

RECEIVED
1991 MAR -6 PM 4:26
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2473

(By ~~Mr.~~ Del. Rutledge + Carper)

— ● —

Passed Feb. 26, 1991

In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2473
(By DELEGATES RUTLEDGE AND CARPER)

[Passed February 26, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section four hundred two, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities and adding the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS) to the listings exempt from certain provisions of the uniform securities act.

Be it enacted by the Legislature of West Virginia:

That section four hundred two, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-402. Exemptions.

- 1 (a) The following securities are exempt from sections
- 2 301 and 403:
- 3 (1) Any security (including a revenue obligation)
- 4 issued or guaranteed by the United States, any state,
- 5 any political subdivision of a state, or any agency or
- 6 corporate or other instrumentality of one or more of the

7 foregoing; or any certificate of deposit for any of the
8 foregoing;

9 (2) Any security issued or guaranteed by Canada, any
10 Canadian province, any political subdivision of any such
11 province, any agency or corporate or other instrumen-
12 tality of one or more of the foregoing, or any other
13 foreign government with which the United States
14 currently maintains diplomatic relations, if the security
15 is recognized as a valid obligation by the issuer or
16 guarantor;

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

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

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

31 (6) Any security issued or guaranteed by any federal
32 credit union or any credit union, industrial loan
33 association or similar association organized and super-
34 vised under the laws of this state;

35 (7) Any security issued or guaranteed by any railroad,
36 other common carrier, public utility or holding company
37 which is (A) subject to the jurisdiction of the interstate
38 commerce commission; (B) a registered holding com-
39 pany under the Public Utility Holding Company Act of
40 1935 or a subsidiary of such a company within the
41 meaning of that act; (C) regulated in respect of its rates
42 and charges by a governmental authority of the United
43 States or any state; or (D) regulated in respect of the
44 issuance or guarantee of the security by a governmental
45 authority of the United States, any state, Canada, or any
46 Canadian province;

47 (8) Any security listed or approved for listing upon
48 notice of issuance on the New York Stock Exchange, the
49 American Stock Exchange, or the Midwest Stock
50 Exchange, any other stock exchange approved by the
51 commissioner, the National Association of Securities
52 Dealers Automated Quotation/National Market System
53 (NASDAQ/NMS), or any other market system approved
54 by the commissioner, any other security of the same
55 issuer which is of senior or substantially equal rank, any
56 security called for by subscription rights or warrants so
57 listed or approved, or any warrant or right to purchase
58 or subscribe to any of the foregoing, except that the
59 commissioner may adopt and promulgate rules and
60 regulations pursuant to chapter twenty-nine-a of this
61 code which, after notice to such exchange or market
62 system and an opportunity to be heard, remove any such
63 exchange or market system from this exemption if the
64 commissioner finds that the listing requirements or
65 market surveillance of such exchange or market system
66 are such that the continued availability of such exemp-
67 tion for such exchange or market system is not in the
68 public interest and that removal is necessary for the
69 protection of investors;

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

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

85 (11) Any investment contract issued in connection
86 with an employees' stock purchase, savings, pension,
87 profit-sharing or similar benefit plan if the commis-

88 sioner is notified in writing thirty days before the
89 inception of the plan or, with respect to plans which are
90 in effect on the effective date of this chapter, within
91 sixty days thereafter (or within thirty days before they
92 are reopened if they are closed on the effective date of
93 this chapter); and

94 (12) Any security issued by an agricultural coopera-
95 tive association operating in this state and organized
96 under article four, chapter nineteen of this code, or by
97 a foreign cooperative association organized under the
98 laws of another state and duly qualified to transact
99 business in this state.

