

IC 23-19-2-2 Version a

Exempt transactions

Note: This version of section amended by P.L.71-2014, SEC.1. See also following version of this section amended by P.L.106-2014, SEC.3.

IC 23-19-2-2 Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

- (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.

(iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:
- (A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or
 - (B) has a fixed maturity or a fixed interest or dividend, if:
 - (i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.
- (9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.
- (10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.
- (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
- (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - (B) a general solicitation or general advertisement of the transaction is not made; and
 - (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.
- (12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.
- (13) A sale or offer to sell to:
- (A) an institutional investor;
 - (B) a federal covered investment adviser; or
 - (C) any other person exempted by rule adopted or order issued under this article.
- (14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:
- (A) not more than twenty-five (25) purchasers are present in this state during any

twelve (12) consecutive months, other than those designated in subdivision (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) An offer to sell or a sale of a security of an issuer under an offering made and completed solely within Indiana, if:

(A) the transaction is part of a single issue in which:

(i) not more than twenty-five (25) purchasers are present in Indiana during any twelve (12) consecutive months, other than those designated in subdivision (13);

(ii) general solicitation or general advertising is not made in connection with the offer to sell or the sale of the security;

(iii) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article, or to an agent registered under this article, for soliciting a prospective purchaser in Indiana; and

(iv) the issuer reasonably believes that all the purchasers in Indiana, other than those designated in subdivision (13), are purchasing for investment; and

(B) the issuer:

(i) is not a registered securities broker-dealer; and

(ii) does not sell issue by or through a registered securities broker-dealer; and

(C) the issuer files a notice of the issuer's intent to sell a security in accordance with this subdivision on a form prescribed by the commissioner.

The commissioner may require the issuer to furnish any additional information considered

necessary by the commissioner to determine the issuer's qualifications.

(25) An offer to sell or a sale of a security of an issuer, if the following apply:

(A) The transaction is part of a single issue in which:

(i) the offer or sale is made in compliance with 17 CFR 230.504, 17 CFR 230.505, and 17 CFR 230.506, including any offer or sale made exempt by the application of 17 CFR 508(a);

(ii) the issuer is required to submit a notice filing on a Form D not later than fifteen (15) days after the first sale of securities in this state; and

(iii) by submitting the notice described in item (ii), the issuer agrees, upon written request by the commissioner, to furnish to the commissioner any information the issuer furnished to offerees.

(B) For offerings made in compliance with 17 CFR 230.504, no commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under this article. It is a defense to a violation of this clause if the issuer sustains the burden of proof that the issuer did not know and, in the exercise of reasonable care could not have known, that the person who received the commission, fee, or other remuneration was not properly registered.

(C) In all sales to purchasers other than those described in subdivision (13) for offerings made in compliance with 17 CFR 230.504, at least one (1) of the following is satisfied:

(i) The investment is suitable for the purchaser upon the basis of facts, if any facts are disclosed by the purchaser, as to the purchaser's other securities holdings, financial situation, and needs. For purposes of this item only, it is presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, the investment is suitable.

(ii) The purchaser, either alone or with the purchaser's representative or representatives, has the knowledge and experience in financial and business matters that demonstrate that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(26) Subject to section 2.4 of this chapter, an offer to sell or a sale of a security by an issuer in a transaction that meets all the following requirements:

(A) The sale of the security is made only to a person who:

(i) is; or

(ii) the issuer reasonably believes is;

an accredited investor as defined in 17 CFR 230.501(a).

(B) The issuer complies with the requirements in section 2.6 of this chapter.

(C) The issuer:

(i) reasonably believes that all purchasers are purchasing for investment; and

(ii) is not selling or offering to sell the security with the view to or for sale in connection with a distribution of the security.

If a security is resold within twelve (12) months after the date that the security was sold in reliance on the exemption under this subdivision, the sale of the security in reliance on this exemption is presumed to be with a view to distribution and not for investment. However, the presumption does not apply to a security resold under a registration statement effective under IC 23-19-3-4 or IC 23-19-3-5 or to an accredited investor under an exemption available under this section.

As added by P.L.27-2007, SEC.23. Amended by P.L.71-2014, SEC.1..

IC 23-19-2-2 Version b

Exempt transactions

Note: This version of section amended by P.L.106-2014, SEC.3. See also preceding version of this

section amended by P.L.71-2014, SEC.1.

IC 23-19-2-2 Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

- (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

- (A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (B) the security is sold at a price reasonably related to its current market price;
- (C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
- (D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

- (i) a description of the business and operations of the issuer;
- (ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;
- (iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
- (iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

- (E) any one (1) of the following requirements is met:

- (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.
- (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.
- (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.
- (iv) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(13) A sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this article.

