendments to Form ADV, prepared in accordance with section 16 of this rule, as required under IC 23-19.

(*Securities Division; 710 IAC 4-9-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)



**710 IAC 4-9-2 Investment adviser representative application**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 2. (a) An application for registration as an investment adviser representative under IC 23-19 shall be filed on a Form U-4, the Uniform Application for Securities Industry Registration or Transfer, or any successor form, with the commissioner or with a central registration depository system designated by the commissioner. The application shall include the following:

- (1) Proof of compliance by the investment adviser representative with the examination requirements of section 6 of this rule unless exempted herein.
- (2) The fee required under IC 23-19.
- (3) Consent to service of process required under IC 23-19.
- (4) Any other information required by IC 23-19 or these rules or requested by the commissioner.

(b) An application for renewal registration for an investment adviser representative must be filed with the commissioner or with a central registration depository system designated by the commissioner no later than December 31 of each year. The application must:

- (1) be accompanied by the fee required under IC 23-19; and
- (2) include any amendments to Form U-4, prepared in accordance with section 16 of this rule.

*(Securities Division; 710 IAC 4-9-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-9-3 Termination or withdrawal from registration**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 3. (a) Any investment adviser who does not wish to renew its registration under IC 23-19 shall file with the commissioner, or with a central registration depository system designated by the commissioner, on or before December 31 of the year in which its current registration expires, a Form ADV-W, Notice of Withdrawal of Registration as an Investment Adviser promulgated by the SEC at 17 CFR 279.2, or any successor form prepared in accordance with the instructions.

(b) Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, upon the cessation, file with the commissioner or with a central registration depository system designated by the commissioner, a Form ADV-W or any successor form prepared in accordance with the instructions.

(c) Any investment adviser representative who does not wish to renew registration pursuant to IC 23-19 or who wishes to terminate a current registration shall file Form U-5, Uniform Termination Notice for Securities Industry Regulation, or any successor form with the commissioner or with a central registration depository system designated by the commissioner on or before December 31 of the year in which the current registration expires for nonrenewal or upon termination.

(d) Every notice filed under this rule shall become effective on the thirtieth day after filing or within a shorter period of time as the commissioner may determine. If prior to the effective date of a notice of withdrawal, the commissioner has instituted a proceeding to suspend or revoke registration or to impose terms or conditions upon withdrawal under IC 23-19, the notice of withdrawal shall not become effective except at the time and upon the terms and conditions as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. *(Securities Division; 710 IAC 4-9-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-9-4 Incomplete and abandoned applications**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 4. (a) An application for registration as an investment adviser or investment adviser representative is deficient if the application is not in proper form or the application is not in compliance with IC 23-19 or any other provision of this rule.

(b) When an application is found to be deficient, the commissioner may send a deficiency letter stating the grounds for noncompliance to the applicant and, if the applicant is an investment adviser representative, to the investment adviser who employs or proposes to employ the applicant. If no response is received by the commissioner from the applicant after sixty (60) days, the commissioner may issue a notice of intent to deny the application, under IC 23-19, stating that the commissioner proposes to issue

an order denying the application. (*Securities Division; 710 IAC 4-9-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-5 Exemption for certain broker-dealers**

Authority: IC 23-19-6-5

Affected: IC 23-19-5-2

Sec. 5. (a) An investment adviser that is registered as a broker-dealer or agent shall be exempt from IC 23-19-5-2 with respect to any transaction in which the broker-dealer or agent acts solely:

- (1) by means of publicly distributed written materials or publicly made oral statements;
- (2) by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
- (3) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
- (4) through any combination of the services in subdivisions (1) through (3).

However, the materials and oral statements must include a statement that, if the purchaser of the advisory communication uses the services of the investment adviser in connection with a sale or purchase of a security that is a subject of the communication, the investment adviser may act as principal for his or her own account or as agent for another person.

(b) As used in this section, "publicly distributed written materials" means materials that are distributed to thirty-five (35) or more persons who pay for access to the materials.

(c) As used in this section, "publicly made oral statements" means statements made simultaneously to thirty-five (35) or more persons who pay for access to the statements.

(d) The requirement that the investment adviser disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the investment adviser of any disclosure obligation that may be imposed by IC 23-19 or this rule.

(e) A broker-dealer that is required to register as an investment adviser under IC 23-19 shall be exempt from the record keeping requirements under section 7 of this rule, with respect to transactions for which it does not receive special compensation, so long as the investment adviser is in compliance with the broker-dealer record keeping requirements under IC 23-19. (*Securities Division; 710 IAC 4-9-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-6 Examinations**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-12

Sec. 6. (a) An examination or series of examinations in the form and content prescribed or approved by the commissioner must be taken and passed by every investment adviser and investment adviser representative.

(b) An investment adviser or investment adviser representative who wishes to rely on passage of any examination other than one prescribed by the commissioner under this section or who wishes to request a waiver of the examination requirements established by the commissioner under this section must submit a written request for consideration identifying:

- (1) the examination in question;
- (2) its content;
- (3) the entity administering the examination; and
- (4) the reason why a waiver should be granted by the commissioner.

Acceptance of the examination results or the waiver of the examination is solely within the commissioner's discretion.

(c) An investment adviser who is not an individual shall meet the examination requirement imposed by the commissioner under this section by showing proof of compliance on a continuing basis with this section by any one (1) of its investment adviser representatives who is currently engaged in the management of the investment adviser's business in Indiana, including the supervision or the training of investment adviser representatives or employees for any of those functions. (*Securities Division; 710 IAC 4-9-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-7 Books and records; maintenance**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 7. Every investment adviser subject to IC 23-19 shall make and keep true, accurate, and current the following books and records relating to its investment advisory business:

(1) Journals, including cash receipts and disbursement records, and any other record of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers, or other comparable records, reflecting:

- (A) asset;
- (B) liability;
- (C) reserve;
- (D) capital;
- (E) income; and
- (F) expense accounts.

(3) A memoranda of each order given by the investment adviser that:

(A) is for:

- (i) purchase or sale of any security;
- (ii) any instruction received by the investment adviser from a client concerning:

- (AA) purchase;
- (BB) sale;
- (CC) receipt; or
- (DD) delivery;

of a particular security; or

(iii) any modification or cancellation of any order or instruction; and

(B) shall:

(i) show the terms and conditions of the:

- (AA) order;
- (BB) instruction;
- (CC) modification; or
- (DD) cancellation;

(ii) identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order;

(iii) show the:

- (AA) account for which the order was entered;
- (BB) date of entry; and

(CC) bank or broker-dealer by or through whom the order was executed, if appropriate.

Orders entered under the exercise of discretionary power shall be so designated.

(4) All:

- (A) checkbooks;
- (B) bank statements;
- (C) canceled checks; and
- (D) cash reconciliations;

of the investment adviser.

(5) All bills or statements, or copies thereof, paid or unpaid, relating to the business of the investment adviser.

(6) All:

- (A) trial balances;
- (B) financial statements; and
- (C) internal audit working papers;

relating to the business of the investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser

relating to the following:

(A) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(B) Any:

(i) receipt;

(ii) disbursement; or

(iii) delivery;

of funds or securities.

(C) The placing or execution of any order to purchase or sell any security.

(D) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution, not prepared by or for the investment adviser.

(E) If the investment adviser sends any notice, circular, or other advertisement that offers any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that, if the notice is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice or a memorandum describing the list and the source.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the:

(A) funds;

(B) securities; or

(C) transactions;

of any client.

(9) All powers of attorney given to the investment adviser for the purpose of providing investment advice and other evidence of the granting of any discretionary authority by any client to the investment adviser, or copies of those documents.

(10) All written agreements, or copies of those agreements, entered into by the investment adviser with any client or otherwise relating to the business of the investment adviser.

(11) The following related to communications:

(A) A copy of each:

(i) notice;

(ii) circular;

(iii) advertisement;

(iv) newspaper article;

(v) investment letter;

(vi) bulletin; or

(vii) other communication;

that the investment adviser circulates or distributes, directly or indirectly, to ten (10) or more persons, other than persons connected with the investment adviser.

(B) If the items referenced in clause (A) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or, by reason of the transaction, acquires any direct or indirect beneficial ownership, except with respect to the following:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control.

(B) Transactions in securities that are direct obligations of the United States.

(C) The records required to be kept under this subdivision shall state the following:

(i) The title and amount of the security involved.

(ii) The date and nature of the transaction.

(iii) The price at which it was affected.

(iv) The name of the broker-dealer or bank with or through whom the transaction was effected.

The record may also contain a statement declaring that the reporting or recording of any of these transactions shall not be construed as an admission that the investment adviser, or advisory representative, has any direct or indirect beneficial

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ownership in the security. A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(D) For purposes of clause (A), "control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, (15 U.S.C. 80a-2(a)(9)), as amended.

(E) An investment adviser shall not be deemed to have violated the provisions of this subdivision because of its failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(F) For purposes of this subdivision, "advisory representative" means the following:

(i) Any:

- (AA) partner;
- (BB) officer; or
- (CC) director;

of the investment adviser.

(ii) Any employee:

- (AA) who makes any recommendation;
- (BB) who participates in the determination of which recommendation shall be made; or
- (CC) whose functions or duties relate to the determination of which recommendation shall be made.

(iii) Any employee who, in connection with his or her duties, obtains any information concerning that securities are being recommended prior to the effective dissemination of the recommendations or of the information concerning the recommendations.

(iv) Any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

- (AA) Any person in a control relationship to the investment adviser.
- (BB) Any affiliated person of the controlling person.
- (CC) Any affiliated person of the affiliated person.

(13) Notwithstanding the provision of subdivision (12) where the investment adviser is primarily engaged in a business other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or, by reason of the transaction, acquires any direct or indirect beneficial ownership, except with respect to the following:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control.

(B) Transactions in securities that are direct obligations of the United States.

(C) The records required to be kept by this subdivision shall state the following:

- (i) Title and amount of the security involved.
- (ii) The date and nature of the transaction.
- (iii) The price at which it was affected.

(iv) The name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any of these transactions shall not be construed as an admission that the investment adviser, or investment adviser representative, has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(D) As used in this subdivision, "control" shall have the same meanings as set forth in Section 2(a)(9), (15 U.S.C. 80a-2(a)(9)) of the Investment Company Act of 1940, as amended.

