WEST VIRGINIA CODE CHAPTER 32

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§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.

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§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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§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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§32-3-301. Registration requirement.

It is unlawful for any person to offer or sell any security in this state unless: (1) It is registered under this chapter; or (2) the security or transaction is exempted under section four hundred two of article four of this chapter or under article five of this chapter; or (3) the security is a federal covered security.

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§32-3-302. Registration by notification.

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 303:

(1) Any security, other than a security with a fixed maturity or a fixed interest or dividend provision, whose issuer and any predecessors have been in continuous operation for at least five years if (A) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(2) Any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if (A) any security of the same class has ever been registered under this chapter or a predecessor act, or (B) the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: His name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) A description of the security being registered;

(5) The information and documents specified in subdivisions (8), (10) and (12) of section 304(b);

(6) In the case of any registration under section 302(a) (2) which does not also satisfy the conditions of section 302(a) (1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at three o'clock in the afternoon of the full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

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§32-3-303. Registration by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

(1) Three copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) No stop order is in effect and no proceeding is pending under section 306; (2) the registration statement has been on file with the commissioner for at least ten days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and the commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post- effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is

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void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2) and (3) of subsection (b). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 306; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

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§32-3-304. Registration by qualification.

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

(1) With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His name, address and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) With respect to persons covered by subdivision (2): The remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate;

(4) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in subdivision (2) other than his occupation;

(5) With respect to every promoter if the issuer was organized within the past three years: The information specified in subdivision (2), any amount paid to him within that period or intended to be paid to him and the consideration for any such payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: His name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(7) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of

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consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purpose stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (2), (4), (5), (6) or (8) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales

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literature intended as of the effective date to be used in connection with the offering;

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser or other person whose profession gives authority to a statement made by him if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Such additional information as the commissioner requires by rule or order.

(c) A registration statement under this section becomes effective when the commissioner so orders.

(d) The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.

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§32-3-304a. Federal-covered securities.

(a) Securities for which a registration statement has been filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933 may be offered for sale or sold to residents of this state upon the commissioner's receipt of: (1) A notice as prescribed by the commissioner by rule or otherwise or in lieu thereof a copy of the issuer's federal registration statement as filed with the securities and exchange commissioner; (2) a consent to service of process signed by the issuer; and (3) payment of a fee as provided for in §32-3-305(b) of this code: *Provided*, That up through October 10, 1999, or such other date as may be legally permissible, a federal-covered security for which a fee has not been paid or promptly remedied following written notification from the commissioner to the issuer of the nonpayment or underpayment of such fees, as required by this article, shall be required to register under this article.

(b) The commissioner, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933; and

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933, which shall be filed concurrently with the commissioner.

(c) With respect to any security that is a federal-covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such federal-covered security in this state, together with a fee as established by rule by the commissioner.

(d) The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a federal-covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee for such document as appropriate under §32-3-305(m) and (n) of this code.

(e) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A (17 CFR 230.251 through 17 CFR 230.263) and § 18(b)(3) or 18(b)(4) of the Securities Act of 1933 (15 USC § 77a) shall submit the following at least 21 calendar days prior to the initial sale in this state:

(1) A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with

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the U.S. Securities and Exchange Commission;

(2) A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

(3) A filing fee of $375 payable to the West Virginia State Auditor.

(1) The initial notice filing is effective for 12 months from the date of the filing with this state. For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

(A) The Regulation A – Tier 2 notice filing form marked "renewal" or a cover letter or other document requesting renewal; and

(B) A renewal fee in the amount of $200 payable to the West Virginia State Auditor.

(2) An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked "amendment" or other document describing the transaction.

(f) The commissioner may issue a stop order suspending the offer and sale of a federal-covered security, except a federal-covered security under Section 18(b)(1) of the Securities Act of 1933, if it finds that: (1) The order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

(g) The commissioner, by rule or order, may waive any or all of the provisions of this section.

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§32-3-305. Provisions applicable to registration and notice filing generally.

(a) A registration or notice filing statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer. A registration or notice filing statement filed under this chapter registering or noticing investment company shares shall cover only one class, series, or portfolio of investment company shares.

(b) Every person filing a registration or notice filing statement shall pay a filing fee of one sixteenth of one percent of the maximum aggregate offering price at which the registered or noticed securities are to be offered in this state, but the fee shall in no case be less than $60 or more than $1,800. When a registration or notice filing statement is withdrawn before the effective date or a pre-effective stop order is entered under §32-3-306 of this code, the commissioner shall retain all of the fee.

