

**STATE OF WEST VIRGINIA  
WEST VIRGINIA SECURITIES COMMISSION  
BEFORE THE SECURITIES COMMISSIONER  
CHARLESTON, WEST VIRGINIA 25305**

**IN THE MATTER OF:**

**CASE NO.97-1228**

**The West Virginia Uniform Securities Act,  
Chapter 32, Article 2, Section 202(b)**

**AMENDED (II)  
ORDER APPROVING  
PROCEDURES FOR  
IMPLEMENTATION OF  
NOTICE FILING BY FEDERAL  
COVERED ADVISER &  
DESIGNATION OF AN  
INVESTMENT ADVISER  
REGISTRATION DEPOSITORY  
(IARD)**

**ORDER**

Pursuant to the authority granted by Chapter 32 of the West Virginia Code, 1931, as amended, the West Virginia Uniform Securities Act, (hereinafter referred to as the "Act"), and particularly Chapter 32, Article 2, Section 202 of the Act, the Commissioner of Securities "hereinafter referred to as the "Commissioner"), has reviewed the registration and notice filing procedure, Chapter 32, Article 2, Section 202(b) of the Act, which is effective July 11, 1997.

Pursuant to said review, the Commissioner finds as follows:

**FINDINGS OF FACT**

1. The Act provides 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), section two hundred two, article two, chapter thirty-two of the Act.

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 adviser representative is registered under this article, or exempt from registration. Every applicant for initial or renewal registration shall pay a filing fee under subsection (c) and subsection (i), section two hundred two, article two, chapter thirty-two of the Act. When an application is denied or withdrawn, the Commissioner shall retain all of the fee.
3. Neither the Act nor existing regulations provide a method for implementing the notice filing by federal covered adviser.
4. On September 12, 2000, the Securities and Exchange Commission (the "SEC") issued Release No. IA-1897 (Electronic Filing by Investment Advisers; Amendments to Form ADV; File No. s7-10-00) which, effective October 10, 2000 and among other things, mandated that SEC-registered investment advisers file Part 1 of Form ADV electronically with the SEC through the Investment Adviser Registration Depository ("IARD") commencing January 1, 2001.
5. The IARD is an Internet-based filing depository operated by NASD Regulation, Inc. ("NASDR") under contracts with the SEC and the North American Securities Administrators Association ("NASAA"), which depository is designed to accept filings made electronically by SEC and state registered investment advisers as well as their investment adviser representative ("REPS"); collect associated regulatory filing fees on behalf of affected jurisdictions.
6. The Commissioner finds that this Order is necessary and appropriate and in the Public interest, for the protection of investors and to achieve maximum uniformity.

### **CONCLUSIONS OF LAW**

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may issue orders as are necessary to carry out the provisions of the Act.
2. Chapter 32, Article 2, Section 202(b) of the Act provides that the Commissioner may require documents by rule or order.
3. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

IT IS THEREFORE, ORDERED THAT:

- A. Every person who transacts business in this State as a federal covered advisor shall file notice as prescribed in subsection E, below, with the Commissioner or such other entity designated by the Commissioner.
- B. Designation. Pursuant to the West Virginia Uniform Securities Act, the Commissioner designates the web-based Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers (NASD) to receive and store filings and collect related fees from federal covered advisers and investment adviser representatives on behalf of the Commissioner.
- C. Use of the IARD. Unless otherwise provided, all federal covered adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the Commissioner pursuant to the West Virginia Uniform Securities Act, Chapter 32, shall be filed electronically with and transmitted to the IARD.
- D. Electronic Filing Conditions.
  - 1. Electronic Signature. When a signature or signatures are required by particular instructions of any filing to be made through the IARD, a duly authorized officer of the federal covered adviser or the investment adviser representative, as required, shall affix the individual's electronic signature to the filing by typing the individual's name in the appropriate fields and submitting the filing to the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.
  - 2. Completion of Filing. Applications for initial and renewal notice filing as a federal covered adviser and registration as an investment adviser representative may not be considered filed until the required fee and all required submissions have been received by the Commissioner.
- E. Application for notice as a federal covered adviser shall be deemed incomplete unless the following executed forms, fee and information are submitted:
  - 1. Part One (I) of Form ADV
  - 2. Schedule A or B or C
  - 3. Statutory fee in the amount of Two hundred dollars (\$200.00).
- F. A federal covered adviser's notice filing shall expire annually at midnight on the 31st day of December, unless renewed.

G. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

1. All changes in the information included in a federal covered adviser's Part One (1) and Schedule A or B or C of Form ADV shall be filed with the Commissioner at the same time such amendment is filed with the U.S. Securities and Exchange Commission.
2. The statutory fee in the amount of fifty dollars (\$50.00) for each name or address change **shall be paid directly to the Commissioner.** Checks should be made payable to the West Virginia State Auditor.

H. Termination of Notice Filing.

1. When a federal covered adviser desires to terminate its notice filing, it shall file a written request for such termination with the Commissioner. A federal covered adviser may file SEC Form ADV-W in lieu of a written request for termination.

I. Every investment adviser representative of a federal covered adviser who has a place of business in this State, as defined in subsection J below, shall be registered or exempted under the Act.

J. "Place of business" means:

1. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with or otherwise communicates with clients, and (2) any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

K. It is unlawful for any 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 adviser representative is registered or is exempt from registration. Applicants for investment adviser representative of a federal covered adviser shall register as prescribed in subsection L below, with the Commissioner or such other entity designated by the Commissioner.

L. Application for investment adviser representative of a federal covered adviser shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form U-4 Uniform Application for Securities Industry Registration or Transfer.
2. The initial statutory fee in the amount of One hundred dollars (\$100.00, renewal \$85.00). The check must be made payable to the West Virginia State Auditor.

3. Proof of exams (just Series 65 , or Series 7 and a Series 66).
- M. An investment adviser representative registration shall expire annually at midnight on the 31st day of December, unless renewed.
- N. A renewal of registration shall be granted as a matter of course upon payment of the proper fee unless the registration was, or the renewal would be, subject to revocation or suspension under Section 32-2-204 of the Act.
- O. Reporting requirements, updates and amendments for investment adviser representatives.
1. Each investment adviser representative shall file with the Commissioner a copy of any complaint related to his or her business, transactions or operations in this State, naming the investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within twenty (20) days of the date of the complaint is served on the investment adviser representative, and within ten (10) days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any proceeding within twenty (20) days of the date the decision, order or sanction is rendered.
  2. Each investment adviser representative shall file all changes in the information included in his or her most recent Form U-4 filed with the Commissioner within ten (10) days after the change occurs.
  3. The qualification of an investment adviser representative is not effective during any period when the federal covered adviser which the person represents has not filed proper notice or during any period in which the representative is not employed by a specified federal covered adviser under Chapter 32 of the Act.
  4. An application for withdrawal from the State of West Virginia of a qualified investment adviser representative shall be filed by the representative within ten (10) days of the termination of the representative's employment on Form U-5.
  5. An applicant must be registered or qualified in the securities business in the state of the applicant's principal place of business.
- P. Federal covered advisers required to file notice under Section 32-2-201(f) and 202(b) of the Act and investment adviser representatives required to be registered under Section 32-2-201(e)(2) of the Act shall make their West Virginia notice and registration filings, including renewals, amendments and statutory filing fees, through the IARD.

- Q. Nothing in this Order shall relieve any federal covered advisers required to file notice under Section 32-2-201(f) and 202(b) of the Act and investment adviser representatives required to be registered under Section 32-2-201(e)(2) of the Act from their obligation to file supplemental information directly with the Commissioner upon the Commissioner's request in such form and manner as the Commissioner may determine.
- R. This Order shall remain in effect until modified or vacated by the Commissioner.

Entered this 15th day of July, 1997  
Amended August 18, 1997  
Amended June 26, 2003

Glen B. Gainer, III  
Commissioner of Securities