

FILED

JUN 19 2003

IN THE OFFICE OF
JOE MANCHIN III
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Second Extraordinary Session, 2003

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ENROLLED

SENATE BILL NO. 2003

(By Senator Tomblin, Mr. President, and Speaker,
By Request of the Executive)

—●—
PASSED June 13, 2003

In Effect from Passage

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Senate Bill No. 2003

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed June 13, 2003; in effect from passage.]

AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three hundred five, article three of said chapter; and to amend and reenact section four hundred six, article four of said chapter, all relating to updating fee structure provisions for certain broker-dealers and agents; providing for annual sales report and filing fee by certain issuers of securities; and providing for disposition of special revenue.

Be it enacted by the Legislature of West Virginia:

That section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three hundred five, article three of said chapter be amended and reenacted; and that section four hundred six, article four of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS;
REGISTRATION AND NOTICE FILING FOR INVESTMENT
ADVISERS.**

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

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application, together with a consent to
4 service of process pursuant to subsection (g), section four
5 hundred fourteen, article four of this chapter. The appli-
6 cation shall contain whatever information the commis-
7 sioner by rule requires concerning matters such as: (1) The
8 applicant's firm and place of organization; (2) the appli-
9 cant's proposed method of doing business; (3) the qualifi-
10 cations and business history of the applicant and in the
11 case of a broker-dealer or investment adviser, the qualifi-
12 cations and business history of any partner, officer or
13 director, any person occupying a similar status or perform-
14 ing similar functions or any person, directly or indirectly,
15 controlling the broker-dealer or investment adviser and, in
16 the case of an investment adviser, the qualifications and
17 business history of any employee; (4) any injunction or
18 administrative order or conviction of a misdemeanor
19 involving a security or any aspect of the securities business
20 and any conviction of a felony; and (5) subject to the
21 limitations of §15(h)(1) of the Securities Exchange Act of
22 1934, the applicant's financial condition and history. The
23 commissioner may by rule or order require an applicant
24 for initial registration to publish an announcement of the
25 application as a Class I legal advertisement in compliance
26 with the provisions of article three, chapter fifty-nine of
27 this code and the publication area or areas for the publica-
28 tion shall be specified by the commissioner. If no denial
29 order is in effect and no proceeding is pending under
30 section two hundred four of this article, registration
31 becomes effective at noon of the thirtieth day after an
32 application is filed. The commissioner may by rule or
33 order specify an earlier effective date and he or she may by

34 order defer the effective date until noon of the thirtieth
35 day after the filing of any amendment to an application.
36 Registration of a broker-dealer automatically constitutes
37 registration of any agent who is a partner, officer or
38 director, or a person occupying a similar status or per-
39 forming similar functions, as designated by the broker-
40 dealer in writing to the commissioner and approved in
41 writing by the commissioner. Registration of an invest-
42 ment adviser automatically constitutes registration of any
43 investment adviser representative who is a partner, officer
44 or director or a person occupying a similar status or
45 performing similar functions as designated by the invest-
46 ment adviser in writing to the commissioner and approved
47 in writing by the commissioner.

48 (b) Except with respect to federal-covered advisers
49 whose only clients are those described in paragraphs (A)
50 and (B), subdivision (3), subsection (c), section two hun-
51 dred one of this article, a federal-covered adviser shall file
52 with the commissioner, prior to acting as a federal-covered
53 adviser in this state, such documents as have been filed
54 with the securities and exchange commissioner as the
55 commissioner, by rule or order, may require along with
56 notice filing fees under subsection (c) of this section.

57 (c) Every applicant for initial or renewal registration
58 shall pay a filing fee of two hundred fifty dollars in the
59 case of a broker-dealer and the agent of an issuer, fifty-
60 five dollars in the case of an agent, two hundred dollars in
61 the case of an investment adviser and seventy-five dollars
62 for each investment advisor representative. When an
63 application is denied or withdrawn, the commissioner
64 shall retain all of the fee.

65 (d) A registered broker-dealer or investment adviser may
66 file an application for registration of a successor, whether
67 or not the successor is then in existence, for the unexpired
68 portion of the year. A filing fee of twenty dollars shall be
69 paid.