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subdivision (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

- (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
- (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
- (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) Subject to the following, an offer or sale of securities by an issuer made after June 30, 2014, only to persons who are or the issuer reasonably believes are accredited investors:

(A) The exemption under this subdivision is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with:

- (i) an unidentified company or companies; or
- (ii) another entity or person.

(B) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on the exemption under this subdivision within twelve (12) months after sale is presumed to be with a view to distribution and not for investment, except:

- (i) a resale under a registration statement effective under IC 23-19-3; or
- (ii) a resale to an accredited investor under an exemption available under the Indiana Uniform Securities Act.

(C) Except as provided in clause (D), the exemption under this subdivision is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of the underwriter:

- (i) within the last five (5) years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

- (ii) within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or any criminal offense involving fraud or deceit;
- (iii) is currently subject to any state or federal administrative enforcement order or judgment entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or
- (iv) is currently subject to any order, judgment, or decree of any court with jurisdiction, entered within the last five (5) years, temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(D) Clause (C) does not apply if:

- (i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against the party;
- (ii) before the first offer under the exemption described in this subdivision, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
- (iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.

(E) A general announcement of the proposed offering may be made by any means. A general announcement described in this clause must include only the following information, unless additional information is specifically permitted by the commissioner:

- (i) The name, address, and telephone number of the issuer of the securities.
- (ii) The name, a brief description, and price (if known) of any security to be issued.
- (iii) A brief description of the business of the issuer in twenty-five (25) words or less.
- (iv) The type, number, and aggregate amount of securities being offered.
- (v) The name, address, and telephone number of the person to contact for additional information.
- (vi) A statement that indicates that sales will be made only to accredited investors, that no money or other consideration is being solicited or will be accepted by way of the general announcement, that the securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission, and that the securities are being offered and sold under an exemption from registration.

(F) The issuer, in connection with an offer, may provide information in addition to the general announcement under clause (E), if the information:

- (i) is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
- (ii) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(G) No telephone solicitation is permitted unless before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(H) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this subdivision.

(I) The issuer shall file with the division a notice of transaction, a consent to service

of process, a copy of the general announcement, and a fee established by the commissioner within fifteen (15) days after the first sale in Indiana.

(25) An offer to sell or a sale of a security of an issuer made after June 30, 2014, if:

(A) the transaction is part of a single issue in which:

(i) the offer or sale is made in compliance with 17 CFR 230.504, 17 CFR 230.505, and 17 CFR 230.506, including any offer or sale made exempt by the application of 17 CFR 508(a);

(ii) the issuer is required to submit a notice filing on a Form D not later than fifteen (15) days after the first sale of securities in this state; and

(iii) by submitting the notice described in item (ii), the issuer agrees, upon written request by the commissioner, to furnish to the commissioner any information the issuer furnished to offerees;

(B) for offerings made in compliance with 17 CFR 230.504, no commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under this article. It is a defense to a violation of this clause if the issuer sustains the burden of proof that the issuer did not know and, in the exercise of reasonable care could not have known, that the person who received the commission, fee, or other remuneration was not properly registered; and

(C) in all sales to purchasers other than those described in subdivision (13) for offerings made in compliance with 17 CFR 230.504, at least one (1) of the following is satisfied:

(i) The investment is suitable for the purchaser upon the basis of facts, if any facts are disclosed by the purchaser, as to the purchaser's other securities holdings, financial situation, and needs. For purposes of this item only, it is presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, the investment is suitable.

(ii) The purchaser, either alone or with the purchaser's representative or representatives, has the knowledge and experience in financial and business matters that demonstrate that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(26) Any offer or sale of securities after June 30, 2014, by an issuer that meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR 230.147. However, all the following apply:

(A) The issuer must make a notice filing with the division on a form prescribed by the commissioner within thirty (30) days after the first sale in Indiana.

(B) Any commission, discount, or other remuneration for sales of securities in Indiana must be paid or given only to dealers or salespersons licensed under this article.

(C) The issuer must pay the fee established by the commissioner. However, no filing fee is required to file amendments to Form D of the Securities and Exchange Commission.

(D) Within ten (10) days of receiving the form required by this subdivision, the commissioner may require the issuer to furnish any additional information considered necessary by the commissioner to determine the issuer's qualifications.

(27) An offer or sale of a security made after June 30, 2014, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(A) The issuer of the security is a business entity organized under the laws of Indiana and authorized to do business in Indiana.

(B) The transaction meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and

Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

(C) Except as provided in clause (E), the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor or institutional investor, does not exceed the following amount:

(i) If the issuer has not undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on the exemption under this subdivision.

(ii) If the issuer has undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars (\$2,000,000), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on the exemption under this subdivision.

