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STATE AUDITOR
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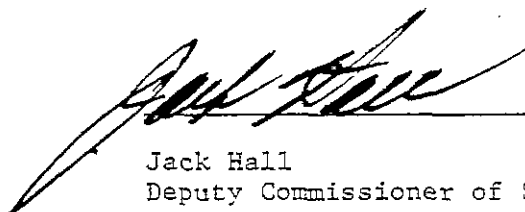
STATE OF WEST VIRGINIA
STATE AUDITOR'S OFFICE
CHARLESTON
25305

JACK HALL
DEPUTY COMMISSIONER OF SECURITIES
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
J. ROBERT WEAVER
ASSISTANT DEPUTY
COMMISSIONER OF SECURITIES
AREA CODE 304
PHONE 348-2257

NOTICE OF FINAL FILING - LEGISLATIVE RULE

LEGISLATIVE RULE: West Virginia Securities Rules and Regulations

The attached legislative rule is hereby final filed with the
Secretary of State by the Securities Commission as authorized
by Senate Bill 399 Section 64-2-32(4)(412)(b).



Jack Hall
Deputy Commissioner of Securities

WEST VIRGINIA LEGISLATIVE RULES

COMMISSIONER OF SECURITIES

CHAPTER 32 OF THE CODE OF WEST VIRGINIA,

1931, AS AMENDED

FILED

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SECRETARY OF STATE

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Section 2 Room
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Title 111

WEST VIRGINIA LEGISLATIVE RULE
SECURITIES COMMISSIONER
~~CHAPTER 32, ARTICLE 1~~
SERIES ~~111~~ *1*

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SECRETARY OF STATE

Title: West Virginia Securities Rules and Regulations

Section ~~9.00~~ *9.00* General

9.01 Scope - These legislative rules establish the rules and regulations which govern any securities matter in this State.

9.02 Authority - West Virginia Code 32-4-1,2,3,4
32-4-412

9.03 Filing Date - 6/12/85

9.04 Effective Date - 6/12/85

Section 2 through 9-Reserved

Section ~~10.00~~ *10.00* Rules of Practice and Procedure

The rules included in this section (~~10.00~~ through ~~10.08~~ *2.8*) are procedural rules, and are adopted pursuant to the provisions of Chapter 32, Article 4, Section 412 of the West Virginia Code, as amended, and they shall govern the practice before the Securities Commissioner, in accordance with the provisions of Chapter 29A and Chapter 32, Article 4, Section 412 of the West Virginia Code, as amended. These rules do not apply to investigations, except where made specifically applicable.

10.01 Business Hours - The general office of the Commissioner shall be open from 9:00 a.m. to 5:00 p.m. each day, except Saturdays, Sundays and legal holidays.

10.02 Communications - All communications, including correspondence, motions, and pleadings shall be addressed to and be filed with the State Auditor's Office, Securities Division, West-118, State Capitol Building, Charleston, West Virginia 25305.

10.03 Date of Receipt - All communications, including correspondence, motions, and pleadings shall be deemed to be filed or received on the date on which they are actually received by the Division, party or other person.

10.04 Computation of Time - Computation of any period of time referred to in the rules shall begin with the first day following that on which the act which initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Commissioner is closed, the period shall run until the end of the following business day. When such period of time with the intervening Saturdays, Sundays, and legal holidays counted is five (5) days or less, the said Saturdays, Sundays, and legal holidays

shall be excluded from the computation; otherwise such days shall be included in the computation.

10.05 Filing Papers - Communications addressed to the Commissioner, and petitions, applications, answers and other pleadings, all exhibits, depositions, transcripts, orders and other papers or documents shall be filed in the general offices of the Commissioner, and shall be stamped showing the date of the receipt thereof.

10.06 Notice of Proceedings; Hearings - (1) Notice of Proceedings; Order of Proceedings. Whenever an order for proceeding is issued by the Commissioner appropriate notice thereof shall be given by the Deputy Commissioner or other duly designated employee of the Commissioner to each party to the proceeding, and any other person entitled to notice, or to the person designated by any such party or person as being authorized to receive on his behalf notice issued by the Commissioner. The parties or persons entitled to notice shall be timely informed of the time, date, place and nature of any hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall be furnished a short and simple statement of the matters of fact and law to be considered and determined. In proceedings in which an answer is directed, the order for the proceeding shall be set for the action proposed and the factual and legal basis alleged therefor, in such detail as will permit a specific response thereto.

(2) Notice of Hearing; Service of Notice. The time and place for any hearing in a proceeding shall be fixed with due regard for the public interests and the convenience and necessity of the parties or their representatives. Each party or person entitled to notice shall be given notice of hearing at least twenty-one (21) days prior to the hearing, and such notice may be given by registered mail, or certified mail, addressed to his last known business or residence address or to the address of his agent for service.

(3) Effect of Failure to Appear. If any person who is named in an order for proceeding or any stop-order, revocation order, suspension or termination order, or the like as a person against whom findings may be made or sanctions imposed in the proceeding does not file a notice of appearance in the proceeding within fifteen (15) days after service upon him of the order for proceeding (unless a different time period is specified in the order), or if he fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default and the proceeding or order may be determined against him upon consideration of the order for proceeding, the allegations of which may be deemed to be true. For purpose of this subsection, an answer shall constitute a notice of appearance.

10.07 Answers - (1) When Required. In any order issued by the Commissioner, the Commissioner may direct that any party respondent shall file an answer to the allegations contained therein, and any part respondent may file an answer.

(2) Time to File. Except where a different period is provided by rule or order, a party respondent directed to file an answer as provided in Section 10.07(1) shall do so within fifteen (15) days after proper service upon him of the order for proceeding. Any other person admitted to such a proceeding may be required to file an answer within such time as is directed by the presiding hearing officer or the Commissioner. Where amendments to the matters of fact and/or law to be considered in such proceeding are authorized subsequent to the institution of the proceeding, the parties may be required to answer within the matters of fact and/or law to be considered and as amended within seven (7) days after any such amendment has been authorized.

(3) Requirements; Effect of Failure to Deny. Unless otherwise directed by the Commissioner, an answer required by Section 10.07 shall specifically admit, deny or state that the party does not have and is unable to obtain sufficient information to admit or deny each allegation in the order. A statement of a lack of information to admit or deny each allegation in the order. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

10.08 Replies - There shall be no reply other than an answer as provided in Section 10.07 of these Rules.

10.09 Amendments - Leave to file amendments to any pleading will be allowed or denied as a matter of discretion. Leave to amend shall be freely given as justice requires, and cannot be unreasonably withheld.

10.10 Settlements, Agreements and Conferences - (1) Offer of Settlement. (a) Parties may propose in writing offers of settlement which shall be submitted to and considered by the Commissioner where time, the nature of the proceeding, and the public interest permit. Such offers may be made at any time during the course of the proceeding;

(b) Upon the agreement and the request of the interested parties, the presiding hearing officer or the Commissioner or his designated employee may express his views regarding the appropriateness of any offer of settlement with the understanding that the request by the parties constitutes a waiver of any right to claim prejudgment by the presiding hearing officer or the Commissioner or his designated employee based on the views the presiding hearing officer or the Commissioner or his designated employee expresses, and said person in any event in his/their discretion may decline to express any view on the offer. Where the Commissioner rejects an offer of settlement, the party making the offer shall be notified of the Commissioner's action and the offer of settlement shall be deemed withdrawn and such offer and any documents relating thereto shall not constitute a part of the record. Where the Commissioner deems it appropriate, he may also give the party making the offer an opportunity to make an oral presentation to the Commissioner.

(2) Conferences. At the opening of a hearing or at any other time during the course of any proceeding, to the extent practicable, where time, the nature of the proceeding, and the public interest permit, the presiding hearing officer or the Commissioner or his designated employee shall, at the request of any party or upon his own motion, hold or order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the proceeding. At the conference or otherwise, the presiding hearing officer, or the Commissioner, or his designated employee, at the request of any party or upon his own motion, where he believes such action would tend to expedite the proceedings or promote fairness, may in his discretion and with due regard for the convenience and necessity of the parties or their attorneys, order a party to furnish where practicable any or all of the following: an outline of his case or defense; the legal theories upon which he will rely; the identity of the witnesses who will testify on his behalf; and copies of or a list of documents which he intends to introduce at the hearing.

10.11 Parties -

(1) Who May Become Parties. Any interested representative, agency, authority or instrumentality of the United States or any interested State, State Commission, municipality or other political subdivision of a State shall become a party to any proceeding upon the filing of a written notice of appearance therein.

(2) When Intervention Granted. Except as provided in Section 10.11(1), of these Rules, no person shall be admitted to a proceeding by intervention unless the Commissioner is satisfied on the basis of the written application of such person (and any evidence taken in connection therewith) that his participation as a party will be in the public interest.

10.12 Consolidation - By order of the Commissioner proceedings involving a common question of law or fact may be joined for hearing of any or all of the matters at issue in the proceedings and such proceedings may be consolidated; and the Commissioner may make such orders concerning the conduct of such proceedings as may tend to be necessary to avoid unnecessary costs or delay.

10.13 Service -

(1) By the Commissioner. Service of complaints, orders, decisions, pleadings, motions, and processes of the agency shall normally be by registered or certified mail.

(2) On the Commissioner. For the purposes of proceedings under these rules only, service upon the Commissioner may be made by filing the paper or papers in the general offices of the Commissioner.

(3) Parties and other Persons. All papers, including, but not limited to, applications, notices, pleadings, petitions, motions, briefs, memoranda, and other documents, filed by any party or other person with the Commissioner or a presiding hearing officer shall be served by registered or certified mail upon all parties to the proceedings. Proof of service shall accompany all papers when filed or shall be filed within seven (7) days thereafter.

10.14 Stipulations - In the discretion of the Commissioner or his designated employee or the presiding hearing officer, the parties may by stipulation in writing filed with the Commissioner or his designated employee or the presiding hearing officer at any stage of the hearing, agree upon any pertinent facts in the proceeding. In making his findings, the Commissioner or his designated employee or the presiding hearing officer need not be bound by any such stipulation.