(c) Every registration statement and notice filing shall specify: (1) The amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) In any case where securities sold in this state are in excess of the aggregate amount of securities specified under subsection (c) of this section, the commissioner may require payment of an oversale assessment which shall be three times an amount which equals the difference between the filing fee that would have been payable under subsection (b) of this section based upon the total amount of securities sold in this state and the total filing fees previously paid to the commissioner with respect to such registration or notice filing, but in no case shall the oversale assessment be less than $420 or be more than $1,800.

(e) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(f) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration or notice filing statement.

(g) In the case of a non-issuer distribution, information may not be required under §32-3-304 of this code or subsection (k) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(h) The commissioner may by rule or order require as a condition of registration by qualification or coordination: (1) That any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until

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the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required under this subsection, but he or she may not reject a depository solely because of location in another state.

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(j) Every registration statement is effective for one year from its effective date or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time a stop order is in effect under §32-3-306 of this code. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction: (1) So long as the registration statement is effective; and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under §32-3-306 of this code (if the registration statement did not relate, in whole or in part, to a non-issuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(k) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(l) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(m) Every person changing the name or address of a securities registration or notice filing shall pay a $60 fee for change.

(n) Every person amending a registration statement or notice filing or offering a document without increasing the dollar amount registered shall pay a $60 fee for each amended

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statement, notice filing, or document.

(o) Every registered issuer or notice filing shall annually file a sales report and shall pay a filing fee for that report of one eighth of one percent of the maximum offering price at which the registered or noticed securities are offered in this state but the fee shall in no case be less than $300 nor more than $1,800.

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§32-3-306. Denial, suspension and revocation of registration.

(a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that

(A) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 305(k) as of its effective date, or any report under section 305(j) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commissioner may not institute a proceeding against an effective registration statement under subdivision (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under subdivision (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) When a security is sought to be registered by notification, it is not eligible for such registration;

(H) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303(b) (4); or

(I) The applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subdivision and he shall vacate any such order

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when the deficiency has been corrected.

The commissioner may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty days.

(b) The commissioner may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (c) 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 to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.

(c) No stop order may be entered under any part of this section except the first sentence of subsection (b) without (1) appropriate prior notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(d) The commissioner may vacate or modify a stop order if he finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

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§32-4-401. Definitions.

When used in this chapter, unless the context otherwise requires:

(a) "Commissioner" means the Auditor of the State of West Virginia.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in: (1) Effecting transactions in a security exempted by subdivision (1), (2), (3), (10) or (11), subsection (a), section four hundred two of this article; (2) effecting transactions exempted by subsection (b), section four hundred two of this article; (3) effecting transactions in a covered security as described in section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of 1933; (4) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or (5) effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. "Broker-dealer" does not include: (1) An agent; (2) an issuer; (3) a bank, savings institution or trust company; or (4) a person who has no place of business in this state if: (A) He or she effects transactions in this state exclusively with or through: (i) The issuers of the securities involved in the transactions; (ii) other broker-dealers; or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of twelve consecutive months he or she does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A), paragraph (4) of this subdivision, whether or not the offeror or any of the offerees is then present in this state.

(d) "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(f) "Federal-covered adviser" means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940 or (2) is excluded from the definition of "investment advisor" under section two hundred two-a (11) of the Investment Advisers Act of 1940.

(g) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports

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concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include: (1) A bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his or her profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them; (4) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; (5) a person whose advice, analyses or reports relate only to securities exempted by subdivision (1), subsection (a), section four hundred two of this article; (6) a person who has no place of business in this state if: (A) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; 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 subparagraph (A), paragraph (6), of this subdivision, whether or not he or she or any of the persons to whom the communications are directed is then present in this state; (7) an investment adviser representative; (8) a "federal-covered adviser"; or (9) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(h) "Investment adviser representative" means any partner, officer, director of or a person occupying a similar status or performing similar functions or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter or who has a place of business located in this state and is employed by or associated with a federal-covered adviser; and including clerical or ministerial personnel, who does any of the following: (1) Makes any recommendations or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines which recommendation or advice regarding securities should be given; (4) solicits, offers or negotiates for the sale of or sells investment advisory services unless the person is registered as an agent pursuant to this article; or (5) supervises employees who perform any of the foregoing unless the person is registered as an agent pursuant to this article.

