

SEC 21 to 28

Filed September 8, 1972
2:15 P.M.

STATE OF WISCONSIN
Office of the
COMMISSIONER OF SECURITIES

CERTIFICATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Harry W. Knight, Jr., Deputy Commissioner of Securities and custodian of the official records of this agency, hereby certify that the annexed rules, amendments thereto, and repeals thereof, all relating to state regulation of the corporate take-overs, were duly approved and adopted by this agency on September 8, 1972.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of this agency at Madison, Wisconsin, this 8th day of September, 1972.

Harry W. Knight, Jr.
DEPUTY COMMISSIONER OF SECURITIES

(SEAL)

ORDER OF THE COMMISSIONER OF SECURITIES
ADOPTING, AMENDING AND REPEALING RULES
UNDER THE WISCONSIN CORPORATE TAKE-OVER LAW

Pursuant to authority vested in the Commissioner of Securities by Section 552.13(2) of the Wisconsin Statutes, the Commissioner of Securities hereby finds that it is necessary and appropriate in the public interest and for the protection of investors to adopt, amend and repeal rules as follows under the Wisconsin Corporate Take-Over Law, and hereby adopts, amends and repeals rules as follows:

Sections SEC 21.01 through SEC 28.01, inclusive, of the Wisconsin Administrative Code are adopted, amended or repealed, respectively, in the form annexed hereto and made a part hereof.

The rules so adopted, amended or repealed shall take effect on November 1, 1972, as provided in Section 227.026(1) of the Wisconsin Statutes.

Dated at Madison, Wisconsin, this 8th day of September, 1972.

Harry W. Knight, Jr.
DEPUTY COMMISSIONER OF SECURITIES

(SEAL)

WISCONSIN ADMINISTRATIVE CODE

Rules of the

COMMISSIONER OF SECURITIES

under Chapter 552,

THE WISCONSIN CORPORATE TAKE-OVER LAW

Effective November 1, 1972

Cite the rules in this Code as

(for example)

Wis. Adm. Code section SEC 21.01

OFFICE OF THE COMMISSIONER OF SECURITIES

448 West Washington Avenue

Box 1768, Madison, Wisconsin 53701

ADMINISTRATIVE RULES FOR CHAPTER 552

OF THE WISCONSIN STATUTES

THE WISCONSIN CORPORATE TAKE-OVER LAW

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DEFINITIONS

SEC 21.01 Definitions. (1) "Person" within the meaning of section 552.03(1), Wis. Stats., includes two 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) 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 three 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.

Chapter SEC 22

FILING OF OWNERSHIP INFORMATION

SEC 22.01 Filing of Long-Form Statement of Ownership Information. Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a target company, is directly or indirectly the beneficial owner of more than 5% of any class of the outstanding equity securities of the issuer shall, within 10 days after such acquisition, file with the commissioner a long-form statement of ownership information on form TO-1 prescribed by the commissioner, and send a signed copy of such form to the target company by certified mail at its principal office not later than the date of filing.

SEC 22.02 Filing of Short-Form Statement of Ownership Information. Any person subject to the long-form filing requirement who certifies, pursuant to section 552.03(3), Wis. Stats., that the equity securities of the target company 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, may elect to file with the commissioner a short-form statement of ownership information on form TO-2 prescribed by the commissioner and send a signed copy of such form to the target company by certified mail at its principal office not later than the date of filing.

SEC 22.03 Amendment of Ownership Information Filings. If any material change occurs in the facts set forth in any ownership information statement filed pursuant to Wis. Adm. Code sections SEC 22.01 or 22.02, the person who filed such statement shall, within 10 days thereafter, file with the commissioner an amendment describing the change and send a signed copy of such amendment to the target company by certified mail not later than the date of filing. Forms TO-1 and TO-2 shall be used for the filing or sending of amendments to ownership information statements.

