

TITLE 710 SECURITIES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Definitions (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)

Rule 2. Form and Requisites of Application for Registration of Securities; Reports to Commissioner; Rulings as to Materiality; Unfair Practices (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)

Rule 3. Secondary Market (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)

Rule 3.5. Nonpublic Offering Exemption (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)

Rule 4. Broker-Dealers and Agents; Requirements and Licensing Procedures

710 IAC 1-4-1 Definitions; consent to service of process; permission for dual office (Repealed)

Sec. 1. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-2 Examination of broker-dealer applicants (Repealed)

Sec. 2. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-2.1 Notice of broker-dealer registration (Repealed)

Sec. 2.1. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-3 Financial requirements; definitions (Repealed)

Sec. 3. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-4 Bookkeeping requirements (Repealed)

Sec. 4. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-5 Preservation of books and records (Repealed)

Sec. 5. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-6 Financial reports by broker-dealers (Repealed)

Sec. 6. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-7 Principal offices; supervision (Repealed)

Sec. 7. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-8 Branch offices (Repealed)

Sec. 8. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-9 Changes in broker-dealer applications; notice and amendment (Repealed)

Sec. 9. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-10 Broker-dealer registration expiration and renewal (Repealed)

Sec. 10. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-11 Certification of agent; restricted activities (Repealed)

Sec. 11. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-12 Agent examination requirements (Repealed)

Sec. 12. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-13 Agent identification (Repealed)

Sec. 13. *(Repealed by Securities Division; filed Aug 18, 1981, 3:42 pm: 4 IR 2023)*

710 IAC 1-4-13.1 Notice of agent registration (Repealed)

Sec. 13.1. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-14 Changes in agent applications; notice and amendment (Repealed)

Sec. 14. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-15 Agent registration expiration, renewal, termination, suspension (Repealed)

Sec. 15. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-16 Dishonest and unethical practices (Repealed)

Sec. 16. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

710 IAC 1-4-17 Time of delivery and payment by broker-dealer (Repealed)

Sec. 17. *(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)*

Rule 4.1. Investment Advisor (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986)

Rule 5. Rules on Accounting; General Application; Commercial and Industrial Companies (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2057, eff Jun 1, 1986)

Rule 6. Rules of Practice; Proceedings Before the Division; Hearings Before the Commissioner (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2057, eff Jun 1, 1986)

Rule 7. Office Hours and Procedures (Repealed)

(Repealed by Securities Division; filed Mar 24, 1986, 3:27 pm: 9 IR 2057, eff Jun 1, 1986)

Rule 8. General Provisions

710 IAC 1-8-1 Definitions

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 1. The following definitions apply throughout this article and IC 23-2-1 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 cash, services, property, notes, cancellation of debt, or 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 partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for a broker-dealer.

(5) "Branch office" means any location (other than the principal office) identified by any means to the public or customers as a location at which the broker-dealer conducts business, with the exception of the following:

(A) Any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or office of supervisory jurisdiction of the broker-dealer from which the person conducting business at the nonbranch location is directly supervised.

(B) Any location referred to in a broker-dealer's advertisement by its local telephone number and/or local post office box, provided that such reference may not contain the address of the nonbranch location and, further, that such reference also sets forth the address and telephone number of the branch office or office of supervisory jurisdiction of the firm from which the person conducting business at the nonbranch locations is supervised.

(C) Any location identified by address in a broker-dealer's sales literature, provided that the sales literature also sets forth the address and telephone number of the branch office or office of supervisory jurisdiction of the firm from which the person conducting business at the nonbranch location is directly supervised.

(6) "Commissioner" means the Indiana securities commissioner provided for in IC 23-2-1-15(a).

(7) "Division" means the Indiana securities division.

(8) "Initiation of proceedings" or "order for proceedings" means any:

(A) summary order issued under IC 23-2-1-2(d), IC 23-2-1-7, or IC 23-2-1-11;

(B) ex parte order issued under IC 23-2-1-17.1; or

(C) notice of hearing issued at the instance of the commissioner.

(9) "Insider" includes every:

(A) officer, director, partner, trustee, or individual occupying similar status or performing similar functions;

(B) promoter (if the organization took place within three (3) years from date of applicability); and

(C) dealer or underwriter of an issuer under negotiation or contract to engage in the sale or distribution of its securities.

(10) "National securities association" means an association registered with the United States Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. §78o-3).

(11) "National securities exchange" means an exchange registered with the United States Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. §78f).

(12) "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 United States Securities and Exchange Commission.

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(13) "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 23-2-1-2(b)(10) or are made more than six (6) months after completion of such 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 23-2-1-2(b)(10), 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 such 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.

Notwithstanding this subdivision, the filing required by IC 23-2-1-2(b)(10)(D) or IC 23-2-1-2(b)(10)(E) shall not be considered to have been filed in an untimely fashion if sales are made prior to the expiration of the ten (10) business day period provided by IC 23-2-1-2(b)(10)(F), and all such sales, but for integration with sales made pursuant to said filing, complied with all conditions of IC 23-2-1-2(b)(10)(G)(i) or IC 23-2-1-2(b)(10)(G)(ii).

(14) "Office of supervisory jurisdiction" means any office designated by a broker-dealer as being responsible for supervision of one (1) or more branch offices.

(15) "Officer" means and shall be limited to the president, first vice president, secretary, and treasurer of a corporation or the equivalent positions in another type of business organization.

(16) "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:

- (i) a relative of the purchaser representative by blood, marriage, or adoption and not more remote than a first cousin;
- (ii) a trust or estate in which the purchaser representative and any person related to him or her 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) a corporation or other organization of which the purchaser representative and any persons related to him or her 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 such knowledge and experience in financial and business matters that such person is capable of evaluating, alone, together with other purchaser representative of the purchaser, or 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 then exist, that is mutually understood to be contemplated, or that has existed at any time during the previous two (2) years, and any compensation received or to be received as a result of such relationship.

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

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

(Securities Division; 710 IAC 1-8-1; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2026, eff Jun 1, 1986; filed May 16, 1997, 9:30 a.m.: 20 IR 2776; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)

710 IAC 1-8-2 Filing date

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 2. An application, notice, or report under IC 23-2-1 shall not be considered filed until all required forms and fees are received by the commissioner. (*Securities Division; 710 IAC 1-8-2; filed Mar 24, 1986, 3:27 pm; 9 IR 2028, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203*)

710 IAC 1-8-3 Forms

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 3. Where an application, notice, or report is required to be filed under IC 23-2-1 or 710 IAC 1 the application, notice, or report shall be filed on the forms prescribed by the commissioner. (*Securities Division; 710 IAC 1-8-3; filed Mar 24, 1986, 3:27 pm; 9 IR 2028, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203*)

Rule 9. Securities Registration

710 IAC 1-9-1 Filing of original application; power of attorney

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 1. (a) The original of the completed application for registration, including exhibits and all other papers and documents filed as a part of the application, shall be filed with the commissioner.

(b) The application for registration shall be signed manually 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 such 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 such signature shall also be filed with application for registration. (*Securities Division; 710 IAC 1-9-1; filed Mar 24, 1986, 3:27 pm; 9 IR 2028, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203*)

710 IAC 1-9-2 Paper, printing, and language

Authority: IC 23-2-1-15
Affected: IC 23-2-1-4; IC 23-2-1-5

Sec. 2. (a) Insofar as practicable application for registration shall be filed on unglazed white paper of good quality, 8 1/2 by 11 inches in size. Tables, charts, maps and financial statements may be on larger paper, if folded to that size; and the prospectus may be on smaller paper if the applicant so desires, but in no event shall it be smaller than 5 by 8 inches.

(b) The application for registration and, insofar as practicable, all papers and documents filed as a part thereof shall be printed, lithographed or typewritten. However, the application or any portion thereof may be prepared by similar process which, in the opinion of the commissioner, produces copies suitable for permanent record. Irrespective of the process used, all copies of any material shall be clear, easily readable and suitable for repeated photocopying.

(c) The application shall be in the English language. If any exhibit, other paper or 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 1-9-2; filed Mar 24, 1986, 3:27 pm; 9 IR 2028, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203*)

710 IAC 1-9-3 Contents of all applications for registration

Authority: IC 23-2-1-15
Affected: IC 23-2-1-4; IC 23-2-1-5

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

- (1) Type of Registration. The type of registration requested (qualification or coordination).
- (2) Name, Address and Interest of Applicant. The name and address of the applicant, and if the issuer is not the applicant, the interest of the applicant in the offering.
- (3) Name and Address of Issuer. The name and address of the issuer.
- (4) Description of Securities. A description of the securities to be offered in Indiana, including the number of shares or units of each kind of security, a statement of the kinds of security, the price per unit for each kind of security and the total offering price for each kind of security.
- (5) Underwriting Discounts or Commissions. The underwriting discounts or commissions to be paid per share or unit.
- (6) Other States in Which Filed. 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) Existing Orders, Judgments or Decrees. A statement as to the existence at any time of any order, judgment or decree as to the offering entered by regulatory authorities of any state, by any court or by the Securities and Exchange Commission and a statement as to any jurisdiction in which an application for registration of the offering has been withdrawn.

(Securities Division; 710 IAC 1-9-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2029, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)

Rule 10. Disclosure Requirements

710 IAC 1-10-1 Prospectus

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 1. (a) Form of Prospectus. The prospectus shall be printed, mimeographed, lithographed, typewritten or prepared by any similar process in clearly legible copies. If printed, it shall be set in Roman type of at least ten (10) point, modern type (except that financial statements and other statistical or tabular matter may be set in Roman type as small as eight (8) point). All type shall be leaded at least two (2) points. A prospectus in the final form approved by the commissioner shall be deemed to have met all requirements of this paragraph *[this subsection]*.

(b) Pictorial or Graphic Representations in Prospectuses. As a general rule photographic reproductions of management, principal properties, or important products are not permissible in prospectuses unless necessary to a fair understanding of the subject. The same is true of conceptions or renderings of artists, architects or engineers, which 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) Presentation of Information in Prospectus. The information set forth in a prospectus should be presented in a clear, concise, 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 thereunder. 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. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

(d) Inclusion of All Material Information. 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.

(e) Prospectus To Be Kept Current. (1) No prospectus shall be used more than one (1) year after the date appearing on its first page. If any registration statement is to be effective for a period beyond one (1) year from the date on the prospectus then in use, the applicant shall file an amended prospectus with the commissioner not later than thirty (30) days prior to the anniversary of the prospectus then in use.

(2) The amended prospectus shall include updated financial information and all other changes required to render the prospectus in compliance with all provisions of this section and 710 IAC 1-10-2 *[section 2 of this rule]*.

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(3) The amended prospectus shall include the total sales in the offering as of a date not more than forty-five (45) days before the date of filing with the commissioner.

(4) Any amended prospectus filed with the commissioner shall be marked to show changes from the previous prospectus. (Securities Division; 710 IAC 1-10-1; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2029, eff Jun 1, 1986; filed Sep 27, 1988, 11:00 a.m.: 12 IR 343; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)

710 IAC 1-10-2 Contents of prospectus

Authority: IC 23-2-1-15

Affected: IC 23-2-1-5

Sec. 2. 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 information:

(a) The following material shall appear on the front page of the prospectus:

Table with 4 columns: 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 \$ _____. Rows for Per Share or Unit and 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 PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

NAME OF UNDERWRITER

Address

NAME OF RESIDENT AGENT

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 WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (identify each class of securities in which such a transaction may be effected) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH 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) Table of Contents. 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 information hereinafter prescribed:

TABLE OF CONTENTS

Table with 2 columns: Item Name, 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) Headings—Information. The following information shall, to the extent applicable, appear in the prospectus under appropriate captions or headings:

- (1) Introduction. The introductory paragraph should contain a brief statement covering the following areas (if applicable):
 - (A) The corporation will face competition which 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 such 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 Company.
 - (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.
 - (C) If the issuer has not yet begun business, a statement to that effect, a statement as to any events on which such 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 such business(es) 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 federal, state, or local tax treatment, a statement as to the effect of such treatment.
- (3) The purpose of the offering and use of proceeds. A statement as to the application of the proceeds of the offering as set out in IC 23-2-1-5(b)(1)(I), other than the raising of funds for such application.
- (4) Management's Discussion and Analysis of Financial Condition.
 - (A) Full Fiscal Years. Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in (B)(i), (ii) and (iii) [clause (B)(i) through (B)(iii)] with respect to liquidity, capital resources, and results of operations and also shall provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Discussions of liquidity and capital resources may be combined whenever the two (2) topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.
 - (B)(i) Liquidity. Identify any known trends or any known demands, commitments, events, or 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) Capital Resources.
 - (AA) Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to

fulfill such commitments.

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

(iii) Results of Operations.

(AA) Describe any unusual or infrequent 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) Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.

(CC) To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such 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 registrant, or for those fiscal years in which the registrant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

(5) Description of the Business and Property of the Issuer.

(A) General Development of Business. Describe the general development of the business of the registrant, its subsidiaries, and any predecessor(s) during the past five (5) years, or such 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 such as the following: the year in which the registrant was organized and its form of organization; 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; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

(ii) Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant'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 such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan should include such matters as:

(AA) A statement in narrative form indicating the registrant'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 registrant. The specific reasons for such 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, such 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 such as research and development, production, sales, or administration.

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

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(B) Narrative Description of Business.

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

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

(BB) The status of a product or service if the issuer has made public information about a new product or service which 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 such years on material 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 registrant indicating the number employed full time.

(EE) The material effects that compliance with federal, state, and local provisions which 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 registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the registrant may deem material.

(ii) The registrant should also describe those distinctive or special characteristics of the registrant's operations or industry which may have a material impact upon the registrant's future financial performance. Examples of factors which might be discussed include dependence on one (1) or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions, or royalty agreements, unusual competitive conditions in the industry, cyclicity of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(C) Description of Property. State briefly the location and general character of the principal plants, and other materially important physical properties of the registrant and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

(6) Dividends. State 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 such dividends were paid, so state.

(7) Capitalization. State 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:

Title of Class	Outstanding As of _____, 19__	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

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_____ shares authorized

(8) Dilution. 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 which they have the right to acquire, a comparison [*sic.*] of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such 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) 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 such 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 which will be absorbed by such purchasers.

(9) Description of Securities.

- (A) If the securities offered consist of capital stock, the rights of security holders as to voting, dividends, liquidation, and any other material rights or restrictions should be specifically enumerated.
- (B) If the securities offered are debt securities, the rights of the purchasers thereof as to interest, interest payment dates, convertibility [*sic.*], redemption (including the existence or lack of a sinking fund provision), and 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) Marketability and Price Range of Offered Securities.

