

## Chapter DFI-Sec 21

### DEFINITIONS

#### DFI-Sec 21.01 Definitions.

**History:** Emergency rules covering general subject matter were adopted effective July 1, 1972. Chapter SEC 21 was renumbered chapter DFI-Sec 21 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

**DFI-Sec 21.01 Definitions. (1)** “Persons” within the meaning of s. 552.03 (1), 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 s. 552.03 (1), 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)** For the purpose of ss. 552.01 (5) and 552.03 (1), Stats., “beneficial owner” shall have the meaning prescribed in rule 13d-3 under the securities exchange act of 1934.

**(3)** For the purpose of s. 552.03 (1), Stats., “acquiring directly or indirectly” shall have the meaning prescribed in rule 13d-5 under the securities exchange act of 1934.

**(4)** A target company “may be involved in a take-over offer” within the meaning of s. 552.01 (6), 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 ch. 552, Stats., or the securities exchange act of 1934.

**(5)** “Material change” within the meaning of s. 552.03 (4), Stats., and s. DFI-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 s. 552.03, 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 s. 552.05 (1), 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 contains only the following information:

- (a) The name of the offeror;
- (b) The name of the target company;
- (c) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the target company;
- (d) The date of filing of the registration statement with the division; and
- (e) 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. THE OFFEROR INTENDS TO MAKE A TENDER OFFER IN THE FUTURE FOR THE SECURITIES DESCRIBED HEREIN. HOWEVER, UNLESS AN OFFER IS EXEMPTED BY THE DIVISION, 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 DIVISION OF SECURITIES.

The division may permit the omission of any of the above information or the inclusion of additional information in a public disclosure as the division deems necessary or appropriate to satisfy the purposes of this chapter and to conform the procedures contained in this chapter to those prescribed by Regulation 14D under the securities exchange act of 1934. A public disclosure meeting the requirements of this subsection is not deemed a “solicitation” within the meaning of s. 552.09 (1), Stats., and is intended to constitute a “public announcement” under rule 14d-2 (d) of the securities exchange act of 1934 that does not result in the “commencement” of a tender offer under federal law.

**(7)** “Solicitation” of any offeree for acceptance or rejection of a take-over offer that is not effective or exempt, within the meaning of s. 552.09 (1), 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 division 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 division pursuant to the requirements of ch. 552, Stats., and

(b) Explain that the target company may request or has requested the division to hold a hearing with respect to the proposed take-over offer; explain that, if a hearing is held, the division might not rule on the effectiveness of the offer until 30 days from the filing of the offer with the division; 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 ch. 552, 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; r. and recr. (2) and (3), Register, December, 1979, No. 288, eff. 1-1-80; emerg. am. (6), eff. 2-15-80; am. (6), Register, June, 1980, No. 294, eff. 7-1-80.