WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE AUDITOR

SECURITIES DIVISION
(Chapter 32, Article 1 of the Code)

RULES AND REGULATIONS

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Denzil L. Gainer
State Auditor

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Securities Division

S.R. § 8. OVER-THE-COUNTER MARKET

This rule is adopted pursuant to the general powers of the commissioner of securities under Section 28, Article 1, Chapter 32 of the Code, as amended, in order to provide for appropriate regulation of securities dealers engaged in the intrastate purchase and sale in the State of West Virginia of over-the-counter securities, as defined in S.R. § 8.02.

S.R. § 8.01 DEFINITIONS

(1) When used in this rule all terms defined in Section 2, Article 1, Chapter 32 of the Code, have the meanings set forth therein.

(2) When used in this rule the following terms not defined in Section 2, Article 1, Chapter 32 of the Code

have the following respective meanings:

(a) Subject to Section 28, Article 1, Chapter 32 of the Code, "over-the-counter security" shall include any security defined in Section 2(a), Article 1, Chapter 32, of the Code which has been approved by the Commissioner of Securities in accordance with S. R. § 8.02.

(b) "Intrastate dealer" shall mean any dealer defined in Section 2(d) of the Code, and registered in accordance with Sections 12 and 28, Article 1, Chapter 32 of the Code.

(c) "Net asset value" or "net worth" is the total value of a firm's assets as it appears on the company's books, less its total liabilities.

S.R. § 8.02 ELIGIBILITY OF SECURITIES OFFERED AND SOLD ONLY IN THE STATE OF WEST VIRGINIA FOR OVER-THE-COUNTER TRADING

Any security registered by qualification pursuant to Chapter 32 of the Code and offered and sold only in the State of West Virginia will not be eligible for over-the-counter trading in the State of West Virginia until the commissioner approves a request that the registration be considered closed because the distribution has been completed. The commissioner shall make available a list of such eligible securities and, in the case of a security so registered and offered and sold in the State of West Virginia only for the first time, a thirty-day period shall elapse prior to its inclusion in said eligible list.

S.R. § 8.03 ELIGIBILITY OF INTRASTATE DEALERS TO ENGAGE IN OVER-THE-COUNTER TRADING

No intrastate dealers may engage in over-the-counter trading until specifically registered for such purpose with the securities commissioner. An application for registration shall be made on a form prescribed by the commissioner which shall require, where applicable, disclosure of the information described in Section 12, Article 1, Chapter 32 of the Code, and satisfactory proof of financial responsibility as required in S.R. § 8.13.

S.R. § 8.04 PERSONNEL, RECRUITING AND SUPERVISION BY INTRASTATE DEALERS

(1) No person may act as a salesman of any over-the-counter security unless such person is registered as

a salesman in compliance with Section 12, Article 1, Chapter 32 of the Code. No partner, executive officer or director of a firm registered as a securities dealer, who himself is not so registered, may offer or sell over-the-counter securities unless he has secured prior approval to do so from the commissioner.

(2) A registered intrastate dealer shall be completely responsible for all acts of registered salesmen in the course of employment. This provision shall not, however, relieve the registered salesmen from personal responsibility for all such acts.

(3) No registered intrastate dealer shall permit any employee to exercise discretion in the handling of an account for a customer, and no intrastate dealer or partner or stockholder therein shall delegate to any employee any discretionary power vested by a customer in such dealer, partner or stockholder, without prior written authorization of the customer to do so.

S.R. § 8.05 ADVERTISEMENT OF SECURITIES BY INTRASTATE DEALERS

(1) Any form of advertising or other sales promotional material used by an intrastate dealer in connection with the offer or sale of over-the-counter

securities which employs "come-on" techniques or makes any statements which are flamboyant or misleading, or which contains sensational statements or claims, the implications of which may mislead, shall be deemed untrue, deceptive or misleading.

(2) No intrastate dealer shall publish and circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such transaction was in fact a bona fide purchase or sale of such securities. No intrastate dealer shall publish and circulate or cause to be published or circulated any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to quote the bid and ask price for any security unless such quotation represents a bona fide bid for or offer of such security. If quotations for nominal quantities of a security are used or given they shall be clearly stated or indicated to be such.