(i) "Issuer" means any person who issues or proposes to issue any security, except that: (1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not

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having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer".

(j) "Nonissuer" means not, directly or indirectly, for the benefit of the issuer.

(k) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(l) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subdivision do not include: (A) Any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(m) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935" and "Investment Company Act of 1940" mean the federal statutes of those names as amended before the effective date of this chapter. The National Securities

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Markets Improvement Act of 1996 ("NSMIA") means the federal statute which makes certain amendments to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(n) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement contract; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period: Provided, That "security" does include insurance or endowment policies or annuity contracts that are viatical settlement contracts or agreements for the purchase, sale, assignment, transfer, devise or bequest of any portion of a death benefit or ownership of a life insurance policy or certificate that is less than the expected death benefit of the life insurance policy or certificate.

(o) "Federal-covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, or rules promulgated thereunder.

(p) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

(q) "Branch office" means any location other than the main office, identified to the public, customers or clients as a location where a broker-dealer or investment adviser or federal-covered adviser conducts a securities or investment adviser business. Branch office does not include:

(1) A location identified solely in a telephone directory line listing or on a business card or letterhead if: (A) The listing, card or letterhead also includes the address and telephone number of the broker-dealer or investment adviser or federal covered adviser where the individuals conducting business from the location are directly supervised; and (B) no more than one agent or investment adviser representative transacts business on behalf of the broker-dealer or investment adviser or federal-covered adviser from an identified location; or

(2) Any other location as the commissioner may determine.

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§32-4-402. Exemptions.

(a) The following securities are exempt from §32-3-301 and §32-4-403 of this code:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is: (A) Subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed

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or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules pursuant to chapter 29A of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the commissioner is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within 60 days thereafter (or within 30 days before they are reopened if they are closed on the effective date of this chapter);

(12) Any security issued by an agricultural cooperative association operating in this state and organized under §19-4-1 *et seq*. of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from §32-3-301 and §32-4-403 of this code:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if: (A) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to

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an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian, or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than 10 persons (other than those designated in subdivision (8) of this subsection) in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if: (A) The seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8) of this subsection) are purchasing for investment; and (B) no commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective buyer in this state (other than those designated in subdivision (8) of this subsection), but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) Any offer or sale of a preorganization certificate or subscription if: (A) No commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective subscriber; (B) the number of subscribers does not exceed 10; and (C) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days

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of their issuance, if: (A) No commission or other remuneration (other than a standby commission) is paid or given, directly or indirectly, for soliciting any security holder in this state; or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either chapter;

(13) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash, if the terms and conditions of the issuance and exchange or delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner at a hearing as provided in §32-4-402a of this code.

(c) The commissioner may by order deny or revoke any exemption specified in subdivision (9) or (11) of subsection (a) or in subsection (b) of this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of 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 to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated §32-3-301 and §32-4-403 of this code by reasons of any offer or sale effected after the entry of an order under this subsection if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

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§32-4-402a. Fairness Hearing on issuance of securities involved in a reorganization, recapitalization, or refinancing.

(a) For the purposes of this section, the terms "reorganization," "recapitalization," and "refinancing" shall mean:

(1) A readjustment by modification of the terms of securities by agreement;

(2) A readjustment by the exchange of securities by the issuer for others of its securities;

(3) The exchange of securities by the issuer for securities of another issuer;

(4) The acquisition of assets of a person, directly or indirectly, partly or wholly in consideration for securities distributed or to be distributed as part of the same transaction, directly or indirectly, to holders of securities issued by such person or secured by the assets of such person; or

(5) A merger or consolidation.

(b) The commissioner, or his or her designee, is authorized to consider and conduct a fairness hearing upon any plan of reorganization, recapitalization, or refinancing of a corporation or limited liability company organized under the laws of this state, or having its principal place of business within this state, when the plan is proposed by the corporation, limited liability company, or by any of its shareholders, members, or creditors and contains a proposal to issue securities in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange, or partly for cash: *Provided*, That this section does not apply to plans of reorganization, recapitalization, or refinancing of a corporation or limited liability company wherein there are no proposed issuance of securities.