(E) For purposes of this subdivision, an investment adviser is primarily engaged in a business other than advising registered investment companies or other advisory clients when, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is later, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of its total sales and revenues, and its income, or loss, before income taxes and extraordinary items, from the other business.

(F) An investment adviser shall not be deemed to have violated the provisions of this subdivision because of its failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and

used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(G) For purposes of this subdivision, "advisory representative", when used in connection with a company primarily engaged in a business other than advising registered investment companies or other advisory clients, means the following:

(i) Any:

- (AA) partner;
- (BB) officer;
- (CC) director; or
- (DD) employee;

of the investment adviser;

(ii) does any of the following:

- (AA) who makes any recommendation;
- (BB) who participates in the determination of which recommendation shall be made; or
- (CC) whose functions or duties relate to the determination of which recommendation shall be made, or who in connection with his or her duties obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations or of the information concerning the recommendations.

(iii) Any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

- (AA) Any person in a control relationship to the investment adviser.
- (BB) Any affiliated person of the controlling person.
- (CC) Any affiliated person of the affiliated person.

(14) A copy of each written statement, and each amendment, given or sent to any client or prospective client of the investment adviser under IC 23-19, and a record of the dates that each written statement and each amendment was given or offered to be given to any client or prospective client who subsequently becomes a client.

(15) In relation to rate of return, the following applies:

(A) All:

- (i) accounts;
- (ii) books;
- (iii) internal working papers; and
- (iv) any other records or documents;

(B) necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any communication referenced in subdivision (11)(A);

(C) provided, however, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect all:

- (i) debits;
- (ii) credits;
- (iii) other transactions in a client's account for the period of the statement; and
- (iv) work sheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts;

shall be deemed to satisfy the requirements of this subdivision.

(16) With respect to any investment adviser who has custody or possession of securities or funds of any client, the records required to be made and kept under this section shall contain the following:

(A) A journal or other record showing all:

- (i) purchases;
- (ii) sales;
- (iii) receipts; and
- (iv) deliveries;

of securities, including certificate numbers, for accounts and all other debits and credits to the accounts.

(B) A separate ledger account for each client showing the following:

- (i) All:
    - (AA) purchases;
    - (BB) sales;
    - (CC) receipts; and
    - (DD) deliveries;of securities.
  - (ii) The date and price of each purchase and sale.
  - (iii) All debits and credits.
- (C) Copies of confirmations of all transactions effected by or for the account of any of these clients.
- (D) A record for each security in which any of these clients has a position, and these records shall show the:
- (i) name of the client having any interest in each security;
  - (ii) amount or interest of the client; and
  - (iii) location of the security.
- (17) With respect to any investment adviser who renders any investment supervisory or management service to any client and to the extent that the information is reasonably available to or obtainable by the investment adviser, the records required to be made and kept under this rule with respect to the portfolio being supervised or managed shall include the following:
- (A) Accurate and current records showing separately for the client the securities purchased and sold and the:
- (i) date;
  - (ii) amount; and
  - (iii) price;
- of the purchase and sale.
- (B) For each security in which any of these clients has a current position, accurate and current information from which the investment adviser can promptly furnish the name of the client and the current amount or interest of the client.
- (C) Any books or records required by this section may be maintained by the investment adviser in the manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (D) All books and records required to be made under this section, except for books and records required to be made under subdivisions (11) and (15), shall be maintained and preserved in an easily accessible place for at least five (5) years from the end of the fiscal year during which the last entry was made on the record, with books and records for the first two (2) most recent years stored in an appropriate office of the investment adviser.
- (E) The following shall be maintained in the principal office of the investment adviser and preserved until at least three (3) years after termination of the enterprise:
- (i) partnership articles with any amendments;
  - (ii) articles of incorporation;
  - (iii) charters;
  - (iv) minute books; and
  - (v) stock certificate books;
- of the investment adviser and of any predecessor.
- (F) An investment adviser subject to this section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section, for the remainder of the periods specified herein. The investment adviser shall notify the commissioner in writing of the exact address where the books and records will be maintained during these periods.
- (G) The records required to be maintained and preserved under this section may be stored electronically and be maintained and preserved for the required time in that form. If records are produced or reproduced through electronic storage, the investment adviser shall do the following:
- (i) Arrange the records and index storage medium so as to permit the immediate location of any particular record.
  - (ii) Be prepared to promptly provide any paper copy of the storage medium that the commissioner may request.
  - (iii) Create a suitable backup for that electronic storage medium.
  - (iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction.
  - (v) With respect to records stored on photographic film, at all times have available for the commissioner's

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examination of its records under IC 23-19, facilities for:

(AA) immediate, easily readable projection of the film; and

(BB) producing easily readable facsimile enlargements.

(H) Under clause (G), an investment adviser may, on electronic storage medium, maintain and preserve records that, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission.

(I) Any book or other record made, kept, maintained, and preserved in compliance with IC 23-19 that is substantially the same as the book or other record required to be maintained or preserved under this section shall be deemed to be maintained and preserved in compliance with this section.

(J) A record made and kept under this section that contains all the information required to be kept under any other provision of this rule need not be maintained in duplicate.

(K) As used in this section, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(L) Except as provided in clause (N), each nonresident investment adviser registered or applying for registration under IC 23-19 shall maintain and preserve at a place within the state of Indiana designated in a notice from it, as provided in this section, true, correct, complete, and current copies of books and records that it is required to make, keep current, maintain, or preserve.

(M) Except as provided in clause (N), each nonresident investment adviser subject to clause (L), shall furnish to the commissioner a written notice specifying the address of the place within the state of Indiana where the copies of the books and records required to be kept and preserved by it under clause (L) are located. Each nonresident broker-dealer registered or applying for registration as an investment adviser shall file the notice within thirty (30) days after this section becomes effective. Each nonresident investment adviser who files an application for registration after this section becomes effective shall file the notice with the application for registration.

(N) Notwithstanding the provisions of clauses (L) and (M), a nonresident investment adviser need not keep or preserve within the state of Indiana copies of the books and records to which clauses (L) and (M) refer if the following occur:

(i) The nonresident investment adviser files with the commissioner, at the time or within the period provided by clause (M), a written undertaking, in a form acceptable to the commissioner and signed by a duly authorized person, to furnish to the commissioner, upon demand, at the commissioner's office complete and current copies of any or all of the books and records that it is required to keep and maintain, or preserve under IC 23-19. The undertaking shall be in substantially the following form:

(AA) The undersigned hereby undertakes to furnish to the commissioner at its own expense true, correct, complete, and current copies of any, all, or any part of the books and records that the undersigned is required to make, keep current, or preserve under IC 23-19.

(BB) This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all the books and records at a place within the state of Indiana in compliance with this rule. This undertaking shall be binding upon the undersigned and the heirs, successors, and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners, and managing agents filed with the commissioner, shall extend to and cover any action to enforce the same.

(ii) The nonresident investment adviser furnishes to the commissioner, at the investment adviser's expense, fourteen (14) days after written demand, that has been forwarded to the investment adviser, at its last address filed with the commissioner, by certified mail, return receipt requested that has been signed by the commissioner or the other person as the commissioner may authorize to act on his or her behalf, complete and current copies of any or all books and records that the investment adviser is required to keep current or preserve, or any part of the books and records that may be specified in the written demand. The copies shall be furnished to the commissioner at the commissioner's office in Indianapolis, Indiana, or at any other place within the state of Indiana that may be specified in the written demand.

(O) For purposes of this section, "nonresident investment adviser" means the following:

(i) In the case of an individual, one who resides in or has his or her principal place of business in any place not subject to the jurisdiction of the state of Indiana.



(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the state of Indiana.

(iii) In the case of a partnership or other unincorporated organization, one having its principal place of business in any place not subject to the jurisdiction of the state of Indiana.

(P) Books and records required to be made under subdivisions (11) and (15) shall be maintained and preserved in an easily accessible place for at least five (5) years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the:

- (i) notice;
- (ii) circular;
- (iii) advertisement;
- (iv) newspaper article;
- (v) investment letter;
- (vi) bulletin; or
- (vii) other communication;

with books and records for the first two (2) years stored in an appropriate office of the investment adviser.

*(Securities Division; 710 IAC 4-9-7; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

#### **710 IAC 4-9-8 Supervision of investment adviser representatives and employees**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 8. (a) Every investment adviser registered or required to be registered under IC 23-19 shall exercise diligent supervision over the investment advisory activities of its investment adviser representatives and employees. Each investment adviser representative and other office employees shall be subject to the supervision of a designated supervisor.

(b) Written procedures, a copy of which shall be kept in each business office, shall be maintained and enforced and shall set forth the standards and procedures adopted to comply with IC 23-19 and this rule, including, but not limited to, the following:

- (1) Administrative review and written approval of all new client accounts.
- (2) Periodic examination of client accounts to detect and prevent irregularities or abuse.
- (3) Prompt administrative review of all customer complaints.
- (4) Prompt administrative review of correspondence pertaining to the solicitation and execution of any securities transactions effected on behalf of clients.
- (5) The review and written approval, by the designated supervisor, of the delegation by any client of discretionary investment authority with respect to his or her account, and the frequent, periodic examination of all the discretionary accounts to prevent irregularities or abuses.

(c) Each office location shall be periodically inspected by the investment adviser to assure that the written procedures are enforced.

(d) It shall be the responsibility of each investment adviser to ascertain that investment adviser representatives have been properly registered prior to rendering investment advice and that proof of registration is immediately accessible prior to rendering the advice.

(e) It shall be the responsibility of each investment adviser and their supervisory personnel to ensure that all employees are properly trained regarding the disclosure requirements and the:

- (1) administrative;
- (2) civil; and
- (3) criminal;

liability provisions of IC 23-19.

(f) For the purposes of this section, no person shall be deemed to have failed to diligently supervise any other person if as follows:

- (1) There have been established procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by the other persons.
- (2) The person has reasonably discharged the duties and obligations incumbent upon him or her by reason of the procedures and without reasonable cause to believe that the procedures were not being complied with.

*(Securities Division; 710 IAC 4-9-8; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-9-9 Written disclosure statements**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 9. (a) An investment adviser shall furnish each advisory client and prospective advisory client with a written disclosure statement, which may be either a copy of Part II of Form ADV or a written document containing at least the information required by Part II of Form ADV.