70 (e) The commissioner may, by rule or order, require a
71 minimum capital for registered broker-dealers, subject to
72 the limitations of Section fifteen of the Securities Ex-
73 change Act of 1934 and establish minimum financial
74 requirements for investment advisers, subject to the
75 limitations of Section 222 of the Investment Advisers Act
76 of 1940, which may include different requirements for
77 those investment advisers who maintain custody of clients'
78 funds or securities or who have discretionary authority
79 over same and those investment advisers who do not.

80 (f) The commissioner may, by rule or order, require
81 registered broker-dealers, agents and investment advisers
82 who have custody of or discretionary authority over client
83 funds or securities to post surety bonds in amounts as the
84 commissioner may prescribe, by rule or order, subject to
85 the limitations of Section fifteen of the Securities Ex-
86 change Act of 1934 (for broker-dealers) and Section 222 of
87 the Investment Advisers Act of 1940 (for investment
88 advisers), up to twenty-five thousand dollars and may
89 determine their conditions. Any appropriate deposit of
90 cash or securities shall be accepted in lieu of any bond so
91 required. No bond may be required of any registrant
92 whose net capital or, in the case of an investment adviser,
93 whose minimum financial requirements, which may be
94 defined by rule, exceeds the amounts required by the
95 commissioner. Every bond shall provide for suit thereon
96 by any person who has a cause of action under section four
97 hundred ten, article four of this chapter and, if the com-
98 missioner by rule or order requires, by any person who has
99 a cause of action not arising under this chapter. Every
100 bond shall provide that no suit may be maintained to
101 enforce any liability on the bond unless brought within the
102 time limitations set forth in subsection (e), section four
103 hundred ten, article four of this chapter.

104 (g) Every applicant, whether registered under this
105 chapter or not, shall pay a fifty-dollar fee for each name or
106 address change.

107 (h) Every broker-dealer and investment advisor regis-
108 tered under this chapter shall pay an annual fifty-dollar
109 fee for each branch office located in West Virginia.

110 (i) Each agent, representative and associated person of a
111 broker-dealer or investment advisor when applying for an
112 initial license under this section or changing employers
113 shall pay a compliance assessment of twenty-five dollars.
114 Each agent, representative and associated person, when
115 applying for a renewal license under this section, shall pay
116 a compliance assessment of ten dollars. The West Virginia
117 state Legislature reserves the right to adjust the fees set
118 forth in this section once every four years in an amount
119 reflecting the percentage increase in the cost of adminis-
120 tering this article from the amount of such costs on the
121 effective date of this article.

ARTICLE 3. REGISTRATION OF SECURITIES.

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

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

8 (b) Every person filing a registration or notice filing
9 statement shall pay a filing fee of one twentieth of one
10 percent of the maximum aggregate offering price at which
11 the registered or noticed securities are to be offered in this
12 state, but the fee shall in no case be less than fifty dollars
13 or more than fifteen hundred dollars. When a registration
14 or notice filing statement is withdrawn before the effective
15 date or a preeffective stop order is entered under section
16 three hundred six of this article, the commissioner shall
17 retain all of the fee.

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

26 (d) In any case where securities sold in this state are in
27 excess of the aggregate amount of securities specified
28 under subsection (c) of this section, the commissioner may
29 require payment of an oversale assessment which shall be
30 three times an amount which equals the difference be-
31 tween the filing fee that would have been payable under
32 subsection (b) of this section based upon the total amount
33 of securities sold in this state and the total filing fees
34 previously paid to the commissioner with respect to such
35 registration or notice filing, but in no case shall the
36 oversale assessment be less than three hundred fifty
37 dollars or be more than fifteen hundred dollars.

38 (e) Any document filed under this chapter or a predeces-
39 sor act within five years preceding the filing of a registra-
40 tion statement may be incorporated by reference in the
41 registration statement to the extent that the document is
42 currently accurate.

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

46 (g) In the case of a nonissuer distribution, information
47 may not be required under section three hundred four of
48 this article or subsection (k) of this section unless it is
49 known to the person filing the registration statement or to
50 the persons on whose behalf the distribution is to be made,
51 or can be furnished by them without unreasonable effort
52 or expense.