10.15 Presiding Officer - The hearing shall be conducted by a presiding officer who may be a duly appointed hearing officer, the Deputy Commissioner, or a member of the Commissioner's Staff appointed by the Commissioner to conduct the hearing. The hearing officer shall have all those powers conferred by Chapter 29A, Article 5, Section 1 of the West Virginia Code, as amended. A report shall be filed with the Commissioner by the hearing officer after the termination of the hearing.

10.16 Extension of Time and Adjournments -

(1) Commissioner May Extend, Postpone, or Adjourn. Except as otherwise provided by law, the Commissioner at any time, or at any time prior to the filing of the initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, for good cause shown, may extend any time limits prescribed by these rules for filing any papers and may postpone or adjourn any hearing.

(2) Limitations on Postponements and Adjournments. A hearing before the presiding officer, as set out in Section 10.15 of these Rules, shall begin at the time and place ordered by the Commissioner, provided that within the limits provided by the statute, said presiding officer may for good cause postpone the commencement of the hearing for a reasonable period of time or change the place of hearing. Any convened hearing may be adjourned to such time and place as may be ordered by the Commissioner. The Commissioner's policy is that such postponements or adjournments should normally not exceed thirty (30) days. If the Commissioner or the presiding officer orders a postponement or an adjournment for a period exceeding thirty (30) days, the reasons for so doing shall be stated in his order.

10.17 Evidence -

(1) Presentation and Admission. All witnesses at a hearing for the

purpose of taking evidence shall testify under oath or affirmation, which shall be presented by the presiding hearing officer, as described in Section 10.15 of these Rules. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full disclosure of the facts. The said presiding officer shall regulate the course of the hearing as provided in Chapter 29A, Article 5, Sections 1 and 2 of the West Virginia Code, as amended.

(2) Subpoenas. The presiding officer, or the Commissioner or his designated employee as described in Section 10.15 of these Rules, may issue subpoenas and/or subpoenas duces tecum, according to the provisions of Chapter 29A, Article 5, Section 1(b), and Chapter 32, Article 4, Section 407 of the West Virginia Code, as amended.

(3) Official Notice. In any proceeding official notice may be taken by the presiding officer or judicially cognizable facts. All parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed and they shall be given an opportunity to contest the facts so noticed.

10.18 Oral Argument - A party shall have the right before the close of the hearing to argue orally, but the presiding officer, as provided by Section 10.15 of these Rules, may impose reasonable limitations upon the length of such argument. The Commissioner may in his discretion permit additional oral argument at any time after the close of a hearing, provided all parties are given reasonable opportunity to be heard.

10.19 Briefs - Briefs may be filed by a party or any interested person either before or during the course of a hearing or within such time thereafter as the presiding officer, as provided in Section 10.15 of these Rules, shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

10.20 Revocation of Registration-Written Findings - The presiding officer shall issue written findings of fact and conclusions of law after the termination of a hearing held relative to the revocation of a registration as follows: (a) The revocation of the registration of a broker-dealer or agent, pursuant to Chapter 32, Article 2, Section 204 of the West Virginia Code, as amended; or (b) The revocation of any registration statement pursuant to Chapter 32, Article 3, Section 306 of the West Virginia Code, as amended.

Section ~~11.00~~ ^{11.00} Registration of Broker-Dealers and Agents

Each of the rules in this section (11.00 through 11.02) is a legislative rule, and each is adopted pursuant to the provisions of Chapter 32, Article 4, Section 412 of the West Virginia Code and Chapter 32, Article 2, Sections 201, 202, 203 and 204 of the Code, and each rule relates to Chapter 32, Article 2

Sections 201, 202, 203 and 204 of the Code.

11.01 Registration Requirement -

(a) (reserved)

(b)

(1) (reserved)

(2) Prohibition Against Dual Registration. No person shall be concurrently registered as an agent of more than one broker-dealer or issuer. The Commissioner may waive this requirement upon a finding that control and management of the multiple broker-dealers or issuers, as the case may be, are substantially identical. No waiver will be considered, in any case, except upon written application to the Commissioner for such and including with said application all pertinent materials relating to the reason (s) which the applicant believes entitle him/her to a waiver.

(c) Registration Expiration Date. Every registration of a broker-dealer, agent, issuer agent or investment adviser, expires:

(1) In the case of a broker-dealer, issuer agent, and investment adviser, one year from its effective date, unless renewed or sooner revoked, cancelled or withdrawn;

(2) In the case of an agent of a broker-dealer who is not a member of the National Association of Securities Dealers, Incorporated, one year from its effective date or concurrently with the expiration, revocation or cancellation of the registration of the associated broker-dealer or issuer, whichever is sooner, unless said agent registration is renewed or sooner revokes, cancelled or withdrawn.

(3) In the case of an agent employed by a broker-dealer that is a member of the National Association of Securities Dealers, Inc., on December 31 of each year, unless renewed or sooner revoked, cancelled or withdrawn.

(4) In the case of a broker-dealer who is a member of the National Association of Securities Dealers, Inc., on December 31 of each year; this expiration provision for such broker-dealers shall be effective when such broker-dealers are informed that the Commissioner is participating in the NASD's Central Registration Depository System with respect to broker-dealers.

11.02 Registration Procedure -

(a) (1) An application for registration as a broker-dealer in West Virginia shall contain:

(A) A copy of Revised SEC Form BD as adopted by the SEC effective January 1, 1984; the Commissioner will be participating in the NASD's CRD System with respect to broker-dealers when the CRD system makes such an arrangement possible; at that time all applicants will be informed of and will follow the procedures for such participation as the Commissioner finds appropriate.

(B) A non-refundable filing fee in the amount provided in Chapter 32, Article 2, Section 202(b) of the West Virginia Code, made payable to "State Auditor of West Virginia";

(C) Form U-2;

(D) Form U-2A;

(E) Form U-4, and a non-refundable filing fee in the amount provided in Chapter 32, Article 2, Section 202(b) of the West Virginia Code, for each agent except as provided in Section 11.02(a) (2) of these Rules;

(F) A list by location of each branch office in the State, including for each location the identity of the registered agent and the designated supervisor;

(G) A statement of financial condition of the applicant prepared in accordance with the generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. For an applicant that has not yet commenced to act as a registered broker-dealer in another state, the statement of financial condition shall consist of the applicant's most recent audited financial statement and an interim unaudited financial condition, the Commissioner may require the filing of separate schedules (i) listing the securities owned by the applicant valued at the market; (ii) stating material contractual commitments of the applicant not otherwise reflected in such statements, and (iii) describing contingent liabilities of the applicant not otherwise reflected in such statements, the realization of which would have a material effect on the applicant's net capital.

(2) Agent Registration Procedure. (a) A broker-dealer which is not a member of the National Association of Securities Dealers, Inc. ("N.A.S.D."), and which seeks registration of an agent in this State shall file Form U-4 and a non-refundable filing fee in the amount provided in Chapter 32, Article 2, Section 202(b) of the West Virginia Code ("Code"), for each agent to be registered. Broker-dealers which are members of the NASD, and which seek registration of an agent in this State shall, in lieu of filing Form U-4 or Form U-5 directly with this State, file Form U-4 through the NASD's Central Registration Depository System. The Central Registration Depository ("CRD") System shall be maintained by NASDAQ, Inc., a subsidiary of the NASD pursuant to an agreement with, and under the guidelines established by, the North American Securities Administrators Association, Inc. This alternative method

of filing agent application forms shall be in effect so long as the Commissioner is a participant in the CRD System.

Filings through the CRD System shall be forwarded to Membership Department, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, with appropriate fees. These fees shall be known as "in lieu filing fees". Only current Forms U-4 and Forms U-5 will be accepted for filing to register, amend information or terminate a registration.

Although filings shall be made by the NASD member firm on behalf of the agent, nothing in this procedure shall be construed to, or shall relieve the individual agent of any responsibility or liability under Chapter 32 of the Code.

Should the statutory registration fee be increased for filing directly with this State, the CRD filing fee shall be increased by a like amount.

(b) Examination Requirement - Agents/Broker-Dealers. All applicants for initial registration as an agent: (1) Shall pass, with a minimum grade of 70%, the applicable qualifying examination required by the NASD, National Securities or Commodities Exchanges, and/or the SEC, and (2) Shall pass, with a minimum grade of 70%, the Uniform Securities Agent State Law Examination (USASLE) administered by the NASD.

Applicants for initial registration as broker-dealers shall pass, with a minimum grade of 70%, the applicable qualifying examinations required by the NASD, National Securities or Commodities Exchanges and/or the SEC. The Commissioner does not administer examinations, but reserves the right to require an applicant for initial registration as a broker-dealer to pass a written or oral examination or both administered by the Commissioner or his designee.

11.02(a) (2) (b) (2) Waiver of Examination Requirement - For purposes of the examination requirement for agents and broker-dealers set out in Section 11.02(a) (2) (b) (1) of these Rules, a waiver from this requirement may be considered in the following circumstances:

(1) where the applicant has remained continuously registered in the capacity to be filled in this State without interruption for at least two years prior to the date of application for which the waiver is sought;

(2) where the applicant submits to the Commissioner written evidence of effective registration in the capacity to be filled in a different state without interruption for at least two years prior to the date of application for which waiver is sought;

(3) where due to the nature of such combined circumstances as the

applicant's education, employment experience, and the limited nature of the proposed offering or sale of securities in conjunction for which registration is sought, the applicant appears to be adequately qualified to transact business in this State, so that investor protection should not require the examination otherwise imposed by Section 11.02(a) (2) (b) (1).

Application for a waiver of the examination requirement shall be limited to the three sets of circumstances detailed above. The applicant may apply for a waiver by submitting a letter to the Commissioner describing the applicable circumstances for which a waiver may be appropriate. Such a letter shall include such evidence as is necessary to demonstrate the applicant's entitlement to a waiver. No oral applications will be acceptable under any circumstances. Waiver shall not be effective unless it is provided to the applicant in writing by the Commissioner.