(D) An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in clause (C).

(E) The issuer does not accept more than five thousand dollars (\$5,000) from any single purchaser unless the purchaser is an accredited investor.

(F) Unless waived by written consent by the commissioner, not less than ten (10) days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(i) Make a notice filing with the division on Form D of the Securities and Exchange Commission.

(ii) Pay the fee established by the commissioner. However, no filing fee is required to file amendments to Form D of the Securities and Exchange Commission.

(iii) Provide the commissioner a copy of the disclosure document to be provided to prospective investors under clause (L).

(iv) Provide the commissioner a copy of an escrow agreement with a bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association, or credit union authorized to do business in Indiana in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person.

(v) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement.

(vi) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement.

(G) The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), an entity that would be an investment company but for the exclusions

provided in Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)), or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 15 U.S.C. 78o(d)).

(H) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 (17 CFR 230.147(e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(I) The issuer requires each purchaser to certify in writing or electronically as follows:

"I UNDERSTAND AND ACKNOWLEDGE THAT I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company."

(J) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Indiana and, if applicable, is an accredited investor.

(K) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in clause (F)(iv). The commissioner may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection.

(L) The issuer of securities offered under an exemption under this subdivision

provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(i) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

(ii) The identity of all persons owning more than twenty percent (20%) of the ownership interests of any class of securities of the company.

(iii) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

(iv) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered.

(v) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Internet web site operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital.

(vi) For each person identified as required in this clause, a description of the consideration being paid to the person for such assistance.

(vii) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management.

(viii) The names and addresses, including the Uniform Resource Locator, of each Internet web site that will be used by the issuer to offer or sell securities under an exemption under this subdivision.

(ix) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

(M) The exemption under this subdivision may not be used in conjunction with any other exemption under this article, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve (12) month period.

(N) The exemption described in this subdivision does not apply if an issuer or person affiliated with the issuer or offering is subject to disqualification established by the commissioner by rule or contained in the Securities Act of 1933 (15 U.S.C.

77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.262). However, this clause does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the commissioner, the commissioner determines that it is not necessary under the circumstances that an exemption is denied.

(ii) The issuer establishes that it made a factual inquiry into whether any

disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

- (O) The offering exempted under this subdivision is made exclusively through one (1) or more Internet web sites and each Internet web site is subject to the following:
- (i) Before any offer or sale of securities, the issuer must provide to the Internet web site operator evidence that the issuer is organized under the laws of Indiana and is authorized to do business in Indiana.
 - (ii) Subject to items (iii) and (v), the Internet web site operator must register with the division by filing a statement, accompanied by the filing fee established by the commissioner, that includes all the information described in section 2.3(b) of this chapter.
 - (iii) The Internet web site operator is not required to register as a broker-dealer if all the conditions in section 2.3(c) of this chapter apply with respect to the Internet web site and its operator.
 - (iv) If any change occurs that affects the Internet web site's registration exemption, the Internet web site operator must notify the division within thirty (30) days after the change occurs.
 - (v) The Internet web site operator is not required to register as a broker-dealer under item (ii) if the Internet web site operator is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78o) or is a funding portal registered under the Securities Act of 1933 (15 U.S.C. 77d-1) and the Securities and Exchange Commission has adopted rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(h)) and P.L. 112-106, Section 304, governing funding portals. This item does not require an Internet web site operator to register as a broker-dealer under the Securities Exchange Act of 1934 or as a funding portal under the Securities Act of 1933.
 - (vi) The issuer and the Internet web site operator must maintain records of all offers and sales of securities effected through the Internet web site and must provide ready access to the records to the division, upon request. The records of an Internet web site operator under this clause are subject to the reasonable periodic, special, or other audits or inspections by a representative of the commissioner, in or outside Indiana, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this item.
 - (vii) The Internet web site operator shall limit web site access to the offer or sale of securities to only Indiana residents.
 - (viii) The Internet web site operator shall not hold, manage, possess, or handle investor funds or securities.
 - (ix) The Internet web site operator may not be an investor in any Indiana offering under this subdivision or subdivision (26).
- (P) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding.

An issuer may satisfy the reporting requirement of this clause by making the information available on an Internet web site if the information is made available within forty-five (45) days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this clause with the division and, if the quarterly report is made available on an Internet web site, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(Q) In 2019 and every fifth year thereafter, the commissioner shall cumulatively adjust the dollar limitations provided in clause (C) to reflect the change in the Consumer Price Index for all Urban Consumers published by the federal Bureau of Labor Statistics rounding each dollar limitation to the nearest fifty thousand dollars (\$50,000).

As added by P.L.27-2007, SEC.23. Amended by P.L.106-2014, SEC.3.