STATEMENT OF AUTHORITY

These rules are legislative rules as defined in Chapter 29A, Article 1, Sections 2(d) and (i) of the West Virginia Code, 1931 as amended. These rules relate to the authority of the Commissioner of Securities (the "Commissioner") pursuant to Chapter 32, Article 2, Sections 201 through 204, inclusively, Chapter 32, Article 3, Section 306, and Chapter 32, Article 4, Sections 402(b)(9) and 412 of the West Virginia Code. The Commissioner is empowered to make, amend, and rescind such rules as are necessary to carry out the provisions of Chapter 32, of the West Virginia Code, including the Code sections listed above, by the provisions of Chapter 32, Article 4, Section 412 of the West Virginia Code.

ABSTRACT OF PROMULGATION HISTORY

The Commissioner hereby files this notice of proposed Legislative rules, attached hereto.

On October 14, 1983, the Commissioner entered an Order proposing Legislative rules and directing them to be filed in the State Register. These rules amend the Commissioner's Administrative Regulations 10.02, 11.01(c), 11.02(a)(2)(b), 11.02(a)(2)(b)(5), 11.02(a)(1), 12.02(a)(1)(c)(C), 12.02(b)(1), 14.04(3), 14.05, 14.06 and 15.06. Rules 14.07 and 15.06(b)(9) are initially proposed in this rulemaking.

Subject to notice as provided in Chapter 29A, Article 3, Section 5 of the West Virginia Code, the Commissioner scheduled a public hearing on November 15, 1983, for the purpose of providing interested parties an opportunity to present their views with respect to the Rules as initially proposed. No persons appeared at said hearing. The Commissioner received no written comments concerning said Rules. A few oral comments were received, each generally supporting the Rules as proposed. Comments were particularly favorable concerning proposed Rule 15.06(b)(2)(9).

Pursuant to the provisions of Chapter 29A, Article 3, Sections 9 and 11, respectively, the Commissioner filed Notice of Approval of the Proposed Rules with the Secretary of State, and the Rules in Final Form as proposed to be adopted with the Legislative Rulemaking Committee, on December , 1983.

STATEMENT OF FACTS AND CIRCUMSTANCES AND DESCRIPTIVE SUMMARY OF CONTENT

It is specifically pointed out that, in cases where new Rules are being proposed, those portions of the text are underlined. Where rules are being amended, either through rescinding part of the Rules, or adding new material, or both, new portions are underlined, old portions appear in normal type; portions to be rescinded are stricken through. Where Rules are somewhat lengthy, and only a portion is being effected through part of it being rescinded or added to, the entire present Rule may not appear.

The following comments are in explanation, Rule by Rule, of the specific proposals:

(1) Rule 10.02- an amendment is proposed to correct the mailing address;

(2) Rule 11.02(a)(1)- the Rule is to be amended to provide for adoption of the latest revised application form for broker-dealers as adopted by the U.S. Securities and Exchange Commission, and for the purpose of providing for broker-dealer reporting and registration requirements to be accomplished through the National Association of Securities Dealers' ("NASD") Central Registration Depository System ("CRD"), when this procedure becomes available. Like 48 other states, West Virginia participates in the CRD System, which is an efficient and economical, nationwide automated filing system for agents and, soon, broker-dealers;

(3) Rule 11.01(c)(4)- this Rule is amended to provide in the future for a uniform expiration date for broker-dealers who are NASD members, in keeping with the amendment mentioned in the preceding paragraph;

(4) Rule 11.02(a)(2)(b)(1)- this Rule is being amended to clarify, and to make easier to claim, the provision for being waived from the examination requirement for agent registration;

(5) Rule 11.02(a)(2)(b)(5)- this Rule is being amended to eliminate the requirement that an agent of an NASD member broker-dealer must have a letter from the Commissioner's office before registration is effective. This requirement is duplicative of the NASD's efforts, and expensive and time-consuming.