(3) Issuer-Agent Registration. An issuer which seeks registration of an agent in this State shall file Form U-4 and a non-refundable filing fee in the amount provided by Chapter 32, Article 2, Section 202(b) of the Code for each agent to be registered.

(4) Investment Adviser Registration. An applicant which seeks registration as an investment adviser in this State shall file the following with the Commissioner:

- (A) An exact copy of SEC Form ADV, including all schedules and continuation sheets required in connection with the submission of said form as filed with the Securities and Exchange Commission;
- (B) A non-refundable filing fee in the amount specified by Chapter 32, Article 2, Section 202(b) of the Code, made payable to "State Auditor of West Virginia";
- (C) Form U-2 and Form U-2A;
- (D) A statement of the financial condition of the applicant prepared in accordance with federal accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. For an applicant that has not yet commenced to act as a registered investment adviser in any state, his statement of financial condition shall have been prepared within forty-five days prior to the date on which such application is filed. For an applicant that has commenced to act as a registered investment adviser in another state, the statement of financial condition shall consist of the applicant's most recent audited financial statement and an interim unaudited financial statement prepared within forty-

five days prior to the date on which the application is filed. As part of the statement of financial condition, the Commissioner may require the filing of separate schedules (i) listing the securities owned by the applicant valued at the market; (ii) stating material contractual commitments of the applicant not otherwise reflected in such statements; (iii) describing contingent liabilities of the applicant not otherwise reflected in such statements, the realization of which would have a material effect on the applicant's net capital.

11.02(a) (2) (b) (5) Date Registration Becomes Effective - If no denial, suspension, or revocation order is in effect an no proceeding therefor is pending, registration becomes effective at noon of the thirtieth day after the filing of an application is complete, unless an earlier effective date is specified in writing by the Commissioner. No broker-dealer, no agent who is employed by a broker-dealer who is not an NASD member, issuer-agent or investment adviser shall transact business in this State until informed, in writing, by the Commissioner that the registration is effective. Additional exhibits or information not specifically required but essential to a full presentation of all material facts relating to the qualifications of the application should be furnished and properly identified. The Commissioner may make such examination of the applicant and request additional information as he deems appropriate in the consideration of eligibility for registration. A filing shall be considered complete when the application and all attachments and exhibits thereto, as required by the Commissioner, have been filed with, and are satisfactory to the Commissioner. Applications filed with the NASD's CRD are not considered filed with the Commissioner until all data deficiencies, according to the NASD or the Commissioner, are corrected. Agents who are employed by NASD-member broker-dealers and who file applications for registration with the NASD's CRD shall not transact business in this State until informed by the Commissioner that registration with this State is effective. An agent may be deemed to have been informed by the Commissioner that registration is effective upon receipt of the NASD's written confirmation of registration for this State. An agent who becomes registered with the Commissioner pursuant to a filing with the NASD's CRD shall retain at all times while so registered, the written confirmation of such registration which is sent to the agent's employer by the NASD. Retention of the confirmation by the employer shall be sufficient compliance with this requirement.

(6) Broker-Dealer, Agent, Issuer-Agent and Investment Adviser Renewals. All registrations shall automatically expire as provided in Section 11.01(2) (c) of these Rules, unless sooner revoked, cancelled, or withdrawn.

A broker-dealer which is not a member of the NASD, wishing to renew its registration and that of its agents, shall file Form 16, including all information required by said form, Form 16-A, and the appropriate renewal fees not earlier than the first day, nor later than the tenth day of the month in

which the registration would otherwise expire by law.

tenth
A broker-dealer which is a member of the NASD wishing to renew its registration shall file Form 16, including all information required by said form, and the appropriate renewal fee not earlier than the first day, nor later than the tenth day of the month for which the registration would otherwise expire by law. An NASD member broker-dealer which wishes to renew the registration of its agents shall file the appropriate forms with, submit the appropriate renewal fees to, and accomplish said renewal through the NASD's CRD, on or before December 31st of each year.

An issuer which wishes to renew the registration of its agents shall file Form 16-A and the appropriate renewal fee no earlier than the first day, nor later than the tenth day of the month in which the registration would normally expire by law.

An investment adviser which wishes to renew its registration shall file W.Va. Form ADV (3-74) and the appropriate renewal fee not earlier than the first day, nor later than the tenth day of the month in which the registration would normally expire by law.

The Commissioner will provide the appropriate renewal forms on, or about, the first day of the month for which the registration of the particular registrant would normally expire in each year, where appropriate. All renewal filings received other than in the above manner shall be deemed to be an initial filing and must meet the requirements of Section 11.02(a) of these Rules.

(7) Agent and Issuer-Agent Transfers. When an agent or issuer-agent transfers his connection from one broker-dealer or issuer to another, the broker-dealer or issuer shall file Form U-4 and a non-refundable filing fee in the amount prescribed by Chapter 32, Article 2, Section 202(b) of the Code, with the Commissioner, or, for agents connected with NASD-member broker-dealers, with the NASD's CRD. No agent or issuer-agent may transact business in the state until notified in writing his transfer is effective.

(8) Abandoned Applications. The Commissioner may order an application for registration as a broker-dealer, agent, issuer-agent or investment adviser deemed abandoned when an applicant fails to adequately respond to any request for additional information required under the Code or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before such order is entered. The applicant may, with the consent of the Commissioner, withdraw the application.

(b) (Reserved)

(c) Successor Broker-Dealer Registration.

(1) A registered broker-dealer which seeks to register a successor pur-

suant to Chapter 32, Article 2, Section 202 of the Code shall file (A) a copy of SEC Form BD (excluding schedule F), (B) Form U-2 and (C) a list of all registered agents associated or to be associated with the successor and a non-refundable fee in the amount prescribed by Chapter 32, Article 2, Section 202 (c) of the Code.

(2) In the event that a broker-dealer succeeds to and continues the business of another registered broker-dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 60 days after such succession, or until the last day of the month in which the predecessor's registration would normally have expired, whichever is sooner, provided that Form BD is filed by such successor within 30 days after such succession or before the last day of the month in which the predecessor's registration would normally have expired, whichever is sooner.

(3) A Form BD, filed by a broker-dealer partnership which is not registered when such form is filed and which succeeds as a broker-dealer, shall be deemed to be an application for registration, even though designated as an amendment, if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

(4) There shall be no fee as prescribed by Chapter 32, Article 2, Section 202(b) of the Code for filing Form BD pursuant to Section 11.02(c) of these Rules.

(d) Minimum Capital Requirements. (1) A broker-dealer, investment adviser, or issuer having agents registered in this State, shall comply with SEC Rules 15c3-1 (Net Capital Requirements for broker-dealers, 17 C.F.R. 240.15c3-3), and shall maintain net capital in such minimum amounts as are prescribed therein, or in the amount of \$25,000, whichever is greater.

(2) A broker-dealer shall comply with SEC Rule 17a-11, as amended by FOCUS Report (supplemental current financial and operational reports, 17 C.F.R. 240.17a-11) and shall simultaneously file with the Commissioner copies of all reports and notices that said Rule requires, and the Commissioner may by order prescribe as to such broker-dealer such conditions on its right to transact business in the state as he deems appropriate for the protection of the public.

(3) The Commissioner may by order exempt any broker-dealer from the provisions of this section, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the provisions are not necessary in the public interest or for the protection of investors.

(e) Any broker-dealer, any issuer having agents registered in this state or wishing to have agents so registered, and any investment adviser which fails to meet, or does not at all times maintain the minimum net capital defined and required by Section 11.02(d) of these Rules shall be required to furnish a surety bond in the amount of ten thousand dollars, as a condition for said registration becoming, or remaining effective. Said surety bond shall be submitted on the form prescribed by, or on a form acceptable to the Commissioner, and shall acknowledge the registrant, as principal, and the surety indebted and firmly bound unto this state. The conditions of said bond shall be satisfied if the principal (i) discharges all obligations imposed on him under Chapter 32 of the Code; (ii) performs all contracts entered into in connection with the sale of securities, and accounts for all money and securities coming into his hands for the use of investors, in a manner prescribed by the Commissioner; and (iii) such other conditions as the Commissioner shall deem to be in the public interest. Said bond shall not be effective for the purposes of this Section until approval is given by the Commissioner in such manner as he deems appropriate. Every bond given under this Section shall provide for suit thereon by any person who has a cause of action under Chapter 32, Article 4, Section 410 of the Code, and every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

Any appropriate deposit of cash or securities shall be accepted in lieu of the bond required under this Section, but approval of such deposit shall not be effective until given by the Commissioner, in writing. Said deposit shall be made in a manner acceptable to the Commissioner.

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Section 12.00 Post Registration Provisions

Each of the rules in this section (12.00 through 12.02) is a legislative rule, and each is adopted pursuant to the provisions of Chapter 32, Article 4, Section 412 of the Code and Chapter 32, Article 2, Sections 201, 202, 203 and 204 of the Code, and each rule relates to Chapter 32, Article 2, Sections 201, 202, 203 and 204 of the Code.

12.01 Record Keeping Requirements -

(a) (1) A broker-dealer shall comply with SEC Rules 15c1-4 (Confirmation of transactions, 17 C.F.R. 240.15c1-4), 17a-3 (Records to be made by certain exchange members, brokers and dealers, 17 C.F.R. 240.17a-3) and 17a-4 (Records to be preserved by certain exchange members, brokers and dealers, 17 C.F.R. 240.17a-4).

(2) A broker-dealer shall immediately telegraph or otherwise expeditiously notify in writing the Commissioner of the theft or mysterious disappearance of any securities or funds from any of its offices, setting forth all

material facts known to him concerning the theft or disappearance.

