

Emergency Rule
LSA Document #18-398(E)

DIGEST

Temporarily adds noncode provisions to assist in the implementation of new intrastate securities exemptions established by Senate Enrolled Act No. 375-2014. Statutory authority: [IC 23-19-2-5](#). Effective September 12, 2018.

SECTION 1. The definitions in [710 IAC 4-1-1](#) apply throughout this document.

SECTION 2. By authority delegated to the commissioner by [IC 23-19-2-5](#) to create a rule, considering the legislative intent to maintain consistency concerning safeguards provided for protection of investors contained within [IC 23-19-2-2](#), neither the issuer nor any person acting on its behalf shall offer or sell securities in reliance on [IC 23-19-2-2\(26\)](#) by any form of general solicitation, including Internet offerings.

SECTION 3. (a) The commissioner shall charge a nonrefundable filing fee of one hundred dollars (\$100) for a notice filing required under [IC 23-19-2-2\(26\)\(A\)](#).

(b) The commissioner shall charge a nonrefundable filing fee of one hundred dollars (\$100) for a notice filing required under [IC 23-19-2-2\(27\)\(F\)\(i\)](#).

SECTION 4. (a) An investor may cancel an investment commitment pursuant to [IC 23-19-2-2\(27\)](#) for any reason up to forty-eight (48) hours prior to the deadline identified in the issuer's offering materials.

(b) If an issuer reaches the target offering amount prior to the deadline identified in the issuer's offering materials, the issuer may close the offering on a date earlier than the deadline identified in the issuer's offering materials provided that:

- (1) the offering has been open for a minimum of twenty-one (21) days;
- (2) the Internet web site operator provides notice to any potential investors and gives notice to investors that have investment commitments in the offering:
 - (A) the new anticipated deadline of the offering; and
 - (B) the right of investors to cancel investment commitments for any reason until forty-eight (48) hours prior to the new anticipated offering deadline;
- (3) the new offering deadline is scheduled for and occurs at least five (5) business days after the notice required under subdivision (2) is provided; and
- (4) at the time of the new offering deadline, the issuer continues to meet or exceed the minimum target offering amount.

SECTION 5. (a) With regard to an offering made in compliance with [IC 23-19-2-2\(27\)](#), pursuant to [IC 23-19-2-2\(27\)\(L\)](#) the issuer shall include in the disclosure materials required to be provided to prospective investors, for both the minimum and maximum amounts of securities proposed to be sold in the offering, as applicable, the percentages and dollar amounts of the following:

- (1) The proceeds the issuer expects to receive from the offering.
- (2) If a minimum amount is proposed the issuer must specify the use of the amount as it relates to its business plan and the minimum use of proceeds.
- (3) The specific purpose or purposes for which the issuer intends to use the proceeds, including, but not limited to any amounts to be paid to existing security holders as compensation or in consideration for existing securities.
- (4) The estimated amount to be used for each purpose listed under subdivision (3).

(b) Issuers shall make and preserve all records related to offerings made in reliance on [IC 23-19-2-2\(27\)](#) for five (5) years after the close of an offering.

SECTION 6. Internet web site operators required to register with the division pursuant to [IC 23-19-2-2\(27\)\(O\)](#) shall be subject to the following:

- (1) The commissioner shall charge a nonrefundable filing fee of one hundred dollars (\$100) for an Internet web site operator registration under [IC 23-19-2-2\(27\)\(O\)\(ii\)](#).
- (2) Each Internet web site operator must maintain a surety bond satisfactory to the commissioner, in

the minimum amount of fifty thousand dollars (\$50,000). The bond shall be in favor of the state and shall secure payment of costs, fines, and damages to any person determined by the commissioner to be aggrieved by an Internet web site operator's violation of [IC 23-19-2-2\(27\)](#). The surety bond must be filed with the division.

(3) Each Internet web site operator must be a United States citizen or alternatively a nonresident funding portal which is approved as a portal member by the Financial Industry Regulatory Authority (FINRA).

(4) Internet web site operators shall make and preserve all records related to offerings made in reliance on [IC 23-19-2-2\(27\)](#) for five (5) years.

SECTION 7. A registered broker-dealer or investment adviser who also serves as an Internet web site operator must register with the division as an Internet web site operator; however, the fee for registration shall be waived with evidence of licensure.

SECTION 8. (a) A general announcement by an issuer or Internet web site operator regarding an issuer's offering being made in reliance on [IC 23-19-2-2\(27\)](#) shall not be considered an offer of a security under [IC 23-19-2-2\(27\)](#) so long as only the following are included:

(1) A statement that the issuer is conducting an offering, the name of the Internet web site operator conducting the offering, and a link directing the potential investor to the Internet web site operator's platform.

(2) The maximum amount of the offering.

(3) Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number, and web site of the issuer, a brief description of the business of the issuer, and the name and email address of a representative of the issuer.

(b) Any general announcement regarding an issuer's offering being made in reliance on [IC 23-19-2-2\(27\)](#) must contain a statement making it clear that the offering is directed only to residents of Indiana.

SECTION 9. Nothing in [IC 23-19-2-2\(26\)](#) or [IC 23-19-2-2\(27\)](#) shall be construed to alleviate any person from the anti-fraud provisions under [IC 23-19-5-1](#), nor shall such exemption be construed to provide relief from any other provisions of the Indiana Uniform Securities Act other than as expressly stated.

SECTION 10. A person relying on an exemption under [IC 23-19-2-2\(26\)](#) or [IC 23-19-2-2\(27\)](#) must comply with such other requirements as the commissioner may, by rule or order, prescribe for the protection of investors and in the public interest.

SECTION 11. An issuer making a notice filing pursuant to [IC 23-19-2-2\(26\)\(A\)](#) or [IC 23-19-2-2\(27\)\(F\)\(i\)](#) shall complete and submit a Final Report of Sales form no later than thirty (30) days after the completion of an offering conducted pursuant to [IC 23-19-2-2\(26\)\(A\)](#) or [IC 23-19-2-2\(27\)\(F\)\(i\)](#). The Final Report of Sales is required for every offering regardless of whether funds are raised.

SECTION 12. The exemption described under [IC 23-19-2-2\(27\)](#) may be referred to as the "Invest Indiana Crowdfunding Exemption".

SECTION 13. SECTIONS 1 through 12 of this document shall take effect September 12, 2018.

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Filed with Publisher: September 12, 2018, 2:49 p.m.

Posted: 09/19/2018 by Legislative Services Agency

An [html](#) version of this document.