(3) All intrastate dealers shall file with the commissioner a copy of all advertising material and sales promotional material to be used five days prior to its

release and no advertising material of any kind may be used after receipt of notice from the commissioner that it is considered untrue, deceptive, or misleading. A copy of all such advertisements and materials shall be filed with the commissioner within two days after its distribution or publication. If there is no change in a continuing advertisement except the market price, then only such change in figures must be submitted and then only within two days after said change.

(4) Each dealer shall maintain a copy of all advertising materials and sales literature in a separate, readily accessible file, for a period of two years from the date of use.

S.R. § 8.06 INFORMATION TO BE FURNISHED CUSTOMER BY INTRASTATE DEALER

(1) All information furnished by an intrastate dealer to a customer relating to the market for a security or to the business of the issuer thereof, shall be accurate, and it shall be a violation of this Rule for a dealer to fail to disclose material information. The circulation by an intrastate dealer in any manner of any inaccurate statements which would tend to create or induce purchases or sales in any security, or for

the purpose of influencing the market price of any security, shall be considered fraudulent.

(2) An intrastate dealer, contemporaneously with or immediately after the execution of each transaction with a customer, shall give or send to the customer written notification or confirmation specifying whether such dealer acted (a) as a broker for such customer; (b) as a dealer for his own account; (c) as a broker for some other person; or (d) as a broker for both such customer and some other person.

(3) In any transaction in which an intrastate dealer acts as a broker for both the buyer and seller, upon the request of either customer the dealer shall furnish the following information.

(a) the name of the other customer from whom the security was either purchased or sold;

(b) the date of the transaction with such other customer; and

(c) the source and amount of any commission or other remuneration received or to be received by such broker in connection with the transaction.

(4) In any brokerage transaction executed by a dealer, the dealer is a guarantor of the timely completion of the sale or purchase.

S.R. § 8.07 INFORMATION TO BE FURNISHED THE SECURITIES COMMISSIONER BY INTRASTATE DEALER

(1) An intrastate dealer shall furnish information relating to transactions in over-the-counter securities, as requested and on a form prescribed by the commissioner. Such information shall include, for the transactions specified by the commissioner, the following:

(a) the name and address of the purchaser and/or seller;

(b) the price paid or received by the purchaser and/or seller as the case may be; and

(c) the prevailing bid and asked prices for the security at the time of the transaction.

S.R. § 8.08 RECORDS TO BE KEPT BY INTRASTATE DEALERS

Every intrastate dealer shall keep the following books and records relating to its business:

(1) A memorandum of each brokerage order and instructions concerning the order, given or received, for

the purchase or sale of security, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modifications or cancellations thereof, and to the extent feasible, the time of execution.

(2) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and all other debits, and credits. Such records shall show the account for which each such transaction was effected, the name, and amount of the securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(3) Ledger reflecting all assets, and liabilities, income and expense and capital accounts.

(4) Ledger accounts, itemizing separately as to each cash account of every customer, and of such dealer and partners or executive officers thereof, all purchases, sales, receipts, and deliveries of securities for such account and all other debits and credits to such account.

(5) A securities record kept separately for each security carried by such dealer for its account and the accounts of its partners, officers and customers, and reflecting the "long" or "short" position of such security at all times.

(6) Copies of confirmations of all purchases and sales of securities.

(7) Such other records as will accurately record:

(a) Securities in transfer

(b) Securities failed to receive and failed to deliver

(c) Dividends received

(d) Interest received

S.R. § 8.09 PAYMENT AND DELIVERY BY AND TO INTRASTATE DEALERS

(1) Intrastate dealers shall not enter into installment purchase contracts for the sale or purchase of securities.

(2) No intrastate dealer shall directly or indirectly hypothecate or arrange for or permit the hypothecation of any securities carried for the account of any customer.

(3) In connection with a transaction for "cash", delivery of the security and/or purchase money shall be made on the day of the transaction.

(4) In connection with other than "cash" transactions the following provisions shall apply:

(a) When acting as a principal, the dealer shall have the unqualified responsibility at the time he offers the security for sale (and thereafter until delivery to the customer) to own and possess the security offered for sale in the quantity offered for sale, free of any liens or claims which might adversely affect completion of the proposed sale.

(b) In transactions by and between dealers only, delivery of the security shall be due on the fifth (5th) full business day following the date of the transaction. If such day falls on a Saturday, Sunday or holiday, it shall carry over to the next full business day.

