

CHAPTER 80B

CORPORATE TAKE-OVERS

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80B.01 DEFINITIONS. Subdivision 1. When used in sections 80B.01 to 80B.13, unless the context otherwise requires, the following words shall have the meanings herein ascribed to them.

Subd. 2. "Affiliate" of a person means any person controlling, controlled by, or under common control with such person.

Subd. 3. "Associate" of a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of an issuer.

Subd. 4. "Commissioner" means the commissioner of securities.

Subd. 5. "Equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest and for the protection of investors, to treat as an equity security.

Subd. 6. "Offeror" means a person who makes or in any way participates in making a take-over offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer.

Subd. 7. "Offeree" means the beneficial owner of equity securities which an offeror offers to acquire in connection with a take-over offer.

Subd. 8. "Take-over offer" means the offer to acquire any equity securities of a target company pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company. Take-over offer does not include:

(a) An offer to purchase securities which are currently publicly traded from or through a broker-dealer at the current market price;

(b) An offer to exchange the securities of one issuer for the securities of another issuer, if the offer is registered or exempt from registration under chapter 80A and registered or exempt from registration under the Securities Act of 1933;

(c) An offer as to which the target company, acting through its board of directors, recommends acceptance to its stockholders, if the offer is made to all stockholders on substantially equal terms;

(d) An offer which, if accepted by all offerees, will not result in the offeror having acquired more than two percent of the same class of equity securities of the issuer within the preceding 12 month period;

(e) An offer by the issuer to acquire its own equity securities;

(f) Any offer which the commissioner, by rule or order, shall exempt from the definition of "take-over offer" as not being entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of sections 80B.01 to 80B.13.

Subd. 9. "Target company" means an issuer of securities (a) which is organized under the laws of this state or has its principal office in this state; (b) which has a substantial portion of its assets located in this state; (c) whose equity securities of any

class are, or within the past two year period have been, registered under chapter 80A; and (d) whose equity securities are the subject of a take-over offer.

[1973 c 331 s 1; 1974 c 406 s 94,95]

80B.02 FILING OF OWNERSHIP INFORMATION. Subdivision 1. Any person who, after acquiring directly or indirectly the beneficial ownership of an equity security of an issuer (a) which is organized under the laws of this state or has its principal office in this state; (b) which has a substantial portion of its assets located in this state; and (c) whose equity securities of any class are, or within the past two year period have been, registered under chapter 80A, is directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of such issuer shall, within ten days after such acquisition, file with the commissioner on a form prescribed by him a statement containing the information prescribed by subdivision 2, and such additional information as the commissioner may by rule prescribe. In determining, for the purpose of this section, whether a person is directly or indirectly the beneficial owner of securities of any class, such person shall be deemed to be the beneficial owner of securities of such class which such 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 securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. For the purpose of this section, a person shall be deemed the beneficial owner of any securities owned or held, with power to vote, by such person, any relative or spouse or relative of the spouse residing in the home of such person, any trust or estate in which such person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which such person owns ten percent or more of the equity, and any affiliate or associate of such person.

Subd. 2. The form required to be filed by subdivision 1 shall contain the following information and such additional information as the commissioner may by rule prescribe:

(a) The identity and background of all persons on whose behalf the acquisition of any equity security of the issuer has been or is to be affected;

(b) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including if applicable a statement describing any securities which are being offered in exchange for the equity securities of the issuer, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were borrowed;

(c) If the purpose of the acquisition is to gain control of the issuer, a statement of any plans or proposals which such person has, upon gaining control, to liquidate the issuer, sell its assets, effect its merger or consolidation, or make any other major change in its business, corporate structure, management or personnel;

(d) The number of shares or units of any equity security of the issuer owned beneficially by such person and any affiliate or associate of such person, together with the name and address of each affiliate or associate;

(e) The material terms of any contract, arrangement or understanding with any other person with respect to the equity securities of the issuer whereby the person filing the statement has or will acquire any interest in additional equity securities of the issuer, or is or will be obligated to transfer any interest in the equity securities to another.

Subd. 3. If the acquisition of the issuer's securities is subject to the requirements of section 13, clause (d) of the Securities Exchange Act of 1934, any person may file with the commissioner a signed copy of the statement prescribed therein in lieu of the statement prescribed in subdivision 2.