- (A) State 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, state name and capitalization of such broker-dealer. If such broker-dealer is a member of the National Association of Securities Dealers, a statement to that effect may be made in lieu of enumerating the capitalization of the broker-dealer.
- (B) State 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 such shares or units were issued to any person identified under subdivision (11), "Management and Principal Stockholders", to any member of the family of any such person or to any trust or corporation or other business entity in which any such person or any member of his family has a beneficial or ownership interest, and set out the consideration given.

(11) Management and Principal Stockholders.

- (A) List each officer, director, holder of more than ten percent (10%) of the voting shares in the issuer, and any employee who makes a significant contribution to the business of the issuer and supply a brief description of the business background of each such person. Do not include social, fraternal, religious, or honorary posts unless particularly relevant to the business of the issuer. Include the names of all corporations (including those no longer in existence) which any such person has served as director or officer and a very brief statement of the business of each such 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 _____, 19__	Cash Price As Of _____, 19__	% of Shares If Offering Sold	% of Cash Paid In If Offering Sold	% of Shares If All Options or Warrants Exercised
Total for group					
Total for public					
Grand Total					

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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 such persons to the issuer:

“The following persons had not yet fully paid for _____ shares for which they had subscribed as of _____, 19 _____, and which 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 by him in the table required by clause (B) from any person other than the issuer, the table shall show the cash price paid for such shares and include a footnote indicating from whom such shares were purchased and what consideration the issuer received for their initial issue.

(E) Shares owned by or for the benefit of any person, his or her spouse, child, brother, sister, or parent shall be deemed owned by such 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) Control. State the percentage of voting power to be held by persons identified under subdivision (11), “Management and Principal Stockholders”. Include a statement of the ability of such persons to control the corporation if they vote as a unit.

(13) Remuneration and Transactions with Management.

(A) Include in tabular form the total salary, commissions, or other remuneration paid by the issuer or any parent, affiliate, or subsidiary of the issuer to any person identified in subdivision (11), “Management and Principal Stockholders”, 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 such payments in the next twelve (12) months.

(B) Include any material transactions between the issuer and any such person or any corporation in which he has an interest as officer, director, or shareholder.

(14) Options and Warrants. State whether any options or warrants to purchase any securities of the issuer are outstanding or proposed to be issued. If there are such 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

(15) Escrow of Proceeds. Set forth the relevant terms of any escrow provisions relating to the proceeds of the offering, including the name of the escrow agent, the percentage of proceeds to be escrowed, the length of the escrow term, and the conditions for release of the proceeds.

(16) Litigation. Set forth any pending or threatened litigation involving the issuer, its officers, directors, or promoters that may materially affect the issuer's business or ability to commence business.

(17) Material Contracts. Set forth a brief description of any contracts with customers, suppliers, or others that are of sufficient importance to the issuer that their termination would materially affect the issuer's business.

(18) Underwriter, Broker-Dealer, or Plan of Distribution. Set forth the names and addresses of every underwriter or recipient of a finder's fee, including (separately): cash, securities, contracts, or 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. State briefly 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) Selling Stockholders. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, state names and addresses, amounts of securities held by such persons as of the date of the prospectus, a description of any material interest in any transaction with the issuer, predecessor, affiliate, or subsidiary effected or proposed to be effected within the past three (3) years and a statement of their reasons for making the offering.

(20) Legal Opinions. State the name and address of counsel who has advised the issuer with respect to the legality of the offering and matters relating to IC 23-2-1. Include an opinion that the security when sold will be legally issued, fully paid, and nonassessable, or if a debt security, that it will be a binding obligation of the issuer.

(21) Experts. Include 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) Undertaking to Report and Hold Meetings. Include 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 *[sic.]*, will be distributed prior to each annual meeting.”

(23) Opinion of Independent Accountants. Incorporate 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 such tests of the accounting records and such other auditing procedures as considered necessary under the circumstances and an opinion that such financial statements fairly present the financial position of the issuer and the results of its business operations for the periods stated therein.

(24) Financial Statements. The financial statements required under IC 23-2-1-5(b)(6).

(Securities Division; 710 IAC 1-10-2; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2030, eff Jun 1, 1986; filed Sep 27, 1988, 11:00 a.m.: 12 IR 344; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)

710 IAC 1-10-3 Changes in circumstances

Authority: IC 23-2-1-15

Affected: IC 23-2-1-6

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 such 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. Such 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 pursuant to 710 IAC 1-10-4. Such 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 1-10-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)*

710 IAC 1-10-4 Petition for ruling as to materiality

Authority: IC 23-2-1-15

Affected: IC 23-2-1-6

Sec. 4. (a) An applicant may file a petition for a ruling as to materiality of any information. Such petition shall be sworn, and shall set forth the information on which a ruling is requested, and 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 based solely on the representations in the petition, and shall be valid only to the extent that such representations are true and complete.

(c) If the commissioner rules that the information is material, such 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 710 IAC 1-10-1 nor 710 IAC 1-10-2 by virtue of the omission of such information.

(d) The commissioner may decline to rule on any petition filed under this section. *(Securities Division; 710 IAC 1-10-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 203)*

Rule 11. Reporting Requirements

710 IAC 1-11-1 Annual report

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

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 1-11-1; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-11-2 Quarterly financial statements

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 2. Each issuer with an effective registration by qualification of equity securities, which offering is not underwritten, shall file quarterly financial statements within forty-five (45) days after the close of each calendar quarter. (*Securities Division; 710 IAC 1-11-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-11-3 Final affidavit

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-6

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 shares sold in the offering and the number of shares sold in Indiana. (*Securities Division; 710 IAC 1-11-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-11-4 Reports to stockholders

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-5

Sec. 4. Each issuer of securities registered by qualification which is also the applicant or is controlled by the applicant shall distribute an annual report to its shareholders. The report shall include audited financial statements, including profit and loss statements for the past five (5) years. The report shall be mailed not less than ten (10) days in advance of the annual meeting which shall be held not later than five (5) months after the close of each fiscal year. Such undertaking shall be included in the prospectus, and shall remain in effect through the first fiscal year ending after termination of the registration. (*Securities Division; 710 IAC 1-11-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2035, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-11-5 Filing of advertising and sales literature

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-5

Sec. 5. (a) A copy of any advertisement, pamphlet, circular, letter, article or communication published in any newspaper, magazine or periodical, the script of any recording, radio or television announcement or broadcast, or any sales-kit, pitch-kit or film clip 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 1-11-5; filed Mar 24, 1986, 3:27 pm: 9 IR 2036, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-11-6 Contents of advertisement, article or communication relating to registered securities

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-5

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, 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; and
- (7) address where a prospectus may be obtained.

(Securities Division; 710 IAC 1-11-6; filed Mar 24, 1986, 3:27 pm; 9 IR 2036, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

Rule 12. Merit Standards

710 IAC 1-12-1 Maximum commissions

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-7

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:

- (a) Options, warrants and other transactions or conversion rights reserved or granted in connection with the sale of securities;
- (b) Payment of the underwriter's expenses incident to the offering, including advertising, traveling and promotional expenses;

and

- (c) Any other thing of value accruing to such broker-dealer or underwriter. *(Securities Division; 710 IAC 1-12-1; filed Mar 24, 1986, 3:27 pm; 9 IR 2036, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-12-2 Options and warrants; unfair practices

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-7

Sec. 2. In connection with applications for registration of equity securities or securities convertible into equity securities, warrants or stock purchase options to those other than all of the purchasers of securities must be justified by the applicant as not inherently unfair. The following standards will be followed in determining whether the issuance of such warrants or stock options are justified:

(a) Restricted and Qualified Stock Options. Options to employees in the nature of restricted or qualified stock options for incentive purposes and options to directors of promotional companies will be considered justified if reasonable in number and method of exercise.

(b) Stock Purchase Plans. Options to employees or their nominees, pursuant to stock purchase plans or profit-sharing plans, will be considered justified if reasonable in number and method of exercise.

(c) Options to Underwriters and Finders. Options or warrants to underwriters and finders will be considered justified if all of the following conditions are met:

- (1) if issued to underwriters under an underwriting agreement, provided they are not transferable except in cases where the underwriter is a partnership (and then only among the partnership);
- (2) if the options or warrants do not exceed five (5) years in duration and are exercisable no sooner than one (1) year after issuance, or if exercisable prior thereto, the shares issued on exercise thereof are required to be held for not less than one (1)

year after issuance;

(3) if the initial exercise price of the options is at least equal to the public offering price plus an amount equal to:

(A) seven percent (7%) each year they are outstanding so that the exercise price throughout the second year is one hundred seven percent (107%); throughout the third year one hundred fourteen percent (114%); throughout the fourth year one hundred twenty-one percent (121%); and throughout the fifty [*sic.*] year one hundred twenty-eight percent (128%); or in the alternative;

(B) twenty percent (20%) at any time after one (1) year from the date of issuance; provided that an election as to either alternative must be made by the underwriters at the time the options are issued to the underwriters;

(4) if the options and warrants are issued by a relatively small company, which is in the promotional stage, and which, because of its size, lack of public ownership of its shares or other facts and circumstances make it appear to the commissioner that the issuance of options is necessary to obtain competent investment banking services; provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be in the absence of such stock options;

(5) the prospectus issued in connection with the application contains a full disclosure as to the terms and the reason for the issuance of such options and warrants; and provided further that if such reason is in connection with future advisory services to be performed by the underwriter without compensation in consideration for the issuance of such options, a statement to that effect is placed in this prospectus;

(6) where it is necessary to include the value of the options in the computation of commissions, then the market value of such options, if any, is used; in those cases where no market value exists for the options or for the securities into which they are to be converted, an arbitrary value of twenty percent (20%) of the public offering price of the securities to which the options pertain is used, unless evidence indicates that a contrary valuation exists; and

(7) the same conditions are applied to options issued by selling shareholders as has been provided herein, unless the evidence clearly indicates that the selling shareholders are so separated from the issuer and so lacking in control of the issuer as to require more liberal treatment.

(d) Options to Financing Institutions. Options or warrants issued to financing institutions (other than underwriters), in connection with financing arrangements made by the issuer will be considered justified if all of the following qualifications are met:

(1) the options or warrants are issued contemporaneously with the issuance of the evidence of indebtedness of the loan;

(2) the options or warrants expire not later than the final maturity date of the loan;

(3) the options or warrants are issued as a result of bona fide negotiations between the issuer and parties not affiliated with the issuer;

(4) the exercise price of such options or warrants is not less than the fair market value of the shares into which they are exercisable on the date the loan is granted; and

(5) the number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.

(e) Options in Connection With Acquisitions. Options or warrants issued in connection with acquisitions, reorganizations, consolidations or mergers made by the issuer will be considered justified if they are issued to parties not affiliated with the issuer and the earnings per share of the issuer would not be materially diluted by the issuance of shares pursuant to the exercise of such options or warrants.

(f) Number of Options and Warrants. The total number of options and warrants issued and outstanding or reserved for issuance at the date of the public offering pursuant to transactions falling within subsections (a), (b) and (c) of this section shall not exceed ten percent (10%) of the number of shares to be outstanding upon completion of the offering. The number of options and warrants reserved for issuance may be disregarded if the issuer files a certificate or states in the prospectus that the number of outstanding options and warrants shall not exceed ten percent (10%) of the number of outstanding shares during the period the registration is in effect.

(g) All options and warrants other than those issued to financing institutions, shall be issued at not less than fair market value on the date of issuance. (*Securities Division; 710 IAC 1-12-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2036, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-3 Promotional shares

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 3. The statement of policy on Promotional Shares of the North American Securities Administrators Association, as effective January 1, 1988, is incorporated in 710 IAC 1 [this article] by reference. (*Securities Division; 710 IAC 1-12-3; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2037, 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*)

710 IAC 1-12-4 Nonvoting common stock; unfair practices

Authority: IC 23-2-1-15

Affected: IC 23-2-1-7

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 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 1-12-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2038, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-5 Preferred stock and debentures; unfair practices

Authority: IC 23-2-1-15

Affected: IC 23-2-1-7

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 debentures, notes and 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 1-12-5; filed Mar 24, 1986, 3:27 pm: 9 IR 2038, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-6 Offerings of securities with high price to earnings multiples

Authority: IC 23-2-1-15

Affected: IC 23-2-1-7

Sec. 6. 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.

(a) Prescribed Multiple. 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 such other multiple as the commissioner may prescribe from time to time, the information prescribed in subsections (b) and (c) shall be submitted with the application as justification for the offering price.

(b) Comparative Justification. 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 size, industry, products and 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.

(c) Market Justification. Where there is an existing public market for the shares, information shall be submitted justifying the adequacy of such public market, including the number of shares owned by public shareholders, the number of shares traded during each of the preceding six (6) months, the number of transactions during each of such months, the number of shareholders at the beginning and end of such period, the names and locations of dealers regularly making a market in the shares and the newspapers and financial publications where the shares are regularly quoted. If there has been a significant increase in the price/earnings multiple

of the issuer over such period, additional information shall be submitted accounting for such increase.

(d) Exemptions. 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.

(e) Stepped-price Offerings. 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 1-12-6; filed Mar 24, 1986, 3:27 pm: 9 IR 2038, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-7 Commissions on installment sales

Authority: IC 23-2-1-15

Affected: IC 23-2-1

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 1-12-7; filed Mar 24, 1986, 3:27 pm: 9 IR 2038, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-8 Statements of policy

Authority: IC 23-2-1-15

Affected: IC 23-2-1-4; IC 23-2-1-5

Sec. 8. The following statements of policy of the North American Securities Administrators Association, Inc., as effective on May 1, 1988, are incorporated in 710 IAC 1 [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; and
- (8) real estate programs.

(*Securities Division; 710 IAC 1-12-8; filed May 14, 1987, 2:10 p.m.: 10 IR 2297; filed Sep 27, 1988, 11:00 a.m.: 12 IR 350; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-9 Impound of proceeds

Authority: IC 23-2-1-15

Affected: IC 23-2-1-6

Sec. 9. (a) An agreement for the impound of proceeds of an offering registered by qualification under IC 23-2-1-6(j)(2) shall contain the following provisions:

- (1) the escrow agent shall not release any impounded funds without the express written consent of the commissioner; and
- (2) the agreement may not be rescinded or modified in any respect without the consent of the commissioner.

(b) With respect to an offering registered by qualification, the registrant shall file with the commissioner a copy of any statement from an escrow agent regarding the status of an impound account, within five (5) days after receipt of the statement from the escrow agent. (*Securities Division; 710 IAC 1-12-9; filed Sep 27, 1988, 11:00 a.m.: 12 IR 350; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-12-10 Use of proceeds

Authority: IC 23-2-1-15

Affected: IC 23-2-1-7

Sec. 10. (a) In a development stage company the business plan and the use of offering proceeds must be disclosed with

specificity in the offering prospectus.

