Secretary of State
State of Indiana
Securities Division

Statement of Policy regarding merit review of securities offerings.

The Indiana Securities Commissioner is authorized by IC 23-2-1-7 to deny registration to offerings which, among other things, involve unreasonable promoter's profits, unreasonable brokerage compensation, or would tend to work a fraud on the investor. Pursuant to statutory authority, the Securities Division adopted the regulations found at 710 IAC 1-12-1 through 710 IAC 1-12-7. These regulations govern brokerage compensation for and the merits of stock and debt security offerings. In addition, the staff refers to the North American Securities Administrators Association Guidelines and Statements of Policy for additional merit standards with regard to various types of offerings. In utilizing this merit review policy, it is the intent of the Division to maintain a balance between the goal of preventing offerings which might tend to work a fraud on the citizens of the state of Indiana and the goal of facilitating business capital formation. The Commissioner retains the option to permit deviation from the merit standards, depending on the individual circumstances presented by a particular offering. Issuers wishing to deviate from a given standard should be prepared to present justification for the requested deviation.

The Division will apply merit review standards to all securities registered by qualification filed pursuant to IC 23-2-1-5 and to securities registered by coordination filed pursuant to IC 23-1-2-4.

The Commissioner is granted authority by IC 23-2-1-2(d) to deny exemptions under IC 23-2-1-2(a)(6), (7) and (8), as well as IC 23-2-1-2(b), to offerings which would not qualify for registration due to merit deficiencies. Pursuant to this authority, the staff may, if deemed necessary to further the intent of the Indiana Securities Act, apply merit standards to offerings which are exempt under IC 23-2-1-2(b)(10)(D), IC 23-2-1-2(b)(10)(E), or 710 IAC 1-13-6. However, as a general policy, the Securities Division will not apply merit standards to these types of exempt offerings. Thus, the Division will allow an exemption where the offering materials contain full disclosure regarding each material aspect of the offering. Offerings will be required to comply with the anti-fraud provisions of IC 23-2-1-12 and meet the suitability requirements of 710 IAC 1-13-6(d)(4).

In determining whether a particular private placement meets the suitability requirements of IC 23-2-1-2(b)(10)(D)(ii), the following standard, as found in the NASAA Uniform Limited Offering Exemption and at 710 IAC 1-13-6(d)(4), will be applied:

The investment must be suitable for the purchaser based upon the facts disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. It may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable; or the offering must require that a non-accredited investor either alone or with a purchaser representative have the knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

The Securities Commissioner may otherwise deny or revoke an exemption, or require compliance with additional conditions, if doing so would further the intent of the Indiana Securities Act.

Policy Statement, Bradley W. Skolnik, Indiana Securities Commissioner, 4-23-96.

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