Subd. 4. Any person may file with the commissioner, in lieu of the statement prescribed in subdivision 2 and unless otherwise ordered by the commissioner, a statement containing his name and address, the number of shares or units of any equity security of the issuer which are beneficially owned directly or indirectly by him, the date of their acquisition and such other information as the commissioner may by rule prescribe, if he certifies that such securities were acquired by him in the ordinary course

of his business and not for the purpose or having the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect, and that he does not intend to make a take-over offer involving the target company.

Subd. 5. If any material change occurs in the facts set forth in the statement, the person filing the statement shall, within ten days thereafter, file with the commissioner an amendment describing the change in such form as the commissioner shall by rule prescribe.

Subd. 6. Each person required to file a statement with the commissioner under this section by reason of his acquisition of any equity securities of an issuer prior to August 1, 1973 shall file the statement with the commissioner within 30 days after August 1, 1973.

Subd. 7. Each person required to file any statement or amendment thereto with the commissioner under this section shall send a signed copy of such statement or amendment by certified mail to the issuer at its principal office not later than the day of filing with the commissioner.

Subd. 8. No person required to file any ownership statement under this section, who is delinquent in the filing of such statement, may file a registration statement relating to a proposed take-over offer for a period of 60 days after the date of filing of the ownership statement, except as may be permitted by order of the commissioner.

[1973 c 331 s 2; 1974 c 406 s 96]

80B.03 REGISTRATION OF TAKE-OVER OFFERS. Subdivision 1. It is unlawful for any person to make a take-over offer involving a target company in this state, or to acquire any equity securities of the target company pursuant to the offer, unless the offer is effective under sections 80B.01 to 80B.13 or is exempted by rule or order of the commissioner. Before a take-over offer becomes effective under sections 80B.01 to 80B.13, the offeror shall file with the commissioner a registration statement containing the information prescribed in section 80B.02, and shall send a copy of the registration statement by certified mail to the target company at its principal office and publicly disclose the material terms of the proposed offer, not later than the date of filing of the registration statement. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers in this state currently quoting the security.

Subd. 2. The registration statement shall be filed on forms prescribed by the commissioner, and shall be accompanied by a consent by the offeror to service of process and the filing fee specified in section 80B.08, and shall contain the following information and such additional information as the commissioner by rule prescribes.

(a) All of the information specified in section 80B.02, subdivision 2;

(b) Two copies of all solicitation materials intended to be used in the take-over offer in the form proposed to be published or sent or delivered to offerees;

(c) If the offeror is other than a natural person, information concerning its organization and operations, including the year, form and jurisdiction of its organization, a description of each class of equity security and long term debt, a description of the business conducted by the offeror and its subsidiaries and any material changes therein during the past three years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any material pending legal or administrative proceedings in which the offeror or any of its subsidiaries is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three years, and financial statements of the offeror in such form and for such period of time as the commissioner may by rule prescribe;

(d) If the offeror is a natural person, information concerning his identity and background, including his business activities and affiliations during the past three years, and a description of any material pending legal or administrative proceedings in which the offeror is a party.

Subd. 3. The commissioner may require the offeror to file any other documents, exhibits and information that he deems material to the take-over offer, and may permit the omission of any of the information specified in subdivision 2 if he determines that such information is not required for the protection of offerees. The commissioner may by order summarily delay the effective date of the offer if he determines that the

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registration statement does not contain all of the information specified in subdivision 2 or that the solicitation materials do not provide full disclosure to offerees of all material information concerning the offer.

Subd. 4. A take-over offer automatically becomes effective ten days after the date of filing the registration statement with the commissioner unless delayed by order or unless prior thereto the commissioner schedules a hearing with respect to the offer. The commissioner may schedule a hearing if he deems it necessary or appropriate for the protection of offerees in this state, and shall schedule a hearing if so requested by the target company, acting through its board of directors, or by signed petition of shareholders owning, in the aggregate, ten percent of the outstanding equity securities of the class involved in the take-over offer. If a hearing is called, the offer shall not become effective until registered by order of the commissioner. Registration is not deemed approval of the offer by the commissioner and any representation to the contrary is unlawful.

