WEST VIRGINIA CODE: §31A-3-3

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsections (e), (f), (g) and (h) of this section and to the provisions of subsection (j), section twelve, article eight of this chapter, notice and hearing shall be provided in advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

(2) At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and enter an order deciding the matters with respect to which such hearing was conducted, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(c) In the case of an application for the board's approval to incorporate and organize a banking institution in this state, as provided in subdivision (3), subsection (b), section two of this article, the board shall, upon receipt of any such application, provide notice to all banking institutions, which in the manner hereinafter provided, have requested notice of any such action. The request by any such banking institution to receive such notice shall be in writing and shall request the board to notify it of the receipt by the board of any application to incorporate and organize a banking institution in this state. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

(d) The board shall have the power and authority to issue subpoenas and subpoenas duces tecum, administer oaths and examine any person under oath in connection with any subject relating to duties imposed upon or powers vested in the board.

(e) Whenever the board shall find that extraordinary circumstances exist which require immediate action, it may forthwith without notice or hearing enter an order taking any action permitted by subdivisions (1), (2), (4) and (5), subsection (b), section two of this article. Immediately upon the entry of such order, certified copies thereof shall be served

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upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(f) Whenever the board shall find that the financial condition of a state banking institution or a national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without notice or hearing enter an order taking any action permitted by subdivisions (7) and (8), subsection (b), section two of this article. Immediately upon entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(g) Whenever the board shall find that the financial condition of a state banking institution or national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section six or seven, article four of this chapter and without notice or hearing enter an order approving or disapproving an application to incorporate a state banking institution which is being formed to purchase the business and assets or assume the liabilities of, or both, or merge or consolidate with, such state banking institution or national banking institution the financial condition of which constitutes an imminent peril to its depositors, savings account holders, other customers or creditors. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(h) Whenever the board shall find that the financial condition of a state banking institution, national association or bank holding company constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section five or six, article eight-a of this chapter and without notice of hearing enter an order approving or disapproving an application by an existing bank holding company or by an organizing bank holding company to acquire in whole or in part, directly or indirectly, such state banking institution, national association or bank holding company. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby at the earliest practicable time.

(i) Definitions:

(1) The term "imminent peril" means that, because the banking institution or bank holding company is insolvent or about to be insolvent, or there is a probability that the banking institution will not be able to pay its debts when they become due.

(2) A banking institution or bank holding company is "about to be insolvent" when it would be unable to meet the demands of its depositors or is clearly unable, without impairment of capital, by sale of assets or lawful borrowings or otherwise, to realize sufficient liquid assets to pay such debts for which payment is likely, in the immediate future, to be due and demanded in the ordinary course of business.

(3) A banking institution or bank holding company is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business.

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