(c) Prior to any fairness hearing authorized by this section, a corporation or limited liability company, shareholder, member, or creditor shall apply to the commissioner to approve the issuance of securities or to the delivery of other consideration pursuant to a plan of reorganization, recapitalization, or refinancing. The application shall be on a form and be accompanied by such documents and filing fees as shall be required by rule or order of the commissioner: *Provided*, That the filing fees may not exceed $500. The applicant shall provide sufficient information to the commissioner regarding the value of the securities, claims, or interests to be exchanged and the securities to be issued in the transaction. The commissioner shall inform the applicant of any deficiencies in the application or of any additional information or documents required. The commissioner may require the applicant to amend or resubmit the application to comply with any rule or order of the commissioner prior to setting a date for the fairness hearing. The commissioner, or his or her designee, is required to hold a fairness hearing on any application for approval within 30 days after the filing of a complete application and supporting documents required by any rule or order of the commissioner.

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(d) All persons to whom it is proposed securities be issued or other consideration be delivered by the applicant shall have the right to appear at the fairness hearing. Holders of a majority of the applicant's debts or holders of a majority of any outstanding class of securities issued by the applicant shall have the right to appear. The applicant shall provide notice in person or by United States mail, postage prepaid, providing the time and place of the fairness hearing to all persons to whom it is proposed securities be issued or other consideration be delivered in such exchange, not less than 10 days prior to such hearing. The applicant shall file evidence of notice required by this subsection with the commissioner, or his or her designee, prior to the fairness hearing.

(e) Any fairness hearing conducted by the commissioner, or his or her designee, under this section may be conducted in person, by video conference, by telephone conference, or by any other mode deemed appropriate by any rule or order of the commissioner.

(f) Within 10 business days after holding the fairness hearing, the commissioner, or his or her designee, shall issue a statement of findings of fairness and his or her approval or a statement that his or her approval will not be forthcoming.

(g) Securities issued in accordance with a plan approved by the commissioner, or his or her designee, pursuant to this section are exempt from the registration requirement provided in the provisions of §32-3-301, *et seq*. of this code.

(h) The commissioner is authorized to invoice the applicant for the costs of conducting the fairness hearing and the preparation of the statement of findings.

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§32-4-403. Filing of sales and advertising literature.

Any prospectus, pamphlet, circular, form letter, advertisement or any other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, shall be filed with the commissioner before it is used, disseminated or distributed unless the security or transaction is exempted by section 402.

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§32-4-404. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

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§32-4-405. Unlawful representations concerning registration, exemption or notice filing.

(a) Neither (1) the fact that a notice filing or an application for registration under article two of this chapter or a registration statement under article three of this chapter has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with subsection (a).

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§32-4-406. Administration of chapter; operating fund for securities department.

(a) This chapter shall be administered by the Auditor of this state and he or she is hereby designated, and shall be, the commissioner of securities of this state. He or she has the power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) The Auditor shall set up a special operating fund for the securities division in his or her office. The Auditor shall pay into the fund 25 percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds 25 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General Revenue Fund.

The special operating fund shall be used by the Auditor to fund the operation of the securities division and the general operations of the Auditor's office. The special operating fund shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by §32-4-407a of this code shall be collected by the commissioner and deposited into the General Revenue Fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

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§32-4-407. Sworn investigator, investigations and subpoenas.

(a) Sworn Investigators. --

(1) The commissioner may appoint special investigators to aid in investigations conducted pursuant to chapter thirty-two, thirty-two-a or thirty-two-b of this code.

(2) The commissioner, deputy commissioners and each investigator, prior to entering upon the discharge of his or her duties, shall take an oath before any justice of the West Virginia Supreme Court of Appeals, circuit judge or magistrate which is to be in the following form:

State of West Virginia

County of ....., to wit: I, ...,do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the securities commission of West Virginia to the best of my skill and judgment.

(Signed).....

Taken, subscribed and sworn to before me, this ..... day of ..... 2 .....

(3) The oaths of the commissioner, deputy commissioner or commissioners and investigators of the West Virginia securities commission are to be filed and preserved in the office of the State Auditor.

(b) Investigations and subpoenas. --

(1) The commissioner in his or her discretion: (A) May make such public or private investigations within or outside of this state as he or she considers necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; (B) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and (C) may publish information concerning any violation of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this chapter, the commissioner, deputy commissioner or commissioners, if any, and special investigators appointed pursuant to this section may administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, take and store evidence in compliance with the policies and procedures of the West Virginia state police and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner finds relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit

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court of Kanawha County, upon application by the commissioner, may issue to the person an order requiring him or her to appear before the commissioner, or the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him or her, or in any proceeding instituted by the commissioner on the ground that the testimony or evidence (documentary or otherwise) required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he or she is compelled, after claiming his or her privilege against self-incrimination to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(5) Civil and criminal investigations undertaken by the West Virginia securities commission are not subject to the requirements of article nine-a, chapter six of this code and chapter twenty-nine-b of this code.