(b) Except as provided in this section, an investment adviser shall deliver the statement required by this section to an advisory client or prospective advisory client:

(1) not less than forty-eight (48) hours before entering into any written or oral investment advisory contract with the client; or

(2) at the time of entering into any the contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(c) Delivery of the statement required by subsection (a) need not be made in connection with entering into:

(1) an investment company contract; or

(2) a contract for impersonal advisory services, as defined in this section.

(d) Notwithstanding the provisions of this section, an investment adviser shall not be required to give a five (5) day right to terminate a transaction for the purchase or sale of securities, provided that, as follows:

(1) The investment adviser is also registered as a broker-dealer or agent under IC 23-19.

(2) The contract relates to the purchase or sale of a security.

(3) The provision of advisory services is incidental to the investment adviser's business as a broker-dealer or agent, and no special investment adviser compensation is received for the services.

(4) The disclosure is provided to the client or prospective client at or before the time the client makes the purchase or sale.

(e) An investment adviser shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required under this section.

(f) The delivery or offer required by subsection (e) need not be made to advisory clients receiving advisory services solely under either of the following:

(1) An investment company contract.

(2) A contract for impersonal advisory services requiring a payment of less than two hundred dollars (\$200).

(g) With respect to an advisory client entering into a contract or receiving advisory services under a contract for impersonal advisory services that requires a payment of two hundred dollars (\$200) or more, an offer of the type specified in subsection (e) shall also be made at the time of entering into an advisory contract.

(h) Any statement requested under this section in writing by an advisory client must be mailed or delivered within seven (7) days of receipt of the request.

(i) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if the information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(j) Nothing in this section shall relieve any investment adviser from any obligation under any provision of IC 23-19 or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

(k) As used in this section, "contract for impersonal advisory services" means any contract relating solely to the provisions of investment advisory services:

(1) by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(2) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) by or through any combination of the services required under subdivisions (1) and (2).

(l) As used in this section, "entering into", in reference to an investment advisory contract, does not include an extension or

renewal without material change of any the contract that is in effect immediately prior to the extension or renewal.

(m) As used in this section, "investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 that meets the requirements of Section 15 of that Act (15 U.S.C. 80a-15). (*Securities Division; 710 IAC 4-9-9; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-10 Performance based compensation exemption**

Authority: IC 23-19-6-5

Affected: IC 23-19-5-2

Sec. 10. (a) As used in this section, "affiliated person" has the meaning set forth in Section 2(a)(3) of the federal Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)).

(b) As used in this section, "client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract but does not include any of the following:

- (1) The investment adviser relying on this section.
  - (2) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative.
  - (3) An interested person of the investment adviser.
  - (4) A person who receives, directly or indirectly, any compensation in connection with the contract from:
    - (A) the investment adviser;
    - (B) an affiliated person of the investment adviser;
    - (C) an affiliated person of an affiliated person of the investment adviser; or
    - (D) an interested person of the investment adviser.
  - (5) A person with any material relationship between himself or herself, or an affiliated person of that person, and the investment adviser, or an affiliated person of the investment adviser, who exists or has existed at any time during the past two (2) years.
- (c) As used in this section, "company" means:
- (1) a corporation;
  - (2) a partnership;
  - (3) an association;
  - (4) a joint stock company;
  - (5) a trust;
  - (6) any organized group of persons, whether incorporated or not;
  - (7) any receiver;
  - (8) a trustee in a case under Title 11 of the United States Code;
  - (9) a similar official; or
  - (10) any liquidating agent for any of the foregoing, in his or her official capacity.

The term does not include a company required to be registered under the federal Investment Company Act of 1940 but which is not so registered, a private investment company that is a company that would be defined as an investment company under Section 3(a) of the federal Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception from that definition provided by Section 3(c)(1) of that Act (15 U.S.C. 80a-3(c)(1)), an investment company registered under the federal Investment Company Act of 1940, or a business development company as defined in Section 202(a)(22) of the federal Investment Adviser Act of 1940 (15 U.S.C. 80b-2(a)(22)), unless each of the equity owners of any business development company, other than the investment adviser entering into the contract, is a natural person or company as defined under this subsection.

(d) As used in this section, "interested person" means any of the following:

- (1) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser.
- (2) Any person who knowingly has any direct or indirect beneficial interest in or who is designated as trustee, executor, or guardian of any legal interest in any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:
  - (A) one-tenth of one percent (.1%) of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
  - (B) five percent (5%) of the total assets of the person seeking to act as the client's independent agent.

(3) Any:

- (A) person;
- (B) partner; or
- (C) employee;

of any person who, at any time since the beginning of the last two (2) years, has acted as legal counsel for the investment adviser.

(e) Notwithstanding IC 23-19-5-2(c), an investment adviser may:

- (1) enter into;
- (2) extend; or
- (3) renew;

an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds of the client if the conditions of subsections (f) through (k) are met.

(f) The client entering into the contract must be either of the following:

- (1) A natural person or a company who immediately after entering into the contract has at least five hundred thousand dollars (\$500,000) under the management of the investment adviser.
- (2) A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds one million dollars (\$1,000,000). The net worth of a natural person may include assets held jointly with that person's spouse.

(g) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

- (1) In the case of securities for which market quotations are readily available, within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (17 CFR 270.2a-4(a)(1)), Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period.
- (2) In the case of securities for which market quotations are not readily available, within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (17 CFR 270.2a-4(a)(1)), the formula must include the following:
  - (A) The realized capital losses of securities over the period.
  - (B) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period.
- (3) The formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses, computed under this subsection, in the client's account for a period of not less than one (1) year.

(h) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

- (1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance-based fee.
- (2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's accounts.
- (3) The periods that will be used to measure investment performance throughout the contract and their potential significance in the computation of the fee.
- (4) The following concerning indexes:
  - (A) The nature of any index that will be used as a comparative measure of investment performance.
  - (B) The potential significance of the index.
  - (C) The reasons the investment adviser believes that the index is appropriate.

(5) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, within the meaning of Rule 2a-4(a)(1) of the Investment Company Act of 1940 (17 CFR 270.2a-4(a)(1)), how the securities will be valued and the extent to which the valuation will be independently determined.

(i) The investment adviser, and any investment adviser representative, who enters into the contract must reasonably believe, immediately before entering into the contract, the following:

- (1) The contract represents an arm's length arrangement between the parties.
- (2) The client or, in the case of a client that is a company as defined in subsection (c), the person representing the company,

alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be:

- (A) a partner;
- (B) a director;
- (C) an officer; or
- (D) an employee;

of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee but must satisfy the definition of client's independent agent set forth in subsection (b).

(j) Nothing in this section shall relieve a person entering into or performing an investment advisory contract from any obligations under IC 23-19-5-2 or any other applicable provision of IC 23-19.

(k) Nothing in this section shall relieve a client's independent agent from any obligations to the client under applicable law. (*Securities Division; 710 IAC 4-9-10; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-11 Certain transactions not deemed assignments**

Authority: IC 23-19-6-5  
Affected: IC 23-19-5-2

Sec. 11. A transaction that does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of section 18 of this rule. (*Securities Division; 710 IAC 4-9-11; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-12 Financial statements and reporting requirements for investment advisers**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 12. (a) Every investment adviser required to be registered under IC 23-19 who has custody of client funds or securities for the purposes of acting as an investment adviser or who requires payment of advisory fees six (6) months or more in advance and in excess of five hundred dollars (\$500) per client must file with the commissioner an audited balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed under this section must be as follows:

- (1) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles.
- (2) Audited by an independent public accountant or an independent certified public accountant.
- (3) Accompanied by an opinion of the accountant as to the report of financial position and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every investment adviser required to be registered under IC 23-19 must file upon request a financial statement with the commissioner showing the financial condition of the investment adviser as of the most recent fiscal year. Except as provided in subsection (a), the financial statements need not be certified.

(c) Financial statements required by subsection (a) shall be filed with the commissioner as soon as possible, but not later than one hundred twenty (120) days after the end of the investment adviser's fiscal year. (*Securities Division; 710 IAC 4-9-12; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-13 Custody and possession of client funds or securities**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-12

Sec. 13. (a) It shall constitute a dishonest practice within the meaning of IC 23-19-4-12(d)(13) for any investment adviser or investment adviser representative who has custody or possession of any funds or securities in which a client has a beneficial interest to do any act or take any action, directly or indirectly, with respect to the funds or securities unless the following occur:

- (1) The investment adviser notifies the commissioner in writing, through Form ADV or otherwise, that the investment adviser has or may have custody.
- (2) The securities of each client are segregated, marked to identify the particular client who has the beneficial interest therein,

and held in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) All funds of the clients are deposited in one (1) or more bank accounts that contain only clients' funds, and the following occur:

- (A) The accounts are maintained in the name of the investment adviser as agent or trustee for the clients.
- (B) The investment adviser maintains a separate record for each account that shows the following:
  - (i) The name and address of the bank where the account is maintained.
  - (ii) The dates and amounts of deposits in and withdrawals from the account.
  - (iii) The exact amount of each client's beneficial interest in the account.

(4) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the following:

- (A) The place and manner in which the funds and securities will be maintained.
- (B) Any change in the place or manner in which the funds are being maintained.

(5) The investment adviser sends each of these clients an itemized statement showing the current funds and securities in the investment adviser's custody or possession at least once every three (3) months. The statement shall include all:

- (A) debits;
- (B) credits; and
- (C) transactions;

occurring in the client's account during that period.

(6) At least once every calendar year, an independent certified public accountant or an independent public accountant verifies all client funds and securities of clients by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report of the accountant, stating that he or she has made an examination, shall be filed with the commissioner promptly after each examination. The accountant's report should comply with the usual technical requirements as to dating, salutation, and signature and should include in general terms an appropriate description of the scope of the physical examination of the securities and examination of the related books and records. In addition, the accountant's report will set forth the following:

- (A) The date of the physical count and confirmation of balances of the client's accounts.
- (B) A clear designation of the place and manner in which funds and securities are maintained.
- (C) Whether the examination was made with prior notice to the investment adviser.
- (D) The results of the examination, including the following:
  - (i) An expression of opinion as to whether the investment adviser was in compliance with this section as of the examination date.
  - (ii) An expression of opinion as to whether the investment adviser had been complying with this section during the period since the prior examination date. If the accountant believes that the investment adviser has not complied with this section, the accountant must state the reasons for his or her belief.
  - (iii) An identification of any material inadequacies found to exist in the books, records, and safekeeping facilities referred to in this section.
  - (iv) Any corrective action taken to remedy a material inadequacy.
  - (v) Corrective action that should be taken to remedy a material inadequacy.