(b) Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated (for example, for the purchase, construction, or development of identified properties or products, discharge of indebtedness, or payment of overhead), the registrant shall comply with the following provisions:

(1) Eighty-five percent (85%) of the net offering proceeds shall be impounded in a manner approved by the division. The impound shall continue until the registrant can specifically allocate the use of at least eighty percent (80%) of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material facts concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be furnished a copy thereof and given no less than twenty (20) days from receipt of the amendment or supplement by the investors to ratify or rescind their investments. Investors who choose to rescind their investments shall receive a pro rata refund of unused offering proceeds.

(3) The registrant shall not issue stock, deliver stock certificates, or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

(c) This section does not apply to:

(1) offerings subject to one (1) of the statements of policy specified in section 8 of this rule;

(2) an offering if:

(A) the issuer proposes to invest in more than one (1) business;

(B) the commissioner determines that the investment strategy of the issuer is adequately disclosed in the prospectus; and

(C) the offer is made only to persons who either:

(i) have gross income of at least fifty thousand dollars (\$50,000) and a net worth of the greater of fifty thousand dollars (\$50,000) or two (2) times the amount of the investment; or

(ii) have a net worth of the greater of seventy-five thousand dollars (\$75,000) or three (3) times the amount of the investment;

(3) offerings which are underwritten on a firm basis by a registered broker-dealer; or

(4) any other offering where the commissioner determines that application of this section is not necessary to protect the public interest.

(Securities Division; 710 IAC 1-12-10; filed Jan 4, 1989, 8:15 a.m.: 12 IR 1386; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

Rule 13. Exemptions

710 IAC 1-13-1 Secondary market exemption

Authority: IC 23-2-1-15

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

Sec. 1. (a) An application under IC 23-2-1-2(b)(3)(C)(iii) shall be accompanied by the issuer's audited financial statement for its last fiscal year ending prior to the date the application is received.

(b) An application shall become effective unless the commissioner disallows the exemption within ten (10) business days after the application is received.

(c) A secondary market exemption shall expire one hundred twenty (120) days after the close of the issuer's fiscal year, unless the applicant refiles the information required in subsection (a) of this section.

(d) No issuer shall be eligible for exemption under IC 23-2-1-2(b)(3)(C)(iii) unless at least one broker-dealer registered under IC 23-2-1-8 is making a market in the issuer's securities.

(e) No offer or sale of a security will be eligible for exemption under IC 23-2-1-2(b)(3) if:

(1) the issuer had made an initial public offering of its securities in any jurisdiction in the preceding nine (9) months which was neither registered nor exempt from registration in Indiana; and

(2) fewer than two unaffiliated broker-dealers registered under IC 23-2-1-8 are making a market in the securities.

For purposes of this subsection "initial public offering" means a public offering by an issuer which has not previously made a public offering of any class of its securities. *(Securities Division; 710 IAC 1-13-1; filed Mar 24, 1986, 3:27 pm: 9 IR 2039, eff Jun 1, 1986;*

filed Sep 24, 1987, 2:00 pm: 11 IR 788; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-13-2 Nonpublic offering exemption

Authority: IC 23-2-1-15

Affected: IC 23-2-1-2

Sec. 2. (a) For purposes of calculating the number of purchasers under IC 23-2-1-2(b)(10), 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 him (as specified in subparagraph (A) or (C)) collectively have more than fifty percent (50%) of the beneficial interest (excluding contingent interests); and
- (C) any corporation or other organization of which a purchaser and any of the persons related to him (as specified in subparagraph (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 23-2-1-2(b)(10).

(b) The issuer must satisfy all necessary provisions of IC 23-2-1-2(b)(10) 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 23-2-1-2(b)(10) 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 23-2-1-2(b)(10), 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 ask questions and receive answers concerning the terms and conditions of the offering, to inspect and copy all material documents relating to the offering, and to 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 23-2-1-2(b)(10).

(d) Offers and sales that are exempt under IC 23-2-1-2(b)(10) may not be combined with offers and sales exempt under any other section or provision of IC 23-2-1; provided, however, that this limitation shall not require an issuer to make an election and an issuer failing to satisfy IC 23-2-1-2(b)(10) may claim the availability of any other applicable exemption. In any proceeding involving the availability of an exemption under IC 23-2-1-2(b)(10), the burden of proving compliance with the conditions of the exemption is upon the person claiming it. In view of the objectives of IC 23-2-1-2(b)(10) and the purposes and policies underlying IC 23-2-1, the exemption under IC 23-2-1-2(b)(10) is not available to any issuer with respect to any transaction which, although *[sic.]* compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly *[sic.]* stated in IC 23-2-1-2(b)(10). (*Securities Division; 710 IAC 1-13-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2039, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-13-3 Disqualifications from use of nonpublic offering exemption

Authority: IC 23-2-1-2; IC 23-2-1-15

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

Sec. 3. (a) The exemption provided by IC 23-2-1-2(b)(10) shall not be available for any offering of securities by an issuer if such issuer, any of its predecessors, or any affiliated issuer:

- (1) has filed within five (5) years prior to the commencement of the offering a registration statement that is the subject of any pending proceeding or examination under the securities laws of any jurisdiction or that is the subject of any currently effective refusal order or stop order thereunder;
- (2) is subject to any pending proceeding in any jurisdiction relating to the exemption from registration of any security or offering, or to a currently effective order denying use of an exemption;
- (3) has been convicted in any jurisdiction within five (5) years prior to the commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or commodity or involving the making of any false filing relating to any security or offering;
- (4) is subject to any order, judgement, 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, such person from engaging in or continuing any conduct or practice (including making use of any exemption) in connection with the purchase or sale of any security or commodity or involving the making of any false filing relating to any security or offering; or

(5) is subject to a United States Postal Service false representation order entered under section 3005 of title 39, United States Code, within five (5) years prior to the commencement of the offering; or is subject to a temporary restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.

(b) The exemption provided by IC 23-2-1-2(b)(10) shall not be available for any offering of securities of any issuer, if any of its directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities (beneficial ownership, meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), any of its promoters presently connected with it in any capacity, any underwriter of the securities to be offered, or any partners, director or *[sic.]* the securities to be offered, or any partners, director or officer of any such underwriter, or any person representing the issuer in effecting or attempting to effect sales of securities:

(1) has been convicted within ten (10) years prior to the filing of the commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or commodity, involving the making of a false filing relating to any security or offering; arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser; or involving fraud, deceit or intentional wrongdoing, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(2) is subject to any order, judgment, or decree of any court or regulatory authority of competent jurisdiction temporarily or preliminarily enjoining or restraining, 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 enjoining or restraining, such person from engaging in or continuing any conduct or practice (including making use of any exemption) in connection with the purchase or sale of any security or commodity or involving the making of a false filing relating to any security or offering, or arising out of the conduct of the business of any underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(3) is suspended or expelled from membership in, or suspended or barred from association with a member of an exchange registered as a national securities exchange pursuant to section 6 of the Securities Exchange Act of 1934, an association registered as a national securities association under section 15A of the Securities Exchange Act of 1934, or a Canadian securities exchange or association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(4) is subject to a United States Postal Service false representation order entered under section 3005 of title 39, United States Code, within five (5) years prior to the commencement of the offering; or is subject to a restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.

(c) The exemption provided by IC 23-2-1-2(b)(10) shall not be available for an offering of securities by an issuer if the issuer is subject to the requirements of sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, unless such issuer has filed all reports required to be filed by those sections within the preceding twelve (12) months.

(d) Paragraph (a), (b), or (c) of this section 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 23-2-1-2(b)(10) be denied. Any such 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.

(e) Paragraph (b) of this section shall not apply if the person subject to disqualification is an underwriter of the securities to be offered, or any partner, director, or officer of any such underwriter, and:

(1) such person is duly licensed or registered to conduct securities related business in the jurisdiction under whose laws the disqualifying event occurred; or

(2) such person is registered under IC 23-2-1-8 and the disqualifying event is disclosed on his application for registration.

(Securities Division; 710 IAC 1-13-3; filed Mar 24, 1986, 3:27 pm; 9 IR 2039, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-13-4 Notices of nonpublic sales

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-2

Sec. 4. (a) An issuer selling securities in reliance upon the exemption provided by IC 23-2-1-2(b)(10) shall file with the commissioner a notice of sales, on such form as may be prescribed from time to time by the commissioner, not later than fifteen (15) days after the first sale in the state of Indiana pursuant to the offering.

(b) Each notice required by subsection (a) of this section shall be manually signed by a person duly authorized by the issuer.

(c) No filings shall be required under this section for an offering in connection with which the issuer satisfied the conditions of IC 23-2-1-2(b)(10)(G)(i), (ii), or (iii). (*Securities Division; 710 IAC 1-13-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2041, eff Jun 1, 1986; filed May 14, 1987, 2:10 pm: 10 IR 2297; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-13-5 Limitations on scope of exemption

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-2; IC 23-2-1-3

Sec. 5. The exemption provided by IC 23-2-1-2(b)(10) is only an exemption for the specific offering from the registration requirements of IC 23-2-1-3. It is not an exemption for the securities being offered and sold, which means that such securities may not subsequently be offered or sold unless subsequently registered or unless an exemption from registration then exists. IC 23-2-1-2(b)(10) does not provide an exemption from any section of IC 23-2-1 other than IC 23-2-1-3, including the antifraud and civil liability provisions.

Issuers are reminded of their obligation to provide to purchasers and the commissioner such further material information, if any, as may be necessary to make the information required under IC 23-2-1-2(b)(10), in light of the circumstances under which it is furnished, not misleading. (*Securities Division; 710 IAC 1-13-5; filed Mar 24, 1986, 3:27 pm: 9 IR 2041, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-13-6 Indiana uniform limited offering exemption

Authority: IC 23-2-1-2
 Affected: IC 23-2-1

Sec. 6. (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 anti-fraud provisions of IC 23-2-1-12.

(b) In view of the objective of this section and the purposes and policies underlying IC 23-2-1, the exemption created by this section is not available to any issuer with respect to any transaction which, 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 due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such persons.

(d) By authority delegated the Indiana securities commissioner by IC 23-2-1-2(b)(16) to create a rule, the following transaction is determined to be exempt from the registration provisions of IC 23-2-1-3. Any offer or sale of securities offered or sold in compliance with 17 CFR 230.504, 17 CFR 230.505, or 17 CFR 230.506, 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 Fed. Reg. 11,251 (1982), and as amended in SEC Release Nos. 33-6437, 47 Fed. Reg. 54,764 (1982), 33-6663, 51 Fed. Reg. 36,385 (1986), 33-6758, 53 Fed. Reg. 7,866 (1988), and 33-6825, 54 Fed. Reg. 11,369 (1989), and which satisfies the following further conditions and limitations:

(1) The following, in the case of an offering made in compliance with 17 CFR 230.504 or 17 CFR 230.505, but not 17 CFR 230.506:

(A) 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 such broker-dealer is appropriately registered under IC 23-2-1-9. 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.

(B) The disqualifications found at section 3 of this rule shall apply to this subdivision as well [*sic.*] IC 23-2-1-2(b)(10).

(C) The issuer shall file with the securities commissioner a notice on Form D (17 CFR 239.500) (incorporated herein by reference):

- (i) No 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 which results from an offer being made in reliance upon this exemption.
- (ii) 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.
- (iii) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.

(D) 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:

- (i) 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.
- (ii) The purchaser, either alone or with his or her purchaser representative or representatives, has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment.

(E) A failure to comply with a term, condition, or requirement of clauses (A), (C), and (D) will not result in loss of the exemption from the requirements of IC 23-2-1-3 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

- (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity;
- (ii) the failure to comply was insignificant with respect to the offering as a whole; and
- (iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of clauses (A), (C), and (D).

(F) The securities commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(2) In the case of an offering made in compliance with 17 CFR 230.506, the issuer shall file with the securities commissioner a notice on Form D no later than fifteen (15) days after the first sale in Indiana.

(e) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of IC 23-2-1; 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 1-13-6; filed Feb 20, 1996, 2:35 p.m.: 19 IR 3082; errata, 21 IR 2393; filed Jun 12, 1998, 5:00 p.m.: 21 IR 4212; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-13-7 Solicitations of interest prior to the filing of a registration statement or notice of claim of exemption from registration under section 6 of this rule

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 7. (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 6(d)(3)(B) of this rule, for such security is exempt from registration under IC 23-2-1-3 if all of the following conditions are satisfied:

- (1) The issuer is or will be a business entity organized under the laws of one (1) of the states or possessions of the United States or one (1) of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration, production, mining, or other extractive industries, and is not a blind pool or other offering for which the specific business or properties cannot now be described.
- (2) The offerer intends to register the security in this state or file a claim of exemption from registration under section 6 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 offerer files with the securities commissioner a solicitation of interest form, to be adopted by order of the securities commissioner, along with any other

materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

(4) Five (5) business days prior to usage, the offerer files with the securities commissioner any amendments to the foregoing materials 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 offerer has been notified by the securities commissioner not to distribute is used to solicit indications of interest.

(6) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five (5) calendar days from the communication.

(7) During the solicitation of interest period, the offerer 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 6(d)(3)(B) of this rule, or the delivery of a preliminary offering circular or preliminary documents to be provided under section 6(d)(3)(B) of this rule under the terms of subsection (c)(3).

(9) The offerer 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 3 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 23-2-1-3 for any offer to a particular individual or entity if the offerer 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 23-2-1 by the securities commissioner under IC 23-2-1-17.1 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 23-2-1-3, but shall be a violation of IC 23-2-1, be actionable by the securities commissioner under IC 23-2-1-17.1, and constitute grounds for denying or revoking the exemption as to a specific security or transaction. The offerer shall comply with the following requirements:

(1) Any published notice or script for broadcast must contain at least the identity of the chief executive officer, or person performing similar function, of the issuer, a brief and general description of its business and products, and the following legends:

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

(B) 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.

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

(D) 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 6 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 6(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 securities commissioner may waive any condition of this section, in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this section, nor the absence of any objection or order by the securities commissioner with respect to any offer of securities undertaken pursuant to this section, shall be deemed to be a waiver

of any condition of this section or deemed to be a confirmation by the securities commissioner of the availability of this section.

(f) Offers made in reliance on this section will not result in a violation of IC 23-2-1-3 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under 710 IAC 1-8-1.

