INDIANA SECRETARY OF STATE
SECURITIES DIVISION

UPDATED STATEMENT OF POLICY REGARDING ELECTRONIC FILING OF SECURITIES REGISTERED BY COORDINATION

Preamble

On December 1, 2005, the Securities Commissioner enacted a Statement of Policy Regarding Electronic Filing of Securities Registered by Coordination. Due to technical problems, the email address included in that Statement of Policy could not provide an immediate confirmation of receipt. The email address has been updated to sos-securefilings@state.in.us and is included in Paragraph A(1) on page 2. Accordingly the Statement of Policy Regarding Electronic Filing of Securities Registered by Coordination is updated to include the current email address.

The Indiana Secretary of State and the Securities Commissioner have determined that it is appropriate and in the public interest to issue a Statement of Policy permitting the electronic filing of certain documents in connection with an application to register securities with the Indiana Securities Division by coordination.

Statutory Context

Section 23-2-1-3 of the Indiana Securities Act (Ind. Code §23-2-1 *et seq.* "Act") prohibits anyone from offering or selling a security in the state of Indiana unless the security is registered, the security or transaction is exempt, or the security is a federal-covered security. Where a registration statement has been filed with the U.S. Securities and Exchange Commission ("SEC") under the Securities Act of 1933 in connection with the same offering, the securities may be registered by coordination ("RC") in Indiana. In the case of an RC, the application must be accompanied by the following documents: (1) one (1) copy of the latest registration statement filed under the Securities Act of 1933 as of the date of filing; (2) a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, any agreements with or among underwriters, any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security; (3) such other information, or copies of other documents, filed under the Securities act of 1933 as the Commissioner may request; and, (4) an undertaking to forward all future amendments to the federal registration statement, other than an amendment that merely delays the effective date of the registration, promptly. Ind. Code §23-2-1-3(b). The Commissioner may by rule or otherwise permit the omission of an item of information or document from an RC application. Ind. Code §23-2-1-6(g). While the statute describes the documents that must accompany an RC, the Act does not define "accompanied".

Background

Over the past several years the number of applications for registration by coordination have been declining. This has been due to both the expansion of exemptions and preemption of state authority to review certain offerings under the National Securities Markets Improvement Act ("NSMIA," 104 P.L. 290, 1996). Nevertheless, there remain a significant number of applications to register by coordination filed with the Division. In every instance of an RC there is substantial duplication involved because the same material must be filed with both the SEC and the Division.

In 1984 the SEC developed and started using the electronic data gathering and retrieval ("EDGAR") system, which allowed for the electronic filing of registration statements, periodic reports, and other required documents. In 1987 the SEC mandated the electronic filing of all registration statements through the EDGAR system. 17 CFR §232.101(1987). Such filings are accessible by the public via the SEC web site www.sec.gov/edgar/searchedgar/webusers.htm. Hence most of the information which is required to accompany an RC application is available via the EDGAR system to both the Division and the public.

Given these developments it is no longer necessary for the Division to receive, file, and maintain paper copies of RC application materials which are available via the EDGAR system. It is not uncommon for such material to be more than 2 inches in thickness, and the adoption of this Policy Statement will reduce the amount of shelf space required for the Division to file and maintain the hard copies while enabling issuers to avoid unnecessary printing and courier expenses. The Division will still be able to carry out its review and comment function, and this change will not compromise its responsibility for investor protection.

Policy

The Securities Division will not pursue enforcement action against an issuer applying for registration in Indiana and who files a registration statement electronically on the EDGAR system so long as the issuer otherwise complies with Indiana law and the conditions set forth in this Statement of Policy.

(A) An issuer filing a registration statement on EDGAR in connection with securities to be offered in Indiana

(1) Shall notify the Commissioner of that fact in writing or by electronic mail at **sos-securefilings@state.in.us**;

(2) Shall identify those documents actually filed via EDGAR and available for online viewing; and,

(3) Shall provide the Central Index Key Number (CIK number) that will cross-reference the SEC filing.

(B) The following documents shall be deemed filed with the Commissioner if, and at such time as, they are available for online viewing via EDGAR provided that the EDGAR filer gives the Commissioner notice in writing or by electronic mail that the documents are so available for online viewing:

(1) The latest form of prospectus as filed under the Securities Act of 1933, as required by Ind. Code §23-2-1-4(b)(1);

(2) The statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions required by Ind. Code §23-2-1-4(b)(3);

(3) The content of the price amendment required by Ind. Code §23-2-1-4(b)(5);

(1) The post-effective amendment containing the information in the price amendment, if any, required by Ind. Code §23-2-1-4(b)(5);

(2) The prospectus amendments, other than amendments that merely delay the effective date of the registration statement, required by Ind. Code §23-2-1-4(b)(4).

(C) An EDGAR filer shall submit the following directly to the Commissioner:

(1) The filing fee required by Ind. Code §23-2-1-6(b);

(2) The Consent to Service of Process (Form U-2) required by Ind. Code §23-2-1-16;

(3) A Form U-1 that includes information on the amount of securities to be offered in Indiana; the states where a registration statement has been or will be filed; the name of any broker-dealer or agent of issuer registered to do business under the Act who may offer the securities in Indiana; and any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the SEC, all as required by 710 IAC 1-9-3;

(4) Notice of SEC effectiveness communicated in writing or by electronic mail to the Commissioner within one business day after the federal registration statement became effective with the SEC, which notice shall include, where applicable, an indication of when the price amendment would be filed federally via EDGAR; and,

(5) Following SEC and Indiana effectiveness of the registration statement, notice in writing or by electronic mail of the completion date of the initial distribution and the amount of securities sold in Indiana.

(D) EDGAR filers shall be exempt from furnishing the Commissioner with the following documents unless such documents are not available via EDGAR or the Commissioner so requests

(1) A copy of the issuer's articles of incorporation and by-laws currently in effect;

(2) A copy of the underwriting agreement;

(3) A copy of any indenture or other instrument governing issuance of the security;

(4) The specimen or copy of the security;

(5) The opinion of counsel regarding issuance of the securities;

(6) Sales literature;

(7) Post-effective filing of a balance sheet and income statement.

(E) Nothing in this Statement of Policy shall excuse an EDGAR filer from directly notifying the Commissioner of changes that render the registration statement or prospectus contained therein materially inaccurate or misleading as required by 710 IAC 1-10-3.

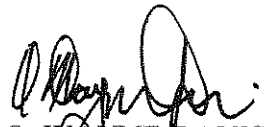
(F) The filing procedures in this Statement of Policy shall also apply to shelf registration filings.

(G) Nothing in this Statement of Policy shall preclude the Commissioner from initiating stop order proceedings pursuant to Ind. Code §23-2-1-7 or from requiring that any document filed via EDGAR be provided to the Commissioner in paper form.

This Updated Statement of Policy shall be effective from and after January 23, 2006.

DATED at Indianapolis, Indiana, this 20th day of January, 2006.

TODD ROKITA
SECRETARY OF STATE



O. WAYNE DAVIS
SECURITIES COMMISSIONER