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TITLE 710 SECURITIES DIVISION

Proposed Rule LSA Document #06-135

DIGEST

Amends 710 IAC 1-14-4 to remove the requirement that reports of financial condition be filed annually, though the reports of financial condition still must be prepared and made available to the Securities Division upon request. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Total costs for small businesses will be slightly reduced as small broker-dealers will no longer be required to submit an annual report to the Securities Division. According to the rule, they will still be required to prepare the report and make it available should the Securities Division request. However, the requirement to file the report has been removed.

Total Annual Costs = 0

710 IAC 1-14-4

SECTION 1. 710 IAC 1-14-4 IS AMENDED TO READ AS FOLLOWS:

710 IAC 1-14-4 Reports made by brokers

Authority: IC 23-2-1-15

Affected: IC 23-2-1-8; IC 23-2-1-10

Sec. 4. (a) **The following are the requirements for** filing reports:

(1) This section shall apply to every broker-dealer registered ~~pursuant to~~ **under** IC 23-2-1-8.

(2) Every broker-dealer subject to ~~710 IAC 1-14~~ **this rule** shall ~~file~~ **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's fiscal year.

(3) Such annual reports shall be ~~filed~~ **prepared** not more than sixty (60) days after the date as of which his **or her** financial condition is reported. If the applicant or licensee is registered with the Securities and Exchange Commission as a broker-dealer, the ~~filing of copies of~~ reports of financial condition as filed with such agency shall be deemed to be in compliance herewith.

(b) ~~Nature and Form of Reports:~~ Each report of financial condition ~~filed pursuant to~~ **prepared under** subsection (a) ~~of this section~~ shall be prepared ~~and filed~~ 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 ~~filed prepared~~ under subsection (a)(3) ~~which 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 that, to the best knowledge and belief of the person making such oath or affirmation, the financial statement and supporting schedules are true and correct and neither the broker-dealer nor any partner, officer, or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. This oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the broker-dealer is a:

(A) sole proprietorship, the oath or affirmation shall be made by the proprietor; ~~if the broker-dealer is a~~

(B) partnership, it shall be made by a general partner; and ~~if the broker-dealer is a~~

(C) 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(d)(3)~~ **17a-5** under the Securities Exchange Act of 1934 (17 CFR sec. ~~240.17a-5(d)(3)~~; **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; ~~by~~

(B) national securities exchanges and national securities associations of which the person ~~filing~~ **preparing** such report is a member; and ~~by~~

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

Nothing contained in this subdivision shall be deemed to be in derogation of the rules of any national securities association or national securities exchange ~~which that~~ gives to customers of a broker-dealer the right, upon request to such 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) ~~of this section~~ may ~~file~~ **prepare** in lieu of the report required by that subsection a copy of any financial statements which 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 copy so included reflects~~ **such financial statements reflect** his ~~or her~~ financial condition as of a date not more than sixty (60) days prior to the ~~filing thereof with date required in subsection (a) by~~ the division, and the report as ~~filed with the division~~ meets the requirements of ~~710 IAC 1-14~~ **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 such a registered investment company who effects transactions in securities only with, or on behalf of, such 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 or Section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder. ~~as a filing pursuant to 710 IAC 1-14. Such a filing shall be deemed to satisfy the requirements of 710 IAC 1-14 for any year in which such a financial statement is filed, provided that the statement so filed meets the requirements of the other rules under which it is filed with respect to time of filing and content.~~

(d) **Extension of Time for Filing Reports:** In the event any broker-dealer finds that he ~~or she~~ cannot ~~file~~ **prepare** his ~~or her~~ report for any year within the time specified in ~~subsections subsection~~ (a) or (c) ~~of this section~~ 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 ~~shall~~

(2) contain an agreement to ~~file~~ **prepare** the report on or before the specified date.

(Securities Division; 710 IAC 1-14-4; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2044, eff Jun 1, 1986; filed Sep 27, 1988, 11:00 a.m.: 12 IR 350; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 21, 2006 at 2:00 p.m., at the Indiana Government Center-South, 302 West Washington Street, Room E111, Indianapolis, Indiana the Securities Division will hold a public hearing on a proposed amendment of 710 IAC 1-14-4 to remove the requirement that broker-dealers file annual financial reports. While broker-dealers would still be required to prepare the reports and submit them to the Securities Division on request, the annual filing requirement would be removed.

The proposed changes eliminate requirements and therefore do not impose any additional costs on any regulated entities. The Commissioner did not rely on any data, studies, or analyses in reaching this conclusion.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E111 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Wayne Davis
Commissioner
Securities Division