(g) Issuers on whose behalf indications of interest are solicited under this section may not make offers or sales in reliance on IC 23-2-1-2(b)(10) until six (6) months after the last communication with a prospective investor made under this section. (*Securities Division; 710 IAC 1-13-7; filed Jun 12, 1996, 3:15 p.m.: 19 IR 3084; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

Rule 14. Broker-Dealers

710 IAC 1-14-1 Safe harbor rule

Authority: IC 23-2-1-15

Affected: IC 23-2-1-1

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 23-2-1-1(c) if the person effects sales of the issuer's securities in an offering and:

(1) the person 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) the person has sold only securities of the same or other affiliated issuers, and the issuer and each such affiliated issuer is an investment company registered under the Investment Company Act of 1940, provided that the associated person restricts his participation to any one (1) or more of the following activities:

(A) preparing any written communication or delivering such 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 such communication is approved by a partner, officer, or director of the issuer;

(B) responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser if the content of such responses are limited to information contained in a registration statement or other offering document;

or

(C) performing ministerial and clerical work involved in effecting and *[sic.]* transaction.

(*Securities Division; 710 IAC 1-14-1; filed Mar 24, 1986, 3:27 pm: 9 IR 2041, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-14-2 Examination for registration

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 2. Unless specifically exempt, as hereinafter provided, a written broker-dealer examination in the form and content prescribed or approved by the commissioner must be taken and passed by every applicant in order to test his or her general knowledge of the securities business, IC 23-2-1 and 710 IAC 1 relating thereto before such applicant will be considered eligible for registration.

(a) Standards for Passing Grade. 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.

(b) Re-Examination. Upon failure to receive a minimum passing grade the applicant may retake such 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 so entered by the commissioner. Such broker-dealer applicant shall be considered ineligible for licensing during a period of three (3) months thereafter, at which time a new broker-dealer application may be filed and its eligibility re-examined. The original filing fee shall not be refunded nor applied to a subsequent application for registration under this provision. However, if the broker-dealer applicant is otherwise qualified, meets the requirements of subsection (c) of this section and the applicant who fails the examination qualifies for an exemption under subsection (e) of this section, then the broker-dealer application shall not be denied.

(c) Qualification on Behalf of Broker-Dealer. In the case of a partnership, corporation, or other association at least two (2) partners, officers, directors or persons occupying a similar position must satisfy the examination requirement. However, only one

(1) such person must satisfy the examination requirement if the broker-dealer maintains no branch offices and employs no more than ten (10) agents.

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

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

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

(2) has taken a written examination in the form and content prescribed or approved by the commissioner, has attained an acceptable passing grade and thereafter has remained continuously in the securities business, duly licensed by another state, prior to making application.

(Securities Division; 710 IAC 1-14-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2042, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-14-3 Books and records

Authority: IC 23-2-1-15

Affected: IC 23-2-1-8

Sec. 3. (a) A broker-dealer that is subject to the record-keeping requirements of Sec. 17(a) of the Securities Exchange Act of 1934 (15 USC § 78q), and maintains its books and records in accordance with the rules thereunder, 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) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the 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 assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners or officers thereof, all purchases, sales receipts, and deliveries of securities and commodities for such account and all other debits and credits to such 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 such collateral); and

(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 such broker-dealer for his account or for the account of his customers, partners or 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. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such broker-dealer or any employee thereof shall be so designated.

(A) The term "instruction" shall be deemed to include instructions between partners or officers and employees of a broker-dealer.

(B) The term "time of entry" shall be deemed to mean the time when such 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 such broker-dealer, showing the price and to the extent feasible, the time of execution.

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(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 such broker-dealer.

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

(10) A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such 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, such 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 such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to such person:

(A) His name, address, social security number and the starting date of his employment or other association with the member or broker-dealer.

(B) His date of birth.

(C) The educational institutions attended by him and whether or not he graduated therefrom.

(D) A complete, consecutive statement of all his business connections for at least the preceding ten (10) years, including his 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 upon him by any federal or state agency, or by any national securities exchange or national securities association, including any findings that he was a cause of any disciplinary action, or had violated any law.

(F) A record of any denial, suspension, expulsion or revocation of membership or registration of any broker-dealer with which he was associated in any capacity when such action was taken.

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

(H) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he has been the subject.

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

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

(c) Every broker-dealer subject to subsection (b) of this section 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 pursuant to subdivisions (b)(1), (2), (3) and (5).

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

(1) all records required to be made pursuant to subdivisions (b)(4), (6), (7), (8) and (9);

(2) all checkbooks, bank statements, cancelled checks and cash reconciliations;

(3) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such broker-dealer as such;

(4) originals of all communications received and copies of all communications sent by such broker-dealer (including inter-officer memoranda and communications) relating to his business as such;

(5) all trial balances, computations of aggregate indebtedness, net liquid capital, (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such broker-dealer as such;

(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; and

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

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

of such account.

(f) Every broker-dealer subject to subsection (b) of this section shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

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

(h) After a record or other document has been preserved for two (2) years a photograph thereof on film may be substituted therefor for the balance of the required time.

(i) If a person who has been subject to subsection (b) of this section ceases to be registered pursuant to IC 23-2-1-8, such person shall for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section. (*Securities Division; 710 IAC 1-14-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2042, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

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) Filing Reports.

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

(2) Every broker-dealer subject to 710 IAC 1-14 [*this rule*] shall file 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 not more than sixty (60) days after the date as of which his 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 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 under subsection (a)(3) which 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 sole proprietorship, the oath or affirmation shall be made by the proprietor; if the broker-dealer is a partnership, it shall be made by a general partner; and if the broker-dealer is a 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) under the Securities Exchange Act of 1934 (17 C.F.R. sec. 240.17a-5(d)(3)), they shall be deemed confidential, except that they shall be available for official use by any official or employee of the United States or any state, by national securities exchanges and national securities associations of which the person filing such report is a member, and by 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 gives to customers of a broker-dealer the right, upon request to such broker-dealer, to obtain information relative to its financial condition.

(c) Use of Certain Statements Filed with the Securities and Exchange Commission and National Securities Exchanges.

(1) Any broker-dealer who is subject to the provisions of subsection (a) of this section may file in lieu of the report required by that subsection a copy of any financial statements which he is, or has been, required to file with any national securities exchange of which he is a member, provided that the copy so included reflects his financial condition as of a date not more

than sixty (60) days prior to the filing thereof with 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 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 [this rule]. Such a filing shall be deemed to satisfy the requirements of 710 IAC 1-14 [this rule] 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 cannot file his report for any year within the time specified in subsections (a) or (c) of this section without undue hardship he 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 financial condition is reported. The application shall state the reasons for the requested extension and shall contain an agreement to file 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*)

710 IAC 1-14-5 Principal office

Authority: IC 23-2-1-15

Affected: IC 23-2-1

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

(b) Resident Office. A broker-dealer having its principal office in Indiana shall be open for the transaction of business during regular office hours, shall maintain facilities for the reception of telephone calls and visits from the public and shall be open for inspection and examination by the division.

(c) Nonresident Office. A broker-dealer having its principal office in another state must be registered or qualified to engage in the securities business in that state and shall be open for inspection and examination by the division. (*Securities Division; 710 IAC 1-14-5; filed Mar 24, 1986, 3:27 pm: 9 IR 2045, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-14-6 Branch offices

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 6. (a) Any broker-dealer maintaining its principal office or one (1) or more branch offices in Indiana shall designate one (1) or more of such offices as offices of supervisory jurisdiction. Each branch office in Indiana shall be supervised by a person maintaining his principal place of business at an office of supervisory jurisdiction in Indiana.

(b) The manager of an office of supervisory jurisdiction shall be responsible for supervision of the branch offices designated by the broker-dealer. The manager of an office of supervisory jurisdiction shall be qualified by examination as a broker-dealer under 710 IAC 1-14-2.

(c) The broker-dealer shall notify the division in writing prior to the opening, relocation, or closing of a branch office. Such 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; and

(4) the name of the manager of the office of supervisory jurisdiction.

(d) Every branch office shall be designated as an office of supervisory jurisdiction unless:

(1) no more than two (2) agents are employed at the branch office, and no customer recordkeeping or clearing functions are performed there; or

(2) the branch office is located no more than forty (40) miles from an office of supervisory jurisdiction.

(e) Every branch office located in Indiana shall be open for inspection and examination by the division. (*Securities Division;*

710 IAC 1-14-6; filed Mar 24, 1986, 3:27 pm; 9 IR 2045, eff Jun 1, 1986; filed May 14, 1987, 2:10 pm; 10 IR 2297; readopted filed Aug 17, 2001, 2:20 p.m.; 25 IR 204)

710 IAC 1-14-7 Notice of changes in circumstances

Authority: IC 23-2-1-15

Affected: IC 23-2-1-10

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 firm name, ownership, management, control, or a change in any of its partners, officers, or persons in similar positions;
- (2) change in principal office address;
- (3) change in principal office or branch office managers, provided such offices are located in Indiana;
- (4) change in the type of entity, general plan or character of the broker-dealer business, method of operation or 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) dissolution, liquidation or noncompliance with the net liquid capital or bond requirements;
- (7) termination of business or discontinuance of activities as a broker-dealer; and
- (8) the broker-dealer or applicant is the subject of an order, proceeding or the institution of a proceeding by or in any court (civil or criminal) or administrative agency involving any aspect of the securities business, any felony or a United States Post Office fraud order.

(Securities Division; 710 IAC 1-14-7; filed Mar 24, 1986, 3:27 pm; 9 IR 2046, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.; 25 IR 204)

710 IAC 1-14-8 Expiration and renewal of registration

Authority: IC 23-2-1-15

Affected: IC 23-2-1-8; IC 23-2-1-9

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 which are members of a national securities association. (Securities Division; 710 IAC 1-14-8; filed Mar 24, 1986, 3:27 pm; 9 IR 2046, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.; 25 IR 204)

Rule 15. Agents

710 IAC 1-15-1 Licensure; dual registration

Authority: IC 23-2-1-15

Affected: IC 23-2-1-9

Sec. 1. (a) Certification by Employer. 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) Agent of Issuer. An agent of an issuer may sell only those securities which are actually issued by that issuer. He may not take securities in trade except as provided in the prospectus.

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

(d) No person may register as an agent of more than one (1) broker-dealer unless the written consent of each such 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 1-15-1; filed Mar 24, 1986, 3:27 pm: 9 IR 2046, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-15-2 Examination for licensure

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 2. Unless specifically exempt, as hereinafter provided, a written agent examination in the form and content prescribed or approved by the commissioner must be taken and passed by every applicant in order to test his or her general knowledge of the securities business, IC 23-2-1 and 710 IAC 1 relating thereto before such applicant will be considered eligible for registration.

(a) **Passing Grade.** 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.

(b) **Re-Examinations.** Upon failure to receive a minimum passing grade the applicant may retake such 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 may be so entered by the commissioner. Such applicant will be considered ineligible for licensing during a period of three (3) months thereafter, at which time a new application may be filed and his eligibility re-examined. The original filing fee shall not be refunded nor applied to subsequent applications for registration under this subsection.

(c) **Incomplete Application.** An application shall be deemed incomplete until there is a showing of compliance with the examination requirement or an exemption therefrom.

(d) **Waiver of Examination Requirements.** 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; or
- (2) has within the preceding two (2) years taken a written examination in the forms and content approved by the commissioner and has passed such examination with the minimum acceptable passing grade for agent applicants; or
- (3) has taken a written 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 1-15-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2047, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-15-3 Notice of changes in circumstances

Authority: IC 23-2-1-15

Affected: IC 23-2-1-9

Sec. 3. Every agent or applicant shall immediately notify the division in writing of any material changes in any information, exhibits or schedules disclosed in his application. A correction amendment shall be filed at the time of the occurrence or discovery of the change. 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 fraudulent, dishonest or unethical act is alleged or a violation of IC 23-2-1 is alleged or a violation of IC 23-2-1 is involved; and
- (4) the agent or applicant is the subject of an order, proceeding or institution of a proceeding by or in any court or administrative agency, involving any aspect of the securities business, any felony or a United States Post Office fraud order.

(*Securities Division; 710 IAC 1-15-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2047, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-15-4 Expiration, renewal, and termination or suspension of registration

Authority: IC 23-2-1-15

Affected: IC 23-2-1

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 *[sic.]* no authority to transact securities business.

(c) Termination or Suspension. 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 1-15-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2047, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

Rule 16. Investment Advisers

710 IAC 1-16-1 Application for registration (Repealed)

Sec. 1. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-2 Notice of changes in circumstances (Repealed)

Sec. 2. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-3 Expiration and renewal of registration (Repealed)

Sec. 3. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-4 Unethical business practices (Repealed)

Sec. 4. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-5 Annual reports (Repealed)

Sec. 5. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-6 Holding out as an investment adviser (Repealed)

Sec. 6. (*Repealed by Securities Division; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]*)

710 IAC 1-16-7 Investment adviser registration application

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 7. (a) An application for registration as an investment adviser filed under IC 23-2-1 must be filed on a manually signed Form ADV, the Uniform Application for Investment Adviser Registration promulgated by the United States 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 13 of this rule unless exempted therein.
- (2) The financial statements required by IC 23-2-1 and section 19 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 23-2-1 and section 9 of this rule.
- (4) Consent to service of process required under IC 23-2-1.
- (5) Any other information required under IC 23-2-1 or these rules or requested by the commissioner.

(b) A Form ADV filed by an investment adviser partnership which is not registered when such form is filed and which 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 which is not registered when such form is filed and which 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 corporation, partnership, sole proprietorship, or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship, or other 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 must be accompanied by the fee required under IC 23-2-1 and shall also include any amendments to Form ADV, prepared in accordance with section 23 of this rule, as required under IC 23-2-1. An investment adviser shall also file Form ADV-S, the Annual Report For Investment Advisers Act of 1940 as promulgated by the SEC at 17 CFR 179.3, or any successor form with the commissioner or with a central registration depository system designated by the commissioner at the time an application for renewal registration is filed or at any other time a Form ADV-S is filed with the SEC. *(Securities Division; 710 IAC 1-16-7; filed Dec 20, 1991, 9:30 a.m.: 15 IR 717, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-16-8 Investment adviser representative application

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 8. (a) An application for registration as an investment adviser representative under IC 23-2-1 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 13 of this rule unless exempted herein.
- (2) The fee required under IC 23-2-1 and section 9 of this rule.
- (3) Consent to service of process required under IC 23-2-1.
- (4) Any other information required by IC 23-2-1 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 be accompanied by the fee required under IC 23-2-1 and section 9 of this rule, and must include any amendments to Form U-4, prepared in accordance with section 23 of this rule. (*Securities Division; 710 IAC 1-16-8; filed Dec 20, 1991, 9:30 a.m.: 15 IR 718, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-9 Fees for registration and renewal

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-9

Sec. 9. (a) An application for registration by an investment adviser shall be accompanied by a nonrefundable fee of one hundred dollars (\$100).

(b) An application for renewal registration by an investment adviser shall be accompanied by a nonrefundable fee of fifty dollars (\$50).

(c) An application for registration by an investment adviser representative shall be accompanied by a nonrefundable fee of twenty-five dollars (\$25).