(3) An issuer-agent (other than one employed by or associated with an issuer registered pursuant to the Investment Company Act of 1940) registered pursuant to the Code shall make, keep, and preserve for a period not less than three years, books and records containing the following information:

- (A) Copies of all writing confirming the sale or purchase of securities;
- (B) The date and amount of each cash receipt or disbursement associated with such sale or purchase of securities;
- (C) The number of shares involved, their certificate numbers, and the date they were delivered to or received from the investor.

(4) An issuer-agent (other than one employed by or associated with an issuer registered under the Investment Company Act of 1940) shall notify a customer in writing at or before completion of each purchase or sale of a security, and a debit or a credit for securities, case, and other items in the account of others. The notice shall state (A) the identity and price of the security, (B) the account for which entered, (C) the date of execution, (D) the name of the agent handling the transaction, and (E) the fact that the transaction was unsolicited, if so.

(5) An issuer-agent employed by or associated with an issuer registered under the Investment Company Act of 1940 shall comply with SEC Rules 270.31a-1 (Records to be maintained by registered investment companies, 17 C.F.R. 270.31a-1), 270.31a-2 (Records to be preserved by registered investment companies, 17 C.F.R. 270.3a-2) and 270.31a-3 (Records prepared or maintained by others, 17 C.F.R. 270.31a-3). The issuer's compliance with the Rules shall be deemed compliance by such issuer-agent.

(6) The person responsible for the day-to-day operation of an office of a broker-dealer in this state must be either the broker-dealer himself (in case of proprietorship), an officer of the broker-dealer or a registered agent of the broker-dealer.

(7) Complaint File. Every broker-dealer shall maintain a file which shall contain all investor complaints and legal actions against the firm by West Virginia residents, or against the firm's agents registered in West Virginia. It shall also include any legal or administrative action against the firm or any of its agents taken by a State or federal agency or self-regulatory organization. The file shall be maintained in the West Virginia branch office where the complaint applies, as well as the home office of the broker-dealer.

(8) Market Maker Records. Any broker-dealer which makes a market in a security shall maintain and preserve for a period of at least five years, the following: (A) Proof in its files that it is lawful for the broker-dealer to, in fact, make a market in such securities, i.e., the securities are either registered or exempt from registration under Chapter 32 of the Code, and applicable Federal Law. (B) Information which he reasonably believes is true and correct and reasonably current, and which was obtained by him from sources which he reasonably believes are reliable. This information shall be available upon request to any person expressing an interest in a proposed transaction in the security with the broker-dealer. The information shall include:

1. The exact name of the issuer and its predecessor (if any);
2. The address of the issuer's principal executive offices;
3. The state of incorporation, if it is a corporation;
4. The exact title and class of the security;
5. The par or stated value of the security;
6. The number of shares or total amount of the securities outstanding as of the end of the issuer's fiscal year;
7. The name and address of the transfer agent;
8. The nature of products or services offered;
9. The nature and extent of the issuer's facilities;
10. The name of the chief executive officer and members of the board of directors;
11. The issuer's most recent balance sheet, profit and loss and the retained earnings statement;
12. Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence; and
13. Whether the broker-dealer or any associates persons are affiliated, directly or indirectly, with the issuer.

(C) The term "market maker" shall mean a broker-dealer who, with respect to the particular type of security, (1) Regularly publishes bona fide competitive bid and offer quotations in a recognized inter-dealer quotation system or regularly furnishes bona fide competitive bid and offer quotations to other

broker-dealers on request; and (2) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(b) Financial Reporting Requirements. (1) Each broker-dealer shall file annually with the Commissioner a copy of his annual financial statements filed with the SEC as required under and at times specified in SEC Rule 17a-5, FOCUS Report Part II (Reports to be made by certain broker and dealers, 17 C.F.R. 240.17a-5) and shall file with the Commissioner a copy of each report required by said Rule 17a-5(d) on the date and in the form prescribed therein. Broker-dealers required to furnish their customers with an audited financial statement in accordance with said Rule 17a-5 may satisfy the requirement of this subsection by filing with the Commissioner a copy of that audited financial statement. If, in the annual audit report, the independent certified public accountant commented on any material inadequacies in accordance with SEC Rules 17a-5 and 17a-11, a copy of the comments shall accompany the financial statement filed with the Commissioner.

(2) A broker-dealer shall file with the Commissioner notice of any proposed transfer of control of such broker-dealer within thirty days prior to the date on which such transfer of control is to become effective or such shorter period as the Commissioner shall permit, and shall furnish the Commissioner such additional information as the Commissioner may require. A transfer of control is deemed a material amendment of the application for registration of such broker-dealer for purposes of Section 203 of Chapter 32 of the Code.

(c) Duty to Amend Information Previously Filed. (1) If the information contained in any application or amendment for registration as a broker-dealer, agent, or issuer-agent changes in a material way, is or becomes incomplete in any respect, an amendment shall be promptly filed at the time of knowledge of such changes. Events requiring notice to the Commissioner shall include, but are not limited to, the following:

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- (A) Change in firm name, ownership, management, or control of a broker-dealer;
 - (B) Change in any of a broker-dealer's partners, officers, or persons occupying a similar status or performing similar functions;
 - (C) Change in the business address;
 - (D) Change *in* ~~is~~ supervisory personnel for an office;
 - (E) Insolvency, dissolution, liquidation or a material, adverse change or improvement of working capital;

- (F) Non-compliance with the minimum net capital requirement set forth in Section 11.02(d) of these Rules;
- (G) Termination of business or discontinuance of activities as a broker-dealer or agent;
- (H) The filing of a criminal charge or civil action against a person or entity, including a partner or officer, registered with the Commissioner, in which an alleged violation of a securities law is involved;
- (I) The result of any hearing, proceeding, or action in (H), as well as any subsequent action taken on appeal by a reviewing agency or court;
- (J) The commencement or notice of intent to commence any action by an administrative agency, regulatory agency, self-regulatory organization or court to consider whether to deny, suspend or revoke a registration, to impose a fine, injunction, or other penalty upon the registrant, and the results of such action, including subsequent measures taken by any agency or court;
- (K) The filing of a civil action against a person or entity registered with the Commissioner alleging a course of action other than a securities violation which, if proven, would affect the financial capacity of the registrant.

The registrant will have complied with the requirement of prompt notification pursuant to this Section if notification has been filed directly with the Commissioner, or as noted in the next sentence, in writing, as soon as possible, but in no event more than fifteen business days after the registrant has knowledge of the circumstances requiring such notification. A broker-dealer who is a NASD member shall comply with the requirements of this Section, where appropriate, by filing its Revised SEC Form BD, as adopted by the SEC effective January 1, 1984, with the NASD's CRD System, when such a broker-dealer is informed by the Commissioner that the Commissioner is participating in the NASD's CRD System with respect to broker-dealers. This change in filing requirements, when effective, does not change the reporting requirements of this Section in any other manner.

(A) The Commissioner regards updating of the agent application to be within the supervisory responsibilities of a broker-dealer, as well as the responsibility of the agent, so that the requirements of the filing(s) set forth in Section 12.01(c)(1) of these Rules will be met in some manner in every case. A broker-dealer shall have established procedures to insure compliance with this Section.

12.02 Denial, Revocation, Suspension, Cancellation and
Withdrawal of Registration

- (a) (Reserved)
- (b) Broker-Dealer, Agent, Issuer-Agent, and Investment Adviser Termination.

(1) A broker-dealer, which seeks to withdraw or fails to renew its registration pursuant to Chapter 32, Article 2, Section 204(e) of the Code shall file Revised SEC Form BDW, as adopted by the SEC effective January 1, 1984, in accordance with the instructions contained therein. A broker-dealer which is a NASD member shall file the Revised SEC Form BDW with the NASD's CRD system when such a broker-dealer is informed by the Commissioner that the Commissioner is participating in the NASD's CRD System with respect to broker-dealers. A broker-dealer or issuer which seeks to terminate or fails to renew the registration of an agent or issuer agent shall file Form U-5 in accordance with the instructions contained therein. NASD-member broker-dealers shall file said Form with the NASD's CRD. All other broker-dealers shall file said Form directly with the Commissioner. All such Forms shall be filed with the Commissioner, or as noted above for NASD member firms, within ten days of the termination. An investment adviser that seeks to withdraw or terminate its registration shall inform the Commissioner in writing, of its intention to do so, in the manner or in the form(s) prescribed by the Commissioner, at least fifteen days prior to the date on which the termination/withdrawal is desired to become effective.

- (2) (Reserved)
- (3) (Reserved)

(4) The registration of any agent is not effective during any period when the broker-dealer which the agent represents is not registered or when the securities of the issuer which the agent represents is not registered or when the securities of the issuer which the agent represents are not subject to an effective order of registration or exemption, or upon termination of the offering. The Commissioner may take steps to revoke the registration of such an agent if the circumstances which cause said registration to become not effective are not, or cannot reasonably be, in the Commissioner's judgment, promptly corrected.

Section 13.00 Licensing of Investment Advisers

Each of the Rules in this Section (13.00 through 13.05) is a legislative rule, and is adopted pursuant to the provisions of Chapter 32, Article 4, Section 412 of the Code, and Chapter 32, Article 2, Sections 201, 202, 203 and 204 of the Code, and each relates to Chapter 32, Article 2, Sections 201, 202, 203 and 204 of the Code.

13.01 Licensing Procedure - (1) Applications for initial and renewal licenses and qualifications of investment advisers and their representatives shall be filed as prescribed by the Commissioner in Section 11.02(b)(4) of

these Rules.

(2) Each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative is required to pass a written examination prescribed by the Commissioner, unless the requirement is waived under subsection (3) of this Section. The examination shall relate to Chapter 32 of the Code, the Rules of the Commissioner thereunder, the applicable Federal Securities laws and rules of the SEC thereunder, general matters concerning the securities business, and such other matters as the Commissioner may determine. The Commissioner may prescribe different examinations for different classes of applicants. Evidence of passing such examinations must be submitted to the Commissioner prior to approval of registration.