Subd. 5. Any hearing scheduled by the commissioner under this section shall be held within 20 days of the date of filing of the registration statement under subdivision 1, and any determination made following the hearing shall be made within 20 days after such hearing has been closed, unless extended by order of the commissioner with the consent of all interested parties. If, upon the hearing, the commissioner finds that the take-over offer fails to provide for full and fair disclosure to offerees of all material information concerning the offer, or that the offer is unfair or inequitable to offerees or will not be made to all stockholders on substantially equal terms or is in violation of chapter 80A or sections 80B.01 to 80B.13, he shall by order deny registration of the offer.

[1973 c 331 s 3; 1974 c 406 s 97]

80B.04 FILING OF SOLICITATION MATERIALS. Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the take-over offer, shall be filed with the commissioner and sent to the target company or offeror, respectively, not later than the time copies of such solicitation materials are first published or used or sent to offerees. The commissioner may prohibit the use of any solicitation materials deemed false or misleading.

[1973 c 331 s 4]

80B.05 FRAUDULENT AND DECEPTIVE PRACTICES. It is unlawful for any offeror or target company or any controlling person of an offeror or target company or any broker-dealer acting on behalf of an offeror or target company to engage in any fraudulent, deceptive or manipulative acts or practices in connection with a take-over offer. Fraudulent, deceptive and manipulative acts or practices include, without limitation:

(1) The publication or use in connection with the offer of any false statement of a material fact or the omission to state a material fact necessary to make the statements made not misleading;

(2) The sale by any controlling shareholders of a target company of any or their equity securities to the offeror for a consideration greater than that to be paid other stockholders pursuant to the offer or the purchase of any of the securities of a controlling shareholder of the target company by the offeror for a consideration greater than that to be paid other shareholders, pursuant to an agreement not disclosed to the other shareholders;

(3) The refusal by a target company to permit an offeror who is a stockholder of record to examine its list of stockholders, and to make extracts therefrom, pursuant to the applicable corporation statutes, for the purpose of making a take-over offer in compliance with sections 80B.01 to 80B.13, or in lieu thereof, to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of such materials together with the reasonable expenses of postage and handling.

[1973 c 331 s 5]

80B.06 LIMITATIONS ON OFFERORS. Subdivision 1. No offeror may make a take-over offer involving a target company which is not made to stockholders in this state on substantially the same terms as the offer is made to stockholders outside this state.

Subd. 2. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a take-over offer may be withdrawn by or on behalf of any offeree at any time within seven days from the date the offer has become effective under sections 80B.01 to 80B.13 and after 60 days from the date the offer has become effective under sections 80B.01 to 80B.13, except as the commissioner may otherwise prescribe by rule or order for the protection of investors.

Subd. 3. If an offeror makes a take-over offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto within ten days after the offer has become effective under sections 80B.01 to 80B.13 and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to security holders is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted *pro rata*, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

Subd. 4. If an offeror varies the terms of a take-over offer before its expiration date by increasing the consideration offered to security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the variation in the terms of the offer.

Subd. 5. No offeror may make a take-over offer involving a target company in this state, or acquire any equity securities of a target company pursuant to the offer, at any time when an administrative or injunctive proceeding is pending on behalf of the commissioner against the offeror alleging a violation of sections 80B.01 to 80B.13 or chapter 80A.

Subd. 6. No offeror may acquire, remove or exercise control, directly or indirectly, over any assets of a target company located in this state unless the take-over offer is effective or exempt under sections 80B.01 to 80B.13, except as permitted by order of the commissioner.

[1973 c 331 s 6; 1974 c 406 s 98]

80B.07 ADMINISTRATION, RULES AND ORDERS. Subdivision 1. Sections 80B.01 to 80B.13 shall be administered by the commissioner of securities, who may exercise all powers granted to him under chapter 80A, which are not inconsistent with sections 80B.01 to 80B.13.

Subd. 2. The commissioner may make and adopt such rules and forms as are necessary to carry out the purposes of sections 80B.01 to 80B.13, including, without limitation, rules defining terms used in sections 80B.01 to 80B.13.

Subd. 3. The commissioner may by rule or order exempt from any provisions of sections 80B.01 to 80B.13 take-over offers which he determines are not made for the purpose and do not have the effect of changing or influencing the control of a target company or where he determines that compliance with sections 80B.01 to 80B.13 is not necessary for the protection of the offerees, and he may similarly exempt any persons from the requirement of filing statements under sections 80B.01 to 80B.13.