(d) An application for renewal registration by an investment adviser representative shall be accompanied by a nonrefundable fee of twenty-five dollars (\$25).

(e) All fees shall be paid in cash, certified check, personal check, or by United States postal money order, bank cashier's check, or bank money order, payable to the Indiana secretary of state. (*Securities Division; 710 IAC 1-16-9; filed Dec 20, 1991, 9:30 a.m.: 15 IR 718, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-10 Termination or withdrawal from registration

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 10. (a) Any investment adviser who does not wish to renew its registration under IC 23-2-1 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 instructions contained therein.

(b) Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, upon such 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 contained therein.

(c) Any investment adviser representative who does not wish to renew registration pursuant to IC 23-2-1 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 the filing thereof or within such 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 23-2-1, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. (*Securities Division; 710 IAC 1-16-10; filed Dec 20, 1991, 9:30 a.m.: 15 IR 719, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-11 Incomplete and abandoned applications

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 11. (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 23-2-1 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 such 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 23-2-1, stating that the commissioner proposes to issue an order denying the application. *(Securities Division; 710 IAC 1-16-11; filed Dec 20, 1991, 9:30 a.m.: 15 IR 719, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-16-12 Exemption for certain broker-dealers

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 12. (a) An investment adviser which is registered as services by a broker-dealer or agent shall be exempt from IC 23-2-1-12.1(a)(3) 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 which 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, such 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 which is a subject of such 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 which are distributed to thirty-five (35) or more persons who pay for access to such 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 such 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 which may be imposed by IC 23-2-1 or this rule.

(e) A broker-dealer which is required to register as an investment adviser under IC 23-2-1 shall be exempt from the record keeping requirements under section 14 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 23-2-1. *(Securities Division; 710 IAC 1-16-12; filed Dec 20, 1991, 9:30 a.m.: 15 IR 719, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-16-13 Examinations

Authority: IC 23-2-1-15

Affected: IC 23-2-1-11

Sec. 13. (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 the examination in question, its content, the entity administering the examination, and the reason why a waiver should be granted by the commissioner. Acceptance of such 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 1-16-13; filed Dec 20, 1991, 9:30 a.m.: 15 IR 720, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991]; filed Nov 5, 1999, 10:12 a.m.: 23 IR 570; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-14 Books and records; maintenance

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 14. Every investment adviser subject to IC 23-2-1 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 asset, liability, reserve, capital, income, and expense accounts.
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt, or delivery of a particular security of and any modification or cancellation of any such order or instruction. The memoranda shall do the following:
 - (A) Show the terms and conditions of the order, instruction, modification, or cancellation.
 - (B) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order.
 - (C) Show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered under the exercise of discretionary power shall be so designated.
- (4) All checkbooks, bank statements, canceled checks, and 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 trial balances, financial statements, and 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 receipt, disbursement, or 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 offering 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, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and the source thereof.
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or 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 thereof.
- (10) All written agreements, or copies thereof, entered into by the investment adviser with any client or otherwise relating to the business of the investment adviser.
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to ten (10) or more persons, other than persons connected with such investment adviser, and, if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication 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, as defined in clause (F), defined *[sic.]* 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 which 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 effected.
 - (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 such transaction shall not be construed as an admission that the investment adviser, or advisory 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) For purposes of clause (A), the term “control” shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, 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, the term “advisory representative” means the following:

- (i) Any partner, officer, or director of the investment adviser.
- (ii) Any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or 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 which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning the recommendations.
- (iv) Any of the following persons who obtain in-formation 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 which 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 effected.
 - (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 such transaction 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) 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 partner, officer, director, or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or 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.

(ii) Any of the following persons who obtains 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 or revision thereof, given or sent to any client or prospective client of the investment adviser under IC 23-2-1, and a record of the dates that each written statement and each amendment or revision thereof was given or offered to be given to any client or prospective client who subsequently becomes a client.

(15) All accounts, books, internal working papers, and any other records or documents 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 notice, circular, advertisement, newspaper article, investment letter, bulletin, or 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, provided, however, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all 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 purchases, sales, receipts, and 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 purchases, sales, receipts, and 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 such client.

(D) A record for each security in which any such client has a position, which records shall show the name of the client having any interest in each security, the amount or interest of the client, and the 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) True, accurate, and current records showing separately for the client the securities purchased and sold and the date, amount, and price of the purchase and sale.

(B) For each security in which any such client has a current position, true, 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 such manner that the identity of any client to whom such 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) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three (3) years after termination of the enterprise.

(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 immediately produced or reproduced by photograph on film or, as provided in items (i) through (v), on magnetic disk, tape, or other computer storage medium and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall do the following:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be prepared to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commissioner may request.

(iii) Store, separately from the original, one (1) copy of the film or computer storage medium for the time required.

(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 examination of its records under IC 23-2-1, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(H) Under clause (G), an investment adviser may, on computer tape, disk, or other computer storage medium, maintain and preserve records which, 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 23-2-1, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(J) A record made and kept under this section, which 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 23-2-1 shall keep, 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 which 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) through (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) through (M) refer if the following occurs:

(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 true, correct, complete, and current copies of any or all of the books and records which it is required to make, keep current, maintain, or preserve under IC 23-2-1. Such 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 which the undersigned is required to make, keep current, or preserve under IC 23-2-1.

(BB) This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all said 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, which has been forwarded to the investment adviser, at its last address filed with the commissioner, by certified mail, return receipt requested which has been signed by the commissioner or such other person as the commissioner may authorize to act on his or her behalf, true, correct, complete, and current copies of any or all books and records which the investment adviser is required to make, keep current, or preserve, or any part of the books and records which may be specified in said written demand. The copies shall be furnished to the commissioner at his or her office in Indianapolis, Indiana, or at any other the *[sic.]* place within the state of Indiana which may be specified in said 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 or association, 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 *[sic., from]* the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or 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 1-16-14; filed Dec 20, 1991, 9:30 a.m.: 15 IR 721, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-16-15 Supervision of investment adviser representatives and employees

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 15. (a) Every investment adviser registered or required to be registered under IC 23-2-1 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 established, maintained, and enforced and shall set forth the standards and procedures adopted to comply with IC 23-2-1 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 administrative, civil, and criminal liability provisions of IC 23-2-1.

(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, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by such 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 1-16-15; filed Dec 20, 1991, 9:30 a.m.: 15 IR 725, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-16-16 Written disclosure statements

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 16. (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 such 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 23-2-1.
- (2) The contract relates to the purchase or sale of a security.
- (3) The provision of advisory services are *[sic., 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 which 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 which 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 23-2-1 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 which 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) through (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 such contract which is in effect immediately prior to such an 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 which meets the requirements of Section 15(c) of that Act. (*Securities Division; 710 IAC 1-16-16; filed Dec 20, 1991, 9:30 a.m.: 15 IR 726, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-17 Performance based compensation exemption

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 17. (a) As used in this section, "affiliate" has the meaning set forth in Section 2(a)(3) of the federal Investment Company Act of 1940.

(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 the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or 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 a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not, or any receiver, trustee in a case under Title 11 of the United States Code,

or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such. "Company" shall not include any of the following:

- (1) A company required to be registered under the federal Investment Company Act of 1940 but which is not so registered.
- (2) A private investment company which is a company which would be defined as an investment company under Section 3(a) of the federal Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act.
- (3) An investment company registered under the federal Investment Company Act of 1940.
- (4) A business development company as defined in Section 202(a)(22) of the federal Investment Adviser Act of 1940, unless each of the equity owners of any such 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 person, partner, or 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 23-2-1-12.1(b)(1), an investment adviser may enter into, extend, or renew an investment advisory contract which 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 subsection (g) [*sic., 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 which will be used to measure investment performance throughout the contract and their potential significance

in the computation of the fee.

(4) The nature of any index which will be used as a comparative measure of investment performance [*sic.*], the potential significance of the index, and 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 which 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 partner, director, officer, or 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 23-2-1-12.1 or any other applicable provision of IC 23-2-1.

(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 1-16-17; filed Dec 20, 1991, 9:30 a.m.: 15 IR 727, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-18 Certain transactions not deemed assignments

Authority: IC 23-2-1-15

Affected: IC 23-2-1-12.1

Sec. 18. A transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of IC 23-2-112.1(b)(2) [*sic.*, IC 23-2-1-12.1(b)(2)]. (*Securities Division; 710 IAC 1-16-18; filed Dec 20, 1991, 9:30 a.m.: 15 IR 729, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-19 Financial statements and reporting requirements for investment advisers

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 19. (a) Every investment adviser required to be registered under IC 23-2-1 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 23-2-1 must file 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), such financial statements need not be certified.

(c) Financial statements required by this section 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 1-16-19; filed Dec 20, 1991, 9:30 a.m.: 15 IR 729, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR*

204)

710 IAC 1-16-20 Custody and possession of client funds or securities

Authority: IC 23-2-1-15

Affected: IC 23-2-1-11

Sec. 20. (a) It shall constitute a dishonest practice within the meaning of IC 23-2-1-11(a)(6) 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 such funds or securities unless the following occurs:

(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 such clients are deposited in one (1) or more bank accounts which contain only clients' funds, and the following occurs:

(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 which 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 does the following:

(A) Notifies the client in writing of the place and manner in which the funds and securities will be maintained.

(B) Notifies the client in writing of any change in the place or manner in which the funds are being maintained.

(5) The investment adviser sends each such client 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 debits, credits, and 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 manual 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 on *[sic., off]* 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 reason's *[sic.]* 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 *[sic.]* 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 if the broker-dealer or agent is subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirement for Brokers or Dealers) under the Securities Exchange Act of 1934 or the broker-dealer or agent is a member of an exchange whose members are exempt from said Rule 15c3-1, under the provisions of paragraph (b)(2) thereof, 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 1-16-20; filed Dec 20, 1991, 9:30 a.m.: 15 IR 729, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-21 Agency cross transactions for advisory clients

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 21. (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 controlling, controlled by, or 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 such 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 23-2-1, or a person registered as a broker-dealer or agent under IC 23-2-1 which is controlling, controlled by, or under common control with a registered investment adviser, shall be deemed to be in compliance with section 22(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 before 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 such 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 such 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 an investment adviser, an investment adviser representative, or 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 an investment adviser, an investment adviser representative, or another person relying on

this section from any disclosure obligation which may be imposed by IC 23-2-1. (*Securities Division; 710 IAC 1-16-21; filed Dec 20, 1991, 9:30 a.m.: 15 IR 730, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-22 Dishonest or unethical practices

Authority: IC 23-2-1-15

Affected: IC 23-2-1-11

Sec. 22. (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 23-2-1-11(a)(6):

- (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 the client's investment objectives, financial situation, and needs, and 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 financial resources, investment objectives, and 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 such service.
 - (C) Omitting to state a material fact necessary to make the statements made regarding qualifications, services, or 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 uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.
- (8) Charging a client an advisory fee that is unreasonable in the light of the type of services to be provided, the experience and expertise of the adviser, and the 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 which 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 which 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 which 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 under the Investment Advisers Act of 1940 or the investment adviser is exempt from those requirements by virtue of SEC Rule 102(e)(i)-1(b).

(13) Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which 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 23-2-1, provided that no investment adviser which is exempt from registration under IC 23-2-1 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 which operates or would operate as a fraud or deceit. (*Securities Division; 710 IAC 1-16-22; filed Dec 20, 1991, 9:30 a.m.: 15 IR 731, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-23 Amendment of registration documents filed by investment advisers and investment adviser representatives

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 23. (a) Any amendment required under IC 23-2-1 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 23-2-1 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 thereto or renewal thereof, 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 such information along with the application for renewal registration described in IC 23-2-1 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 1-16-23; filed Dec 20, 1991, 9:30 a.m.: 15 IR 732, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-16-24 Refunds

Authority: IC 23-2-1-15

Affected: IC 23-2-1-11

Sec. 24. 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:

(1) the 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) the investment adviser's financial capability is adequate to ensure its ability to meet all such refund demands. *(Securities Division; 710 IAC 1-16-24; filed Dec 20, 1991, 9:30 a.m.: 15 IR 733, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-105 was filed Dec 20, 1991.]; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

Rule 17. Standards of Practice

710 IAC 1-17-1 Dishonest and unethical practices

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 1. Dishonest and unethical practices within the meaning of IC 23-2-1-11 shall include but not be limited to the following:

(a) Resale or Repurchase. Representing, agreeing, guaranteeing, directly or by implication, in writing or orally, to resell or repurchase securities in an offer, purchase, or sale, except for securities issued by an investment company registered under the Investment Company Act of 1940.

(b) Representations as to Future Happenings. Representing in the offer or sale of securities, either directly or by implication, in writing or orally, that:

- (1) the securities will subsequently become listed or traded;
- (2) a market will be established in the shares, which will regularly be bought and sold;
- (3) there is a guarantee against risk or loss;
- (4) there is a guarantee or an assurance that a dividend or a return on the investment will be paid or maintained by the issuer;
- (5) an investor's capital will increase or that the purchase involves a preservation of original capital and protection against loss in value;
- (6) dividends or other distributions, cash or otherwise, will be paid to shareholders of the issuer, unless such dividends or distributions have actually been declared;
- (7) there is an impending but undeclared dividend or distribution, used as an inducement for the immediate purchase of securities;
- (8) a purchase will result in an assured, immediate, or extensive increase in value, market price, or return on the investment;
- (9) there will be or that the issuer contemplates a stock split, merger, or consolidation, unless such action has been announced or declared by the issuer;
- (10) 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
- (11) the next or succeeding issue of securities of the same issuer will sell for a higher price than the present issue of securities.

(c) False, Misleading, or Deceptive Representation. Making false, misleading, deceptive, exaggerated, or flamboyant representations or predictions in the offer, purchase, or sale of securities about:

- (1) an issuer's management ability or competency;
- (2) an issuer's financial condition, earnings, dividends, distributions, growth, or future success;
- (3) a stable, continuous, dependable, or liberal return or that there will be a specific rate of return; or
- (4) market conditions, marketability, listing, or trading.

(d) Representations Concerning Investment Return. Representing or implying in the offer or sale of securities a return on an investment based on figures which combine income and distributions from capital or any other source.

(e) Distribution from Capital Depreciation, Etc. Representing or implying in the offer or sale of securities distributions from capital, depreciation, or similar distributions and failing to point out that such distributions reduce the value of the investment.

(f) Investing Beyond Resources. Inducing a customer to invest beyond his known immediate financial resources.

(g) Excessive Investments. Effecting transactions pursuant to discretionary authority, which are excessive in size or frequency in relation to the financial resources of the customer or the character of his account.

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

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

(j) Boiler-Room Operations—High Pressure Tactics. Engaging or aiding in “boiler-room” operations or high pressure tactics

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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 salesman or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his investment needs and objectives.

