

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Commissioner of Banking TITLE NUMBER: 106

CITE AUTHORITY: 31A-2-4(c)(11); 31A-8C-2 & 4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE XXX

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series 13

TITLE OF RULE BEING ADOPTED: Defining Certain Terms Found
in Chapter 31A-8C-6, et seq.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 29, 1989

Howard Greenwood
Counsel, Comr of Banking

WEST VIRGINIA INTERPRETIVE RULES
COMMISSIONER OF BANKING
WEST VIRGINIA CODE §31A-8C-1 et seq.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: Interpretive Rules Defining Certain Terms Found in
Chapter 31A-8C-1, et seq. and Regulations Promulgated
Thereunder.

Section 1. General

1.1 Scope and Purpose - This regulation clarifies and defines certain terms set forth under WV Code §31A-8C-2, and procedural rules promulgated thereunder, and shall serve as interpretations by the Commissioner of Banking of said terms, which generally define the term "financially-related", under the West Virginia Provision of Financially-Related Services By Banks and Bank Holding Companies Act.

1.2 Authority - This regulation is promulgated under the authority of WV Code §31A-2-4(c)(11), §31A-8C-2 and 4, and §29A-3-1 et seq.

1.3 Filing Date - ~~November 29, 1988~~

1.4 Effective Date -

Section 2. Definitions as Interpreted by the Commissioner of Banking.

For purposes of the Procedural Rules Implementing the Act Governing the Provision of Financially-Related Services by Banks and Bank Holding Companies and the Financially-Related Services Act, Chapter 31A-8C-1, et seq., the terms set forth below shall be defined as follows.

2.1 "Financially-Related" means:

(a) All products, services and activities offered or engaged in by national banks or by any West Virginia state or federally chartered thrift institution or credit union; except those excluded by subsection (f) of this section;

(b) Equity investments in real estate development activities, products and services; except those excluded by subsection (f) of this section;

(c) Securities underwriting and brokerage activities, products and services; except those excluded by subsection (f) of this section;

(d) Financial consulting activities, products and services;

(e) Any and all other activities, products and services engaged in or offered by other providers of financial products or services which may be deemed by the Commissioner of Banking to be financially-related; except those excluded by subsections (f) and (g) of this section;

(f) The term "financially-related" excludes products, services or activities offered or engaged in by an insurer or by any underwriter, agent, solicitor, broker of insurance, which products, services or activities are regulated by the department of insurance pursuant to chapter thirty-three of the West Virginia code except for such activities, products and services permitted, engaged in, or offered by any bank or bank holding company prior to the effective date of this article.

(g) The term "financially-related" also excludes products, services, or activities offered or engaged in by any real estate agent, agency or broker, which products, services or activities are regulated by the state real estate commission pursuant to chapter forty-seven of the West Virginia code except for such activities, products and services permitted, engaged in or offered by any bank or bank holding company prior to the effective date of this article or permitted pursuant to subdivision (b) of this section.

(h) To the extent the term "financially-related" includes products, services, or activities permitted to banks and bank holding companies under other provisions of state or federal law or regulations, such activities otherwise permitted are not subject to the requirements of the Financially-Related Services Act or this regulation.

2.2 "Engaging in Financially-Related Activities" means the conduct of financially-related activities, as permitted by the Financially-Related Act or this regulation, by a bank or bank holding company (i) through equity investment in other entities; (ii) through a wholly-owned subsidiary; or (iii) through contract or agreement with others; provided, however, it does not include engaging in activities or offering products and services pursuant to other provisions of law, nor does it include activities conducted by those who are not an agent of the bank or bank holding company will own 5% or greater of the issued and outstanding voting equity of the entity.

2.3 "Equity investment" means the acquisition by a bank or bank holding company of common stock, preferred stock, other capital stock, limited partnership interests, or any other non-debt ownership interest in an entity engaging in financially-related services, when after any such equity investment, the purchasing bank or bank holding company will own 5% or greater of the issued and outstanding voting equity of the entity.

2.4 "Wholly-owned subsidiary" means a subsidiary in which a bank or bank holding company owns 100% of the issued and outstanding voting equity.

2.5 "Bank" means a West Virginia state-chartered bank.

2.6 "Bank Holding Company" means a bank holding company conducting business in West Virginia directly or through one or more subsidiaries with its principal place of business in West Virginia.

2.7 "Commissioner" means the Commissioner of Banking or his designee.

2.8 "Board of Banking" means the West Virginia Board of Banking and Financial Institutions.

2.9 "Capital and Surplus" means the amount of common stock outstanding plus the amount of any surplus. "Surplus" as used herein means capital surplus, earned surplus, undivided profits, allowance for possible loan losses, nonconvertible subordinated notes and nonconvertible subordinated debentures. Bank holding companies may also include outstanding perpetual preferred stock and capital instruments with covenants mandating conversion into common or perpetual preferred stock. For purposes of this definition, intangible assets must be deducted from the calculation of capital and surplus unless inclusion is specifically permitted by the Commissioner. Applicants should contact the Commissioner regarding inclusion of intangible assets.