53 (h) The commissioner may by rule or order require as a
54 condition of registration by qualification or coordination:
55 (1) That any security issued within the past three years or
56 to be issued to a promoter for a consideration substantially
57 different from the public offering price, or to any person
58 for a consideration other than cash, be deposited in
59 escrow; and (2) that the proceeds from the sale of the
60 registered security in this state be impounded until the
61 issuer receives a specified amount from the sale of the
62 security either in this state or elsewhere. The commis-
63 sioner may by rule or order determine the conditions of
64 any escrow or impounding required under this subsection,
65 but he or she may not reject a depository solely because of
66 location in another state.

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

74 (j) Every registration statement is effective for one year
75 from its effective date or any longer period during which
76 the security is being offered or distributed in a
77 nonexempted transaction by or for the account of the
78 issuer or other person on whose behalf the offering is being
79 made or by any underwriter or broker-dealer who is still
80 offering part of an unsold allotment or subscription taken
81 by him or her as a participant in the distribution, except
82 during the time a stop order is in effect under section three
83 hundred six of this article. All outstanding securities of
84 the same class as a registered security are considered to be
85 registered for the purpose of any nonissuer transaction: (1)
86 So long as the registration statement is effective; and (2)
87 between the thirtieth day after the entry of any stop order
88 suspending or revoking the effectiveness of the registration
89 statement under section three hundred six of this article (if

90 the registration statement did not relate, in whole or in
91 part, to a nonissuer distribution) and one year from the
92 effective date of the registration statement. A registration
93 statement may not be withdrawn for one year from its
94 effective date if any securities of the same class are
95 outstanding. A registration statement may be withdrawn
96 otherwise only in the discretion of the commissioner.

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

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

114 (m) Every person changing the name or address of a
115 securities registration or notice filing shall pay a fifty-
116 dollar fee for change.

117 (n) Every person amending a registration statement or
118 notice filing or offering a document without increasing the
119 dollar amount registered shall pay a fifty-dollar fee for
120 each amended statement, notice filing or document.

121 (o) Every registered issuer or notice filing shall annually
122 file a sales report and shall pay a filing fee for that report
123 of one tenth of one percent of the maximum offering price
124 at which the registered or noticed securities are offered in

125 this state but the fee shall in no case be less than two
126 hundred dollars nor more than fifteen hundred dollars.

ARTICLE 4. GENERAL PROVISIONS.

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

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

7 (b) The auditor shall set up a special operating fund for
8 the securities division in his or her office. The auditor
9 shall pay into the fund twenty percent of all fees collected
10 as provided for in this chapter. If, at the end of any fiscal
11 year, the balance in the operating fund exceeds half of the
12 prior fiscal year's appropriation, the excess shall be
13 transferred to the general revenue fund.

14 The special operating fund shall be used by the auditor
15 to fund the operation of the securities division and the
16 general operations of the auditor's office. The special
17 operating fund shall be appropriated by line item by the
18 Legislature.

19 (c) Moneys payable for assessments established by
20 section four hundred seven-a of this article shall be
21 collected by the commissioner and deposited into the
22 general revenue fund.

23 (d) It is unlawful for the commissioner or any of his or
24 her officers or employees to use for personal benefit any
25 information which is filed with or obtained by the com-
26 missioner and which is not made public. No provision of
27 this chapter authorizes the commissioner or any of his or
28 her officers or employees to disclose any information
29 except among themselves or when necessary or appropri-

30 ate in a proceeding or investigation under this chapter. No
31 provision of the chapter either creates or derogates from
32 any privilege which exists at common law or otherwise
33 when documentary or other evidence is sought under a
34 subpoena directed to the commissioner or any of his or her
35 officers or employees.

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

Carly Mize
.....
Chairman Senate Committee

Sharon Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

David Glavin
.....
Clerk of the Senate

Bruce M. Sisk
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert Skiss
.....
Speaker House of Delegates

The within *is approved* this the *19th*

Day of *June*, 2003.

Bob Mize
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 6/19/03

Time 4:45pm

FILED

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SECRETARY OF STATE