(k) Unreasonable or Excessive Prices. Offering, purchasing, or selling securities at unreasonable or excessive prices in relation to market value or with unreasonable or excessive markups or commissions.

(l) Excessive Commissions, Charges, or Expenses. Charging, paying, or receiving commissions, selling charges, expenses, or any other kind or *[sic.]* remuneration greater than those disclosed in a registration statement under IC 23-2-1-4 or IC 23-2-1-5.

(m) Inside Information. 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 offer, sale, or purchase of securities.

(n) Undisclosed Interest in Issuer. 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.

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

(p) False Two-Way Market. 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.

(q) Influencing Publishing of Investment Information. 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 newspaper, investment service, or similar publication of any matter which 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.

(r) Rewards to Employees, Agents, Broker-Dealers, or Issuers. 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 such employee, agent, or representative in relation to the business of the employer of such employee, principal or such agent, or the represented party, without the prior knowledge and consent of such employer, principal, or represented party.

(s) Sale Without Prospectus. Selling or offering securities registered under IC 23-2-1-4 or IC 23-2-1-5 without the use and dissemination of the required prospectus or making oral or written statements contrary to or inconsistent with the disclosures contained therein.

(t) Use of Unfiled Materials. Selling or offering securities registered under IC 23-2-1-5 using selling or advertising materials, copies of which have not been filed with the division as required by 710 IAC 1-11-5.

(u) Implying State or Federal Approval. Making any reference to the registration or regulation of a security with or by any state or federal authority without explaining that this does not involve approval or supervision of management or investment practices and that such authorities do not pass upon the merits of the security as an investment.

(v) Supervision of Agents and Employees. Failing to properly supervise agents and employees. Supervision includes approval of all transactions and correspondence by an officer or branch manager.

(w) Violation of Standards of Honesty and Ethics. Engaging in and *[sic.]* practice which is in violation of the standards of honesty and ethics which are generally accepted in the securities trade and industry.

(x) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other relevant information known by the broker-dealer.

(y) Failure or refusal to furnish a customer upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint. (*Securities Division; 710 IAC 1-17-1; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2048, eff Jun 1, 1986; filed Sep 27, 1988, 11:00 a.m.: 12 IR 352; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-17-2 Deliveries and payments by broker-dealers

Authority: IC 23-2-1-15

Affected: IC 23-2-1-11; IC 23-2-1-12

Sec. 2. (a) Delivery by Broker-Dealer to Buyer. For the purpose of IC 23-2-1-11(a)(14), delivery of securities by a broker-dealer to a buyer of such securities shall be deemed to have been made within forty-five (45) days of the date of the transaction if, within forty-five (45) days following the date upon which the broker-dealer executed the purchase of such securities upon the order

of the buyer or the date upon which full payment was made for such securities by the buyer, whichever date last occurs, the broker-dealer does one (1) of the following acts:

- (1) Delivers the certificate or other instrument evidencing such securities to the buyer, if the buyer has not authorized the broker-dealer in writing to hold such securities for the account of the buyer;
- (2) Credits the account of the buyer with the purchase of such securities and delivers written confirmation of such crediting to the buyer, if the buyer has authorized the broker-dealer in writing to hold such securities for the account of the buyer.

There shall not be included, in counting the forty-five (45) day period, any days during which the certificate or other instrument evidencing such securities is in the possession of the transfer agent for the issuer.

(b) Payment by Broker-Dealer to Seller. For the purposes of IC 23-2-1-11(a)(14), payment for securities by a broker-dealer to a seller of such securities shall be deemed to have been made within forty-five (45) days of the date of the transaction, if within forty-five (45) days following the date upon which the broker-dealer executed the sale of such securities upon the order of the buyer, or the date upon which the certificate or other instrument evidencing such securities was made by the seller to the broker-dealer, whichever date last occurs, the broker-dealer does one of the following acts:

- (1) Delivers a check or draft in the amount of the full sale price for such securities to the seller, if the seller has not authorized the broker-dealer in writing to hold such amount for the account of the seller; or
- (2) Credits the account of the seller with the amount of full sale price for such securities and delivers written confirmation of such crediting to the buyer, if the seller has authorized the broker-dealer in writing to hold such amount for the account of the seller.

(c) Reasonable Delivery or Payment. Subsections (a) and (b) of this section shall in no event constitute authorization to any broker-dealer to delay delivery or payment for securities in whatever form to a buyer or a seller beyond that period of time which is reasonable under the facts and circumstances then existing. Any delay in delivery or payment, in whatever form, beyond that period of time which is reasonable under the facts and circumstances then existing, will be deemed by the division to be in contravention of the provisions of IC 23-2-1-11(a)(7), (14) and IC 23-2-1-12. (*Securities Division; 710 IAC 1-17-2; filed Mar 24, 1986, 3:27 pm; 9 IR 2050, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

Rule 18. Financial Statements

710 IAC 1-18-1 Financial statements

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 1. All financial statement [*sic.*] required to be filed under IC 23-2-1 and 710 IAC 1 shall be prepared in accordance with generally accepted accounting principles. (*Securities Division; 710 IAC 1-18-1; filed Mar 24, 1986, 3:27 pm; 9 IR 2050, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-18-2 Certified financial statements

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 2. All financial statements required under IC 23-2-1 and 710 IAC 1 to be certified or audited shall be based on an examination made in accordance with generally accepted auditing standards. (*Securities Division; 710 IAC 1-18-2; filed Mar 24, 1986, 3:27 pm; 9 IR 2051, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-18-3 Qualification of accountants

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 3. All accountants whose reports are filed as part of a financial statement under IC 23-2-1 and 710 IAC 1 shall be duly registered in Indiana or another state as a certified public or public accountant. (*Securities Division; 710 IAC 1-18-3; filed Mar 24, 1986, 3:27 pm; 9 IR 2051, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-18-4 Change of accountants

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 4. (a) An issuer with an offering registered by qualification shall notify the commissioner in writing within five (5) business days of the resignation, dismissal, or declination to stand for re-election, 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 accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement, 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 that necessary internal controls do not exist;
- (3) the former accountant has advised the issuer 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;
- (4) the former accountant has advised the issuer of the need to expand significantly the scope of its audit; or
- (5) the former accountant has advised the issuer 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 1-18-4; filed Jan 4, 1989, 8:15 a.m.: 12 IR 1387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

Rule 19. Division Proceedings

710 IAC 1-19-1 Scope of rule

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

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 1-19-1; filed Mar 24, 1986, 3:27 pm: 9 IR 2051, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-2 Appearance and practice before division

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 2. (a) By Non-Lawyers. An individual may appear in his own behalf. A member of a partnership may represent the partnership; a bona fide officer of a trust or association may represent the trust or association; and 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 in any proceeding.

(b) By Lawyers. 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) Representation Only as Specified. A person shall not be represented at any hearing before the division other than as provided in subsections (a) and (b) of this section or as otherwise permitted by the commissioner.

(d) Notice of Appearance; Designation for Service; Power of Attorney. (1) When an individual appears in his own behalf before the division in a particular proceeding which involves a hearing or an opportunity for hearing, he 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 furnished to him may be sent.

(2) When an attorney appears before the division in a representative capacity in a particular proceeding which involves a hearing or an opportunity for hearing, he shall file with the commissioner a written notice of such appearance, which shall state his

name, address and telephone number and the name and address of the person or persons on whose behalf he 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 authority to act in such capacity.

(e) Suspension. The commissioner may deny, temporarily or permanently, the privilege of appearing or practicing before him 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, not to possess the requisite qualifications to represent others, to be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

(f) Contemptuous Conduct. Contemptuous conduct at any hearing before the division shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

(g) Practice Defined. For the purposes of 710 IAC 1-19, practicing before the division shall include, but shall not be limited to:

(1) transacting any business with the division; and

(2) the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the commissioner in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other expert.

(h) Service on Attorneys. In any proceeding where an attorney has filed an appearance pursuant to subsection (d)(2) of this section, 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 of such attorneys if the client is represented by more than one attorney) in the same manner as prescribed for his client, even though such communication also is furnished directly to the client. (*Securities Division; 710 IAC 1-19-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2051, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-3 Notice of proceedings and hearings

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 3. (a) Notice of the Initiation of Proceedings. 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) Contents of Notice of the Initiation of Proceedings. The parties or persons entitled to notice shall be timely informed of the nature of the legal authority and jurisdiction under which the proceeding has been initiated, and shall be 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 pursuant to 710 IAC 1-19-5 the order for proceeding shall set forth the action proposed and the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.

(c) Notice of Hearing. 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 23-2-1.

(d) Service of Notice of Hearing. 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) Publication of Notice of Hearing. Unless otherwise ordered by the commissioner, notice of any public hearing shall be given general circulation by release to the public press.

(f) Service of Pleadings and Papers. All pleadings, papers, discovery, briefs, proposed findings and conclusions or 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. 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) Amendment of Order for Proceedings. 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 1-19-3; filed Mar 24, 1986, 3:27 pm: 9 IR 2052, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-4 Default entry

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 4. Effect of Failure to Appear. If any person who is named in an order for proceeding as one against whom findings may be made or sanctions imposed therein does not file a notice of appearance in the proceeding within fifteen (15) days after service upon him of the order for proceeding (unless a different period is specified in the order), or if he fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default and the proceeding may be determined against him upon consideration of the order for proceeding, the allegations of which may be deemed to be true. For the purpose of this section an answer shall constitute a notice of appearance. (*Securities Division; 710 IAC 1-19-4; filed Mar 24, 1986, 3:27 pm: 9 IR 2052, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-5 Answers

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 5. (a) When Required. In any order for proceeding the commissioner may direct that any party respondent shall file an answer to the allegations contained in the order for proceeding and any party in the proceeding may file an answer.

(b) Time to File Answer. 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) of this section shall do so within fifteen (15) days after service upon him of the order for proceeding. Any other person admitted to such a proceeding (except a person becoming a party under IC [sic.] 710 IAC 1-19-8(a)) may be required to file an answer within such time as is directed by the commissioner. Where amendments to the matters of fact and law to be considered in such 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) Requirements of Answer—Effect of Failure to Deny. Unless otherwise directed by the commissioner, an answer required by this section shall specifically admit, deny or 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 shall specify so much of it as is true and shall deny only the remainder.

(d) Effect of Failure to File Answer. If a party fails to file an answer required by 710 IAC 1-19 within the time provided, such person shall be deemed in default and the proceeding may be determined against him by the commissioner upon consideration of the order for proceeding, the allegations of which may be deemed to be true.

(e) Signature on Answer—Requirement and Effect. Every answer filed pursuant to this section shall be signed by the party filing it or by at least one (1) attorney, in his individual name, who represents such party. The signature shall constitute a certificate by the signer that he has read the answer, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. (*Securities Division; 710 IAC 1-19-5; filed Mar 24, 1986, 3:27 pm: 9 IR 2052, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-6 Settlement offers

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-19

Sec. 6. Parties may propose in writing offers of settlement which shall be submitted to and considered by the commissioner where time, the nature of the proceeding and the public interest permit. Such 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 may also give the party making the offer an opportunity to make an oral presentation to the commissioner. Where to [sic.] commissioner rejects an offer of settlement, the party making the offer shall be notified of the commissioner's action, the offer of settlement shall be deemed withdrawn and such offer and any documents relating thereto shall not constitute a part of the record. (*Securities Division; 710 IAC 1-19-6; filed Mar 24, 1986, 3:27 pm: 9 IR 2053, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-7 Prehearing conferences

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 7. 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 own motion, hold conferences for the purpose of clarifying and simplifying issues by consent of the parties, including, where practical and reasonable, considering:

- (a) Stipulations and Admissions. The possibility of obtaining stipulations and admissions of facts and of authenticity and contents of documents which will avoid unnecessary proof.
- (b) Presentation of Evidence. Expediting the presentation of evidence.
- (c) Exchange of Copies. The exchange of copies of proposed exhibits.
- (d) Other Matters. Such other matters as will promote a fair and expeditious hearing or aid in the disposition of the proceeding.

At the conclusion of a conference the hearing officer shall enter a ruling or order which recites the matters agreed upon by the parties and any procedural determinations made by the hearing officer. (*Securities Division; 710 IAC 1-19-7; filed Mar 24, 1986, 3:27 pm: 9 IR 2053, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-8 Parties to proceedings; limited participation; intervention

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-11

Sec. 8. (a) Who May Become Parties. Any interested official, department, commission, municipality or other political subdivision of the state of Indiana, the Securities *[sic.]* and Exchange Commission or other interested representative, agency, authority or instrumentality of the United States may become a party to any proceeding by filing a written motion.

(b) Parties in Broker-Dealer Proceedings. In proceedings under IC 23-2-1-11 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 participates generally in the proceedings or files a notice of appearance, he shall be deemed a party of record and shall be given notices of intermediate developments in the proceedings.

In any event he may inform himself of such developments by attendance at the hearings, examination of the record or by arrangement with a party of record so that he can determine whether he desires to be heard at any time.

(c) Limited Participation—Leave to be Heard. Any person may, at the discretion of the commissioner or other representative of the division conducting the hearing, be given leave to be heard in any proceeding as to any matter affecting his interests. Requests for leave to be heard shall be in writing, shall set forth the nature and extent of the applicant's interest in the proceeding and, except where good cause for late filing is shown, shall 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 interest in the proceeding.

(d) Right of Participant. Leave to be heard pursuant to subsection (c) of this section may include such 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, such person shall be expected to inform himself 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 continuances, the filing of amendments, answers, motions or briefs by parties to the proceeding, or the fixing of time for any such action), and such person shall not be entitled as of right to other notice thereof or to service of copies of documents.

(e) When Intervention as Party Granted. Except as provided in subsections (a) and (b) of this section, 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 such person and any evidence taken in connection therewith, that his participation as a party will be in the public interest and that leave to be heard pursuant to subsections (c) and (d) of this section would be inadequate for the protection of his interests.

(f) Permission to State Views. Any person who has not complied with the requirements of subsection (c) of this section may, in the discretion of the hearing officer, be permitted to file a memorandum or make an oral statement of his views and the hearing

officer may accept for the record written communications received from any such person. Unless offered and admitted as evidence of the truth of the statements therein made, the memoranda and oral or written communications submitted pursuant to the provisions of this subsection shall be considered only to the extent that the statements therein made are otherwise supported by the record.