(6) Rule 12.01(a)(c)(C)- this Rule is being amended to eliminate the requirement that broker-dealers inform the Commissioner of the creation of a branch office. This is an item which most broker-dealers report to the NASD, and it is available to the Commissioner from the NASD; the Rule is also amended to provide for the CRD System reporting requirement for certain broker-dealer information;

(7) Rule 12.02(b)(1)- this Rule is amended to require for broker-dealers to use the CRD system to report termination, when this option becomes available;

(8) Rule 14.04(3)- this Rule is amended to correct a statutory citation;

(9) Rule 14.05- this Rule is amended to rescind a requirement for certain security filings which is covered by another section of the Rules;

(10) Rule 14.06- this Rule is amended to clearly indicate that the Real Estate Policy Statement of the North American Securities Administrators Association, Inc., which the Commissioner has adopted along with most other states, includes the amended portion of the guidelines;

(11) Rule 14.07- this Rule is new, and is proposed for the adoption of the Statement of Policy Regarding Oil and Gas Programs, as adopted by the North American Securities Administrators Association, and by most other states. This Rule will provide a known, uniform procedure for registering oil and gas programs, as it is used in most other states;

(12) Rule 15.06(a)(8)- this Rule is new, and is proposed for the purpose of eliminating the Boston Stock Exchange from the Stock exchange exemption provided by Chapter 32, Article 4, Section 402(a)(8) of the West Virginia Code. This distinction is made to clarify the listing exemption for regional stock exchanges provided by the statute. The Commissioner has determined, through experience, that issuers who have securities accepted for listing by The Boston Stock Exchange are often not the well-capitalized, solvent firms which the Commissioner believes the statutory section intends to include;

(13) Rule 15.06(b)(9)- this Rule is new, and is, by far, the most important portion of these Proposed Rules. This Rule will provide an offering exemption for many small businesses who must otherwise use the expensive, time-consuming and cumbersome registration procedure, or else not raise capital in the State. It is an exemption clearly called for by the provisions of Chapter 32, Article 4, Section 402(b)(9) of the West Virginia Code. It is a provision that approximately 34 other states have adopted in substantially similar form. The Rule should greatly aid the capital formation process in this State.

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 ~~205~~, 118 State Capitol Building, Charleston, West Virginia 25305.

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

(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.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4-18-84
Administrative Law Division

11.02(a)(2)(b)(1) 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.

~~For-purposes-of-this-Section,-applicants-for-registration-as-broker-dealers-or-agents-shall-not-be-required-to-pass-the-prescribed-examinations-if-(1)-said-applicant-has-remained-continuously-registered-in-the-capacity-to-be-filled-with-this-state-without-interruption-for-more-then-two-years,-or-if-(2)-said-applicant-submits-to-the-Commissioner-evidence-of-effective-registration,-within-the-preceding-two-years,-with-a-Nation-~~

~~al Association of Securities Dealers firm or National Stock Exchange registered with the SEC, as principal or agents.~~

~~The Applicant shall be required to submit evidence of passing the examiniation(s) required by this Section, or of an application for waiver therefrom, in writing, in a manner acceptable to the Commissioner.~~

(a)(2)(b)(2) Waiver of Examiniation 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.

11.02(a)(2)(b)(5) Date Registration Becomes Effective- If no denial, suspension, or revocation order is in effect and 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 elgibility 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.

12.01(a)(c)

(C) Change in the business address; ~~or-creation-or-termination-of-a branch-office~~;

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.

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, <u>or as noted above for NASD member firms</u>, 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.

Section 14.04

(3) A registration statement filed under Chapter 32, Article 3, Section ~~302~~ <u>303</u> of the <u>Code</u> 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.

Section 14.05 <u>Promotional Securities or "Cheap Stock"</u>.

~~(e) The shares of cheap stock issued shall not result in a dilution of more than 33-1/3% of the value of the shares outstanding in the hands of the public at any time~~.

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.

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

15.06 Exemptions

(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.

(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 satisy 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 230.506 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 ordeceit, 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 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 caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines 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.

4. In all sales to non accreditied 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 condition 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".