

Chapter SEC 21

DEFINITIONS

SEC 21.01 Definitions

History: Emergency rules covering general subject matter were adopted effective July 1, 1972.

SEC 21.01 Definitions. (1) "Person" within the meaning of section 552.03 (1), Wis. Stats., includes 2 or more persons acting as a partnership, limited partnership, syndicate or other group in connection with their acquiring, holding or disposing of securities of a target company for the purpose of changing or influencing control of such target company. Two or more officers or directors of a target company shall not be deemed to have "acquired directly or indirectly the beneficial ownership of any equity security of a target company", within the meaning of section 552.03 (1), Wis. Stats., if they do no more than act in their respective capacities as officers and directors under the organizational instruments of the target company.

(2) An offeror or person is deemed to be "directly or indirectly" a beneficial owner of more than 5% of any class of the outstanding equity securities of the issuer, within the meaning of sections 552.01 (5) and 552.03 (1), Wis. Stats., if such offeror or person is the beneficial owner of any class of equity securities or of such class which such offeror or person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities, or otherwise. The equity securities subject to such options, warrants or conversion privileges held by an offeror or person are deemed to be outstanding for the purpose of computing the percentage of outstanding equity securities of the class owned by such offeror or person but are not deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

(3) A person is not deemed to be a "beneficial owner" within the meaning of section 552.03 (1), Wis. Stats., solely by reason of being the record owner of equity securities of a target company as nominee for another person.

(4) A target company "may be involved in a take-over offer" within the meaning of section 552.01 (6), Wis. Stats., if the making of a take-over offer relating to any class of its equity securities or the acquisition of any of its securities pursuant to the offer is not prohibited by any state or federal law other than chapter 552, Wis. Stats., or the securities exchange act of 1934.

(5) "Material change" within the meaning of section 552.03 (4), Wis. Stats., and Wis. Adm. Code section SEC 22.03 does not include any acquisition or disposition of the direct or indirect beneficial ownership of an equity security of a target company which, when added to the net of all acquisitions and dispositions by the same person of securities of the same class during the preceding 12 months or since the last filing by the person under section 552.03, Wis. Stats., whichever time period is shorter, does not exceed 2% of the outstanding equity securities of that class.

(6) "Public disclosure" of the material terms of the proposed offer within the meaning of section 552.05 (1), Wis. Stats., means an advertisement placed in any newspaper of general circulation in

this state or in the area in this state where the principal office of the target company is located, if located in this state, which states the following information:

- (a) The name of the offeror;
- (b) The name of the target company;
- (c) The class of security for which a take-over offer is intended to be made;
- (d) The amount and nature of the consideration, including cash, stock or other securities or property, to be used by the offeror to acquire tendered shares of the target company;
- (e) If the consideration is to be a security and if there is a public market for such security, the name of the principal national securities exchange or other market where the price of the security is quoted and the last reported price at the close of trading on a business day not more than 3 days prior to the date when public disclosure is made;
- (f) The date of filing of the registration statement with the commissioner; and

(g) The following statement in bold-face type:

THIS PUBLICATION OF A PROPOSED TENDER OFFER OR INVITATION FOR TENDERS IS REQUIRED BY THE WISCONSIN CORPORATE TAKE-OVER LAW AND DOES NOT CONSTITUTE AN OFFER NOR A SOLICITATION FOR AN OFFER. NO OFFER MAY BE MADE, NOR WILL TENDERS BE ACCEPTED, UNLESS AND UNTIL THE REGISTRATION STATEMENT WITH RESPECT TO THE OFFER BECOMES EFFECTIVE WITH THE WISCONSIN COMMISSIONER OF SECURITIES.

The commissioner may permit the omission of any of the above information or the inclusion of additional information in a public disclosure. A public disclosure meeting the requirements of this subsection is not deemed a "solicitation" within the meaning of section 552.09 (1), Wis. Stats.

(7) "Solicitation" of any offeree for acceptance or rejection of a take-over offer that is not effective or exempt, within the meaning of section 552.09 (1), Wis. Stats., is not deemed a "fraudulent, deceptive or manipulative act" if such solicitation is a communication from a target company to its equity security holders, is filed with and permitted by the commissioner before mailing, and does no more than:

(a) Refer to the fact that the offeror had made a public disclosure of a proposed take-over offer and has filed a registration statement related to the offer with the commissioner pursuant to the requirements of chapter 552, Wis. Stats., and

(b) Explain that the target company may request or has requested the commissioner to hold a hearing with respect to the proposed take-over offer; explain that, if a hearing is held, the commissioner might not rule on the effectiveness of the offer until 30 days from the filing of the offer with the commissioner; and request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with respect thereto, but explain that the target company is prohibited by chapter 552, Wis. Stats., from making any recommendation to its equity security holders concerning the proposed offer unless and until the offer is effective.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Register, October, 1972, No. 202