(6) Nothing in this chapter may be construed to authorize the commissioner, a deputy commissioner, a special investigator appointed pursuant to this section or any other employee of the State Auditor to carry or use a hand gun or other firearm in the discharge of his or her duties under this article.

(7) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.

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§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 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

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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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§32-4-408. Injunctions.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the circuit court of Kanawha county or a court of competent jurisdiction in the county where one or more of the defendants reside or have a place of business to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

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§32-4-409. Criminal penalties.

(a) Any person who willfully violates any provision of this chapter, except section 404, or who willfully violates any rule or order under this chapter, or who willfully violates section 404 knowing the statement made to be false or misleading in any material respect, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $50,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order. No indictment may be returned under this chapter more than five years after the alleged violation.

(b) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the proper prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

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§32-4-410. Civil liabilities.

(a) Any person who

(1) Offers or sells a security in violation of section 201(a), 301, 403 or 405(b), or of any condition imposed under section 304(d), 305(g) or 305(h), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission 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 (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him who may assert a claim in a civil action to recover the consideration paid for the security, together with interest at nine percent per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at nine percent per year from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than three years after the sale.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(g) Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(h) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity, but this chapter does not create any cause of

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action not specified in this section or section 202(e).

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§32-4-411. Judicial review of orders.

(a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in the circuit court of Kanawha county by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The commissioner may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order. The judgment of the court shall be final, subject to review by the Supreme Court of Appeals.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

WV Legislature

§32-4-412. Rules, forms, orders and hearings.

(a) The commissioner may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the commissioner may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or 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 chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

(c) The commissioner may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the commissioner shall be published.

(e) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the commissioner, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public.

WV Legislature

§32-4-413. Administrative files and opinions.

(a) A document is filed when it is received by the commissioner.

(b) The commissioner shall keep a register of all notice filings and all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under rules prescribed by the commissioner.

(d) Upon request and at such reasonable charges as he or she prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his or her seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions. Copies of the opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection. The commissioner shall charge a $120 fee for each interpretative opinion.

WV Legislature

§32-4-414. Scope of the chapter and service of process.

(a) Sections 101, 201(a), 301, 405 and 410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a) and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer: (1) Originates from this state; or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance: (1) Is communicated to the offeror in this state; and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as section 405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every person making a notice filing and every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he or she by rule prescribes, an irrevocable consent appointing the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his or her successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless: (1) The plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified

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mail to the defendant or respondent at his or her last address on file with the commissioner; and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he or she has not filed a consent to service of process under subsection (g) of this section and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his or her successor, executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last-known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

WV Legislature

§32-4-415. Statutory policy.

This chapter shall be so construed as to effectuate the general purpose to make uniform the law of those states which enact the Uniform Securities Act and to coordinate the interpretation and administration of this chapter with the related federal regulation.

WV Legislature

§32-4-416. Short title.

This chapter may be cited as the "Uniform Securities Act."

WV Legislature

§32-4-417. Severability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

WV Legislature

§32-4-418. Saving provisions.

(a) Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within three years after the effective date of this chapter.

(b) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, entered or imposed under this chapter, but are governed by prior law.

(c) Prior law applies in respect of any offer or sale made within one year after the effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(d) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this chapter are governed by section 411, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective date of this chapter.

WV Legislature

§32-5-501. Short title.

This article shall be known as the West Virginia Small Business Capital Act.

WV Legislature

§32-5-502. Offer or sale of Small Business Securities.

Notwithstanding any other provision of law to the contrary, certain offerings are exempt from the securities registration requirements of articles two and three of this chapter if the offer, sale, issuer and purchaser meet the requirements of this article.

WV Legislature

§32-5-503. Qualifications of issuer and purchaser.

(a) In order to qualify for exemption under this article, the issuer must be a for-profit entity organized under the laws of West Virginia with its principal place of business in West Virginia.

(b) In order to qualify for the exemption under this article, the purchaser must be a resident of West Virginia or be an entity organized under the laws of West Virginia with its principal place of business in West Virginia.

