

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

Form #5 □

Do Not Mark In This Box

FILED  
AUG 26 P 2 53  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code Section 33-2-10 and 33-8A-3(b)

RULE TYPE: PROCEDURAL X INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE \_\_\_\_\_

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW  
\_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

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  
\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS August 25, 2002



Authorized Signature

SCANNED

**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**

**SERIES 60  
AFFIDAVITS OF CUSTODIAN BANKS**

FILED  
2002 JUL 26 P 2:53  
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. -- July 26, 2002.

1.4. Effective Date. -- July 26, 2002.

**§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

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;

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

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

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 \_\_\_\_\_



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

**BOB WISE**  
Governor

**JANE L. CLINE**  
Insurance Commissioner

July 26, 2002

HAND DELIVERED

Ms. Judy Cooper, Director  
Administrative Law Division  
Office of Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Ms. Cooper:

Please find herewith, one (1) copy of the following for filing:

- 1) Notice of Agency Adoption of a Procedural or Interpretive Rule and Consent of Cabinet Secretary of Tax and Revenue;
- 2) Agency adopted procedural rule entitled "Affidavits of Custodian Banks" (Title 114, Series 60).
- 3) Computer disc containing the above rule in Word Perfect 8.0 format.

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script, appearing to read "JLC".

Jane L. Cline  
Insurance Commissioner

JLC/jz  
Attachments