(g) Modification of Participation Provisions. The commissioner may, by order in any case, modify the provisions of this section which would otherwise be applicable and may impose such terms and conditions on the participation of any person in any proceeding as he may deem necessary or appropriate in the public interest. (*Securities Division; 710 IAC 1-19-8; filed Mar 24, 1986, 3:27 pm; 9 IR 2053, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-9 Consolidation

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 9. By order of the commissioner proceedings involving a common question of law or fact may be joined for hearing of any or all the matters, in issue therein, such proceedings may be consolidated and the commissioner may make such orders concerning the conduct of such proceedings as may tend to avoid unnecessary costs or delay. (*Securities Division; 710 IAC 1-19-9; filed Mar 24, 1986, 3:27 pm; 9 IR 2054, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-10 Evidence

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 10. (a) Presentation and Admission of Evidence. 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 such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) Issuance of Subpoenas Ad Testificandum and Subpoenas Duces Tecum. The commissioner, in connection with any hearing ordered by him, 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; provided, however, that where it appears to the commissioner the subpoena sought may be unreasonable, oppressive, excessive in scope or unduly burdensome, he may in his 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. In the event the commissioner shall, after consideration of all the circumstances, determine that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope or unduly burdensome, he may refuse to issue the subpoena or he may issue it only upon such conditions as fairness requires. In making the foregoing determination, where he 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 shall not disclose the identity of the person sought to be subpoenaed.

(c) Motions to Quash. 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 such subpoena, apply to the commissioner to quash or modify such subpoena, accompanying such 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 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 Subpoenas. Service of subpoena upon a person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one (1) day's attendance and the mileage as specified by subsection (e) of this section. 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 office with the person in charge thereof;
- (C) if there is no one in charge at his office, leaving them in a conspicuous place therein;
- (D) leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;
- (E) mailing them by registered or certified mail to him at his last known address;
- (F) any method whereby actual notice is given to him 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 such person;
- (B) mailing them by registered or certified mail to such representative at his last known address;
- (C) any method whereby actual notice is given to such representative and the fees are made available prior to the return date.

(e) **Witness Fees and Mileage.** 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) **Official Notice.** In any proceeding official notice may be taken of any material fact which might be judicially noticed by a court of the state of Indiana, of any matter in the public official records of the commissioner or of any matter which 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 1-19-10; filed Mar 24, 1986, 3:27 pm: 9 IR 2054, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-11 Discovery

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 11. **Applications and Orders for Discovery.** 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 1-19-11; filed Mar 24, 1986, 3:27 pm: 9 IR 2055, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-12 Proposed findings and conclusions; briefs

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

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 such proposals may be filed therewith or as a part thereof and any proposed finding or conclusion not briefed may be regarded as waived. (*Securities Division; 710 IAC 1-19-12; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-19-13 Summary judgment

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-16; IC 23-2-1-17.1

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 may be supported with affidavits or other evidence permitted under this section and 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. An

adverse party shall have thirty (30) days after service of the motion to serve a response, any opposing affidavits, or other evidence. The commissioner shall conduct a hearing on the motion that 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. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, testimony, or 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. A summary judgment may be rendered upon fewer than all the issues or claims (such as 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 upon fewer than all the issues involved in a proceeding or with respect to fewer than all the claims or parties is not a final order. The commissioner shall designate the issues or claims upon which the commissioner finds no genuine issue as to any material facts. 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. 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 thereupon 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 matters stated therein.

(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 respond to the motion with affidavits or other evidence permitted under this section and 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 1-19-13; filed Apr 1, 1998, 10:50 a.m.: 21 IR 2986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

Rule 20. Records and Investigations

710 IAC 1-20-1 Inspection of records

Authority: IC 23-2-1-15

Affected: IC 23-2-1-10; IC 23-2-1-16

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 which 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 23-2-1-16(d) and compliance reports filed under IC 23-2-1-10(f) shall, unless made a matter of public record, be deemed confidential. Officers and employees of the division shall not make such confidential information or documents available to anyone other than a member, officer, or employee of the secretary of state's office, the division, or

any other regulatory or law enforcement agency, unless the secretary of state or commissioner authorized the disclosure of such information or the production of such documents as not being contrary to the public interest.

(Securities Division; 710 IAC 1-20-1; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2056, eff Jun 1, 1986; filed Jun 5, 1992, 11:00 a.m.: 15 IR 2234; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-20-2 Complaints where division not moving party

Authority: IC 23-2-1-15

Affected: IC 23-2-1-17.1

Sec. 2. (a) In General. Any person may submit to the division a complaint concerning the activities of an issuer, broker-dealer or agent.

(b) Form and Content. Complaints shall be made in writing and shall be signed and verified by the person making the same. The complaint should include a succinct, definite statement of the facts on which it is based, including the names and addresses of the persons involved, the dates of the events complained of and the nature of the interest of the person making the complaint.

(c) Evidence to Support Complaint. The person making a complaint should be prepared to support the facts alleged therein by sufficient evidence and should retain and make such 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 1-20-2; filed Mar 24, 1986, 3:27 pm: 9 IR 2056, eff Jun 1, 1986; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

Rule 21. Investigation; Rules of Practice

710 IAC 1-21-1 Scope

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 1. This rule applies to investigations and examinations conducted by the division pursuant to IC 23-2-1. *(Securities Division; 710 IAC 1-21-1; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2386; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-21-2 Information obtained during the course of investigations

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 2. Information or documents obtained by the division in the course of any investigation, unless such information or documents are published by the division pursuant to its authority under IC 23-2-1, shall be deemed nonpublic. Such information and documents may be disclosed to:

- (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; and
- (6) trustees in bankruptcy;

upon the acceptance of an access request letter. The division may also, to the extent necessary, disclose such information and documents in court proceedings, when ordered to do so by a court of competent jurisdiction, or when appropriate in furtherance of any ongoing investigation or proceeding. *(Securities Division; 710 IAC 1-21-2; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2386; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-21-3 Applicability

Authority: IC 23-2-1-15

Affected: IC 23-2-1

Sec. 3. 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.

Such person, being sworn in an investigation or examination, shall be referred to as a “witness”. Such investigation or examination, hereinafter referred to as an “investigative proceeding”, shall be conducted by the division before one (1) or more of its deputy commissioners for enforcement or before any other person designated by the division for the purpose of taking testimony of witnesses and receiving other evidence. (*Securities Division; 710 IAC 1-21-3; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-4 Official transcript

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 4. Transcripts, if any, of investigative proceedings shall be recorded solely by the official reporter or by any other person or means designated by the officer conducting the investigation. There shall be one (1) official transcript of a witness' 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 1-21-4; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-5 Access to transcripts

Authority: IC 23-2-1-15
Affected: IC 23-2-1

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' 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 1-21-5; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-6 Access to documentary evidence

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 6. A person complying with any request, order, or subpoena issued by the division for the production of documentary evidence shall retain the originals and shall provide the division with clearly legible, true, and complete copies of the documents requested, along with a signed cover letter, which shall identify those documents with a reasonable degree of specificity. (*Securities Division; 710 IAC 1-21-6; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-7 Witnesses; representation by counsel

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 7. A witness may be accompanied, represented, and advised by counsel, as defined in 710 IAC 1-19-2. 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 1-21-7; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-8 Witnesses; advice from counsel

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 8. Counsel may advise witnesses before, during, and after the conclusion of testimony given in the course of an investigative proceeding and may make summary notes during such 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 such 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' testimony shall constitute an acceptable ground for the witness' failure to appear at the designated time and place or to answer the questions of the officer conducting the examination. (*Securities Division; 710 IAC 1-21-8; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-9 Sequestration of witnesses

Authority: IC 23-2-1-15
Affected: IC 23-2-1

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 such 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' examination. (*Securities Division; 710 IAC 1-21-9; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2387; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-10 Access to premises by division; generally

Authority: IC 23-2-1-15
Affected: IC 23-2-1

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 documents are stored or where trading or investor solicitation is conducted. (*Securities Division; 710 IAC 1-21-10; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2388; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-11 Observation of conduct of business by division

Authority: IC 23-2-1-15
Affected: IC 23-2-1

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 1-21-11; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2388; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204*)

710 IAC 1-21-12 Access to documents by division

Authority: IC 23-2-1-15
Affected: IC 23-2-1

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 broker-dealer, agent, investment adviser, or investment adviser representative in order to determine compliance with the Indiana Securities Act. Broker-dealers, agents, investment advisers, and investment adviser representatives 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 1-21-12; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2388; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

710 IAC 1-21-13 Access to persons by division

Authority: IC 23-2-1-15
 Affected: IC 23-2-1

Sec. 13. Members of the division staff may interview individuals, included within the scope of IC 23-2-1, who may be present on the broker-dealer's or investment adviser's premises and who voluntarily consent to be interviewed. If such 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 monitoring, surveillance, or interference by any kind of device or by persons who are not members of the division staff. *(Securities Division; 710 IAC 1-21-13; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2388; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

710 IAC 1-21-14 Failure to cooperate

Authority: IC 23-2-1-15
 Affected: IC 23-2-1-11

Sec. 14. (a) A person shall cooperate in any inquiry, investigation, or 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 thereunder. 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 23-2-1-11(a)(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 pursuant to IC 23-2-1 or as may otherwise be provided by law.
- (2) The failure to answer any question pertinent to inquiry made pursuant to IC 23-2-1 or other applicable law unless the response to said 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 such 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 thereof, 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 23-2-1 or any other applicable law.
- (6) Aiding or abetting another person's failure to cooperate.

(Securities Division; 710 IAC 1-21-14; filed Feb 18, 1998, 9:45 a.m.: 21 IR 2388; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)

ARTICLE 2. SUPERVISION OF CONTINUING CARE CONTRACTS

Rule 1. Definitions

710 IAC 2-1-1 Definitions

Authority: IC 23-2-4-24
 Affected: IC 23-2-1-15; IC 23-2-4-1

Sec. 1. As used in 710 IAC 2, the term:

“Commissioner” means the securities commissioner as provided in IC 23-2-1-15(a).

“Health facility” shall have the same meaning as provided in IC 16-10-4-2 [*IC 16-10 was repealed by P.L.2-1993, SECTION*]

209, effective July 1, 1993.]

“Manager” means any person, other than employees of the provider, who contracts with the provider to perform managerial services in a home. *(Securities Division; 710 IAC 2-1-1; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

Rule 2. Applications for Registration

710 IAC 2-2-1 Filing date

Authority: IC 23-2-4-24

Affected: IC 23-2-4-3

Sec. 1. For purposes of IC 23-2-4-3(d), an application shall not be considered filed until all required forms and fees are received by the commissioner. *(Securities Division; 710 IAC 2-2-1; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

710 IAC 2-2-2 Contents of application for registration

Authority: IC 23-2-4-24

Affected: IC 23-2-4-4

Sec. 2. An application for registration under IC 23-2-4 shall contain:

(1) the following information on the form prescribed by the commissioner:

- (A) the name and address of the home;
- (B) the name and address of the provider;
- (C) the name and address of a person to whom correspondence may be directed;
- (D) the current and maximum occupancy of the home;
- (E) the date on which the fiscal year of the home ends;
- (F) the name and address of any other home currently or previously operated by the provider or manager of the home;
- (G) the name and address of the escrow agent for deposit of entrance fees and a copy of the escrow agreement;
- (H) if the operation of the home has not begun, a statement of the anticipated source and application of funds to be used in the purchase or construction of the home, and the estimate of the funds, if any, which are anticipated to be necessary to pay for start-up losses;
- (I) a copy of the forms of agreement for continuing care used by the provider.

(2) an initial disclosure statement in compliance with IC 23-2-4-4 and 710 IAC 2-3;

(3) the provider's articles of incorporation or association, if not already on file with the secretary of state; and

(4) any code of rules or by-laws to which a resident must agree to abide.

(Securities Division; 710 IAC 2-2-2; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

710 IAC 2-2-3 Amendments

Authority: IC 23-2-4-24

Affected: IC 23-2-4-3

Sec. 3. (a) An application for registration shall be amended within 30 days after any change (other than a change in occupancy) in the information required by 710 IAC 2-2-2.

(b) An application may be amended by filing a copy of the form prescribed for applications, with appropriate changes. *(Securities Division; 710 IAC 2-2-3; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

Rule 3. Initial Disclosure Statement

710 IAC 2-3-1 Form of initial disclosure statement

Authority: IC 23-2-4-24

Affected: IC 23-2-4-4

Sec. 1. An initial disclosure statement shall be printed or typed on paper 8 1/2 inches by 11 inches. The statement shall be bound, stapled, or otherwise securely fastened. (*Securities Division; 710 IAC 2-3-1; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 2-3-2 Pictorial or graphic representations; sales material

Authority: IC 23-2-4-24

Affected: IC 23-2-4-4

Sec. 2. (a) An initial disclosure statement shall contain no photographic reproductions, drawings or artist's renderings, other than actual plans of the home. No inaccurate or misleading photograph or diagram shall be contained in any initial disclosure statement.

(b) No sales or advertising material shall appear in the initial disclosure statement.

(c) The provider shall keep and maintain a file of all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical; scripts of any recording, radio, or television announcement; and any sales kits or literature to be used in solicitation of persons to enter into a continuing care agreement. The file shall be kept with the records of the home. Documents shall be kept in the file for at least two years. (*Securities Division; 710 IAC 2-3-2; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 2-3-3 Material information

Authority: IC 23-2-4-24

Affected: IC 23-2-4-4

Sec. 3. (a) An initial disclosure statement shall contain all material information not expressly required, that is necessary, under the circumstances, to make the statements made not misleading.

(b) An initial disclosure statement shall be amended at any time if necessary to prevent the statement from containing any material misstatement of fact or omission of a material fact.

(c) The provider may file a sworn petition requesting that the commissioner rule as to the materiality of any information. The commissioner's ruling shall be based solely on the representations contained in such petition and shall be valid and effective only to the extent that such representations are true and complete.

(d) If the commissioner rules that information is material, such information shall be included in the initial disclosure statement. If the commissioner rules that the information is not material, the initial disclosure statement shall not be deemed in violation of 710 IAC 2-3 by virtue of the omission of such information. (*Securities Division; 710 IAC 2-3-3; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 2-3-4 Initial disclosure statement to be kept current

Authority: IC 23-2-4-24

Affected: IC 23-2-4-4

Sec. 4. (a) An initial disclosure statement dated more than one year prior to the date of delivery shall not comply with the requirements of 710 IAC 2-3.

(b) An initial disclosure statement shall be amended no less frequently than once each year. (*Securities Division; 710 IAC 2-3-4; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 2-3-5 Contents of an initial disclosure statement

Authority: IC 23-2-4-24

Affected: IC 23-2-4

Sec. 5. The initial disclosure statement shall contain the following information:

(1) Cover Page. The following information shall appear on the cover page of the initial disclosure statement:

(A) In bold face, the words "INITIAL DISCLOSURE STATEMENT."

(B) The name and address of the home.

