WEST VIRGINIA CODE: §32-2-204

§32-2-204. Denial, revocation, suspension, otherwise condition, cancellation and withdrawal of registration.

(a) The commissioner may by order deny, suspend, otherwise condition or revoke any registration if he or she finds: (1) That the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business or any felony;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent or investment adviser;

(F) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post-office-fraud order; but: (i) The commissioner may not institute a revocation or suspension proceeding under this subdivision more than one year from the date of the order relied on; and (ii) he or she may not enter an order under this subdivision on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business.

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(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser; or

(I) Is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (b).

The commissioner may by order deny, suspend or revoke any registration if he or she finds: (1) That the order is in the public interest; and (2) that the applicant or registrant:

(J) Has failed reasonably to supervise his or her agents if he or she is a broker-dealer or his or her employees if he or she is an investment adviser; or

(K) Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subdivision and he or she shall vacate any such order when the deficiency has been corrected.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him or her when registration became effective unless the proceeding is instituted within the next thirty days.

(b) With regard to broker-dealers and agents, dishonest or unethical practices in the securities business includes, but is not limited to:

(1) Causing any unreasonable and unjustifiable delay or engaging in a pattern of unreasonable and unjustifiable delays, in the delivery of securities purchased by any of the customers or in the payment upon request of free credit balances reflecting completed transactions of any of the customers;

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

(3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other relevant information known by the broker-dealer and/or agent;

(4) Executing a transaction on behalf of a customer without authorization;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

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(6) Extending, arranging for or participating in arranging for credit to a customer in violation of the regulations of the securities and exchange commission or the regulations of the federal reserve board;

(7) Executing any transaction in a margin account without obtaining from the customer a written margin agreement prior to settlement date for the initial transaction in the account;

(8) Failing to segregate customers' free securities or securities in safekeeping;

(9) Hypothecating a customer's securities without having a lien thereon unless a properly executed written consent of the customer is first obtained, except as otherwise permitted by rules of the securities and exchange commission;

(10) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;

(11) Entering into a transaction for its own account with a customer in a security at a price not reasonably related to the current market price of the security, or charging a commission which is not reasonable;

(12) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable or indeterminate commission or profit;

(13) Executing orders for the purchase by a customer of securities not registered under the provisions of this chapter, unless the securities or transaction are exempt from registration under this chapter;

(14) Engaging in a course of conduct constituting an egregious violation of the rules of a national securities association of which the broker-dealer is a member with respect to any customer, transaction or business;

(15) Introducing customer transactions on a fully disclosed basis to another broker-dealer or agent that is not registered under section 32-2-201 unless the customer is a person described in section 32-4-402(b)(8);

(16) Unreasonably or unjustifiably failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(17) Offering to buy from or sell to any person any security at a stated price unless the broker-dealer or agent is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;

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(18) Representing that a security is being offered to a customer "at the market" or for a price relevant to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer or agent, or by any person for whom he or she is acting or with whom he or she is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer or agent;

(19) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but is not limited to: (A) Effecting any transaction in a security which involves no change in the beneficial ownership; (B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance with respect to the market for the security: Provided, That nothing in this paragraph prohibits a broker-dealer or agent from entering into a bona fide agency cross transaction for its customers; and (C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

(20) Guaranteeing a customer against market loss in any securities account of the customer carried by the broker-dealer or agent or in any securities transaction effected by the broker-dealer or agent with or for the customer;

(21) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security, or which purports to quote the bid price or asked price for any security, unless the broker-dealer or agent believes the quotation represents a bona fide bid for or offer of the security;

(22) Using any advertising or sales presentation which is deceptive or misleading, such as the distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer or display by works, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(23) Failing to disclose to the customer that the broker-dealer or agent is controlled by, affiliated with or under common control with the issuer of any contract with or for a customer for the purchase or sale of the security and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

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(24) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer or agent for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(25) Failing or refusing to furnish a customer, upon reasonable request, information to which he or she is entitled, or to respond to a formal written request or complaint;

(26) Establishing, maintaining or operating an account under fictitious name or containing fictitious information;

(27) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer;

(28) Utilizing an agent or subagent in effecting or attempting to effect purchases or sales of securities where the agent or subagent is not registered as an agent pursuant to section 32-2-201;

(29) Associating, affiliating or entering into any arrangement with any person not registered as a broker-dealer or agent pursuant to section 32-2-201 for the purpose of engaging in the business of effecting transactions in securities, where the employees of such person assisting the broker-dealer or agent in effecting the transactions in securities are not either registered as an agent of the broker-dealer or the activities of the employees are not limited to duties that are exclusively clerical in nature for which the broker-dealer or agent has provided adequate supervision including instruction, training and safeguards against a violation of this chapter;

(30) Associating, affiliating or entering into any arrangement with any person not registered as a broker-dealer or agent pursuant to section 32-2-201 for the purpose of engaging in the business of effecting transactions in securities, where the person fails to conspicuously disclose to all customers in any advertisement or literature published or distributed by the person: (A) The identity of the registered broker-dealer or agency; (B) that a person is not subject to regulation by the securities commissioner of the State of West Virginia; and (C) the manner, form and amount of compensation, commission or remuneration to be received by the person;

(31) Representing the availability of financial or investment capabilities when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services and method of compensation for the services;

(32) Engaging in any act or a course of conduct which resulted in the issuance by a securities agency or administrator of any state of an order to cease and desist the violation of the provisions of any state's securities laws or rules(or the equivalent of any such order); or

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(33) Engaging in any other act or practice which the commissioner determines to constitute dishonest or unethical practices in the securities business.

(c) With regard to agents, dishonest or unethical practices in the securities business also includes, but is not limited to:

(1) Borrowing or engaging in the practice of borrowing money or securities from a customer (other than any institution or organization whose normal business activities include lending of moneys), or lending or engaging in the practice of lending money or securities to a customer;

(2) Acting as a custodian for money, securities or an executed stock power of a customer;

(3) Effecting securities transactions with a customer not recorded on the regular books or records of a broker-dealer which an agent represents, unless the transactions are disclosed to and authorized in writing by the broker-dealer prior to execution of the transactions;

(4) Establishing, maintaining or operating an account under a fictitious name or which contains fictitious information;

(5) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and broker-dealer which the agent represents;

(6) Dividing or otherwise splitting commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(7) Entering into a transaction for agent's own account with a customer in which a commission is charged;

(8) Entering in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the agent is a member with respect to any customer, transaction or business; and

(9) Holding oneself out as representing any person other than the broker-dealer for whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered, when representing the broker-dealer in effecting or attempting to effect purchases or sales of securities.

(d) The commissioner may deny, suspend, otherwise condition or revoke the registration of an applicant or registrant or take any other action authorized by the provisions of this chapter if the commissioner determines the person has engaged in the conduct of forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts or manipulative or fraudulent practices.

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(e) The following provisions govern the application of section 204(a)(2)(I):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than: (A) The broker-dealer himself or herself if he or she is an individual; or (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than: (A) The investment adviser himself or herself if he or she is an individual; or (B) any other person who represents the investment adviser in doing any of the acts which may make him or her an investment adviser.

(3) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he or she finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he or she may by order condition the applicant's registration as a broker-dealer upon his or her not transacting business in this state as an investment adviser.

(6) The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser.

(f) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(g) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

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(h) Withdrawal from registration as a broker-dealer, agent or investment adviser becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at a time and upon the conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under section 204(a)(2)(B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(i) No order may be entered under any part of this section except the first sentence of subsection (f) without: (1) Appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent); (2) opportunity for hearing; and (3) written findings of fact and conclusions of law.

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