(c) A dealer representing a seller shall have the unqualified responsibility to obtain from the seller within a five (5) day period a duly endorsed certificate evidencing ownership of the securities sold.

(d) Within seven (7) days of each purchase of securities, each dealer shall deliver to each customer, or to the customer's designated bank, for safekeeping in a bank safe deposit box or otherwise, certificates representing all fully paid-for securities belonging to the customer, unless the purchaser requests the dealer to first have the securities registered, in which case, delivery shall be made to the customer, as promptly as possible, after having them registered in the name of the customer or in the name or names designated by him.

(e) It shall be the dealer's unqualified responsibility to collect from the buyer all money due to cover a securities purchase within five (5) full business days following the date of execution of a "buy order."

(f) It shall be the dealer's unqualified responsibility to make payment to the customer of all proceeds due within seven (7) full business days following the date of the execution of the "sell order", whether or not the dealer has himself received the purchase money.

(5) In connection with transactions wherein the date of delivery of the certificate is uncertain by reason of certain legal restrictions, limitations, etc., and for any reasons known to the seller, the seller shall advise the dealer of such facts and it is the dealer's unqualified responsibility to advise the buyer of such facts and to deliver the certificates within a reasonable time, taking into consideration all relative circumstances.

S.R. § 8.10 PRICES AND COMMISSIONS CHARGED BY INTRASTATE DEALERS

In any transaction involving West Virginia over-the-counter securities, whether the intrastate dealer buys for his own account from a customer or sells from his own account to a customer, he shall buy or sell at a price which is fair, taking into consideration all relative circumstances, including market conditions with respect to such securities at the time of the transaction, the expense involved and the fact that he is entitled to a profit. The same principle shall apply if the dealer acts as a broker or agent for a customer and he shall not charge the purchaser more than a fair commission or service charge.

While the reasonable expense incurred in a transaction and the value of a service rendered may be considered in mark-up or price charged, no excessive expense may be used to justify such mark-up or price.

S.R. § 8.11 DISCLOSURE OF FINANCIAL CONDITION BY INTRASTATE DEALERS

(1) Every intrastate dealer shall be subject to examination of his financial records or methods of business, as provided in Section 12, Article 1, of Chapter 32 of the Code.

(2) A trial balance reflecting the balances of all ledger accounts shall be prepared promptly at the end of each month in order that it may be submitted to the securities commissioner upon his request, and each intrastate dealer shall make available for inspection by any bona fide customer, upon request by such customer, the information relative to such dealer's financial condition as disclosed in the most recent balance sheet.

S.R. § 8.12 PRESERVATION OF RECORDS BY INTRASTATE DEALERS

Each intrastate dealer shall preserve for a period of not less than five years all records relating to any over-the-counter transactions. During the first two years of such period, the records shall be kept in a readily accessible place.

S.R. § 8.13 CAPITAL REQUIREMENTS OF INTRASTATE DEALERS

Each intrastate dealer shall maintain at all times a minimum net asset value or net worth of $15,000.00; provided, however, the Commissioner may approve an application for an intrastate dealership if he is of the opinion that the net worth will reach $15,000.00 within six months after approval, and after reviewing all facts surrounding the application, finds that the customer will be fully protected during the said six months period.

S.R. § 8.14 PROHIBITED PRACTICES BY INTRASTATE DEALERS

(1) No intrastate dealer or any employee or agent of such dealer shall:

(a) guarantee or purport to guarantee a customer against loss by reason of change in the future market value of securities;

(b) as an inducement to the customer to buy securities, represent that the securities will be resold or repurchased;

(c) represent that a security will be listed or registered on a securities exchange;

(d) switch a customer from one security to another for the purpose of obtaining commissions or profits;

(e) encourage a customer to trade beyond his known immediate financial resources;

(f) effect a transaction pursuant to discretionary authority which is excessive in size or frequency in relation to the financial resources of the customer or the character of his account; or

(g) make any representation which is misleading or omit to state facts necessary to keep statements made from being misleading.

(2) Each of the foregoing actions is defined as untrue, deceptive, or fraudulent.

S.R. § 8.15 REVOCATION OF REGISTRATION

(1) The violation by a registered dealer, his agents or employees, of any of the provisions of these rules shall subject the dealer, agent and employee to revocation of registration.