[1973 c 331 s 7; 1974 c 406 s 99]

80B.08 FEES AND EXPENSES. The commissioner shall charge a filing fee of \$100 for a registration statement filed by an offeror and \$100 for a request for hearing filed by a target company or its shareholders. The expenses reasonably attributable to any hearing scheduled at the request of the target company or its shareholders shall be charged ratably to the offeror and the person requesting the hearing, but the total amount charged shall not exceed \$500.

[1973 c 331 s 8]

80B.09 INJUNCTIONS. Whenever it appears to the commissioner that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of sections 80B.01 to 80B.13 or any rule or order hereunder, (1) he may issue and cause to be served upon any person violating any of the provisions of sections 80B.01 to 80B.13 an order requiring the person guilty thereof to cease and desist therefrom; and (2) he may bring an action in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with sections 80B.01 to 80B.13 or any rule or order hereunder, or he may refer the matter to the attorney general or the county attorney of

the appropriate county. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order and may order rescission of any sales or purchases of securities determined to be unlawful under sections 80B.01 to 80B.13 or any rule or order hereunder. The court may not require the commissioner to post a bond.

[1973 c 331 s 9]

80B.10 PENALTIES. Subdivision 1. Any person, including a controlling person of an offeror or target company, who violates sections 80B.03 to 80B.06 or any rule thereunder, or any order of which he has notice, or who willfully violates section 80B.02 or any rule or order thereunder, may be fined not more than \$5,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under sections 80B.01 to 80B.13 more than six years after the alleged violation.

Subd. 2. The commissioner may refer such evidence as is available concerning violations of sections 80B.01 to 80B.13 or of any rule or order hereunder to the attorney general or the county attorney of the appropriate county who may, with or without any reference, institute the appropriate criminal proceedings under sections 80B.01 to 80B.13. If referred to a county attorney, he shall within 90 days file with the commissioner a statement concerning any action taken or, if no action has been taken, the reasons therefor.

Subd. 3. Nothing in sections 80B.01 to 80B.13 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

[1973 c 331 s 10]

80B.11 CIVIL LIABILITIES. Subdivision 1. Any offeror who purchases a security in connection with a take-over offer in violation of sections 80B.01 to 80B.13 shall be liable to the person selling the security to him who may sue either at law or in equity. In an action for rescission the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable. Damages are the excess of either the value of the security on the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

Subd. 2. Every person who directly or indirectly controls a person liable under subdivision 1, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly or severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Subd. 3. No action may be maintained under this section unless commenced before the expiration of three years after the act or transaction constituting the violation or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires.

Subd. 4. The rights and remedies under sections 80B.01 to 80B.13 are in addition to any other rights or remedies that may exist at law or in equity.

[1973 c 331 s 11]

80B.12 APPLICATION OF CORPORATE TAKE-OVER LAW. Subdivision 1. If the target company is an insurance company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the commissioner of banks, or a public service corporation subject to regulation by the public service commission, the commissioner shall promptly furnish a copy of the registration statement filed under sections 80B.01 to 80B.13 to the regulatory agency having supervision of the target company. Any hearing under sections 80B.01 to 80B.13 involving any such target company shall be held jointly with the regulatory agency having su-

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pervision, and any determination following the hearing shall be made jointly with that regulatory agency.

Subd. 2. If the target company is a public utility, public utility holding company, national banking association, bank holding company or savings and loan association subject to regulation by a federal agency and the take-over of such company is subject to approval by that agency sections 80B.01 to 80B.13 shall not apply.

Subd. 3. Sections 80B.01 to 80B.13 shall not apply to any offer involving a class vote by stockholders of the target company, pursuant to its articles of incorporation or the applicable corporation statute, on a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation, or sale of its securities in exchange for cash or securities of another corporation.

[1973 c 331 s 12]

80B.13 APPLICATION OF SECURITIES LAW. All of the provisions of chapter 80A, which are not in conflict with sections 80B.01 to 80B.13 shall apply to any take-over offer involving a target company in this state.

[1973 c 331 s 13; 1974 c 406 s 100]