(c) The exemption is not available to any of the following:

(1) An investment company, as defined in the Federal Investment Company Act of 1940;

(2) A development stage company that either has no specific business plan or purpose or has indicated that the company's business plan is to engage in a merger or acquisition with an unidentified company or companies, or entity or person or without an allocation of proceeds for sufficiently identifiable properties or objectives; and

(3) Any person who is subject to a disqualifying event described in subsection (d) of this section.

(d) The exemption is not available if the issuer or the executive directors, directors or managers of the issuer or any individual or entity holding more than twenty percent of the outstanding equity of the issuer:

(1) Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order or cease and desist order entered by any state securities administrator or the United States Securities and Exchange Commission;

(2) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involved fraud or deceit;

(3) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(4) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

WV Legislature

§32-5-504. Qualifications of offers, sales and transactions.

(a) The transaction must meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. section 77c(a)(11) and SEC rule 147, 17 CFR 230.147.

(b) The sum of all cash and other consideration received from the issue of securities under this exemption may not exceed $1 million per annum unless the issuer prepares and produces audited financial statements on a quarterly basis to the commissioner. If audited financial statements are prepared and produced to the commissioner, the sum of all cash and other consideration received from the issue of securities shall not exceed $2 million per annum.

(c) The issuer may not issue more than $10,000 per annum to any single purchaser unless the purchaser is an accredited investor as defined under rule 501 of SEC Reg D, 17 CFR 230.501.

(d) All funds received by the issuer from purchasers under this article shall be held in escrow by an attorney licensed to practice law in West Virginia who shall deposit the funds in a depository institution authorized to do business in West Virginia until such time as the offering amount sought is attained or the time period for the offering has elapsed: Provided, That upon the escrowed funds attaining a balance of at least ten percent of the offering amount sought, the attorney holding the money in escrow shall, upon written request of the issuer, withdraw a portion of the money in escrow and deliver such portion of money to the issuer.

(e) All funds received by the issuer from purchasers under this article shall be used by the issuer in accordance with the representations by the issuer to purchasers.

(f) The duration of the offering will not exceed twelve months unless the issuer applies to extend the offering for a period not to exceed twelve additional months. An issuer may apply to extend the offering by submitting an amended filing with the commissioner in conformance with these provisions and the rules and orders of the commissioner.

WV Legislature

§32-5-505. West Virginia Crowdfunding Portal Requirements

(a) The offering must be made exclusively through an internet-based crowdfunding portal that is incorporated or organized under the laws of West Virginia and authorized to do business in West Virginia and registered with the commissioner.

(b) The crowdfunding portal must contain a conspicuous disclaimer that reflects that access to securities offerings on the website is limited to West Virginia residents and offers and sales of the securities on the website are limited to persons that are West Virginia residents.

(c) There must be an affirmative representation by a visitor to the crowdfunding portal that the visitor is a resident of West Virginia before the visitor can view securities-related offering materials on the crowdfunding portal website.

(d) The crowdfunding portal must take reasonable steps to verify that all prospective purchasers are West Virginia residents.

(e) At least ten days prior to an offering that qualifies for the exemption described in this article of the code, the crowdfunding portal shall give the commissioner access to its website and the following:

(1) A copy of the disclosure statement required by subsection (f) of this section;

(2) A summary of the offering including:

(A) A description of the entity, its form of business, principal office, history, business plan, and the intended use of the offering proceeds, including compensation paid to any owner, executive officer, director or manager;

(B) The identity of the executive officers, directors and managers, including their titles and their prior experience and identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company; and

(C) A description of the securities being offered and any outstanding securities of the company, the amount of the offering , and the percentage ownership of the company represented by the offered securities.

(f) A disclosure statement must be made readily available and accessible to each prospective purchaser at the time the offer of securities is made to the prospective purchaser on the crowdfunding portal. The disclosure statement must contain at a minimum all of the following:

(1) A statement that there is no ready market for the sale of the securities acquired from this offering, that it may be difficult or impossible for an investor to sell or otherwise dispose of this investment, and that a purchaser may be required to hold and bear financial risks of this investment indefinitely;

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(2) A statement that the securities that are the subject of the offer have not been registered under federal or state securities law or regulation, and therefore cannot be resold unless the securities are registered or qualify for an exemption from registration under federal or state law;

(3) A statement that in making an investment decisions, purchasers must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved;

(4) A statement that no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on the crowdfunding portal; and

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering risky or speculative, including, but not limited to:

(A) A description of the issuer's business;

(B) The history of the issuer's operations and organization;

(C) A list of executive directors, directors or managers of the issuer and any individual or entity holding more than twenty percent of the outstanding equity of the issuer;

(D) A description of how the proceeds from the offering will be used;

(E) Financial information about the issuer;

(F) A detailed description of securities offered; and

(G) A complete list of any legal proceedings or litigation affecting the offering.