(b) This section shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) if the broker-dealer or agent is:

- (1) subject to and in compliance with SEC Rule 15c3-1(17 CFR 240.15c3-1) (Net Capital Requirement for Brokers or Dealers) under the Securities Exchange Act of 1934; or
- (2) a member of an exchange whose members are exempt from Rule 15c3-1, under the provisions of paragraph (b)(2) of that rule;

and the broker-dealer or agent is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers. (*Securities Division; 710 IAC 4-9-13; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-14 Agency cross transactions for advisory clients**

Authority: IC 23-19-6-5  
 Affected: IC 23-19

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Sec. 14. (a) As used in this section, "agency cross transactions for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which that investment adviser, or any person:

- (1) controlling;
- (2) controlled by; or
- (3) under common control with that investment adviser;

acts as broker-dealer or agent for both the advisory client and for another person on the other side of the transaction. When acting in this capacity, the person is required to be registered as a broker-dealer or agent in this state, unless excluded from the definition.

(b) An investment adviser registered under IC 23-19, or a person registered as a broker-dealer or agent under IC 23-19 that is controlling, controlled by, or under common control with a registered investment adviser, shall be deemed to be in compliance with section 15(a)(15) of this rule in effecting an agency cross transaction for an advisory client if the following conditions are met:

- (1) The advisory client executes a written consent prospectively authorizing the investment adviser or any other person relying on this section to effect agency cross transactions for the advisory clients.
- (2) Before obtaining written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser or the other person will act as a broker-dealer or agent for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions.
- (3) At or prior to the completion of each agency cross transaction, the investment adviser or any other person relying on this section sends to each client a written confirmation, which shall include the following:
  - (A) A statement of the nature of the transaction.
  - (B) The date the transaction took place.
  - (C) An offer to furnish upon request the time when the transactions took place.
  - (D) The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this section in connection with the transaction.
  - (E) In the case of a purchase, if the investment adviser or any other person relying on this section was not participating in a distribution, or, in the case of a sale, if the investment adviser or any other person relying on this section was not participating in a tender offer, the written confirmation may state the following:
    - (i) Whether any other remuneration has been or will be received.
    - (ii) That the source and amount of the remuneration will be furnished upon written request of that customer.

(4) At least annually and with or as part of any written statement or summary of the account from the investment adviser or any other person relying on this section, the investment adviser sends to each client a written disclosure statement identifying the total number of the agency cross transactions during the period since the date of the last statement or summary, and the total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this section in connection with the agency cross transactions during this period.

(5) Each written disclosure and confirmation required by this section includes a conspicuous statement that the written consent referred to in subdivision (1) may be revoked at any time by the advisory client by written notice to the investment adviser or to any other person relying on this section.

(6) No agency cross transaction may be effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with the investment adviser recommended the transaction to both any seller and any purchaser.

(c) This section shall not relieve:

- (1) an investment adviser;
- (2) an investment adviser representative; or
- (3) another person relying on this section;

from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client.

(d) This section shall not relieve:

- (1) an investment adviser;
- (2) an investment adviser representative; or
- (3) another person relying on this section;

from any disclosure obligation that may be imposed by IC 23-19. (*Securities Division; 710 IAC 4-9-14; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-15 Dishonest or unethical practices**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-12

Sec. 15. (a) Investment advisers and investment adviser representatives are fiduciaries and have a duty to act primarily for the benefit of their clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and his or her clients and the circumstances of each case, an investment adviser or an investment adviser representative shall not engage in unethical or dishonest business practices. Each of the following actions or activities shall constitute an unethical or dishonest practice within the meaning of IC 23-19-4-12(d)(13):

- (1) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning:
  - (A) the client's investment objectives;
  - (B) the client's financial situation;
  - (C) the client's needs; and
  - (D) any other information known or acquired by the client's financial records as may be provided to the investment adviser.
- (2) Placing an order to purchase or sell a security for the account of a client without authority to do so.
- (3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
- (4) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
- (5) Inducing trading in a client's account that is excessive in size or frequency in view of the:
  - (A) financial resources;
  - (B) investment objectives; and
  - (C) character of the account.
- (6) Misrepresenting to any advisory client or prospective advisory client any of the following:
  - (A) Qualifications of the investment adviser or any employee of the investment adviser.
  - (B) The nature of the advisory services being offered or fees to be charged for the service.
  - (C) Omitting to state a material fact necessary to make the statements made regarding:
    - (i) qualifications;
    - (ii) services; or
    - (iii) fees;in light of the circumstances under which they are made, not misleading.
- (7) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser:
  - (A) uses published research reports or statistical analyses to render advice; or
  - (B) orders this type of report in the normal course of providing service.
- (8) Charging a client an advisory fee that is unreasonable in the light of the:
  - (A) type of services to be provided;
  - (B) experience and expertise of the adviser; and
  - (C) sophistication and bargaining power of the client.
- (9) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including, but not limited to, the following:
  - (A) Compensation arrangements connected with advisory services to clients that are in addition to compensation from the clients for the services.
  - (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the adviser or its employees.



(10) Guaranteeing a client that a specific result will be achieved, gained, or no loss, as a result of the advice that will be rendered.

(11) Disclosing the identity, affairs, or investments of any client to any third party, unless:

(A) required by law to do so; or

(B) the client consents to the disclosure.

(12) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, or the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of SEC Rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 or the investment adviser is exempt from those requirements by virtue of SEC Rule 206(4)-2(b) (17 CFR 275.206(4)-2(b)).

(13) Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner that does not comply with Rule 206(4)-3 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-3), as amended.

(14) Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under Investment Advisers Act of 1940 (17 CFR 275.206(4)-4), as amended.

(15) While acting as principal for the investment adviser's own account, knowingly effecting any sale or purchase of any security for the account of a client without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser is acting and obtaining the consent of the client to the transaction.

(16) For an investment adviser, employing any investment adviser representative who is not registered as required by IC 23-19, provided that no investment adviser that is exempt from registration under IC 23-19 shall be required to register its investment adviser representatives.

(b) The conduct set forth in subsection (a) is not inclusive. It also includes employing any device, scheme, or artifice to defraud or engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit. (*Securities Division; 710 IAC 4-9-15; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-16 Amendment of registration documents filed by investment advisers and investment adviser representatives**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 16. (a) Any amendment required under IC 23-19 for an investment adviser shall be made on Form ADV or any successor form in the manner prescribed by that form.

(b) Any amendment required under IC 23-19 for an investment adviser representative shall be made on Form U-4 or any successor form in the manner prescribed by that form.

(c) If the information contained in the response to Items 1, 2, 3, 4, 5, 11, 13A, 13B, 14A, and 14B of Part I of any Form ADV application for registration as an investment adviser, or any amendment thereto or renewal thereof, becomes inaccurate or misleading for any reason or if the information contained in any response to any question in Items 9 and 10 of Part I and all items of Part II (except Item 14) of any Form ADV application for registration as an investment adviser, or any amendment or renewal of the original filing, becomes materially inaccurate or misleading, the investment adviser shall promptly file an amendment on Form ADV correcting the information.

(d) For all other changes not designated in subsection (c), the investment adviser shall file an amendment on Form ADV correcting the information along with the application for renewal registration described in IC 23-19 on or before December 31 in the calendar year in which the changes occur.

(e) If any of the information contained on Form U-4 becomes inaccurate or misleading for any reason, the investment adviser representative shall promptly file a new U-4 correcting the information. (*Securities Division; 710 IAC 4-9-16; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-9-17 Refunds**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-12

Sec. 17. Investment advisers and investment adviser representatives shall not advertise or represent to clients that subscriptions, fees, or other payments will be refunded to clients if they are not satisfied unless the:

- (1) advertisement or representation to refund is clear and unequivocal and based not on the merit or success of the service, but on the client's satisfaction with the services; and
- (2) investment adviser's financial capability is adequate to ensure its ability to meet all refund demands.

*(Securities Division; 710 IAC 4-9-17; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-9-18 Unlawful practices; investment advisers and investment adviser representatives**

Authority: IC 23-19-6-5

Affected: IC 23-19-5

Sec. 18. (a) It is unlawful for an investment adviser or an investment adviser representative who receives consideration, directly or indirectly, from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

- (1) employ a device, scheme, or artifice to defraud the other person;
- (2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or
- (3) knowingly sell to or purchase from a client a security when the investment adviser or investment adviser representative is acting as principle for the adviser's or the representative's own account, or knowingly sell to or purchase for the account of a client a security when the investment adviser or investment adviser representative is acting as a broker for a person other than the client without:

(A) disclosing to the client in writing before the completion of the sale or purchase the fact that the investment adviser or investment adviser representative is acting as a broker for a person other than the client; and

(B) obtaining consent from the client for the sale or purchase.

The prohibitions of this subdivision do not apply to a transaction with a client of a broker-dealer if the broker-dealer is not acting as an investment adviser in the transaction.

(b) Except as permitted by rule or order of the commissioner, it is unlawful for an investment adviser to enter into, extend, or renew an investment advisory contract unless it provides in writing that:

- (1) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or a portion of the funds of the client;
- (2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
- (3) the investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within reasonable time after the change.

Subdivision (1) does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision (2), includes a direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority interest in the business of the investment adviser or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for an investment adviser to take or have custody of the securities of a client if:

- (1) the commissioner prohibits custody; or
- (2) in the absence of a prohibition, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

(d) When soliciting advisory clients, it is unlawful for a person to make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(e) The commissioner may allow exemptions from subsections (a)(3), (b)(1), (b)(2), and (b)(3) if the exemptions are in the public interest and within the purposes of this rule.

(f) The commissioner may require disclosure in writing by an investment adviser or an investment adviser representative of

specified information to be presented to a client or prospective client.

