

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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FILED

2002 MAY 29 2:30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114
RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code §§ 33-2-10 and 33-8A-3(b)
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 60
TITLE OF RULE BEING PROPOSED: Affidavits of Custodian Banks

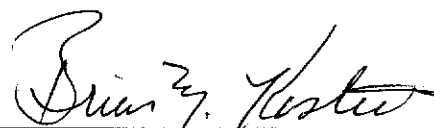
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Mary Jane Pickens, Associate Counsel

West Virginia Insurance
Commission
P.O. Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

Department of Tax and Revenue
Agency Questionnaire

Re: Procedural Rule to be Filed

AFFIDAVITS OF CUSTODIAN BANKS

TITLE 114, SERIES 60

Question 1: Are regulations required?

No. S.B. 506 authorized, but did not require the insurance commissioner to promulgate rules governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

No, the rule is not expected to be controversial. It is a procedural rule that only prescribes forms for affidavits that an insurance company is allowed to request from a custodian of securities in connection with a custody agreement.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

The forms being prescribed by this procedural rule are model forms adopted by the National Association of Insurance Commissioners ("NAIC").

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

S.B. 506, passed during the 2002 Legislative session, amended chapter thirty-three of the code by adding a new article, designated article 8A. The new article authorizes domestic insurance companies to use modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the Insurance Commissioner. Pursuant to the bill, a domestic

insurance company may, by written agreement with a custodian, which is defined as an adequately capitalized national bank, state bank or trust company legally authorized to accept custody of securities, provide for the custody of securities. In connection with the custody agreement, the insurance company may request from the custodian an appropriate affidavit with respect to custodied securities. This proposed procedural rule prescribes the forms for affidavits of custodian banks for use in the following situations: where securities entrusted to the bank's care have not been redeposited elsewhere; where the custodian bank maintains securities on deposit with the Depository Trust Company or like entity; and where ownership of the securities is evidenced by book entry at a federal reserve bank.

Insurance Commissioner
Procedural Rule
Title 114, Series 60

AFFIDAVITS OF CUSTODIAN BANKS

TITLE 114, SERIES 60

BRIEF SUMMARY OF RULE

Domestic insurance companies may now use modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the Insurance Commissioner. An insurance company may enter into a written agreement with a custodian for the custody of securities. In connection with the agreement, the insurance company may request from the custodian an appropriate affidavit with respect to the custodied securities. This proposed procedural rule prescribes the forms for these affidavits of custodian banks for use in the following situations: where securities entrusted to the bank's care have not been redeposited elsewhere; where the custodian bank maintains securities on deposit with the Depository Trust Company or like entity; and where ownership of the securities is evidenced by book entry at a federal reserve bank. The rule also defines some of the terms used in the affidavits.

Insurance Commissioner
Procedural Rule
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AFFIDAVITS OF CUSTODIAN BANKS

TITLE 114, SERIES 60

STATEMENT OF CIRCUMSTANCES

S.B. 506, passed during the 2002 Legislative session, amended chapter thirty-three of the code by adding a new article, designated article 8A. The new article authorizes domestic insurance companies to use modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the Insurance Commissioner. Pursuant to the bill, a domestic insurance company may, by written agreement with a custodian, which is defined as an adequately capitalized national bank, state bank or trust company legally authorized to accept custody of securities, provide for the custody of securities. In connection with the custody agreement, the insurance company may request from the custodian an appropriate affidavit with respect to custodied securities. This proposed procedural rule prescribes the forms for affidavits of custodian banks for use in the following situations: where securities entrusted to the bank's care have not been redeposited elsewhere; where the custodian bank maintains securities on deposit with the Depository Trust Company or like entity; and where ownership of the securities is evidenced by book entry at a federal reserve bank.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Affidavits of Custodian Banks
Title 114, Series 60

Type of Rule: Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The rule will have no additional fiscal impact upon state, local or federal government.

