

§ 78A-30. Application to exchange securities.

(a) When application is made for approval to issue securities or to deliver other consideration (whether or not the security or transaction is exempt from registration or qualification other than by the provisions of G.S. 78A-17(16) or not required to be qualified) in exchange for one or more bona fide securities, claims, or property interests, or partly in such exchange and partly in cash, the Administrator is expressly authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions, and is expressly authorized to hold a hearing upon the fairness of such terms and conditions, at which all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange have the right to appear. Notice of such hearing shall be mailed by United States Mail, Postage Prepaid, to all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange, not less than 10 days prior to such hearing, and such notice shall be effective upon mailing. The application for approval to issue securities or to deliver other consideration shall be in such form, contain such information and be accompanied by such documents as shall be required by rule or order of the Administrator.

(b) The Administrator shall be required to hold a hearing on an application for approval within 30 days after the filing of the application and supporting documents required by rule of the Administrator. Provided, however, if the securities or the transaction regarding which the fairness hearing is sought are otherwise exempt from the registration provisions of this Chapter: (1) the Administrator shall have until 45 days after the filing of the application and supporting documents to hold a hearing on the application for approval; and (2) the hearing on the application shall not be held until at least 10 business days after the filing of the application.

(c) Within 10 business days after holding the hearing under subsection (a), the Administrator shall issue his approval or a statement that his approval will not be forthcoming.

(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or other consideration:

- (1) By any entity organized under the laws of this State; or
- (2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or G.S. 78A-17, or by reason that the security is a security covered under federal law.

(e) The provisions of this section shall be permissive only and no request for approval, failure to request approval, withdrawal of a request for approval, or denial of approval by the Administrator shall affect the availability of any exemption from the registration or qualification requirements other than the exemption available under G.S. 78A-17(16), and shall not be admissible as evidence in any legal or administrative proceeding.

(f) This section is intended to provide for a fairness hearing before the Administrator with respect to transactions which, if approved by the Administrator, would be exempt from the registration requirements of the federal securities laws under section 3(a)(10) of the Securities Act of 1933, or any section comparable thereto which may subsequently be enacted.

(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars (\$500.00), and it may not exceed five thousand dollars (\$5,000). (1979, c. 647, ss. 2, 3; 1987, c. 849, s. 8; 1997-419, s. 8; 1998-212, s. 29A.9(c); 2001-201, s. 14.)