(g) It is unlawful for a person that is required to be registered under Section 203 of the Investment Adviser Act of 1940 (15 U.S.C. 80b-3) as an investment adviser to:

- (1) employ a device, scheme, or artifice to defraud another person;
- (2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (3) when soliciting advisory clients, make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they are made, not misleading.

*(Securities Division; 710 IAC 4-9-18; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

## **Rule 10. Standards of Practice**

### **710 IAC 4-10-1 Dishonest and unethical practices**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 1. Dishonest and unethical practices within the meaning of IC 23-19-4-12 shall include, but not be limited to, the following:

(1) Concerning securities transactions, to represent, agree, or guarantee, directly or by implication, in writing or orally, to resell or repurchase securities in an:

- (A) offer;
- (B) purchase; or
- (C) sale;

except for securities issued by an investment company registered under the Investment Company Act of 1940.

(2) Representing in the offer or sale of securities, either directly or by implication, in writing or orally, that:

- (A) the securities will subsequently become listed or traded;
- (B) a market will be established in the shares that will regularly be bought and sold;
- (C) there is a guarantee against risk or loss;
- (D) there is a guarantee or an assurance that a dividend or a return on the investment will be paid or maintained by the issuer;
- (E) an investor's capital will increase or that the purchase involves a preservation of original capital and protection against loss in value;
- (F) dividends or other distributions, cash or otherwise, will be paid to shareholders of the issuer, unless the dividends or distributions have actually been declared;
- (G) there is an impending but undeclared dividend or distribution, used as an inducement for the immediate purchase of securities;
- (H) a purchase will result in an assured, immediate, or extensive increase in value, market price, or return on the investment;
- (I) there will be or that the issuer contemplates a:
  - (i) stock split;
  - (ii) merger; or
  - (iii) consolidation;

unless the action has been announced or declared by the issuer;

(J) the investor will become a member of the board of directors or some other management or advisory group of the issuer, except when the investor is knowledgeable in business and financial affairs or has acted on the advice of legal counsel; or

(K) the next or succeeding issue of securities of the same issuer will sell for a higher price than the present issue of securities.

(3) Concerning securities transactions, making false, misleading, deceptive, exaggerated, or flamboyant representations or predictions in the offer, purchase, or sale of securities about an issuer's management ability or competency, an issuer's:

- (A) financial condition;

- (B) earnings;
- (C) dividends;
- (D) distributions;
- (E) growth; or
- (F) future success;

a stable, continuous, dependable, or liberal return, or that there will be a specific rate of return or about market conditions, marketability, listing, or trading.

(4) Representing or implying in the offer or sale of securities a return on an investment based on figures that combine income and distributions from capital or any other source.

(5) Representing or implying in the offer or sale of securities distributions from:

- (A) capital;
- (B) depreciation; or
- (C) similar distributions;

and failing to point out that the distributions reduce the value of the investment.

(6) Inducing a customer to invest beyond his or her known immediate financial resources.

(7) Effecting transactions pursuant to discretionary authority that are excessive in size or frequency in relation to the financial resources of the customer or the character of his or her account.

(8) Effecting transactions in the account of a customer without his or her knowledge or maintaining discretionary accounts without written authorization.

(9) Knowingly effecting transactions in a customer account for the purpose of accumulating or compounding commissions.

(10) Engaging or aiding in "boiler-room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot-issues" by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesperson or broker-dealer represented by the salesperson, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives.

(11) In relation to market value or with unreasonable or excessive markups or commissions:

- (A) offering;
- (B) purchasing; or
- (C) selling;

securities at unreasonable or excessive prices.

(12) In relation to communications:

- (A) charging;
- (B) paying; or
- (C) receiving;

any commissions, selling charges, expenses, or any other kind of remuneration greater than those disclosed in a registration statement under IC 23-19-3-3 or IC 23-19-3-4.

(13) Using unpublished information learned from an issuer's management, directors, or employees (normally referred to as inside information) for personal benefit, directly or indirectly, in the:

- (A) offer;
- (B) sale; or
- (C) purchase;

of securities.

(14) Buying or selling securities as principal or agent without disclosing to the customer in writing before the completion of the transaction that the broker-dealer or agent, either directly or indirectly, controls the issuer or that the issuer has a material interest in the broker-dealer.

(15) Creating an impression of false supply or demand or manipulating a market to create false supply or demand.

(16) Publishing or causing to be published a two-way market when the broker-dealer or agent has an interest in only one (1) side of the market or has just an occasional interest.

(17) In relation to communications, giving, offering, or permitting the giving or offering, either directly or indirectly, of anything of value to another for the purpose of influencing or rewarding the publication or circulation of any matter in any:

- (A) newspaper;
- (B) investment service; or

- (C) similar publication;  
of any matter that has or was intended to have an effect upon the marketability or market price of any security except matters that are clearly distinguishable as paid advertising.
- (18) As part of compensation, giving, offering, or permitting the giving or offering of, directly or indirectly, anything of value to any employee, agent, or representative of a broker-dealer or issuer for the purpose of influencing or rewarding the act of the employee, agent, or representative in relation to the business of the employer of the employee, principal, agent, or represented party without the prior knowledge and consent of the:
- (A) employer;
  - (B) principal; or
  - (C) represented party.
- (19) Selling or offering securities registered under IC 23-19-3-3 or IC 23-19-3-4 without the use and dissemination of the required prospectus or making oral or written statements contrary to or inconsistent with the disclosures contained therein.
- (20) Selling or offering securities registered under IC 23-19-3-4 using selling or advertising materials, copies of which have not been filed with the division as required by 710 IAC 4-6-5.
- (21) Making any reference to the registration or regulation of a security with or by any state or federal authority without explaining that:
- (A) this does not involve approval or supervision of management or investment practices; and
  - (B) the authorities do not pass upon the merits of the security as an investment.
- (22) Failing to properly supervise agents and employees. Supervision includes approval of all transactions and correspondence by an officer or branch manager.
- (23) Engaging in a practice that is in violation of the standards of honesty and ethics that are generally accepted in the securities trade and industry.
- (24) In communication with the customer, recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning:
- (A) the customer's investment objectives;
  - (B) the customer's financial situation;
  - (C) the customer's needs; and
  - (D) any other relevant information known by the broker-dealer.
- (25) Failure or refusal to furnish a customer upon reasonable request, information to which he or she is entitled, or to respond to a formal written request or complaint.

*(Securities Division; 710 IAC 4-10-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-10-2 Senior-specific certifications and designations**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-12

Sec. 2. (a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person shall be a dishonest and unethical practice in the:

- (1) securities;
- (2) commodities;
- (3) investment;
- (4) franchise;
- (5) banking;
- (6) finance; or
- (7) insurance;

business within the meaning of IC 23-19-4-12.

- (b) The prohibited use of such certifications includes, but is not limited to, the use of the following:

- (1) A certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation.
- (2) A nonexistent or self-conferred certification or professional designation.
- (3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have.
- (4) A certification or professional designation that was obtained from a designating or certifying organization that:
  - (A) is primarily engaged in the business of instruction in sales or marketing, or both;
  - (B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(c) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (a) when the organization has been credited by:

- (1) the American National Standards Institute;
- (2) the National Commission for Certifying Agencies; or
- (3) an organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing, or both.

(d) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include the use of one (1) or more words, such as "senior", "retirement", "elder", or like words, combined with one (1) or more words, such as:

- (1) "certified";
- (2) "registered";
- (3) "chartered";
- (4) "adviser";
- (5) "specialist";
- (6) "consultant";
- (7) "planner"; or
- (8) like words;

in the name of the certification or professional designation and the manner in which those words are combined.

(e) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (1) indicates seniority or standing within the organization; or
- (2) specifies an individual's area of specialization within the organization.

For purposes of this subsection, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(f) Nothing in this rule shall limit the commissioner's authority to enforce existing provisions of law. (*Securities Division; 710 IAC 4-10-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

## **Rule 11. Financial Statements**

### **710 IAC 4-11-1 Financial statements**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 1. All financial statements required to be filed under IC 23-19 and this article shall be prepared in accordance with generally accepted accounting principles. (*Securities Division; 710 IAC 4-11-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-11-2 Certified financial statements**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 2. All financial statements required under IC 23-19 and this article to be certified or audited shall be based on an examination made in accordance with generally accepted auditing standards. (*Securities Division; 710 IAC 4-11-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-11-3 Qualification of accountants**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 3. All accountants whose reports are filed as part of a financial statement under IC 23-19 and this article shall be duly registered in Indiana or another state as a certified public accountant or public accountant. (*Securities Division; 710 IAC 4-11-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-11-4 Change of accountants**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 4. (a) An issuer with an offering registered by qualification shall notify the commissioner in writing, within five (5) business days of the removal, of the independent accountant who was previously engaged to audit the issuer's financial statements.

(b) The notification required under subsection (a) shall include a statement of whether:

(1) there has been any disagreement with the former accountant on any matter of:

- (A) accounting principles or practices;
- (B) financial statement disclosure; or
- (C) auditing scope or procedure;

that if not resolved to the satisfaction of the former accountant would have caused it to make reference to the subject matter of the disagreement in connection with its report;

(2) the former accountant has advised the issuer:

- (A) that necessary internal controls do not exist;
- (B) that it has information that has led it to no longer rely on management's representations or that has made it unwilling to be associated with the financial statements prepared by management;
- (C) of the need to expand significantly the scope of its audit; or
- (D) that it has information that it has concluded materially affects the fairness or reliability of a previously issued audit report or financial statements to be issued.

(c) The issuer shall provide the former accountant a copy of the notice required under subsection (a) no later than the time it is filed with the commissioner. The issuer shall request that the accountant furnish a letter addressed to the commissioner stating whether the accountant agrees with the information in the notice. The letter shall be filed with the commissioner within ten (10) business days after filing of the notice. (*Securities Division; 710 IAC 4-11-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**Rule 12. Division Proceedings**

**710 IAC 4-12-1 Scope of rule**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 1. These rules of practice are generally applicable to proceedings before the division and particularly to hearings before the commissioner or any other authorized representative of the division. They do not apply to investigations. (*Securities Division; 710 IAC 4-12-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-12-2 Appearance and practice before division**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 2. (a) In a proceeding before the division, the following applies:

- (1) An individual may appear on his or her own behalf.
- (2) A member of a partnership may represent the partnership.
- (3) A bona fide officer of a trust or association may represent the trust or association.
- (4) An officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(b) Any person may and all corporations shall be represented in any proceeding by an attorney at law duly admitted to practice in the state of Indiana.

