WEST VIRGINIA CODE CHAPTER 32 ARTICLE 2

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§32-2-201. Registration requirement.

(a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he or she is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him or her an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless: (1) He or she is so registered under this chapter; (2) he or she is a federal-covered adviser except that, until October 10, 1999, a federal-covered adviser for which a nonpayment or underpayment of a fee has not been promptly remedied following written notification to the adviser of such nonpayment or underpayment shall be required to register under this article; or (3) he or she has no place of business in this state and: (A) His or her only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal-covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than $1 million and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or (B) during any period of twelve consecutive months he or she does not have more than five clients who are residents of this state, other than those specified in this subsection, whether or not he or she or any of the clients who are residents of this state is then present in the state.

(d) Every registration or notice filing expires one year from its effective date unless renewed. The commissioner by rule or order may prepare an initial schedule for renewals of registrations or notice filings so that subsequent renewals of registrations or notice filings effective on the effective date of this chapter may be staggered by calendar months. For this purpose the commissioner by rule may reduce the registration or notice filing fee proportionately.

(e) It is unlawful for any:

(1) Person required to be registered as an investment adviser under this article to employ an investment adviser representative unless the investment adviser representative is registered under this article: Provided, That the registration of an investment adviser representative is not effective during any period when he or she is not employed by an investment adviser registered under this article; or

(2) Federal-covered adviser to employ, supervise or associate with an investment adviser representative having a place of business located in this state, unless such investment

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adviser representative is registered under this article or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in the case of 401 (g)), or the investment adviser representative (in the case of 401 (f)), shall promptly notify the commissioner.

(f) Except with respect to advisers whose only clients are those described in subdivision (3), subsection (c) of this section, it is unlawful for any federal-covered adviser to conduct advisory business in this state unless such person complies with the provisions of subsection (b), section two hundred two of this article.

(g) An applicant must be registered or qualified in the securities business in the state of the applicant's principal place of business. The commissioner may waive this requirement upon a finding that the applicant is registered with the securities and exchange commission or any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934. A request to waive this requirement must be made upon written application to the commissioner which includes documentation upon which the applicant relies in requesting the waiver.

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§32-2-202. Registration and notice filing procedure.

(a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application, together with a consent to service of process pursuant to §32-4-414(g) of this code. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of 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 and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under §32-2-204 of this code, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director, or a person occupying a similar status or performing similar functions as designated by the investment adviser in writing to the commissioner and approved in writing by the commissioner.

(b) Except with respect to federal-covered advisers whose only clients are those described in §32-2-201(c)(3)(A) and (B) of this code, a federal-covered adviser shall file with the commissioner, prior to acting as a federal-covered adviser in this state, such documents as have been filed with the securities and exchange commissioner as the commissioner, by rule or order, may require along with notice filing fees under subsection (c) of this section.

(c) Every applicant for initial or renewal registration shall pay a filing fee of $300 in the case of a broker-dealer and the agent of an issuer, $70 in the case of an agent, $200 in the case of an investment adviser, and $75 for each investment adviser representative. When an application is denied or withdrawn, the commissioner shall retain all of the fee.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion

of the year. A filing fee of $24 shall be paid.

(e) The commissioner may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(f) The commissioner may, by rule or order, require registered broker-dealers, agents, and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (for broker-dealers) and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to $25,000 and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action §32-4-410 of this code and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations set forth in §32-4-410(e) of this code.

(g) Every applicant, whether registered under this chapter or not, shall pay a $60 fee for each name or address change.

(h) Every broker-dealer and investment advisor registered under this chapter shall pay an annual $60 fee for each branch office located in West Virginia.

(i) Each agent, representative, and associated person of a broker-dealer or investment advisor when applying for an initial license under this section or changing employers shall pay a compliance assessment of $30. Each agent, representative, and associated person, when applying for a renewal license under this section, shall pay a compliance assessment of $12. The West Virginia Legislature reserves the right to adjust the fees set forth in this section once every four years in an amount reflecting the percentage increase in the cost of administering this article from the amount of such costs on the effective date of this article.

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§32-2-203. Post-registration provisions.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner prescribes by rule or order, except as provided by section fifteen of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for three years unless the commissioner prescribes by rule or order otherwise for particular types of records.

(b) With respect to investment advisers, the commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commissioner, in his or her discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered broker-dealer and investment advisor shall file such financial reports as the commissioner may prescribe by rule or order, except as provided by section fifteen of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser).

(d) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment with the commissioner.

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

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§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.

(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

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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;

(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;

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(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;

(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

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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;

(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

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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

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

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(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.

(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

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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.

(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

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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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