

TITLE 710 SECURITIES DIVISION

PROPOSED INTERIM RULES

Identification Number: 710 IAC 5

Article 5 Assessment of Fines and Civil Penalties

Rule 1 Definitions

Rule 2 Assessment of Indiana Uniform Securities Act Fines and Civil Penalties

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Rule 1 Definitions

710 IAC 5-1-1	Applicability
710 IAC 5-1-2	“Commissioner” defined
710 IAC 5-1-3	“Fraud”, fraudulent”, “deceit”, and “defraud” defined
710 IAC 5-1-4	“Harmed person” defined
710 IAC 5-1-5	“Person” defined
710 IAC 5-1-6	“Respondent” defined

710 IAC 5-1-1 Applicability

Authority: Ind. Code § 23-19-6-1, Ind Code § 23-19-6-5, Ind Code § 23-2.5-1-8, Ind Code § 23-2.5-1-36, Ind Code § 23-2.5-11-6, Ind Code § 23-2-2.5-1, Ind Code § 23-2-2.5-42, Ind Code § 23-2-2.5-47, Ind Code § 25-11-1-8, Ind Code § 25-11-1-14, Ind Code § 23-2-6-22, and Ind Code § 23-2-6-34

Affected: Ind. Code § 23, Ind. Code § 25

Sec. 1. (a) Except as provided in subsection (b), the definitions contained in this title apply throughout this title.

(b) If a definition in this article conflicts with a definition of specific applicability in another part of this title or in a statute that controls another part of this title, the definition of specific applicability controls.

710 IAC 5-1-2 “Commissioner” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 2. “Commissioner” means the Indiana Securities Commissioner appointed under Ind. Code 23-19-6-1(a).

710 IAC 5-1-3 “Fraud” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 3. (a) Except as provided in subsection (b), “fraud”, “fraudulent”, “deceit”, and “defraud” have the meaning given in Ind. Code § 23-19-1-2(9).

(b) “Fraud” and “deceit” as it relates to franchises includes any misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

710 IAC 5-1-4 “Harmed Person” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 4. “Harmed person” means the person harmed, defrauded, misled, or deceived by the violation.

710 IAC 5-1-5 “Person” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 5. (a) Except as set forth in subsection (b), “person” has the meaning given in Ind. Code § 23-19-1-2(20).

(b) “Person” as it relates to commodities under Ind. Code 23-2-6 has the meaning set forth in Ind. Code 23-2-6-14.

710 IAC 5-1-6 “Respondent” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 6. “Respondent” means the responding party in the legal proceedings in which a fine or civil penalty has been imposed against.

Rule 2 Assessment of Indiana Uniform Securities Act Fines and Civil Penalties

710 IAC 5-2-1	Applicability
710 IAC 5-2-2	Mitigating Factors
710 IAC 5-2-3	Aggravating Factors
710 IAC 5-2-4	Multiple Violations

710 IAC 5-2-1 Applicability

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-19. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-2-2 Mitigating Factors

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1) The violation resulted in no harm to the public.**
- (2) The Respondent has had no other prior violations.**
- (3) The violation did not involve fraud.**
- (4) Any other circumstances presented by the Respondent for consideration.**

710 IAC 5-2-3 Aggravating Factors

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1) The Respondent has a history of prior violations.**
- (2) The Respondent has had a prior violation of similar behavior.**
- (3) The Respondent's actions caused significant harm or loss to the harmed person.**

- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The Respondent owed a fiduciary duty to the harmed person.**
- (6) The harmed person is at least sixty (60) years of age.**
- (7) The violation was committed while using or taking advantage of or in connection with a relationship that is based on religious affiliation or worship.**
- (8) The violation involved fraudulent conduct.**
- (9) The violation amounted to substantial gains to the Respondent.**
- (10) The Respondent obstructed or failed to comply with the Division's investigation.**
- (11) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-2-4 Multiple Violations

Authority: Ind. Code § 23-19-6-1

Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

Rule 3 Assessment of Indiana Franchise Act Fines and Civil Penalties

710 IAC 5-3-1	Applicability
710 IAC 5-3-2	Mitigating Factors
710 IAC 5-3-3	Aggravating Factors
710 IAC 5-3-4	Multiple Violations