(c) A person shall not be represented at any hearing before the division other than as:

- (1) provided in subsections (a) and (b); or
- (2) otherwise permitted by the commissioner.

(d) Before appearing before the division, the following must be done:

- (1) When an individual appears on his or her own behalf before the division in a particular proceeding that involves a hearing or an opportunity for hearing, he or she shall file with the commissioner or otherwise state on the record an address to which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent.
- (2) When an attorney appears before the division in a representative capacity in a particular proceeding that involves a hearing or an opportunity for hearing, he or she shall file with the commissioner a written notice of the appearance that shall state:

(A) his or her:

- (i) name;
- (ii) address; and
- (iii) telephone number; and

(B) the name and address of the person or persons on whose behalf he or she appears.

Any additional notice or other written communication required to be served or furnished to the client may be sent to the attorney at the latter's stated address.

(3) Any person appearing or practicing before the division in a representative capacity may be required to file a power of attorney with the commissioner showing his or her authority to act in this capacity.

(e) The commissioner may deny, temporarily or permanently, the privilege of appearing or practicing before the division in any way to any person, other than an attorney duly admitted to practice law in Indiana, who is found by the commissioner, after notice of and opportunity for hearing in the matter:

- (1) not to possess the requisite qualifications to represent others;
- (2) to be lacking in character or integrity; or
- (3) to have engaged in unethical or improper professional conduct.

(f) Contemptuous conduct at any hearing before the division shall be ground for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(g) For purposes of this rule, "practicing before the division" shall include, but not be limited to, the following:

- (1) Transacting any business with the division.
- (2) The preparation of any statement, opinion, or other paper by any:
  - (A) attorney;
  - (B) accountant;
  - (C) engineer; or
  - (D) other expert;

filed with the commissioner in any registration statement, notification, application, report, or other document with the consent of the person described in clauses (A) through (D).

(h) In any proceeding where an attorney has filed an appearance under subsection (d)(2), any notice or other written communication required to be served upon or furnished to the client should also be served upon or furnished to the attorney (or one (1) of the attorneys if the client is represented by more than one (1) attorney) in the same manner as prescribed for his or her client, even though the communication also is furnished directly to the client. (*Securities Division; 710 IAC 4-12-2; filed Jun 28, 2010, 2:36*)



*p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-12-3 Notice of proceedings and hearings**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 3. (a) In cases in which the division is the moving party, a notice of the initiation of proceedings shall be given to each respondent by any manner of service provided for service of summons in actions at law under the Indiana Rules of Trial Procedure, or as otherwise provided by law.

(b) The parties or persons entitled to notice shall be:

(1) timely informed of the nature of the legal authority and jurisdiction under which the proceeding has been initiated; and

(2) furnished a short and simple statement of the matter of fact and law to be considered and determined.

In proceedings in which an answer is directed under section 5 of this rule, the order for proceeding shall set forth the action proposed and the factual and legal basis alleged in detail as will permit a specific response.

(c) Where a notice of initiation of proceedings or an order for proceedings is accompanied by a notice of hearing issued at the instance of the commissioner, the respondent shall be deemed to have consented to the date for the hearing set thereby unless, within five (5) business days of receipt by the respondent of the notice of hearing, the respondent requests in writing that the hearing be set within any period required under IC 23-19.

(d) A notice of hearing after the service of notice of the initiation of proceedings shall be served by any manner provided for service after the service of summons under the Indiana Rules of Trial Procedure.

(e) Unless otherwise ordered by the commissioner, notice of any public hearing shall be given general circulation by release to the public press.

(f) All:

(1) pleadings;

(2) papers;

(3) discovery;

(4) briefs;

(5) proposed findings and conclusions; or

(6) applications for orders;

shall be filed with the commissioner and shall, at the time of filing, be served upon all parties to the proceeding by any manner provided for service after service of the summons under the Indiana Rules of Trial Procedure.

(g) Proof of service must be made by filing with the commissioner an affidavit of service or, in the case of any attorney at law, a certificate of service indicating the manner of service on the commissioner and any other parties.

(h) In any proceeding, amendments to the matters of fact and law to be considered may be authorized, for cause shown, by the commissioner at any time. *(Securities Division; 710 IAC 4-12-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-12-4 Default entry**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 4. If:

(1) any person who is named in an order for proceeding as one against whom findings may be made or sanctions imposed does not file a notice of appearance in the proceeding within fifteen (15) days after service of the order for proceeding (unless a different period is specified in the order); or

(2) he or she fails to appear at a hearing of which he or she has been duly notified;

the person shall be deemed in default and the proceeding may be determined against the person upon consideration of the order for proceeding, the allegations of which may be deemed to be true. For purposes of this section, an answer shall constitute a notice of appearance. *(Securities Division; 710 IAC 4-12-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-12-5 Answers**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 5. (a) In any order for proceeding, the commissioner may direct that:

- (1) any party respondent shall file an answer to the allegations contained in the order for proceeding; and
- (2) any party in the proceeding may file an answer.

(b) Except where a different period is provided by rule or by order, a party respondent directed to file an answer as provided in subsection (a) shall do so within fifteen (15) days after service of the order for proceeding. Any other person admitted to the proceeding (except a person becoming a party under section 8(a) of this rule) may be required to file an answer within the time directed by the commissioner. Where amendments to the matters of fact and law to be considered in the proceeding are authorized subsequent to the institution of the proceeding, the parties may be required to answer the matters of fact and law to be considered as amended within a reasonable time.

(c) Unless otherwise directed by the commissioner, an answer required by this section shall specifically:

- (1) admit;
- (2) deny; or
- (3) state;

that the party does not have and is unable to obtain sufficient information to admit or deny each allegation in the order for proceeding. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or to make a qualification of an allegation, he or she shall specify so much of it as is true and shall deny only the remainder.

(d) If a party fails to file an answer required by this rule within the time provided, that person shall be deemed in default and the proceeding may be determined against the party by the commissioner upon consideration of the order for proceeding, the allegations of which may be deemed to be true.

(e) Every answer filed under this section shall be signed by the party filing it or by at least one (1) attorney, in his or her individual name, who represents the party. The signature shall constitute a certificate by the signer that:

- (1) he or she has read the answer;
- (2) to the best of his or her knowledge, information, and belief there is good ground to support it; and
- (3) it is not interposed for delay.

*(Securities Division; 710 IAC 4-12-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-12-6 Settlement offers**

Authority: IC 23-19-6-5  
Affected: IC 23-19-5-9

Sec. 6. (a) Parties may propose in writing offers of settlement that shall be submitted to and considered by the commissioner where:

- (1) time;
- (2) the nature of the proceeding; and
- (3) the public interest;

permit. The offers may be made at any time, prior to the entry of a final order, including prior to the initiation of proceedings. Where the commissioner deems it appropriate, he or she may also give the party making the offer an opportunity to make an oral presentation to the commissioner.

(b) Where the commissioner rejects an offer of settlement:

- (1) the party making the offer shall be notified of the commissioner's action;
- (2) the offer of settlement shall be deemed withdrawn; and
- (3) the offer and any documents relating thereto shall not constitute a part of the record.

*(Securities Division; 710 IAC 4-12-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

**710 IAC 4-12-7 Prehearing conferences**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 7. (a) Prior to a hearing or at any other time during the course of any proceeding, to the extent practicable, where time, the nature of the proceeding, and public interest permit, the commissioner or other representative of the division conducting the hearing may, at the request of any party or upon his or her own motion, hold conferences for the purpose of clarifying and simplifying issues by consent of the parties, including, where practical and reasonable, considering the following:

- (1) The possibility of obtaining stipulations and admissions of facts and of authenticity and contents of documents that will avoid unnecessary proof.
- (2) Expediting the presentation of evidence.
- (3) The exchange of copies of proposed exhibits.
- (4) Any other matters as will promote a fair and expeditious hearing or aid in the disposition of the proceeding.

(b) At the conclusion of a conference, the hearing officer shall enter a ruling or order that recites the matters agreed upon by the parties and any procedural determinations made by the hearing officer. (*Securities Division; 710 IAC 4-12-7; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-12-8 Parties to proceedings; limited participation; intervention**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-12

Sec. 8. (a) Any interested official, department, commission, municipality, or other political subdivision of the state of Indiana, the Securities and Exchange Commission, or other interested:

- (1) representative;
- (2) agency;
- (3) authority; or
- (4) instrumentality;

of the United States may become a party to any proceeding by filing a written motion.

(b) In proceedings under IC 23-19-4-12, any associated person of a broker-dealer, whose interests may be affected by the proceedings, shall be entitled to participate as a party. If he or she participates generally in the proceedings or files a notice of appearance, he or she shall be deemed a party of record and shall be given notices of intermediate developments in the proceedings. In any event, he or she may inform himself or herself of the developments by:

- (1) attendance at the hearings;
- (2) examination of the record; or
- (3) arrangement with a party of record;

so that he or she can determine whether he or she desires to be heard at any time.

(c) Any person, at the discretion of the commissioner or other representative of the division conducting the hearing, may be given leave to be heard in any proceeding as to any matter affecting his or her interests. Requests for leave to be heard shall:

- (1) be in writing;
- (2) set forth the nature and extent of the applicant's interest in the proceeding; and
- (3) except where good cause for late filing is shown, be filed not later than two (2) days prior to the date fixed for the commencement of the hearing.

And, where a respondent is required to answer, requests for leave to be heard shall be filed within the time provided for the filing of the answer. The hearing officer may direct any person requesting leave to be heard to submit to examination as to his or her interest in the proceeding.

(d) Leave to be heard under subsection (c) may include any rights of a party as the hearing officer may deem appropriate. Persons granted leave to be heard shall be bound, except as may otherwise be determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure. Except as may otherwise be specifically directed by the hearing officer at the request of any person granted leave to be heard, the person shall be expected to inform himself or herself by attendance at public hearings and by examination of the public files of the division as to the various steps taken in the proceeding including:

- (1) continuances;

- (2) the filing of amendments;
- (3) answers, motions, or briefs by parties to the proceeding; or
- (4) the fixing of time for any action;

and the person shall not be entitled as of right to other notice thereof or to service of copies of documents.

