

18 NCAC 06A .1502 APPLICATION TO EXCHANGE SECURITIES

(a) The application and all accompanying documents shall be typed or printed and submitted to the administrator in duplicate. The application shall be signed and dated by the applicant or by a person authorized to act in the applicant's behalf.

(b) The application shall contain the following information:

- (1) the name, state of incorporation, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange.
- (2) a brief description of the proposed transaction.
- (3) a list and a description of the securities or other consideration to be issued or delivered in the proposed exchange.
- (4) a list and a description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in Subparagraph (b)(3) of this Rule are to be exchanged, including the name and state of incorporation of the issuer of any such bona fide securities.
- (5) a brief statement of the terms and conditions under which the securities or other consideration will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests.
- (6) a list of the names of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list which shows the shareholders of the corporation and the number of shares held by each shareholder as of a date not more than 30 days prior to the filing of the application.
- (7) a statement setting forth proposed findings of fact which the applicant requests that the administrator find and incorporate in the written decision with respect to the application.
- (8) the date, which shall be within 30 days of the date of filing of the application, on which the applicant requests that the hearing be held.
- (9) any additional information which the applicant desires the administrator to consider. The administrator may require the applicant to submit other information in addition to the information required by this Rule. The administrator may also waive or modify the requirements of this Rule by allowing the applicant to submit less information than this Rule would otherwise require.

(c) The application shall be accompanied by the following documents:

- (1) any written agreement governing the proposed transaction.
- (2) a copy of the notice of the hearing which the applicant will mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction.
- (3) an audited balance sheet, prepared in accordance with generally accepted accounting principles, as of the close of the most recent fiscal year of any corporation whose securities will be issued or exchanged in the proposed transaction.
- (4) an audited income statement, prepared in accordance with generally accepted accounting principles, for the most recent fiscal year of any corporation whose securities will be issued or exchanged in the proposed transaction.
- (5) any other documents which the applicant desires the administrator to consider. The administrator may require the applicant to submit other documents in addition to the documents required by this Rule. The administrator may also waive or modify the requirements of this Rule by allowing the applicant to submit fewer documents other than those which this Rule would otherwise require.
- (6) a written undertaking to pay, upon receipt of an invoice from the administrator, the fee required by G.S. 78A-30(g) and Subparagraph (d)(4) of this Rule.

(d) The procedure following application shall be as follows:

- (1) The administrator shall inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application to comply with the provisions of G.S. 78A-30 or the rules adopted pursuant thereto prior to setting a date for the hearing.
- (2) Upon the filing of an application complying with the provisions of G.S. 78A-30 and the rules adopted pursuant thereto, the administrator shall inform the applicant of the date, hour and place of the hearing which shall be within 30 days after the filing of the application.
- (3) The applicant shall mail by United States Mail, Postage Prepaid, notice of such hearing 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. The applicant shall provide to the administrator, on or before the date of the hearing, a certification that the notice of hearing has been so mailed.

- (4) Following the conclusion of the hearing, the Administrator shall transmit to the applicant an invoice for the fees required by G.S. 78A-30(g). These fees shall be calculated based upon the hours involved in the examination of the application, the conduct of the hearing, and the preparation of any written response, as follows:

(A) For the Hearing Officer, the amount of two hundred dollars (\$200.00) per hour.

(B) For each Assistant to the Hearing Officer, the amount of one hundred dollars (\$100.00) per hour.

But in any event the fee shall be not less than five hundred dollars (\$500.00) nor more than five thousand (\$5000) per fairness hearing.

*History Note: Authority G.S. 78A-30; 78A-49;
Eff. April 1, 1981;
Temporary Amendment Eff. January 1, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. September 29, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.*