(3) The Commissioner may waive, in whole or in part, the examination requirement for:

(a) Any applicant upon receipt of evidence of satisfactory completion, with a passing grade of at least 70%, of a comparable examination, administered by a national securities exchange, the NASD, or the SEC;

(b) Any applicant for qualification as an investment adviser representative, if an undertaking satisfactory to the Commissioner is submitted setting forth how the agent will be adequately supervised, and the qualification of the representative is appropriately limited;

(c) Any applicant who, within two years prior to the date the application is filed, has been licensed or qualified under Chapter 32, of the Code;

(d) Any person by order of the Commissioner under such conditions as the Commissioner may prescribe.

(4) Prior to issuance of a license as an investment adviser, at least one employee of the investment adviser must be designated in the license application to act in a supervisory capacity and be qualified as an investment adviser representative for the investment adviser, and must pass a written supervisory examination required by the Commissioner unless that requirement is waived under subsection (3).

(5) Any application for registration which is not completed or withdrawn within four (4) months from the date it is initially received may be deemed materially incomplete under Chapter 32, Article 2, Section 204 of the Code, and the Commissioner may enter an order denying the effectiveness of such application.

(6) Every investment adviser whose principal office is located in this state shall have at least one person qualified as an investment adviser representative employed on a full-time basis at its principal office.

13.02 Net Capital Requirement -

(1) Every investment adviser shall maintain net capital of not less than \$25,000, which shall be in the form of cash or securities or other liquid assets as determined by the Commissioner. Any investment adviser which fails to meet, or does not at all times maintain the minimum net capital herein prescribed shall be required to furnish a surety bond as prescribed and detailed in Section 11.02(e) of these Rules.

(2) If an investment adviser is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the investment adviser is licensed.

13.03 Investment Adviser's Books and Records - (1) Every licensed investment adviser shall make and keep current such books and records relating to the investment adviser's business as are required by the SEC to be made and kept current by registered investment advisers under the Investment Adviser's Act of 1940, 15 U.S.C. 80b et. seq., and such other books and records relating to the investment adviser's business as the Commissioner may reasonably require, including, but not limited to: (a) Copies of all written communications, correspondence, confirmations, appraisals and other records relating to investment activities of customers; (b) Copies of all complaints of customers relating to investment activities for customers. In this paragraph, "complaint" means any written or oral statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the investment adviser in connection with providing advice or placing orders on behalf of customers; (c) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transaction of any customer; (d) A file containing any advertisement (as defined within the meaning of SEC 206(4)-1 of the Investment Advisers Act of 1940) used in connection with the offering of investment advisory services in this state.

(2) Every investment adviser shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required under subsection (1) except that records respecting an account required under subsection (1)(c) shall be preserved by the investment adviser for a period of not less than six years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for two years as required in this subsection, a microfilm copy thereof may be substituted for the remainder of the required period.

(3) The Commissioner may by order exempt any investment adviser from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business the Commissioner finds that the issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

13.04 Reporting Requirements -

(1) Each investment adviser shall file with the Commissioner a copy of any complaint related to its business, transactions or operations in this state, naming the investment adviser or any of its partners, officers, or investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within twenty days of the date the complaint is served on the investment adviser; a copy of the answer or reply to the complaint filed by the investment adviser within ten days of the date the answer or reply is filed; and a copy of any decision, order, or sanction made with respect to any proceeding within twenty days of the date the decision, order or sanction is rendered.

(3) Each investment adviser shall file with the Commissioner a notice of transfer of control or change of name not less than thirty days prior to the date on which the transfer of control or change of name is to become effective, or such shorter period as the Commissioner may permit.

(4) Except as provided in subsection (2) and (3), all material changes in the information included in an investment adviser's most recent application for license shall be set forth in an amendment to Form ADV filed with the Commissioner within thirty days after the change occurs.

13.05 Prohibited Business Practices - The following are deemed "dishonest or unethical practices in the securities business" by an investment adviser under Chapter 32, Article 2, Section 204(g) of the Code, without limiting those terms to the practices specified in this Section:

(1) Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the price at which, or at the time when, an order involving a definite amount of a specified security shall be executed, or both;

(2) Placing an order to purchase or sell a security for the account of a customer upon instructions of a third party without first having obtained written third party trading authorization from the customer;

(3) Inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account;

(4) Placing an order to purchase or sell for the account of a customer without authority to do so;

(5) Placing an order for the purchase or sale of a security if the security is not registered or transaction is not exempt from registration under Chapter 32 of the Code;

(6) Placing an order to purchase or sell a security for a customer through a broker-dealer or agent not licensed under Chapter 32, of the Code unless the person is a person referenced by Chapter 32, Article 4, Section 402(b) (8) of the Code.

13.06 License Period - (1) The license period of an investment adviser shall be that as provided for in Section 11.00 of these Rules.

(2) The qualification of an investment adviser representative is not effective during any period when the investment adviser which the person represents is not licensed or during any period when the representative is not employed by a specified investment adviser licensed under Chapter 32 of the Code.

13.07 Withdrawal of Licenses - (1) An application for withdrawal from the state of a licensed investment adviser under Chapter 32 of the Code shall be filed by the licensee in the manner and on the Forms prescribed by the Commissioner, and shall include a report on the status of all customer accounts of the licensee in this state, and any additional information the Commissioner may require. (2) An application for withdrawal from the state

of a qualified investment adviser representative shall be filed by the investment adviser which the person represents within ten days of the termination of the representative's employment on Form U-5.

Section 14.00 Registration of Securities

Each of the rules in this Section (14.00 through 14.14) is a legislative rule, and is promulgated pursuant to the provisions of Chapter 32, Article 4, Section 412 of the Code, and Chapter 32, Article 3, Sections 301, 302, 303, 304, 305 and 306 of the Code, and each relates to Chapter 32, Article 3, Sections 301, 302, 303, 304, 305 and 306 of the Code.

14.01 Registration by Notification-Copies of Statement -

The Commissioner may require by order, as a condition to registration by notification in case of public offering of a substantial amount of securities where inadequate, or no prospectus or offering circular is proposed to be used, that a copy of the registration statement under Chapter 32, Article 3, Section 203(b) of the Code be given or sent to each person to whom an offer is made before or concurrently with such offer.

14.02 Registration by Coordination - (1) A person who seeks to register by coordination a security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering shall file Form U-1, the consent to service of process on Form U-2 as required by Chapter 32, Article 4, Section 414(g) of the Code, and shall file the following information specified in Chapter 32, Article 3, Sections 303(b) and 305(c) of the Code:

- (a) A copy of the articles of incorporation and a copy of the by-laws or their substantial equivalents, currently in effect.
- (b) A copy of an agreement with or among underwriters.
- (c) A copy of an indenture or other instrument governing the issuance of the security to be registered.
- (d) A specimen or copy of the security.
- (e) A copy of the latest form of prospectus filed under the Securities Act of 1933; the second and third copies of said prospectus need not be filed.
- (f) The name of a broker-dealer registered in West Virginia through which the issue will be sold, or an application to register an issuer-agent as provided in Section 11.02(3) of these Rules.

(2) The Commissioner may request other information or copies of other documents filed under the Securities Act of 1933.

14.03 Registration by Qualification - (1) A registration statement submitted by a person who seeks to register a security by qualification shall be submitted on Form U-1, shall contain the following information and shall be accompanied by the following documents in addition to the information specified in Chapter 32, Article 3, Sections 304(b) and 305(c) of the Code, and the consent to service of process on Form U-2 required by Chapter 32, Article 4, Section 414(g) of the Code:

(a) The written consent of any independent accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(b) Unless waived by the Commissioner, a balance sheet and a comparative statement of income and changes in financial position and analysis of surplus of the issuer covering the last fiscal year of the issuer, certified by independent or certified public accountants (or the same statements for the same period of any predecessor, if applicable); waiver from this requirement will normally not be granted unless the person who seeks to register the issue informs the Commissioner, in writing, of the reason(s) that this requirement cannot be met; the financial information required by this subsection shall be included in the prospectus or private offering memorandum, and shall be available to each prospective investor;

(c) A description of any pending litigation or proceeding to which the issuer, or any director or officer of the issuer, or any person occupying a similar status or performing similar functions, or any promoter if the issuer was organized within the past three years, or any person owning or beneficially 10% or more of the outstanding shares of any class of equity security of the issuer, is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(d) The name of a broker-dealer registered in West Virginia through which the issue will be sold, or an application to register an issuer-agent as provided in Section 11.02(3) of these Rules.

(2) In the case of registration under this subsection, and unless the Commissioner in a specific instance permits otherwise, a prospectus or offering memorandum previously filed with the Commissioner shall be sent or given to each prospective purchaser within a reasonable time before a commitment to purchase is made. If the prospectus or offering memorandum or any part thereof becomes

misleading as to any material fact, or facts, or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, it shall be revised or supplemented, and the revision or supplementation shall be submitted to the Commissioner prior to its use. A prospectus or offering memorandum shall not be used if the Commissioner has informed the registrant of an objection thereto. A prospectus or offering memorandum shall not be used without supplementation or revision for more than thirteen months from its date.

(3) Unless good cause is shown or unless the issuer has been in business for two years, an issuer may not use more than ten percent of the estimated net proceeds it receives from an offering to repay loans which promoters, finders, controlling stockholders, officers or directors of the issuer made.

(4) A registration statement under Section 14.03 of these Rules becomes effective when the Commissioner so orders.

14.04 Provisions Applicable To Registration Generally -

(1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. A registration statement shall have one or more registrants and may ordinarily have no more than one issuer.

(2) (a) A registration statement which a registrant fails to complete or withdraw within seven months from the date of filing shall be deemed materially incomplete under Chapter 32, Article 3, Section 306(a) of the Code, and the Commissioner may issue a stop order denying effectiveness to such registration statement. An order of withdrawal of an application (prior to effectiveness) may be issued by the Commissioner upon request of the applicant. Abandonment or discontinuance of a proposed offering which is the subject of an application, without request for withdrawal, or dormancy of an application without amendment for a period of six months or more after filing may be considered to signify a request for withdrawal.

