WEST VIRGINIA CODE CHAPTER 32 ARTICLE 1

WV Legislature

§32-1-101. Sales and purchases.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit 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; or

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

WV Legislature

§32-1-102. Advisory activities.

(a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) To employ any device, scheme or artifice to defraud the other person; or

(2) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) It is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract unless it provides in writing

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subdivision (1) of this subsection does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (2) of this subsection includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(1) The commissioner by rule prohibits custody; or

(2) In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

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