710 IAC 5-3-1 Applicability

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-2-2.5. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-3-2 Mitigating Factors

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-3-3 Aggravating Factors

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1) The Respondent has a history of prior violations.**
- (2) The Respondent has had a prior violation of similar behavior.**
- (3) The Respondent's actions caused significant harm or loss to the harmed person.**
- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The violation involved fraudulent conduct.**
- (6) The violation amounted to substantial gains to the Respondent.**
- (7) The Respondent obstructed or failed to comply with the Division's investigation.**
- (8) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-3-4

Multiple Violations

47 Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-
Affected: Ind. Code § 23-2-2.5

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of imposing a civil penalty. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

Rule 4 Assessment of Indiana Loan Broker Act Fines and Civil Penalties

710 IAC 5-4-1	Applicability
710 IAC 5-4-2	Mitigating Factors
710 IAC 5-4-3	Aggravating Factors
710 IAC 5-4-4	Multiple Violations

710 IAC 5-4-1 Applicability

Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6
Affected: Ind. Code § 23-2.5

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-2.5. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-4-2 Mitigating Factors

Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6
Affected: Ind. Code § 23-2.5

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** The circumstances that lead to the violation are not likely to reoccur in the future.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-4-3 Aggravating Factors

Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6
Affected: Ind. Code § 23-2.5

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.

- (2) The Respondent has had a prior violation of similar behavior.**
- (3) The Respondent's actions caused significant harm or loss to the harmed person.**
- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The violation involved fraudulent conduct.**
- (6) The violation amounted to substantial gains to the Respondent.**
- (7) The Respondent obstructed or failed to comply with the Division's investigation.**
- (8) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-4-4 Multiple Violations

Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6
Affected: Ind. Code § 23-2.5

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of imposing a civil penalty. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

Rule 5 Assessment of Indiana Commodities Act Fines and Civil Penalties

710 IAC 5-5-1	Applicability
710 IAC 5-5-2	Mitigating Factors
710 IAC 5-5-3	Aggravating Factors
710 IAC 5-5-4	Multiple Violations

710 IAC 5-5-1 Applicability

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 1. (a) The Commissioner may impose a civil penalty of not more than ten thousand dollars (\$10,000) on a Respondent for any single violation under Ind. Code § 23-2-6. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-5-2 Mitigating Factors

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-5-3 Aggravating Factors

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.
- (2)** The Respondent has had a prior violation of similar behavior.
- (3)** The Respondent's actions caused significant harm or loss to the harmed person.

- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The Respondent owed a fiduciary duty to the harmed person.**
- (6) The harmed person is at least sixty (60) years of age.**
- (7) The violation was committed while using or taking advantage of or in connection with a relationship that is based on religious affiliation or worship.**
- (8) The violation involved fraudulent conduct.**
- (9) The violation amounted to substantial gains to the Respondent.**
- (10) The Respondent obstructed or failed to comply with the Division's investigation.**
- (11) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-5-4 Multiple Violations

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

Rule 6 Assessment of Indiana Collection Agency Act Fines and Civil Penalties

710 IAC 5-6-1	Applicability
710 IAC 5-6-2	Mitigating Factors
710 IAC 5-6-3	Aggravating Factors
710 IAC 5-6-4	Multiple Violations

710 IAC 5-6-1 Applicability

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14
Affected: Ind. Code § 25-11-1-15

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 25-11. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-6-2 Mitigating Factors

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14
Affected: Ind. Code § 25-11-1-15

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-6-3 Aggravating Factors

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14
Affected: Ind. Code § 25-11-1-15

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.
- (2)** The Respondent has had a prior violation of similar behavior.
- (3)** The Respondent's actions caused significant harm or loss to the harmed person.

- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The harmed person is at least sixty (60) years of age.**
- (6) The violation involved fraudulent conduct.**
- (7) The violation amounted to substantial gains to the Respondent.**
- (8) The Respondent obstructed or failed to comply with the Division's investigation.**
- (9) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-6-4 Multiple Violations

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14
Affected: Ind. Code § 25-11-1-15

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.