TITLE 106
INTERPRETIVE RULE
COMMISSIONER OF BANKING

SERIES 13
DEFINING CERTAIN TERMS FOUND IN CHAPTER 31A-8C-6, ET SEQ.
AND REGULATIONS PROMULGATED THEREUNDER

§106-13-1. General.

1.1. Scope. -- This regulations clarifies and defines certain terms set forth under WV Code §31A-8C-2, and procedural rules promulgated thereunder, and shall sever as interpretations by the Commissioner of Banking of said terms, which generally define the term "financially-related", under the West Virginia Provision of Financially-Related Services by Banks and Bank Holding Companies Act.

1.2. Authority. -- WV Code §31A-2-4(c)(11), §31A-8C-2 and 4, and §29A-3-1 et seq.

1.3. Filing Date. -- December 30, 1988

1.4. Effective Date. -- January 29, 1989

§106-13-2. Definitions As Interpreted By The Commissioner Of Banking.

For purposes of the Procedural Rules Implementing the Act Governing the Provision of Financially-Related Services by Banks and Bank Holding Companies and the Financially-Related Services Act, Chapter 31A-8C-1, et seq., the terms set forth below shall be defined as follows.

2.1. "Financially-Related" means:

(a) All products, services and activities offered or engaged in by national banks or by any West Virginia state or federally chartered thrift institution or credit union; except those excluded by subsection (f) of this section;

(b) Equity investments in real estate development activities, products and services; except those

excluded by subsection (f) of this section;

(c) Securities underwriting and brokerage activities, products and services; except those excluded by subsection (f) of this section;

(d) Financial consulting activities, products and services;

(e) Any and all other activities, products and services engaged in or offered by other providers of financial products or services which may be deemed by the Commissioner of Banking to be financially-related; except those excluded by subsections (f) and (g) of this section;

(f) The term "financially-related" excludes products, services or activities offered or engaged in by an insurer or by any underwriter, agent, solicitor, broker of insurance, which products, services or activities are regulated by the department of insurance pursuant to chapter thirty-three of the West Virginia code except for such activities, products and services permitted, engaged in, or offered by any bank or bank holding company prior to the effective date of this article.

(g) The term "financially-related" also excludes products, services, or activities offered or engaged in by any real estate agent, agency or broker, which products, services or activities are regulated by the state real estate commission pursuant to chapter forty-seven of the West Virginia code except for such activities, products and services permitted, engaged in or offered by any bank or bank holding company prior to the effective date of this article or permitted pursuant to subdivision (b) of this section.

(h) To the extent the term "financially-related" includes products, services, or activities permitted to banks and bank holding companies under other provisions of state or federal law or regulations, such activities otherwise permitted are not subject to the requirements of the Financially-Related Services Act or this regulation.

2.2. "Engaging in Financially-Related Activities" means the conduct of financially-related activities, as permitted by the Financially-Related Act or this regulation, by a bank or bank holding company (i) through equity investment in other entities; (ii) through a wholly-owned subsidiary; or (iii) through contract or agreement with others; provided, however, it does not include engaging in activities or offering products and services pursuant to other provisions of law, nor does it include activities conducted by those who are not an agent of the bank or bank holding company will own five percent (5%) or greater of the issued and outstanding voting equity of the entity.

2.3. "Equity investment" means the acquisition by a bank or bank holding company of common stock, preferred stock, other capital stock, limited partnership interests, or any other non-debt ownership interest in an entity engaging in financially-related services, when after any such equity investment, the purchasing bank or bank holding company will own five percent (5%) or greater of the issued and outstanding voting equity of the entity.

2.4. "Wholly-owned subsidiary" means a subsidiar-

y in which a bank or bank holding company owns one hundred percent (100%) of the issued and outstanding voting equity.

2.5. "Bank" means a West Virginia state-chartered bank.

2.6. "Bank Holding Company" means a bank holding company conducting business in West Virginia directly or through one or more subsidiaries with its principal place of business in West Virginia.

2.7. "Commissioner" means the Commissioner of Banking or his designee.

2.8. "Board of Banking" means the West Virginia Board of Banking and Financial Institutions.

2.9. "Capital and surplus" means the amount of common stock outstanding plus the amount of any surplus. "Surplus" as used herein means capital surplus, earned surplus, undivided profits, allowance for possible loan losses, nonconvertible subordinated notes and nonconvertible subordinated debentures. Bank holding companies may also include outstanding perpetual preferred stock and capital instruments with covenants mandating conversion into common or perpetual preferred stock. For purposes of this definition, intangible assets must be deducted from the calculation of capital and surplus unless inclusion is specifically permitted by the Commissioner. Applicants should contact the Commissioner regarding inclusion of intangible assets.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: SHARON BIAS: DEPARTMENT OF BANKING

FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.

DATE: JUNE 6, 1989

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES 6; 13 & 14

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Sharon J. Bias

TITLE OF PERSON SIGNING: Director, Charters and Investigations

DATE: 6-7-89