(e) Except as provided in subsections (a) and (b), no person shall be admitted as a party to a proceeding by intervention unless the commissioner is satisfied, on the basis of the written application of the person and any evidence taken in connection therewith, that his or her participation as a party will be in the public interest and that leave to be heard under subsections (c) and (d) would be inadequate for the protection of his or her interests.

(f) Any person who has not complied with the requirements of subsection (c), in the discretion of the hearing officer, may be permitted to file a memorandum or make an oral statement of his or her views, and the hearing officer may accept for the record written communications received from any person. Unless offered and admitted as evidence of the truth of the included statements, the memoranda and oral or written communications submitted under this subsection shall be considered only to the extent that the statements therein made are otherwise supported by the record.

(g) The commissioner may:

- (1) by order in any case, modify the provisions of this section that would otherwise be applicable; and
- (2) impose the terms and conditions on the participation of any person in any proceeding as he or she may deem necessary or appropriate in the public interest.

*(Securities Division; 710 IAC 4-12-8; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

#### **710 IAC 4-12-9 Consolidation**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 9. By order of the commissioner proceedings involving a common question of law or fact may be:

- (1) joined for hearing of any or all the matters in issue; or
- (2) consolidated.

The commissioner may make orders concerning the conduct of the proceedings as may tend to avoid unnecessary costs or delay.

*(Securities Division; 710 IAC 4-12-9; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

#### **710 IAC 4-12-10 Evidence**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 10. (a) All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the commissioner or other representative of the division conducting the hearing. Every party shall have the right to present the oral or documentary evidence and to conduct the cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall:

- (1) receive relevant and material evidence;
- (2) rule upon offers of proof; and
- (3) exclude all:
  - (A) irrelevant;
  - (B) immaterial; or
  - (C) unduly repetitious;

evidence.

(b) The commissioner, in connection with any hearing, shall issue subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of documentary or other tangible evidence at any designated place of hearing upon request therefor by any party.

(1) Where it appears to the commissioner the subpoena sought may be:

- (A) unreasonable;
- (B) oppressive;
- (C) excessive in scope; or

(D) unduly burdensome;

he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought.

(2) In the event the commissioner shall, after consideration of all the circumstances, determine that the subpoena or any of its terms are:

(A) unreasonable;

(B) oppressive;

(C) excessive in scope; or

(D) unduly burdensome;

he or she may refuse to issue the subpoena or he or she may issue it only upon conditions as fairness requires.

(3) In making the foregoing determination, where he or she can do so without undue inconvenience to the participants in the proceeding, the commissioner may inquire of the other participants whether they will concede the facts sought to be proved, but in this connection, except with permission of the person seeking the subpoena, he or she shall not disclose the identity of the person sought to be subpoenaed.

(c) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five (5) days after the date of service of the subpoena, apply to the commissioner to quash or modify the subpoena, accompanying the application with a brief statement of the reasons therefor. The commissioner may deny the application summarily or after notice to the person upon whose request the subpoena was issued and opportunity for reply he or she may:

(1) deny the application;

(2) quash or modify the subpoena; or

(3) condition denial of the application to quash or modify the subpoena upon just and reasonable conditions, including, in the case of a subpoena duces tecum, a requirement that the person in whose behalf the subpoena was issued shall advance the reasonable cost of transporting the documentary or other tangible evidence to the designated place of hearing.

(d) Service of subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person and by tendering the fees for one (1) day's attendance and the mileage as specified by subsection (e). When the subpoena is issued at the instance of the division, fees and mileage need not be tendered at the time of service.

(1) Whenever service is to be made upon a person who is represented in the pending proceeding by an attorney, the service may be made upon the attorney. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by:

(A) handing them to the person;

(B) leaving them at his or her office with the person in charge;

(C) if there is no one in charge at his or her office, leaving them in a conspicuous place;

(D) leaving them at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing there;

(E) mailing them by registered or certified mail to the person at the last known address; or

(F) any method whereby actual notice is given to the person and the fees are made available prior to the return date.

(2) When the person to be served is not a natural person, delivery of a copy of the subpoena and the tender of the fees may be effected by:

(A) handing them to a registered agent for service or to any officer, director, or agent in charge of any office of the person;

(B) mailing them by registered or certified mail to the representative at his or her last known address; or

(C) any method whereby actual notice is given to the representative and the fees are made available prior to the return date.

(e) Witnesses summoned before the commissioner shall be paid the same fees and mileage that are paid to witnesses in civil cases in the courts of the state of Indiana, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state of Indiana. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

(f) In any proceeding, official notice may be taken of any:

(1) material fact that might be judicially noticed by a court of the state of Indiana;

(2) matter in the public official records of the commissioner; or

(3) matter that is peculiarly within the knowledge of the commissioner.

If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request,

shall be afforded an opportunity to establish the contrary. (*Securities Division; 710 IAC 4-12-10; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-12-11 Discovery**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 11. To the extent practical, any party to a proceeding shall be entitled to use the discovery provisions of T.R. 26 through 37 of the Indiana Rules of Trial Procedure upon written application to the commissioner. (*Securities Division; 710 IAC 4-12-11; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-12-12 Proposed findings and conclusions; briefs**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 12. In any proceeding involving a hearing or any opportunity for hearing, the parties may file, in writing, proposed findings and conclusions. Briefs in support of the proposals may be included, and any proposed finding or conclusion not briefed may be regarded by the commissioner as waived. (*Securities Division; 710 IAC 4-12-12; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-12-13 Summary judgment**

Authority: IC 23-19-6-5  
Affected: IC 23-19-6; IC 23-19-6-4

Sec. 13. (a) A party may, at any time fifteen (15) days after the commencement of an action, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion:

- (1) may be supported with affidavits or other evidence permitted under this section; and
- (2) must set forth specific facts showing that there is not a genuine issue of fact in dispute.
- (b) The motion and any supporting affidavits shall be served in accordance with the Indiana Rules of Trial Procedure.
- (1) An adverse party shall have thirty (30) days after service of the motion to serve:

- (A) a response;
- (B) any opposing affidavits; or
- (C) other evidence.

(2) The commissioner shall conduct a hearing on the motion, which shall be held not less than ten (10) days after the time for filing the response. The commissioner may direct the parties to give oral argument on the motion.

(3) The judgment sought shall be rendered forthwith if the:

- (A) pleadings;
- (B) depositions;
- (C) answers to interrogatories;
- (D) admissions on file;
- (E) affidavits;
- (F) testimony; or
- (G) other documents, if any;

show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law.

(4) A summary judgment may be rendered upon fewer than all the issues or claims (including the issue of penalties alone) although there is a genuine issue as to a violation of law or liability, as the case may be. A summary judgment:

- (A) upon fewer than all the issues involved in a proceeding; or
- (B) with respect to fewer than all the claims or parties;

is not a final order.

(5) The commissioner shall designate the issues or claims upon which the commissioner finds no genuine issue as to any

material facts.

(6) Summary judgment may not be granted as a matter of course because the opposing party fails to offer opposing affidavits or other evidence, but the commissioner shall make a determination from the affidavits and testimony offered upon the matters placed in issue by the pleadings or the evidence.

(7) If it appears from the affidavits or other evidence, of a party opposing the motion, that the party cannot for reasons stated present by affidavit or other evidence facts essential to justify the party's opposition, the commissioner shall make any order that is just.

(c) If, on motion under this section, no order is rendered upon the whole case or for all the relief asked and a hearing is necessary, the commissioner at the hearing on the motion, by examining the pleadings or the evidence before the commissioner and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The commissioner shall make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing further proceedings in the action as are just. Upon the hearing of the action, the facts specified are established, and the hearing shall be conducted accordingly.

(d) Supporting and opposing affidavits shall:

- (1) be made on personal knowledge;
- (2) set forth facts that are admissible in evidence; and
- (3) show affirmatively that the affiant is competent to testify to the stated matters.

(e) The commissioner may permit affidavits to be supplemented or opposed by:

- (1) depositions;
- (2) answers to interrogatories;
- (3) further affidavits;
- (4) testimony of witnesses; or
- (5) other documents.

(f) If a motion for summary judgment is made and supported under this section, an adverse party may not rely upon the mere allegations or denials made in the adverse party's pleadings as a response to the motion. The adverse party shall:

- (1) respond to the motion with affidavits or other evidence permitted under this section; and
- (2) set forth specific facts showing that there is a genuine issue in dispute.

If the adverse party does not respond as required by this subsection, the commissioner may enter summary judgment against the adverse party. (*Securities Division; 710 IAC 4-12-13; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

### **Rule 13. Records and Investigations**

#### **710 IAC 4-13-1 Inspection of records**

Authority: IC 23-19-6-5

Affected: IC 23-19-4-11; IC 23-19-6-2

Sec. 1. All records of the division shall be available for public inspection at the office of the division during business hours, except the following that shall not be made public:

- (1) Records relating to complaints made to the division and records relating to investigations of the division.
- (2) Information or documents obtained by the officers or employees of the division in the course of any examination or investigation under IC 23-19-6-2(a) and compliance reports filed under IC 23-19-4-11(g) shall, unless made a matter of public record, be deemed confidential. Officers and employees of the division shall not make the confidential information or documents available to anyone other than a member, an officer, or an employee of:
  - (A) the secretary of state's office;
  - (B) the division; or
  - (C) any other regulatory or law enforcement agency;

unless the secretary of state or commissioner authorized the disclosure of the information or the production of the documents as not being contrary to the public interest.

(*Securities Division; 710 IAC 4-13-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-13-2 Complaints where division not moving party**

Authority: IC 23-19-6-5  
Affected: IC 23-19-6

Sec. 2. (a) Any person may submit to the division a complaint concerning the activities of an issuer, broker-dealer, or agent.

(b) Complaints shall be made in writing and shall be signed and verified by the person making the complaint. The complaint should include a succinct, definite statement of the facts on which it is based, including the:

- (1) names and addresses of the persons involved;
  - (2) dates of the events complained of; and
  - (3) nature of the interest of the person making the complaint.
- (c) The person making a complaint should:

- (1) be prepared to support the facts alleged by sufficient evidence; and
- (2) retain and make the evidence available to the division on its request.