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Title 114, Series 60

3. Objectives of these rules:

The objective of this procedural rule is to prescribe certain forms for affidavits to be used by custodian banks in connection with custody agreements between the custodian banks and insurance companies. S.B. 506, passed during the 2002 Legislative session, amended chapter thirty-three of the code by adding a new article, designated article 8A. The new article authorizes domestic insurance companies to use modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the Insurance Commissioner. Pursuant to the bill, a domestic insurance company may, by written agreement with a custodian, which is defined as an adequately capitalized national bank, state bank or trust company legally authorized to accept custody of securities, provide for the custody of securities. This proposed procedural rule prescribes the forms for affidavits of custodian banks for use in the following situations: where securities entrusted to the bank's care have not been redeposited elsewhere; where the custodian bank maintains securities on deposit with the Depository Trust Company or like entity; and where ownership of the securities is evidenced by book entry at a federal reserve bank.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: May 29, 2002

Signature of Agency Head or Authorized Representative


MARY JANE PICKENS, ASSOCIATE COUNSEL

114CSR60

**WEST VIRGINIA PROCEDURAL RULE
INSURANCE COMMISSIONER**

**SERIES 60
AFFIDAVITS OF CUSTODIAN BANKS**

Section

- 114-60-1. General.
- 114-60-2. Definitions.
- 114-60-3. Custodian Affidavit Forms.

**TITLE 114
WEST VIRGINIA PROCEDURAL RULE
INSURANCE COMMISSIONER**

FILED

**SERIES 60
AFFIDAVITS OF CUSTODIAN BANKS**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-60-1. General.

1.1. Scope. -- This procedural rule prescribes the form for affidavits of custodian banks for use in the following situations:

- a. Where securities entrusted to its care have not been redeposited elsewhere;
- b. Where a custodian bank maintains securities on deposit with the depository trust company or like entity; and
- c. Where ownership of the securities is evidenced by book entry at a federal reserve bank.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-8A-3(b).

1.3. Filing Date. --

1.4. Effective Date. --

§114-60-2. Definitions.

2.1. "Custodian" means a national bank, state bank or trust company that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this regulation be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities.

2.2. "Federal reserve book-entry procedure" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United

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States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks, through banks which are members of the federal reserve system or which otherwise have access to such computerized systems.

2.3. "Securities" means certificated securities as defined in subdivision (4), subsection a, section one hundred two, article eight, chapter forty-six of the West Virginia Code and uncertificated securities as defined in subdivision (18) of that subsection.

§114-60-3. Custodian Affidavit Forms.

3.1. The affidavit forms attached to this rule, and made a part hereof as exhibit a, exhibit b and exhibit c, shall be used by a custodian when a written request has been made by an appropriate officer of the insurance company for an affidavit of the custodian in connection with a custody agreement.

APPENDIX A

Clearing Corporation Use

[This form affidavit is for use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere.]

STATE OF _____)

)SS: _____

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____ a banking corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____

(hereinafter called "the bank");

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto; That the bank is custodian for certain securities of _____, having a place of business at _____

(hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the bank or its nominee, or were in the process of being registered in such form;

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That the bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____
(Name of officer or agent, title of officer or agent)
of _____,
(Name of corporation acknowledging)
a _____ corporation, on behalf of the corporation.
(state or place of incorporation)

Notary: _____

My commission expires _____

APPENDIX B

Clearing Corporation Use

[This form affidavit is for use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.]

STATE OF _____)

)SS: _____

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____, with the principal place of business at _____

(hereinafter called "the bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____, having a place of business at _____

(hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with _____ and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____, and which were so deposited on such date;

That the bank as custodian has the responsibility for the safekeeping of the securities both in the possession of the bank or deposited with _____ as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

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That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____,

(Name of officer or agent, title of officer or agent)

of _____,

(Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation.
(state or place of incorporation)

Notary: _____

My commission expires _____

APPENDIX C

Clearing Corporation Use

[This form affidavit is for use where ownership is evidenced by book entry at a Federal Reserve Bank.]

STATE OF _____)

)SS: _____

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____, with the principal place of business at _____

(hereinafter called "the bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____, with a place of business at _____

(hereinafter called "the insurance company") pursuant to an agreement between the bank and the insurance company;

That it has caused certain securities to be credited to its bond entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____, which were in a "General" book-entry account maintained in the name of the bank on the books and records of the Federal Reserve Bank of _____ at such date;

That the bank has the responsibility for the safekeeping of such securities both in the possession of the bank or in said "General" book-entry account as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

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That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____,

(Name of officer or agent, title of officer or agent)

of _____,

(Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation.
(state or place of incorporation)

Notary: _____

My commission expires _____