- (C) The name and address of the provider, if different from that of the home.
- (D) If the provider is affiliated with a religious, charitable, or other nonprofit organization, a statement to that effect and the name and address of such organization.
- (E) The following statement, in at least ten (10) point type:

NOTICE TO PROSPECTIVE RESIDENTS

“ALL PROSPECTIVE RESIDENTS SHOULD READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE ENTERING INTO ANY CONTRACT OR WRITTEN AGREEMENT OR PAYING ANY FEE. ADDITIONALLY, A REPRESENTATIVE OF THE PROVIDER IS AVAILABLE DURING NORMAL BUSINESS HOURS TO ANSWER ANY QUESTIONS RELATING TO THIS DISCLOSURE STATEMENT AND THE REPRESENTATIONS CONTAINED HEREIN.”

- (2) Table of Contents, containing at least the following headings in the following order: The Provider, The Manager, Management's Discussion and Analysis of Financial Condition, The Home, Services, Cancellation of the Contract, Management and Principal Owners of the Provider, Management and Principal Owners of the Manager, Litigation, Opinion of Independent Accountants, Financial Statements, Form of Continuing Care Agreements.
- (3) The Provider. Information concerning the provider, including but not limited to:
 - (A) date and form of organization;
 - (B) affiliation with any religious, charitable, or other nonprofit organization;
 - (C) description of the provider's business, including the name and address of any other home or health facility owned or operated, any property in which the provider owns a twenty-five percent (25%) interest and on which a home or health facility is intended to be located, and a description of any other business not related to continuing care or health care; and
 - (D) a statement as to whether, within ten (10) years prior to the date of the initial disclosure statement, he:
 - (i) was convicted of a crime;
 - (ii) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against him;
 - (iii) had a prior discharge in bankruptcy or was found insolvent in any court action; and
 - (iv) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

This clause does not require a negative disclosure.

- (4) The Manager. The same information required for the provider under subdivision (3).
- (5) Management's Discussion and Analysis of Financial Condition:
 - (A) Liquidity. Discuss the provider's ability to generate cash adequate to meet its needs for cash. In particular, discuss on both a long-term and a short-term basis any known trends that are reasonably likely to result in the provider's liquidity increasing or decreasing in a material way. If a cash shortage is identified, indicate the course of action the provider has taken or proposes to take to remedy the shortage and identify and separately describe both internal and external sources of cash.
 - (B) Capital Resources. Describe the provider's commitments for capital expansion, renovation, and other expenditures. Indicate the anticipated source of funds needed to fulfill such commitments. Discuss any expected changes in the mix of equity, debt, and any off-balance sheet financing arrangements.
 - (C) Results of Operations. Discuss the provider's results of operations during the past three (3) years, using year-to-year comparisons when practical. Describe any unusual or infrequent 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. Also describe any known trends or uncertainties that have had or that the provider reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operation.
 - (D) Other. Discuss any other information necessary to an understanding of the provider's financial condition, changes in financial condition, and results of operations. Focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amount of:
 - (i) matters that would have an impact on future operations and have not had an impact in the past; and
 - (ii) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

(6) The Home. A description of the home and its facilities, including a description of any other health care facility, the services of which the resident may be entitled to under the continuing care agreement, including:

- (A) general physical description of the home;
- (B) the number of residents of the home;
- (C) facilities for meals, laundry, and transportation;
- (D) recreational facilities;
- (E) medical service facilities;
- (F) a description of the staff of the home, including a statement as to whether any professional persons are on the staff; and
- (G) a description of the community in which the home is located.

(7) Services. A description of all services to be provided by the provider under its continuing care agreements with contracting parties, and a description of all fees for those services, including any conditions under which the fees may be adjusted. Services described must include:

- (A) meal services;
- (B) laundry services;
- (C) transportation services;
- (D) nursing services; and
- (E) medical services.

(8) Cancellation of the Contract. A description of the terms and conditions under which the continuing care agreement can be cancelled, and a description of the terms and conditions under which fees may be refunded.

(9) Management and Principal Owners of the Provider:

- (A) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider.
- (B) For each officer, director, trustee, partner, manager, or person holding a similar position of the provider, the following information:
 - (i) His name, title, and duties.
 - (ii) His business experience, including all employments for the last ten (10) years.
 - (iii) A statement as to whether, within ten (10) years prior to the date of the initial disclosure statement, he:
 - (AA) was convicted of a crime;
 - (BB) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against him;
 - (CC) had a prior discharge in bankruptcy or was found insolvent in any court action; and
 - (DD) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

This item does not require a negative disclosure.

(10) Management and Principal Owners of the Manager. The same information required for the provider in subdivision (9).

(11) Litigation. A statement as to whether the provider or manager is party to any pending litigation involving claims under IC 23-2-4, or any litigation the result of which may materially affect the financial condition of the provider.

(12) Opinion of Independent Accountants. The report of an independent certified public accountant, based on an examination of the issuer's financial statements in accordance with generally accepted auditing standards, including such tests of the accounting records and such other auditing procedures as considered necessary under the circumstances, and an opinion that such financial statements fairly present the financial position of the issuer and the results of its business operations for the periods stated therein.

(13) Financial Statements. The provider's financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet as of the provider's last fiscal year, and income statements for the last three (3) fiscal years, or such shorter period of time as the provider has been in operation.

(14) Form of Continuing Care Agreements. A copy of the continuing care agreement proposed by the provider. The copies must be bound in the initial disclosure statement but may be detachable for execution by the parties.

(15) Any other information the commissioner may require by order.

(Securities Division; 710 IAC 2-3-5; filed Jan 30, 1985, 9:33 a.m.: 8 IR 612; filed Dec 5, 1988, 8:20 a.m.: 12 IR 918; errata filed Feb 21, 1989, 9:45 a.m.: 12 IR 1558; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

710 IAC 2-3-6 Delivery of initial disclosure statement

Authority: IC 23-2-4-24
Affected: IC 23-2-4-7

Sec. 6. A provider shall not be deemed to have complied with IC 23-2-4-7 unless the initial disclosure statement complies with 710 IAC 2-3-4 and 710 IAC 2-3-5, and the initial disclosure statement is delivered not later than *[sic.]* the earliest of:

- (1) 24 hours prior to the execution of the continuing care agreement; and
- (2) the payment of any application fee, entrance fee, deposit or any other charge, by the contracting party.

(Securities Division; 710 IAC 2-3-6; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

Rule 4. Annual Disclosure Statement

710 IAC 2-4-1 Annual disclosure statement

Authority: IC 23-2-4-24
Affected: IC 23-2-4-5

Sec. 1. The annual disclosure statement required to be filed under IC 23-2-4-5 shall be accompanied by the form prescribed by the commissioner for applications for registration under 710 IAC 2-2-2. *(Securities Division; 710 IAC 2-4-1; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

Rule 5. Escrow of Entrance Fees; Letters of Credit

710 IAC 2-5-1 Application fees

Authority: IC 23-2-4-24
Affected: IC 23-2-4-1; IC 23-2-4-10

Sec. 1. An application fee not exceeding \$250 shall be presumed to cover the provider's reasonable costs in processing applications. Application fees exceeding \$250 shall not be charged unless the provider first files with the commissioner an itemized statement of all costs incurred in processing applications, and the commissioner approves the statement by order. *(Securities Division; 710 IAC 2-5-1; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

710 IAC 2-5-2 Escrow accounts

Authority: IC 23-2-4-24
Affected: IC 23-2-4-10

Sec. 2. All escrow accounts required under IC 23-2-4-10 shall comply with the following:

- (1) An escrow agreement shall be entered into between the provider and a bank or trust company, or any other person approved by the commissioner by order, as escrow agent. The agreement shall state that its purpose is to protect the contracting party, and provide for the escrow agent to release and pay over the funds to the provider or contracting party as required under IC 23-2-4-10.
- (2) Checks shall be made payable to the escrow agent; or endorsed to the escrow agent for deposit only by the provider.
- (3) The account shall be established with an escrow agent, and the funds shall be kept and maintained in an account separate and apart from the provider's business accounts.
- (4) All proceeds so deposited shall remain the property of the contracting party and shall not be subject to any liens or charges by the escrow agent, or judgments, garnishments, or creditor's claims against the provider until released pursuant to IC 23-2-4-10.
- (5) The escrow agent shall provide a statement of the escrow account to the commissioner at his request.

(Securities Division; 710 IAC 2-5-2; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

710 IAC 2-5-3 Letters of credit, bonds, negotiable securities

Authority: IC 23-2-4-24

Affected: IC 23-2-4-10; IC 23-2-4-11

Sec. 3. (a) Letters of credit, surety bonds, and negotiable securities proposed to be filed with the commissioner in lieu of establishment of an escrow account under IC 23-2-4-10, shall be in an amount reasonably anticipated to be equal to or in excess of the maximum amount of entrance fees which might be otherwise subject to escrow requirements.

(b) Surety bonds proposed to be filed shall be issued by a surety company authorized to do business in Indiana.

(c) Letters of credit proposed to be filed shall be issued by a bank or trust company authorized to do business in Indiana.

(d) Letters of credit shall be drawable on the commissioner's sight draft, accompanied by the commissioner's certification that contracting parties have been found to be entitled to refund of entrance fees.

(e) Letters of credit, surety bonds, and negotiable securities must be accompanied by the undertaking of the provider not to accept any entrance fee which would make the amount of fees otherwise subject to escrow requirements exceed the amount of the letter of credit, surety bond, or negotiable securities. *(Securities Division; 710 IAC 2-5-3; filed Jan 30, 1985, 9:33 am: 8 IR 614; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

Rule 6. Financial Condition of Provider

710 IAC 2-6-1 Financial condition

Authority: IC 23-2-4-24

Affected: IC 23-2-4-8

Sec. 1. For purposes of IC 23-2-4-8(a)(6), the commissioner may find that the financial condition of a provider may jeopardize the care of the residents if:

(1) the report of an independent public accountant, based upon an examination of the provider's financial statements in conformity with generally accepted accounting principles, expresses doubt that the provider will be able to continue in business or is qualified due to uncertainties arising from recurring operating losses, working capital deficiency, negative cash flow, default on a loan agreement, loss of key personnel, work stoppages or other labor difficulties, or an uninsured catastrophe; or

(2) the provider is in default on the payment of principal or interest on any debt which is secured by a mortgage on the real estate on which the home is located.

(Securities Division; 710 IAC 2-6-1; filed Dec 5, 1988, 8:20 a.m.: 12 IR 920; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

ARTICLE 3. BUSINESS TAKEOVER OFFERS

Rule 1. General Provisions

710 IAC 3-1-1 Filing a statement

Authority: IC 23-2-3.1-9

Affected: IC 23-2-3.1-3

Sec. 1. (a) The offeror must file with the commissioner the takeover offer statements before or at the same time that the offeror delivers the statement to the target company. If the takeover offer is not subject to the filing requirements of the Exchange Act of 1934, as amended, the takeover offer statements must be filed before or at the time that the offeror first publishes, sends, or gives an offer or solicitation for tenders to security holders. If the takeover offer is subject to the filing requirements of the Exchange Act, the statements must be filed on the same date as the offeror files with the Securities and Exchange Commission.

(b) After a tender offer statement has been filed with the commissioner, the offeror must file with the commissioner amendments to the statement and news releases, and the target company must file with the commissioner written materials delivered to offerees and news releases. *(Securities Division; 710 IAC 3-1-1; filed Aug 27, 1990, 4:10 p.m.: 14 IR 134; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)*

710 IAC 3-1-2 Notice; appearances; objections

Authority: IC 23-2-3.1-9
Affected: IC 23-2-3.1-7

Sec. 2. (a) The hearing officer may require the offeror to provide notice of the takeover offer hearing to the shareholders of the target company. The notice may be by mail or may be published in each publication in an Indiana newspaper of general circulation in which the offeror had published the offer, unless the target company has published the offer.

(b) The hearing officer may by order establish a time within which any person desiring to become a party to the proceeding pursuant to IC 23-2-3.1-7(d) must file an appearance.

(c) The hearing officer may by order establish a time within which a party desiring to present evidence must file with the hearing officer.

(d) The hearing officer shall prohibit the participation in any proceeding of any person who does not comply with an order under subsections (b) through (c), unless good cause is shown why relief from an order should be granted. (*Securities Division; 710 IAC 3-1-2; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 3-1-3 Financial sources; takeover date

Authority: IC 23-2-3.1-9
Affected: IC 23-2-3.1-5.5

Sec. 3. (a) If the statement required under IC 23-2-3.1-5.5(d) does not apply to the offeror because of IC 23-2-3.1-5.5(b), the offeror must file a certified document signed by a duly authorized officer that IC 23-2-3.1-5.5(d) does not apply.

(b) If the offeror has included in its statement filed with the commissioner the information required in IC 23-2-3.1-5.5(e), the offeror may satisfy the requirement of IC 23-2-3.1-5.5(d) by a filing titled "Statement under 5.5" and by referring to the appropriate sections in the tender offer statement. (*Securities Division; 710 IAC 3-1-3; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462*)

710 IAC 3-1-4 Contracts

Authority: IC 23-2-3.1-9
Affected: IC 23-2-3.1-5

Sec. 4. (a) "Contract", for the purposes of this article, means a written or verbal agreement for the purchase, sale, lease, or assignment of goods, services, or intellectual property.

(b) A description of a contract required under this section must be in English and include the following:

- (1) The date the contract was entered into.
- (2) The parties to the contract.
- (3) The goods, services, or intellectual property that is the subject of the contract.
- (4) The approximate aggregate amount, in United States dollars, of the subject of the contract.
- (5) The term of the contract.
- (6) Any other information necessary to understand the contract.

(c) In determining if a government is "in free association with the United States", the hearing officer may consider the following:

- (1) Whether the United States maintains a diplomatic relationship, including, but not limited to, any of the following:
 - (A) Recognizing the foreign government.
 - (B) Establishing an embassy or consulate in the foreign country.
 - (C) Having the United States representative granted diplomatic status in the foreign country.
- (2) Whether federal legislation exists that limits trade including, but not limited to, military goods or "dual use" goods, with foreign governments because of national security concerns.
- (3) Whether the foreign government has legislative or other barriers to the import or export of goods or services produced by individuals or organizations domiciled or incorporated in Indiana.
- (4) Any other factors the hearing officer deems relevant.
- (d) Along with the tender offer statement, the offeror will file a list of all foreign governments with which the offeror and its

affiliates have contracts.

(e) If the information required under IC 23-2-3.1-5(c) does not apply to the offeror, the offeror must file a certified document signed by a duly authorized officer that:

- (1) the offeror and its affiliates are not a party to a contract specified in IC 23-2-3.1-5(c)(1);
- (2) the offeror and its affiliates have not received a subsidy as specified in IC 23-2-3.1-5(c)(2); and
- (3) none of the officers or directors of the offeror or its affiliates hold any office or appointments as specified in IC 23-2-3.1-5(c)(3).

(Securities Division; 710 IAC 3-1-4; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462)

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