(d) The staff of the division is available for personal conferences with persons wishing to file a complaint and to assist in the preparation of complaints. (*Securities Division; 710 IAC 4-13-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**Rule 14. Investigation; Rules of Practice**

**710 IAC 4-14-1 Scope**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 1. This rule applies to investigations and examinations conducted by the division under IC 23-19. (*Securities Division; 710 IAC 4-14-1; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-2 Information obtained during the course of investigations**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 2. (a) Information or documents obtained by the division in the course of any investigation, unless the information or documents are published by the division pursuant to its authority under IC 23-19, shall be deemed nonpublic. Upon the acceptance of an access request letter, the information and documents may be disclosed to the following:

- (1) Representatives of domestic or foreign governmental authorities.
- (2) Self-regulatory agencies.
- (3) State or federal law enforcement officers.
- (4) State securities law administrators.
- (5) Special counsels.
- (6) Trustees in bankruptcy.

(b) The division may also, to the extent necessary, disclose the information and documents in court proceedings when:

- (1) ordered to do so by a court of competent jurisdiction; or
- (2) appropriate in furtherance of any ongoing investigation or proceeding.

(*Securities Division; 710 IAC 4-14-2; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-3 Applicability**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 3. (a) This rule is applicable to a person who appears:

- (1) voluntarily;
- (2) pursuant to an administrative investigative subpoena or administrative order; or
- (3) at the request of, or with the permission of, the division.



(b) The person being sworn in an investigation or examination shall be referred to as a "witness". The investigation or examination, hereinafter referred to as an "investigative proceeding", shall be conducted by the division before any other person designated by the division for the purpose of taking testimony of witnesses and receiving other evidence. (*Securities Division; 710 IAC 4-14-3; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-4 Official transcript**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 4. Transcripts, if any, of investigative proceedings shall be recorded solely by:

(1) the official reporter; or

(2) any other person or means designated by the officer conducting the investigation.

There shall be one (1) official transcript of a witness's testimony, which shall be the property of the division. Except as provided by section 5 of this rule, any other contemporaneous, verbatim transcription by writing or recording, in any form and in any media, shall be prohibited. (*Securities Division; 710 IAC 4-14-4; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-5 Access to transcripts**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 5. Any witness and counsel, upon proper identification and after giving reasonable prior notice, shall have the right to inspect the official transcript of the witness's own testimony at the division's office during normal business hours, but neither the witness, nor counsel for the witness, shall have the right to remove, copy by any manner, or order a copy of the official transcript without authorization by the commissioner. (*Securities Division; 710 IAC 4-14-5; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-6 Access to documentary evidence**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 6. (a) A person complying with any:

(1) request;

(2) order; or

(3) subpoena;

issued by the division for the production of documentary evidence shall retain the originals.

(b) That person shall provide the division with:

(1) clearly legible;

(2) true; and

(3) complete;

copies of the documents requested, along with a signed cover letter, that shall identify those documents with a reasonable degree of specificity. (*Securities Division; 710 IAC 4-14-6; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-7 Witnesses; representation by counsel**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 7. A witness may be:

(1) accompanied;

(2) represented; and

(3) advised;

by counsel, as defined in 710 IAC 4-12-2. In order to protect the integrity of any investigation, the commissioner may, in the

reasonable exercise of the commissioner's discretion, prohibit multiple representations by counsel and may prohibit representation by counsel who is likely to become a witness during the course of either the investigation itself or any legal proceedings expected to ensue upon the investigation's conclusion. (*Securities Division; 710 IAC 4-14-7; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-8 Witnesses; advice from counsel**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 8. Counsel may advise witnesses:

- (1) before;
- (2) during; and
- (3) after;

the conclusion of testimony given in the course of an investigative proceeding and may make summary notes during the testimony solely for use in the representation of the witness. The witness is responsible for having counsel present at the time and place designated by the officer conducting the investigation. Where no timely prior request for adjournment was made, or where the request was denied for good cause, neither the substitution of counsel nor the failure of counsel to appear at the designated time and place for the witness's testimony shall constitute an acceptable ground for the witness's failure to appear at the designated time and place or to answer the questions of the officer conducting the examination. (*Securities Division; 710 IAC 4-14-8; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-9 Sequestration of witnesses**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 9. Unless permitted in the discretion of the division employee or other person designated by the division conducting the investigation, no witness shall be present during the examination of any other witness called in the proceeding. Where counsel represents more than one (1) witness as set forth in this section and sections 7 and 8 of this rule, counsel shall not inform one (1) witness of the nature and contents of another witness's examination. (*Securities Division; 710 IAC 4-14-9; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-10 Access to premises by division; generally**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 10. All broker-dealers and investment advisers registered with the division shall, upon request, provide members of the division's staff prompt access, during regular business hours, to that part of the premises at the broker-dealer's or investment adviser's place of business where:

- (1) documents are stored; or
- (2) trading or investor solicitation is conducted.

(*Securities Division; 710 IAC 4-14-10; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-11 Observation of conduct of business by division**

Authority: IC 23-19-6-5

Affected: IC 23-19

Sec. 11. A broker-dealer or investment adviser registered with the division shall accord members of the division staff the opportunity to observe the conduct of business at the broker-dealer's or investment adviser's place of business. (*Securities Division; 710 IAC 4-14-11; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-12 Access to documents by division**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 12. (a) The division, without notice, may examine, in a manner reasonable under the circumstances, the records, within or without Indiana, of a registered:

- (1) broker-dealer;
- (2) agent;
- (3) investment adviser; or
- (4) investment adviser representative;

in order to determine compliance with the Indiana Uniform Securities Act. These persons registered with the division shall make their records available to the division in legible form.

(b) The division may copy records or require a broker-dealer or an investment adviser to copy records and provide the copies to the division to the extent and in the manner reasonable under the circumstances.

(c) The division may impose a reasonable fee for the expense of making any copies under subsection (b). (*Securities Division; 710 IAC 4-14-12; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-13 Access to persons by division**

Authority: IC 23-19-6-5  
Affected: IC 23-19

Sec. 13. Members of the division staff may interview individuals, included within the scope of IC 23-19, who may be present on the broker-dealer's or investment adviser's premises and who voluntarily consent to be interviewed. If the interview is conducted on the broker-dealer's or investment adviser's premises, division staff shall be given access to a private, enclosed area where the interview can go forward without:

- (1) monitoring;
- (2) surveillance; or
- (3) interference;

by any kind of device or by persons who are not members of the division staff. (*Securities Division; 710 IAC 4-14-13; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA*)

**710 IAC 4-14-14 Failure to cooperate**

Authority: IC 23-19-6-5  
Affected: IC 23-19-4-12

Sec. 14. (a) In response to action by the division, a person shall cooperate in any:

- (1) inquiry;
- (2) investigation; or
- (3) inspection;

conducted by, or on behalf of, the division, for purposes of determining whether or not any person has violated or is about to violate any provision of the Indiana Securities Act or any rule or order promulgated by the commissioner. A person's willful failure to cooperate, absent a bona fide claim of privilege, may be deemed by the division a violation of the Indiana Securities Act within the meaning of IC 23-19-4-12(d)(2) and thus subject the person to denial, suspension, or revocation of registration or a bar from registration.

(b) The following are examples of, but not limited to, conduct by a person that may be deemed a failure to cooperate:

- (1) The failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the division under IC 23-19 or as may otherwise be provided by law.
- (2) The failure to answer any question pertinent to inquiry made under IC 23-19 or other applicable law unless the response to the question is subject to a bona fide claim of privilege.
- (3) The failure to grant the division personnel access to the business premises of a broker-dealer or investment adviser or to the records and documents that the broker-dealer or investment adviser is required, by statute or rule, to make available for

inspection.

(4) The failure to attend any scheduled proceeding at which the person's appearance is directed. In the event a person elects to retain counsel for the purpose of representation in any proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause, shall not require an adjournment of the proceeding.

(5) The failure to timely respond or to provide information requested pursuant to a demand under IC 23-19 or any other applicable law.

(6) Aiding or abetting another person's failure to cooperate.

*(Securities Division; 710 IAC 4-14-14; filed Jun 28, 2010, 2:36 p.m.: 20100728-IR-710100044FRA)*

## **Rule 15. Broker-Dealer Compliance Reports**

### **710 IAC 4-15-1 Qualifications of approved auditors**

Authority: IC 23-19-4-11

Affected: IC 23-19-4-11

Sec. 1. (a) Persons wishing to apply as an approved examiner to submit compliance reports under IC 23-19-4-11(i) must have an appropriate background, such as:

(1) a designation as a certified public accountant;

(2) employment as a public accountant;

(3) a current license to practice law in Indiana; or

(4) previous experience in securities or auditing professions acceptable to the commissioner.

(b) The applicant must not be currently registered or employed by a broker-dealer, regardless of whether that broker-dealer is registered in Indiana.

(c) The applicant must complete an application on a form acceptable to the commissioner and provide all requested information. *(Securities Division; 710 IAC 4-15-1; filed Jun 28, 2010, 2:42 p.m.: 20100728-IR-710090619FRA)*

### **710 IAC 4-15-2 Process for submitting completed compliance reports**

Authority: IC 23-19-4-11

Affected: IC 23-19-4-11

Sec. 2. After completing a compliance report, the approved examiner must submit:

(1) the report to the securities division directly; and

(2) a copy of the report to the broker-dealer that was examined.

*(Securities Division; 710 IAC 4-15-2; filed Jun 28, 2010, 2:42 p.m.: 20100728-IR-710090619FRA)*

### **710 IAC 4-15-3 Time limitations for auditors**

Authority: IC 23-19-4-11

Affected: IC 23-19-4-11

Sec. 3. (a) An examiner may not submit a compliance report for the branches of a broker-dealer for more than three (3) consecutive years.

(b) If an examiner submits a report for a broker-dealer in a fourth consecutive year, that compliance report will not be accepted, and the broker-dealer will not have complied with the requirements of IC 23-19-4-11(i).

(c) After an approved examiner submits a report on behalf of branches of a broker-dealer for three (3) consecutive years, that auditor may be engaged by that broker-dealer to complete a compliance report after two (2) years. *(Securities Division; 710 IAC 4-15-3; filed Jun 28, 2010, 2:42 p.m.: 20100728-IR-710090619FRA)*

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