

1 THE OHIO DEPARTMENT OF COMMERCE

2 DIVISION OF SECURITIES

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4 IN RE: :

5 Leader Technologies : File No. 33015

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7 Fairness Hearing taken at the
8 Department of Commerce, Division of
9 Securities, 77 South High Street, 22nd
10 Floor, Columbus, Ohio, on Thursday, May
11 16, 2002, at 1:00 o'clock p.m.

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8	Michael McKibben		
9	Mr. Kelso - Direct		9
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1 findings of fact, conclusions of law, and
2 a recommendation for the Commissioner of
3 securities.

4 She may approve the fairness of
5 this transaction, which will exempt the
6 transaction from registration requirements
7 under the Ohio Securities Act and exempt
8 the transaction from registration with the
9 Securities and Exchange Commission under
10 3A10 of the Securities Act of 1933.

11 At this point I'd like to have
12 counsel and other parties introduce
13 themselves for the record, please.

14 MR. KELSO: My name is Kevin
15 Kelso with the law firm of Fenwick and
16 West, LLP.

17 MR. MCKIBBEN: I'm Mike
18 McKibben, CEO and senior management of
19 Leader Technologies, LLC.

20 MR. ZACKS: I'm Ben Zacks, vice
21 chairman, manager, and chief legal officer
22 of Leader Technologies.

23 MR. MIGLETS: Off the record for
24 a second.

1 has several classes of membership
2 interests. In the merger, Leader Delaware
3 would issue several different classes of
4 common stock and a series of preferred
5 stock to the various members of Leader
6 Ohio with the intent that the rights of
7 the existing investors or members will be
8 carried over into the new corporation.

9 Outstanding options of Leader
10 Ohio would be replaced by equivalent
11 options in the Delaware company, and the
12 management group would continue on from
13 the existing entity.

14 Leader Delaware, Leader
15 Technologies, Incorporated, is a Delaware
16 corporation headquartered in Westerville,
17 Ohio. Leader Technologies, LLC, is an
18 Ohio limited liability company.

19 We brought with us today a
20 declaration of mailing from Karen Houser,
21 who is the secretary of Leader, certifying
22 that she mailed on May 1st the notice of
23 hearing and accompanying exhibits. I'd
24 like to introduce that into the record.

1 of identification.

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3 MR. MIGLETS: Hearing no
4 objection, I will go ahead and admit that
5 into the record.

6 Just for the record, I would
7 note that a draft of that document has
8 been submitted to the Division of
9 Securities, and we issued comments and
10 discussed with Mr. Kelso prior to the
11 hearing and mailing to the security
12 holders of Leader Tech -- or Leader Ohio.

13 MR. KELSO: At this time I'd
14 like to call as a witness Michael
15 McKibben, the senior management and
16 founder of Leader Technologies.

17 MR. MIGLETS: We are swearing in
18 witnesses.

19 MICHAEL MCKIBBEN
20 first duly sworn, as hereinafter
21 certified, testifies and says as follows:

22

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23 DIRECT EXAMINATION

24 BY MR. KELSO:

1 Leader's business activities?

2 A. The Leader's business is
3 essentially as we have described it in the
4 disclosure documents. We are engaged in
5 the development and marketing of
6 enterprise communications and information
7 management software and related products
8 and services.

9 Q. Could you, now, please describe
10 for us briefly the background of the
11 proposed entity conversion and
12 reincorporation and the reasons for the
13 transaction?

14 A. Sure. As Leader moves from a
15 start-up entity and gets closer to
16 beginning commercial sales, it became
17 clear to me and to the other managers of
18 Leader that a conversion from an LLC to a
19 C-corp structure would have several
20 advantages.

21 We believe that potential
22 investors are generally more familiar with
23 C-corporation structures and may be more
24 likely to invest in Leader if it is

1 merger were structured and determined?

2 A. Yes. The general approach was
3 to attempt to carry over the relative
4 equity ownership interest and rights of
5 the existing classes of membership
6 interests in governing documents of the
7 LLC entity. The LLC has several classes
8 of membership interests. We have founder
9 membership interests, Triple A interests,
10 non-voting Double A interests, and
11 non-voting Single A interests.

12 In terms of the conversion ratio
13 as described in the merger agreement for
14 conversion of the LLC interest into shares
15 of Delaware Leader, the Leader LLC
16 operating agreement contains provisions
17 governing the circumstances in which one
18 class of interests can be converted into
19 another class. For example, in general
20 one Triple A interest can convert into
21 five Double A interests.

22 The conversion ratios utilized
23 in the merger generally reflected these
24 conversion ratios in the existing LLC

1 transactions?

2 A. Yes, in both cases.

3 Q. In your own opinion, are the
4 terms of the merger agreement and the
5 related agreements that are attached as
6 exhibits fair to the members of Leader
7 Ohio?

8 A. Yes, I believe they are.

9 Q. After mailing the notice to the
10 members, have you received any
11 communications or feedback from the
12 members concerning the transaction?

13 A. No. The only communications I
14 received were from security holders who
15 expressed support and who want to know
16 when the transaction might close.

17 Q. Could you tell us a little bit
18 about the advice you received concerning
19 the tax -- intended tax treatment of the
20 transaction.

21 A. Yes. Our tax advisor, KPMG,
22 most specifically the managing partner,
23 Jon Eesley, has told us that they think
24 the transaction should be tax free to the

1 members, there is a right of first refusal
2 agreement that contemplates that he would
3 be given certain rights of first refusal
4 that are consistent with the rights that
5 he has now under the Leader Ohio
6 documents.

7 In conversations with Mr.
8 Steiger this morning he felt, and we have
9 agreed, that it would be more consistent
10 with the rights he has now if that
11 agreement was amended to provide, in
12 effect, an anti-dilution right, which
13 would give him the right to receive
14 additional shares if we sold, engaged in
15 certain issuances of new securities in the
16 future at a price per share below the
17 price he paid for his securities.

18 We believe that is consistent
19 with the rights that he has under the
20 current documents. In our communications
21 with our members following this hearing,
22 we would propose to supplement our
23 disclosure document to describe that
24 amendment before asking the members to

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Thereupon, the proceeding was
recessed at 1:17 o'clock p.m.

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