(b) In the event of an omission or non-compliance as to any requirement for registration, the applicant shall be notified thereof, usually in the form of a data request. Failure to comply with such requirement may be deemed ground for issuance of a stop order under Section 306 of the Code.

(3) A registration statement filed under Chapter 32, Article 3, Section 303 of the Code and Section 14.02 of these Rules is deemed to cover the number of shares or units the federal registration statement covers. No offering or sale of an issue of common stock may result in a share's book value being less than twenty percent of its public offering price.

(4) (a) A person filing a registration statement under Chapter 32,

Article 3, Sections 302 or 303 of the Code or a notification and offering circular under Section 14.00 of these Rules shall file promptly with the Commissioner all amendments to the prospectus (other than amendments which merely delay the effective date of the registration statement) or to the notification and offering circular previously filed, clearly marked so as to indicate the specific amendments.

(b) A person who seeks to register securities under the Act shall promptly notify the Commissioner of the following information or event: (If the registration statement is filed under Section 14.02 of these Rules, notice shall be given prior to the effective date of the federal registration statement.)

- (A) A change in any of the information or documents filed with the Commissioner;
- (B) Any adverse order, judgment, decree, permanent or temporary injunction which a state or federal agency or court entered concerning either the offering or other securities of the issuer or the person seeking the registration;
- (C) A request by the issuer or person seeking the registration to withdraw an application pending before a state or federal agency to register the same security he seeks to register pursuant to the Code;
- (D) Final notice from any state or federal administrative agency that the security or any information or document relating thereto fails to meet the agency's requirements; and
- (E) Such additional information as the Commissioner may request.

(5) The person filing a registration statement under Chapter 32, Article 3, Sections 302 or 303 of the Act or a notification and/or circular under Section 14.00 of these Rules shall promptly notify the Commissioner in writing of the completion date of the initial distribution of a security registered under the Code and these Rules and the number of shares sold in this State; provided, notice need not be given for a distribution of investment company shares if the registration thereof is for a continuous offering.

(6) So long as a registration statement is effective under Chapter 32 of the Code and these Rules, the person who filed the registration statement shall file written sales reports with the Commissioner at least once a year, and at such other times as the Commissioner so requires, in a form acceptable to the Commissioner.

(7) (Reserved)

(8) Upon the written request of the Commissioner, the issuer of a security registered under the Code shall furnish a balance sheet as of the close of the issuer's most recent fiscal year and an income statement for such fiscal year.

14.05 Promotional Securities or "Cheap Stock" -

(1) Securities to be sold or issued, or sold or issued by an issuer which is in the promotional or development state, to underwriters, promoters or insiders for a consideration less than the proposed offering price are presumed to be "cheap stock". Registration of securities where cheap stock has been or will be issued may be looked upon with disfavor and as tending to work an imposition, as being an offering upon unfair terms, and as involving an unreasonable amount of underwriters' and seller's discounts, commissions or other compensation, unless the following minimum conditions are met:

(a) The number of shares shall be justifiable in amount and the consideration therefor shall have a reasonable relationship to the public offering price.

(b) If the shares were or are to be acquired by an underwriter, the difference between the consideration for the shares and the proposed public offering price, when added to the other discounts, commissions and expenses of the sale shall not exceed the maximum customarily allowable therefor.

(c) (Reserved)

(d) The Commissioner, unless satisfactory earnings history meeting standards comparable to those stated in Section 14.12(3) of these Rules is shown may require all cheap stock to be deposited in escrow under such terms and conditions as the Commissioner shall prescribe.

(e) The same test shall be applied to cheap stock acquired from selling shareholders unless such shareholders are so lacking in control of the corporate entity as to require different treatment.

(2) In this section, "promotional or cheap stock" shall include any entity or convertible securities issued or sold at any time prior to the public offering date by an issuer in the promotional or developmental stage on that date, or within two years prior to the public offering date by any other issuer, to any persons who were at the time of the sale or issuance or at the time of the public offering underwriters, promoters, finders, officers, directors or controlling stockholders of the issuer, at a price lower than or at a conversion rate or for a consideration not reasonably related to the public offering price of the securities, in the absence of any public market for the equity securities or any substantial change in the earnings or financial position of the issuer.

14.06 Real Estate Programs -

The offer or sale of interests in a limited partnership which will engage in real estate syndication may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy regarding Real Estate Programs, adopted April 15, 1980, as amended March 30, 1982. Copies of the Statement of Policy are available from the Commissioner's Office for a prepaid fee of \$5.00. The Statement of Policy is published in Volume One of the Commerce Clearing House Blue Sky Law Reporter and is on file at the Offices of the Commissioner.

14.07 Oil and Gas Programs -

The offer or sale of interests in a limited partnership which will engage in oil or gas well drilling and exploration activities or the purchase of production from oil and gas wells may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs, as adopted September 22, 1976. Copies of the Statement of Policy are available from the Commissioner's Office for a prepaid fee of \$5.00. The Statement of Policy is published in Volume One of the Commerce Clearing House Blue Sky Law Reporter, which is on file at the Commissioner's Office.

14.08 Cattle Feeding Programs - The offer or sale of interests in a limited partnership which will engage in cattle feeding operations may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Publicly Offered Cattle Feeding Programs, adopted September 17, 1980. Copies of the Guidelines are available from the Commissioner's Office for a prepaid fee of \$5.00. The Guidelines are published in Volume One of the Commerce Clearing House Blue Sky Law Reporter and are on file at the Offices of the Commissioner.

14.09 Debt Securities Issued by a Church or Congregation -

The offer or sale of debt securities issued by a church or congregation, the proceeds of which are to be utilized to finance or refinance the purchase, construction or improvement of buildings or related facilities (including the underlying property) of the issuer may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for Offerings of Church Bonds, adopted October, 1979. Copies of the Guidelines are available from the Commissioner's office for a prepaid fee of \$5.00. The Guidelines are published in Volume One of the Commerce Clearing House Blue Sky Law Reporter and are on file at the Offices of the Commissioner.

14.10 (Reserved)

14.11 Promoters' Participation - Promoters' participation may be deemed

unreasonable under Chapter 32, Article 3, Section 306(a)(2)(F) of the Code, unless, in the case of an issuing company in a promotional or developmental state seeking equity public financing, the promoters shall have first made an investment in cash or tangible property of a fair value equal to 15% or more of the minimum or impounded amount of the proposed public financing. Tangible assets turned in by promoters after being held by them less than one year will be presumed to have a fair value not greater than the cost to them; however, this presumption may be rebutted.

14.12 Escrow of Securities - (1) As a condition of registration by qualification or coordination, the Commissioner may require that any security issued or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow. The Commissioner, or a governmental agency or bank or trust company acceptable to the Commissioner may be the depository.

(2) The conditions of escrow may be any or all of the following:

(a) To prohibit assignment, sale or transfer of the securities for a stated period of time.

(b) To insure that such securities will not share in assets in dissolution or liquidation until and unless the remaining security holders have been paid a liquidating dividend equal to the public offering price.

(c) To permit the Commissioner, where necessary for the protection of security holders, and after prior notice and opportunity for hearing, to order the cancellation in whole or in part of any such security.

(3) Securities in escrow may be subject to release after lapse of the terms of escrow or on a petition including a showing based on an audit by independent certified public accountants that an average net income of 5% a year, for a two year period subsequent of the date of escrow has been earned on the class of securities in escrow, based on the offering price, and that the issuer is in sound financial condition. Notwithstanding the foregoing, securities may be released if the public offering is terminated and no securities were sold, or if all the purchasers join in petitioning for release of the securities from escrow, or other equitable reasons justify the release, or on such other conditions as the Commissioner may provide, and which may be provided for in the escrow agreement. Said release shall not be effective under any circumstances unless said release is provided by the Commissioner in writing.

(4) Securities in escrow may not be transferred except by will or pursuant to the laws of descent and distribution, without the consent of the Commissioner. A request to permit transfer shall be in writing, shall state the reason and consideration for the transfer and the transferee shall agree to redeposit the shares in escrow under the same terms.

14.13 Impoundment of Proceeds of Sale of Securities -

(1) As a condition to registration by qualification or coordination, the Commissioner may require that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security in this State or elsewhere, sufficient to accomplish the purposes of the offering, or until certain stipulated requirements are met.

(2) In a new promotional enterprise, the Commissioner may require that 100% of the sales price be impounded and that the 100% be returned to investors entitled thereto upon order of the Commissioner in case of failure to raise the specified amount within one year or during the effectiveness of the registration, or if certain stipulated requirements are not met. In such case, the promoters will be required, by equity investment or otherwise in a manner satisfactory to the Commissioner, to defray the discount, commission and expenses of the public offering including the expense of the impoundment and possible refunds. Consideration will be given to reduction of this percentage to defray some or all of the public offering costs in any instance of an enterprise with reduced promotional remuneration and advantages. No funds may be released except upon written order of the Commissioner and all funds may be subject to audit before release.

(3) A bank or trust company may act as depository or escrow agent for the impoundment of proceeds. Checks, drafts, and money orders shall be made payable to the depository. If a broker-dealer is acting as the underwriter or selling agent for the issuer, payments may be made directly to the broker-dealer who shall promptly, after payment or settlement, make remittance to the depository.

(4) A request for the release of impounded funds when requirements are met shall be by petition, in writing, affirming compliance with the registration and shall be accompanied by a statement from the depository setting forth the total amount of deposit.

14.14 Denial, Suspension and Revocation of Registration -

(1) Through (6) (Reserved)

(7) An offering may be deemed to be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation within the meaning of Chapter 32, Article 3, Section 306(b)(2)(F) of the Code if the aggregate of such discounts, commissions, profits, participation, or other consideration exceed eighteen percent of the aggregate amount of the public offering. Warrants to purchase the security which is the subject of the offering are consideration only to the extent the offering price

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exceeds the exercise price. An offering may be deemed to be made with unreasonable amounts of promoters' profits or participation according to the provisions of Section 14.11 of these Rules.

