WEST VIRGINIA CODE: §32-4-407A

§32-4-407a. Administrative assessments.

(a) A registrant, applicant for registration, issuer or other person upon whom the commissioner has conducted an examination, audit, investigation or prosecution and who has been determined by the commissioner to have violated this article or rule or order of the commissioner under this article shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but not be limited to, the salaries and other compensation paid to clerical, accounting, administrative, investigative, examiner and legal personnel, the actual amount of expenses reasonably incurred by such personnel and the commissioner in the conduct of such examination, audit, investigation or prosecution, including a pro rata portion of the commissioner's administrative expense.

(b) After giving notice and opportunity for a hearing, the commissioner may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in an amount provided in subdivision (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section two hundred one, article two of this chapter, or an affiliate of the broker-dealer or investment adviser where the commissioner finds that the person either willfully has violated this article or a rule or order of the commissioner under this article or has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(1) The commissioner, in issuing an order under this subsection may impose an administrative assessment of up to $10,000 for a single violation or of up to $50,000 for multiple violations in a single proceeding or a series of related proceedings. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the commissioner shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation;

(ii) The scope of the violation, including the number of persons in and out of this state affected by the conduct constituting the violation;

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this state to whom the restitution or compensation has been made;

(iv) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or plea of guilty or nolo contendere or settlement with, the

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commissioner or any securities administrator of any other state or other country, any court of competent jurisdiction, the securities and exchange commissioner, the commodity futures trading commission, any other federal or state agency or any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934 (48 Stat. 88a, 15 U.S.C. 78A et seq.);

(v) Any other factor that the commissioner finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this article.

(3) An administrative assessment imposed by an order issued under this subsection is not mutually exclusive of any other remedy available under this article.

(4) The commissioner shall not impose an administrative assessment with respect to any public proceeding which was instituted prior to the date of enactment of this section.

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