100 (b) The following transactions are exempt from
101 sections 301 and 403:

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

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

117 (3) Any nonissuer transaction effected by or through
118 a registered broker-dealer pursuant to an unsolicited
119 order or offer to buy; but the commissioner may by rule
120 require that the customer acknowledge upon a specified
121 form that the sale was unsolicited, and that a signed
122 copy of each such form be preserved by the broker-
123 dealer for a specified period;

124 (4) Any transaction between the issuer or other person
125 on whose behalf the offering is made and an under-
126 writer, or among underwriters;

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

134 (6) Any transaction by an executor, administrator,
135 sheriff, marshal, constable, receiver, trustee in bank-
136 ruptcy, guardian or conservator, and any transaction
137 constituting a judicial sale;

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

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

147 (9) Any transaction pursuant to an offer directed by
148 the offeror to not more than ten persons (other than
149 those designated in subdivision (8)) in this state during
150 any period of twelve consecutive months, whether or not
151 the offeror or any of the offerees is then present in this
152 state, if (A) the seller reasonably believes that all the
153 buyers in this state (other than those designated in
154 subdivision (8)) are purchasing for investment, and (B)
155 no commission or other remuneration is paid or given
156 directly or indirectly for soliciting any prospective
157 buyer in this state (other than those designated in
158 subdivision (8)); but the commissioner may by rule or
159 order, as to any security or transaction or any type of
160 security or transaction, withdraw or further condition
161 this exemption, or increase or decrease the number of
162 offerees permitted, or waive the conditions in clauses (A)
163 and (B) with or without the substitution of a limitation
164 on remuneration;

165 (10) Any offer or sale of a preorganization certificate
166 or subscription if (A) no commission or other remuner-

167 ation is paid or given directly or indirectly for soliciting
168 any prospective subscriber, (B) the number of subscrib-
169 ers does not exceed ten, and (C) no payment is made by
170 any subscriber;

171 (11) Any transaction pursuant to an offer to existing
172 security holders of the issuer, including persons who at
173 the time of the transaction are holders of convertible
174 securities, nontransferable warrants or transferable
175 warrants exercisable within not more than ninety days
176 of their issuance, if (A) no commission or other remun-
177 eration (other than a standby commission) is paid or
178 given directly or indirectly for soliciting any security
179 holder in this state, or (B) the issuer first files a notice
180 specifying the terms of the offer and the commissioner
181 does not by order disallow the exemption within the next
182 five full business days;

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

189 (c) The commissioner may by order deny or revoke
190 any exemption specified in subdivision (9) or (11) of
191 subsection (a) or in subsection (b) with respect to a
192 specific security or transaction. No such order may be
193 entered without appropriate prior notice to all inter-
194 ested parties, opportunity for hearing, and written
195 findings of fact and conclusions of law, except that the
196 commissioner may by order summarily deny or revoke
197 any of the specified exemptions pending final determi-
198 nation of any proceeding under this subsection. Upon
199 the entry of a summary order, the commissioner shall
200 promptly notify all interested parties that it has been
201 entered and of the reasons therefor and that within
202 fifteen days of the receipt of a written request the
203 matter will be set down for hearing. If no hearing is
204 requested and none is ordered by the commissioner, the
205 order will remain in effect until it is modified or vacated
206 by the commissioner. If a hearing is requested or
207 ordered, the commissioner, after notice of and opportun-

208 ity for hearing to all interested persons, may modify or
209 vacate the order or extend it until final determination.
210 No order under this subsection may operate retroac-
211 tively. No person may be considered to have violated
212 section 301 or 403 by reasons of any offer or sale effected
213 after the entry of an order under this subsection if he
214 sustains the burden of proof that he did not know, and
215 in the exercise of reasonable care could not have known,
216 of the order.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harmer Heck

Chairman Senate Committee

Bruce Moore

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Harold E. Brown

Clerk of the Senate

Donald L. Kapp

Clerk of the House of Delegates

Kath Buntline

President of the Senate

John C. Holloman

Speaker of the House of Delegates

The within *is approved* this the *6th*
day of *March*, 1991.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date

3/2/91

Time

10:34 am