(8) The Commissioner may issue a stop order denying effectiveness of, or suspending or revoking the effectiveness of, any registration statement filed pursuant to Chapter 32, Article 3, Section 304, if the sale of securities pursuant to the registration is or would be in violation of the Securities Act of 1933 or the Investment Company Act of 1940.

14.15 Inapplicability of Certain Restrictions on Book Value Per Share, Amounts of Cheap Stock and Promotional Shares, and Promoter's Participation -

(1) The restrictions imposed with respect to minimum book value of a share of common stock by Section 14.04(3) of these Rules, the restrictions on the amounts of cheap stock and promotional securities imposed by Section 14.05 of these Rules and the restrictions on promoter's participation imposed by Section 14.11 of these Rules shall not apply with respect to offerings as to which all of the following conditions are met:

(a) The offering shall be firmly underwritten by a syndicate of not less than fifteen investment banking firms, each of which firmly agrees to purchase for resale in the offering at least \$100,000 of securities; and

(b) The amount in the offering firmly underwritten by such syndicate of investment banking firms shall aggregate not less than \$4,000,000; and

(c) The offering price per share in said offering shall not be less than five (\$5.00) dollars per share.

(2) In order to utilize the provisions of this Rule, Counsel for the Underwriter or Issuer, whichever is applicable, shall certify the information included in paragraphs a through c, above, in writing, to the Commissioner; certification in letter form will be acceptable, provided that such letter is in a form which is separate and distinct from the other information submitted with the usual application for registration of securities; such letter must be submitted at least seven (7) days prior to the proposed effective date for registration of the securities.

(3) The certification imposed by paragraph (2), above, shall under no circumstances be acceptable if it is not in written form.

Section 15.00 General Provisions

Each of the rules in this section (15.00 through 15.09) is a legislative

rule promulgated pursuant to the provisions of Chapter 32, Article 4, Section 412 of the Code. Rules 15.01, 15.03 and 15.07 relate to Chapter 32, Article 4, Section 412 of the Code. Rules 15.02 and 15.06 relate to Chapter 32, Article 4, Section 402 of the Code. Rule 15.04 relates to Chapter 32, Article 4, Section 412 of the Code, and Chapter 32, Article 2, Sections 202, 203 and 204 of the Code. Rule 15.05 relates to Chapter 32, Article 4, Section 403 of the Code. Rule 15.08 relates to Chapter 32, Article 4, Section 413 of the Code. Rule 15.09 relates to Chapter 32, Article 4, Section 414 of the Code.

15.01 Definitions - When used in the Code and these Rules, unless the context clearly otherwise requires:

(a) Certified, when used in connection with financial statements, means certified by an independent public accountant in accordance with generally accepted accounting principles.

(b) Code, means the Code of West Virginia, 1931, as amended.

(c) Commission, means all cash, securities, contracts, or anything else of value paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

(d) Commissioner, means the Auditor of the State of West Virginia, who is by virtue of Chapter 32, Article 4, Section 401 of the Code, the Commissioner of Securities.

(e) Control, Controlling, Controlled By, and Under Common Control with means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(f) Corporation, includes any entity having transferable shares, and includes, without implied limitation, a voluntary association, business trust, and limited partnership.

(g) Federal Registration Statement, means a registration statement filed under the securities Act of 1933.

(h) Isolated, as used in chapter 32, Article 4, Section 401(b)(1) of the Code, means not in the course of repeated and successive transactions of like character. Two consecutive sales of securities made within such a period of time and in such circumstances as to indicate that they involve the same plan of financing are not isolated.

(i) NASD, means the National Association of Securities Dealers, Inc.

(j) Officer, means (1) A president, vice president, treasurer, secretary and any other individual who performs for a broker-dealer or an issuer, whether incorporated or unincorporated, functions corresponding to those ordinarily performed by the foregoing; (2) a member of an executive or similar committee.

(k) Principal, means general partners, in the case of a partnership, and officer in the case of a corporation.

(l) Promoter, means:

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of any issuer.

(b) Any person who, in conjunction with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of securities. However, a person who received such securities or proceeds, either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter if such person can demonstrate, by competent evidence, that he did not otherwise take part in founding and organizing the enterprise.

(m) Purchase, of a security includes every purchase, acquisition or exchange and every contract of purchase of, or contract to purchase, a security or interest in a security for value.

(n) Rule or Rules refers to these Rules.

(o) SEC, means the Securities and Exchange Commission and/or its staff, as appropriate.

(p) Stockholders and Shareholders, mean holders of shares, transferable certificates of participation, or other interests in any corporation.

(q) State, means the State of West Virginia.

(r) Transact Business, includes the solicitation of a person to become a customer, client or subscriber.

15.02 Recognized Securities Manuals - The Commissioner recognizes the following securities manuals under Chapter 32, Article 4, Section 402(b) (2) (A) of the Code:

Moody's industrial manual
Moody's transportation manual
Moody's public utility manual
Moody's bank and finance manual
Moody's municipal and government manual
Standard and Poor's Corporation records
Best's life insurance reports
Best's insurance reports (fire and casualty).

15.03 Rules, Forms, Orders and Hearings -

(a) (1) The forms prescribed for use under these Rules and the Code, to which reference is directed herein for all pertinent purposes, are hereby incorporated by reference and made a part hereof.

(A) Uniform Application to Register Securities (Form U-1) (used for registration by coordination and registration by qualification);

(B) Uniform Consent to Service of Process (Form U-2) (used with all applications for registration and every issuer which proposes to offer a security in this State through any person acting on an agency basis in the common-law sense);

(C) Uniform Form of Corporate Resolution (Form U-2A) (used with Form U-2);

(D) Application for registration as a broker-dealer (SEC Form BD) (used to register and amend registration as a broker-dealer);

(E) Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) (used to register or transfer agents of broker-dealers and issuer-agents);

(F) Uniform Termination Notice for Securities Industry Representative and/or Agent (Form U-5) (used to terminate employment of agents or issuer-agents);

(G) Renewal Form (Form 16_A (Revised 8/77)) (used to renew broker-dealer's registration);

(H) Uniform Application for Registration as an Investment Adviser or to Amend such an application under the Investment Advisers Act of 1940 (Form ADV) (used to register as an investment adviser);

(I) West Virginia Form ADV (W.Va. Form ADV 3-74) (used to renew registration as an investment adviser).

(2) SEC Form BD may be obtained from the SEC; Forms U-4 and U-5, from any National Securities Exchange or from the NASD. The Commissioner reserves the right to and may issue from time to time revisions or amendments of the forms.

(3) Only an executed copy of any form should be filed.

(4) All forms and documents shall be printed, lithographed, mimeographed, typewritten, or prepared by a photo copying process which, in the opinion of the Commissioner, produces copies suitable for a permanent record. All forms and documents shall be clear, easily readable, and suitable for repeated photocopying. Exhibits may be attached to additional sheets or filed separately. A document filed as an exhibit to a prior application may be incorporated by reference into a subsequent application.

(5) All applications and other documents received and filed with the Commissioner shall become part of the permanent records of his office, and will not be returned to the applicant or correspondent.

(6) The Commissioner may by order exempt a person, security, or transaction from a specific provision of these Rules. The Rules supercede any administrative orders, rules and regulations pursuant to Section 21, Article 1, Chapter 32, Code of West Virginia, 1931, as amended, as first adopted on November 16, 1964, and as most recently amended on June 7, 1974, with the express exception of S.R. Rule 9, Application to Register Securities Offered on a Continuing Basis, promulgated on July 18, 1979, and effective on August 17, 1979, which is specifically not superceded by these Rules.

(7) Any Rule requiring compliance with a federal statute, rule, or interpretative opinion of the SEC or other administrative agency, incorporates said statute, rule or interpretative opinion, as amended from time to time, by reference and makes it a part of these Rules as fully as if it were set forth herein.

15.04 Financial Statements - (1) All financial statements required by Chapter 32 of the Code, or these Rules, shall be:

(a) Prepared in accordance with generally accepted accounting principles; and;

(b) Examined and reported upon by an independent certified public accountant, provided that this requirement may be waived by the Commissioner, in a manner such as that provided for in Section 14.03(1)(b) of these Rules, and does not apply to interim financial statements or financial statements of independent advisers that are prepared by an independent accountant, unless otherwise required by the Commissioner in particular cases. The accountant's report shall meet the requirements of Regulation S-X of the SEC, and shall accompany the financial statements included in the prospectus, private

offering memorandum, or like document.

(2) Financial Statements meeting the requirements of Regulation S-X are deemed to satisfy the requirements of subsection (1).

(3) The Commissioner may permit the omission of one or more of the statements required under this section or the filing in substitution therefor of appropriate statements of comparable character, in a manner such as that provided for in Section 14.03(1)(b). The Commissioner may also require the filing of other statements when necessary or appropriate for an adequate presentation of the financial condition of any issuer or person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

15.05 Filing of Sales and Advertising Literature -

(a) Pursuant to Chapter 32, Article 4, Section 403 of the Code, the Commissioner requires the issuer of any security to file sales literature used by or on behalf of the Issuer in connection with the sale of such a security, if such sales literature is intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, before it is used, disseminated or distributed unless the security or transactions are exempted by Chapter 32, Article 4, Section 402 of the Code.

(b) Pursuant to Chapter 32, Article 4, Section 403 of the Code, the Commissioner requires any person other than the issuer to file sales literature used in connection with the sale of a security, under the same circumstances as in subsection (a).

(c) The term "sales literature" includes, but is not limited to, brochures, circulars, advertisements, notices of sale, bid forms, official statements and all other written disclosure statements used in connection with the sale of a security. Sales literature does not include working papers, drafts or internal memoranda.

(d) One copy of each item of sales literature shall be filed with the Commissioner simultaneously with each item's first use.

15.06 Exemptions -

(a) (1) For the purposes of Chapter 32, Article 4, Section 402(a)(1) of the Code only, the term "other instrumentality" shall include any political subdivision of any State other than this State.

