February 20, 2009

HOUSE BILL No. 1460

DIGEST OF HB 1460 (Updated February 18, 2009 4:07 pm - DI 101)

Citations Affected: IC 23-19.

Synopsis: Compliance reports of broker-dealers. Provides that a broker-dealer may not be selected for completion of a compliance report more than one time in a four year period unless certain circumstances apply. Provides that the securities commissioner may select only a home or branch office of a registered broker-dealer that meets the definition of office of supervisory jurisdiction and has a registered principal located at the home or branch office. Prohibits the commissioner from charging a broker-dealer more than $300 for completing a compliance report and certain investigations and examinations.

Effective: July 1, 2009.

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January 13, 2009, read first time and referred to Committee on Financial Institutions.
February 19, 2009, reported — Do Pass.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1460

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-19-4-11, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may establish minimum financial requirements for broker-dealers registered or required to be registered under this article and investment advisers registered or required to be registered under this article.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall file such financial reports as are required by a rule adopted or order issued under this article. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material

respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a):

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

(2) broker-dealer records required to be maintained under subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this article.

(d) The records of a broker-dealer registered or required to be registered under this article and of an investment adviser registered or required to be registered under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or outside this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed fifty thousand dollars ($50,000). The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this article whose net capital exceeds, or of an investment adviser registered under this article whose minimum financial requirements exceed, the amounts required by rule

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or order under this article. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in IC 23-19-5-9(g).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this article may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this article, a rule adopted or order issued under this article may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this article may require an individual registered under section 2 or 4 of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this article may require continuing education for an individual registered under section 4 of this chapter.

(i) **Subject to section 11.5 of this chapter,** the commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. **Subject to section 11.5 of this chapter,** each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under this article not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under IC 23-19-6-2(a).

SECTION 2. IC 23-19-4-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11.5. (a) As used in this section,**

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"office of supervisory jurisdiction" has the meaning set forth in the National Association of Securities Dealers Conduct Rule 3010(g) (as in effect on January 1, 2009).

(b) As used in this section, "principal" has the meaning set forth in the National Association of Securities Dealers Conduct Rule 1021(b) (as in effect on January 1, 2009).

(c) A broker-dealer registered or required to be registered under this article may not be selected for completion of a compliance report under section 11(i) of this chapter more than one (1) time in any four (4) year period unless the commissioner has reason to believe that the broker-dealer has committed a violation of this article.

(d) The commissioner may select for completion of a compliance report under section 11(i) of this chapter only a home or branch office of a registered broker-dealer that:

(1) meets the definition of an office of supervisory jurisdiction; and

(2) has a registered principal located at the home or branch office.

(e) Subject to section 11(i) of this chapter, the commissioner may not charge a broker-dealer more than three hundred dollars ($300) for the costs of completing a compliance report under section 11(i) of this chapter and an investigation or examination under IC 23-19-6-2(a). The secretary of state shall pay any cost incurred under this chapter or IC 23-19-6-2(a) for a compliance report and investigation or examination that exceeds three hundred dollars ($300).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1460, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 9, nays 0.

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