WEST VIRGINIA CODE: §32-4-402a

§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

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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.

(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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