(2) Through (7) (Reserved)

(a) (8) For the purposes of Chapter 32, Article 4, Section 402(a) (8) of the Code, only, the term "any regional stock exchange" shall not include the Boston Stock Exchange.

(9) (Reserved)

(10) To coordinate the interpretation and administration of the Code with related federal regulations, "commercial paper", as used in Chapter 32, Article 4, Section 402(a) (10) of the Code, includes prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper used to facilitate well recognized types of current operational business requirements and a type eligible for discounting by Federal Reserve Banks, as set forth in SEC Release No. 33-4412.

(11) (A) No notice pursuant to Chapter 32, Article 4, Section 402(a) (11) of the Code need be given for the following:

(i) An employees' benefit plan qualified under Section 401 of the Internal Revenue Code of 1954, as amended from time to time, or which does not permit voluntary contributions by participating employees,

(ii) Blue Cross group life, wage continuation, medical reimbursement, or any other plan whose primary purpose is to insure employees against a specified risk or loss, or,

(iii) An employees' benefit plan which requires the employees to contribute in order to participate therein.

(B) The notice requirement the aforesaid Code section requires shall include:

(i) A description or summary of the plan;

(ii) A copy of the plan and any literature describing its details and method of distribution;

(iii) A description of the method by which full disclosure of material facts will be made to each offeree;

(iv) An undertaking that the offeror will notify the Commissioner of any material change in the offering or method or cost of distribution thereof, within thirty days of such change, including a copy of the plan, marked to indicate the change.

(1) Through (8) (Reserved)

(b) (9) Limited Offering Exemption -
Preliminary Notes

1. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Code.

2. In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

3. Nothing in this Rule is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

4. Nothing in this Rule is intended to exempt any person from the broker-dealer or agent registration requirements of the Code.

Rule

Pursuant to the authority delegated to the Commissioner by Chapter 32, Article 4, Section 402(b) (9) and Chapter 32, Article 4, Section 412 of the Code, the following transaction is determined to be exempt from the registration provisions of the Code:

✓ A. Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 or 203.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions or limitations:

1. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this State unless such person is appropriately registered in this State pursuant to the applicable provisions of the Code and these Rules.

2. No exemption under this Rule shall be available for the securities of any issuer if any of the persons described in paragraphs (c) through (f) of Rule 230.252 of Regulation A, as promulgated under the Securities Act of 1933:

- a. Has filed a registration statement which is the subject of a currently effective registration Stop Order entered pursuant to

any State's securities law within five years prior to the commencement of the offering.

- b. Has been convicted within five years prior to the commencement of the offering of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.
 - c. Is currently subject to any state's administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the commencement of the offering or is subject to any state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the commencement of the offering.
 - d. Is subject to any State's administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.
 - e. Is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the commencement of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.
 - f. The prohibitions of paragraphs a, c, and e above shall not apply if the party is subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the State in which the administrative order, judgment or decree was entered against such party.
 - g. Any disqualification cause[^] by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determined upon a showing of good cause that it is not necessary under the circumstances that the exemption under this Rule be denied.
3. The issuer shall file with the Commissioner:

- a. A copy of each notice on Form D as prescribed under the Securities Act of 1933 in 17 C.F.R. 239-500 of each notice on Form D at the same time, and in the same manner as prescribed by Rule 230.503(a) or (b) as applicable, except that the filing of Form D required by Rule 230.503(a)(1) shall be filed no later than 15 days after the first sale of securities in reliance upon this exemption; the filing of the Form D required by Rule 230.503(a)(3) of Reg. D shall be within 30 days after the termination of the offering; each notice required by this paragraph shall be manually signed by a person duly authorized by the issuer;
- b. An undertaking by the issuer to promptly provide to the Commissioner, upon written request, the information furnished to the offerees by the issuer, which undertaking shall be in written form;
- c. An executed consent to service of process on Form U-2 unless a currently effective consent to service of process is on file with the Commissioner; the consent to service of process and the undertaking required by paragraph (b), above, shall be filed with the notice of the first sale, the time for filing of which is covered by paragraph (a), above.
- d. Any person who utilizes any limited offering exemption which the Commissioner established pursuant to the rule-making authority provided by Chapter 32, Article 4, Section 402(b)(9) of the West Virginia Code, 1931, as amended, shall be assessed a non-refundable filing fee in the amount of one hundred twenty-five dollars' (\$125.00). Said fee shall accompany the notice of first sale which is required to be filed with the Commissioner no later than fifteen days after the first sale in reliance upon said exemption. Failure to pay such fee as required by this subsection shall constitute grounds for the Commissioner to deny or revoke said exemption pursuant to Chapter 32, Article 4, Section 402(c) of the West Virginia Code, 1931, as amended. Fees collected under this subsection shall be deposited in the state treasury and credited to the general revenue fund.

4. In all sales to non accredited investors (as the term is defined in Regulation D under the Securities Act of 1933), the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and financial situation and needs.

5. Offers and sales of securities which are exempted by this Rule may

not be combined with offers and sales of securities exempted by any other Rule or section of the Code; however, nothing in this limitation shall act as an election. The issuer may claim the availability of any other applicable exemptions should, for any reason, the persons fail to comply with the conditions of this exemption.

6. In any proceeding involving this Rule, the burden of proving the exemption or any exception from a definition or conditions is upon the person claiming it.

B. The exemption authorized by this Rule shall be known and may be cited as the "Uniform Limited Offering Exemption".

(b) (10) (Reserved)

(11) The notices Chapter 32, Article 4, Sections 402(a)(11) and (b)(11) require, shall be filed by furnishing the Commissioner the following:

- (A) The offeror's name;
- (B) The issuer's name and address, and the type and amount of securities offered;
- (C) The number of persons in this State to whom the offeror expects to direct the offer;
- (D) The offer's terms;
- (E) The person or persons to whom the commission or other remuneration will be given;
- (F) Information from which the Commissioner can determine whether the commission or other remuneration to be paid is consistent with the policy set forth in Section 14.00 of these Rules;
- (G) A copy of any prospectus, pamphlet, circular, or other sales literature or advertising communication, regarding the offer and intended for distribution to persons in this State;
- (H) Additional information or documents which the Commissioner may request within five full business days after the notice is filed.

(12) (Reserved)

15.07 Cease and Desist Orders - The Commissioner may afford persons an opportunity to enter into voluntary agreements to cease and desist from certain acts and practices when it appears that such procedure fully safeguards the public interest. All such agreements and orders shall be matters of public record.

15.08 Files and Records - (1) Except as otherwise provided by law or as specified in subsection (2), any record or document in the Commissioner's possession or control of which the Commissioner is the legal custodian, may

be inspected or copied by any person during regular business hours.

(2) The following records may be excluded from disclosure under this Section if the Commissioner finds the public interest in nondisclosure outweighs the benefits of open access.

(a) Personnel files of office employees, former employees, and job applicants.

(b) Communications with legal counsel.

(c) Records obtained under a pledge or reasonable expectation of confidentiality.

(d) Memoranda and work papers of employees, the Commissioner, or the Deputy Commissioner, prepared with the reasonable expectation of confidentiality.

(e) Information and documents the Commissioner obtains pursuant to an investigation under Chapter 32, Article 4, Section 407 of the Code.

(3) (Reserved)

(4) A request for records shall be addressed to the Commissioner, who shall produce the records or a refusal with the specific reasons therefor within ten business days after the request is received.

15.09 Irrevocable Consent to Service of Process -

An applicant for registration under the Code and an issuer which proposes to offer a security in this State through a broker-dealer as his agent shall file, or have on file, with the Commissioner an irrevocable Consent to Service of Process pursuant to Chapter 32, Article 4, Section 414(g) of the Code in the form prescribed in Section 15.03 of these Rules.

748-8947

SENATE BILL NO. 410

(By Mr. R. Williams

[Introduced March 6, 1985

referred to the Committee on Finance; then to the Committee
on the Judiciary]

A BILL to amend and reenact section thirty-two (four)(four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state auditor, (securities commissioner) to promulgate legislative rules relating to filing fees.

Be it enacted by the Legislature of West Virginia:

That section thirty-two (four)(four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-32(4)(412). State auditor, securities commissioner.

(a) The legislative rules authorized by the Legislature in section thirty-two (four) (four hundred two) of this article were also proposed by the state auditor, securities

1 commissioner pursuant to section four hundred twelve,
2 article four, chapter thirty-two of this code.

3 (b) The legislative rules filed in the state register on
4 the eighteenth day of January, one thousand nine hundred
5 eighty-five relating to the state auditor, securities
6 commissioner (filing fee) are authorized.

7

8 NOTE: The purpose of this bill is to authorize the state
9 auditor, securities commissioner to promulgate legislative
10 rules relating to filing fees.

11 Strike-throughs indicate language that would be stricken
12 from the present law, and underscoring indicates new
13 language that would be added.

H. B. 1620

(By Delegate Casey)
(Introduced March 6, 1985; referred to the
Committee on the Judiciary)

A BILL to amend and reenact section thirty-two (four)(four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state auditor, securities commissioner to promulgate legislative rules relating to filing fees.

Be it enacted by the Legislature of West Virginia:

That section thirty-two (four)(four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-32(4)(412). State auditor, securities commissioner.

(a) The legislative rules authorized by the Legislature in section thirty-two (four) (four hundred two) of this article were also proposed by the state auditor, securities

1 commissioner pursuant to section four hundred twelve,
2 article four, chapter thirty-two of this code.

3 (b) The legislative rules filed in the state register on
4 the eighteenth day of January, one thousand nine hundred
5 eighty-five relating to the state auditor, securities
6 commissioner (filing fee) are authorized.

7

8 NOTE: The purpose of this bill is to authorize the state
9 auditor, securities commissioner to promulgate legislative
10 rules relating to filing fees.

11 Strike-throughs indicate language that would be stricken
12 from the present law, and underscoring indicates new
13 language that would be added.