

2715.7390 SPECIAL PROVISIONS APPLICABLE TO ELECTION CONTESTS.

Subpart 1. **Scope.** This part applies to any solicitation subject to parts 2715.7100 to 2715.8400 by any person or group for the purpose of opposing a solicitation subject to parts 2715.7100 to 2715.8400 by any other person or group with respect to the election or removal of directors at any annual or special meeting of security holders.

Subp. 2. Participant; participant in a solicitation.

A. For purposes of this part the terms "participant" and "participant in a solicitation" include the issuer; any director of the issuer, and any nominee for whose election as a director proxies are solicited; or any other person, acting alone, or with one or more other persons, committees, or groups, in organizing, directing or financing the solicitation.

B. For the purpose of this part the terms "participant" and "participant in a solicitation" do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; any person or organization retained or employed by a participant to solicit security holders, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties; any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of duties in the course of that employment; any person regularly employed as an officer or employee of the issuer, or any of its subsidiaries or affiliates who is not otherwise a participant; or any officer or director of, or any person regularly employed by, any other participant, if the officer, director, or employee is not otherwise a participant.

Subp. 3. Filing of information required by schedule B.

A. No solicitation subject to this rule shall be made by any person other than the issuer unless at least five business days prior to it, or any shorter period the commissioner authorizes upon a showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified in parts 2715.8300 to 2715.8350 (schedule B) and a copy of any material proposed to be distributed to security holders in furtherance of the solicitation.

B. Within five business days after a solicitation subject to this rule is made by the issuer, or any longer period the commissioner authorizes upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the issuer, a statement in duplicate containing the information specified in parts 2715.8300 to 2715.8350.

C. If any solicitation on behalf of the issuer or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this subpart

in opposition to it, a statement in duplicate containing the information specified in parts 2715.8300 to 2715.8350 shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.

D. If, subsequent to the filing of the statements required by items A to C, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified in parts 2715.8300 to 2715.8350, within three business days after the person becomes a participant, or any longer period the commissioner authorizes upon a showing of good cause.

E. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

F. Each statement and amendment to it filed pursuant to this subpart shall be part of the public files of the commissioner.

Subp. 4. **Solicitations prior to furnishing required written proxy statement.** Notwithstanding the provisions of part 2715.8300, a solicitation subject to this rule may be made prior to furnishing security holders a written proxy statement containing the information specified in parts 2715.7700 to 2715.7910 (schedule A) with respect to the solicitation if:

A. the statements required by subpart 5 are filed by or on behalf of each participant in the solicitation;

B. no form of proxy is furnished to security holders prior to the time the written proxy statement required by part 2715.7310, subpart 1 is furnished to those persons. This subpart does not apply where a proxy statement then meeting the requirements of parts 2715.7700 to 2715.7910 (schedule A) has been furnished to security holders;

C. at least the information specified in the statements required by subpart 3, items B and C to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation;

D. a written proxy statement containing the information specified in parts 2715.7700 to 2715.7910 (schedule A) with respect to a solicitation is sent or given security holders at the earliest practicable date.

Subp. 5. **Filing requirements of solicitations prior to furnishing required written proxy statement.** Two copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by part 2715.7310, subpart 1 shall be filed with the commissioner in preliminary form at least five

business days prior to the date definitive copies of the material are first sent or given to these persons, or any shorter period the commissioner authorizes upon a showing of good cause.

Subp. 6. **Annual report.** Notwithstanding the provisions of part 2715.7310, subpart 2, two copies of any portion of the annual report referred to in part 2715.7310, subpart 2 which comments upon or refers to any solicitation subject to this rule, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to parts 2715.7100 to 2715.8400. This portion of the report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

Statutory Authority: *MS s 60A.22*

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