(g) Prior to the offering of securities to residents of West Virginia under this article, the crowdfunding portal shall conduct a reasonable investigation of the background of each issuer whose securities are offered on the crowdfunding portal's website, and of each of the issuer's executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the issuer. The crowdfunding portal shall deny an issuer access to its internet website if the crowdfunding portal has a reasonable belief that the issuer or its executive officers, directors or managers or any individual or entity holding more than twenty percent of the outstanding equity of the issuer are precluded from the exemption under this article.

(h) The crowdfunding portal shall not:

(1) Offer investment advice or recommendations;

(2) Compensate employees, agents or other persons not registered with the commissioner

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for soliciting offers or sales of securities displayed or referenced on the website;

(3) Hold, manage, possess or otherwise handle investor funds or securities;

(4) Be under common control with an issuer whose securities appear on the crowdfunding portal's internet website;

(5) Sell a financial interest in any issuer offering securities on the crowdfunding portal's internet website; or

(6) Receive more than a five percent financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

WV Legislature

§32-6-601. Short title.

This article may be cited as “The Protection of Eligible Adults from Financial Exploitation Act.

WV Legislature

§32-6-602. Definitions.

In this article, unless the context otherwise requires:

(1) “Agencies” means adult protective services and the Securities Commission, a Division of the State Auditor’s office.

(2) “Eligible adult” means a person 65 years of age or older or a person subject to §9-6-1 *et seq.* of this code.

(3) “Financial exploitation” means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of securities, money, assets, or property of an eligible adult; or

(B) Any act or omission taken by a person, including using a power of attorney, guardianship, or conservatorship of an eligible adult to:

(i) Obtain control, through deception, intimidation, or undue influence over the eligible adult’s money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or property; or

(ii) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or property.

WV Legislature

§32-6-603. Governmental Disclosures.

If a broker-dealer or investment adviser reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser shall promptly notify the agencies.

WV Legislature

§32-6-604. Immunity for Governmental Disclosures.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, makes a disclosure of information pursuant to section 603 of this article is immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the customer of the disclosure.

WV Legislature

§32-6-605. Third-Party Disclosures.

If a broker-dealer or investment adviser reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser may notify any reasonably associated individuals. Disclosure may not be made to any third party that is suspected of financial exploitation or other abuse of the eligible adult.

WV Legislature

§32-6-606. Immunity for Third-Party Disclosures.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-605 of this code is immune from any administrative or civil liability that might arise from the disclosure.

WV Legislature

§32-6-607. Delaying Transactions or Disbursements.

(a) A broker-dealer or investment adviser may delay a transaction or disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) The broker-dealer or investment adviser reasonably believes, after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation, that the requested transaction or disbursement may result in financial exploitation of an eligible adult; and

(2) The broker-dealer or investment adviser:

(i) Immediately, but in no event more than two business days after the broker-dealer or investment adviser first delayed the transaction or disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, but in no event more than two business days after the date on which the transaction or disbursement was first delayed, notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary and reports the investigation's results to the agencies on a reasonable and periodic basis, up to and including the resolution of the investigation.

(b) Any delay of a transaction or disbursement as authorized by this section expires upon the sooner of:

(1) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or

(2) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay expires when requested by an order of a court of competent jurisdiction.

wv Legislature

§32-6-608. Immunity for Delaying Transactions or Disbursements.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-607 of this code is immune from any administrative or civil liability that might otherwise arise from the delay in a transaction or disbursement.

WV Legislature

§32-6-609. Records.

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be considered a public record as defined in §29B-1-1 *et seq.* of this code. Nothing in this provision may limit or otherwise impede the authority of the Securities Commission to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

WV Legislature

§32-6-610. Immunity for Complying with Records Requests.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-609 of this code is immune from any administrative or civil liability that might otherwise arise from such disclosure.

WV Legislature