Chapter SEC 23

REGISTRATION OF TAKE-OVER OFFERS

SEC 23.01 Filing of Registration Statement. (1) Any person who proposes to make a take-over offer involving a target company in this state or to acquire any equity securities of a target company pursuant to the offer, shall file with the commissioner a registration statement on form TO-1 and, not later than the date of filing, send a copy of such registration statement by certified mail to the target company at its principal office and, on the date of filing, publicly disclose in the manner specified in Wis. Adm. Code section SEC 21.01(4) the material terms of the proposed offer.

(2) If any material change occurs in the facts set forth in the registration statement required by subsection (1), the offeror who filed such statement shall promptly notify the commissioner and the target company of such change by telephone or telegraph confirmed by letter, and shall amend the registration statement to reflect such change within 10 days of the change.

(3) The proposed take-over offer filed with the commissioner as part of the registration statement pursuant to section 552.05(2)(b), Wis. Stats., shall include, but shall not be limited to, the following information:

(a) The name of the offeror making the take-over offer;

(b) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 552.11(2), Wis. Stats., or otherwise;

(c) If the take-over offer is for fewer than all of the outstanding equity securities of the class and the offeror is not obligated to acquire all of the securities tendered, the date of expiration of the period during which the securities will be taken up pro rata pursuant to section 552.11(3), Wis. Stats., or otherwise; and

(d) The information required by Items B(1), (3), and (5), C, D, E, and F of form TO-1, or a fair and adequate summary thereof.

Chapter SEC 24

EXEMPTIONS

SEC 24.01 Exemptions from Ownership Information Filing. The following persons are exempted under section 552.13(3), Wis. Stats., without limiting the commissioner's authority thereunder, from the ownership information filing requirements of section 552.03, Wis. Stats.:

(1) A person who makes any acquisition 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, does not exceed 2% of the outstanding equity securities of that class.

(2) Any target company which acquires or has acquired the direct or indirect beneficial ownership of its own equity securities, except in connection with a take-over offer.

(3) A person who, prior to an acquisition of the equity securities of an issuer, was the beneficial owner of more than 5% of the outstanding securities of the same class as those acquired and the following conditions are met:

(a) The acquisition is made pursuant to pre-emptive subscription rights in an offering made to all holders of securities of the class to which pre-emptive subscription rights pertain;

(b) The purchaser does not, through the exercise of such pre-emptive subscription rights, acquire more than his or its pro-rata share of the securities offered; and

(c) The acquisition is duly reported pursuant to section 16(a) of the securities exchange act of 1934, or the offering is exempted pursuant to section 551.23(12), Wis. Stats.

(4) Any person who acquires or has acquired the direct or indirect beneficial ownership of the equity securities of a target company registered under chapter 551 or its predecessor laws if such company did not have more than 100 stockholders of record as of the end of its most recent fiscal year.

(5) Any broker-dealer who, in connection with its participation in an underwriting or distribution of equity securities of a target company, or in connection with its transactions as a dealer, acquires more than 5% of the direct or indirect beneficial ownership of its outstanding equity securities of any class, provided that, at the termination of the period of the underwriting or distribution not exceeding 90 days, the broker-dealer owns less than 5% of such class of the equity securities.

(6) In connection with any acquisition of the direct or indirect beneficial ownership of any equity securities of a target company prior to July 1, 1972:

(a) Any person who made such acquisitions before July 29, 1968;

(b) Any person who made such acquisitions before January 1, 1970, unless such person was required to file a Schedule 13D in compliance with Section 13 (d) of the securities exchange act of 1934;

(c) Any person whose acquisitions are not exempted under sub. (a) or (b), but who on July 1, 1972, no longer had direct or indirect beneficial ownership of at least 5% of any class of the equity securities of the target company.

SEC 24.02 Other Filing Exemptions. The following solicitation materials and communications are exempted under the general rule-making authority of the commissioner in section 552.13(2), Wis. Stats., from any and all filing requirements of chapter 552, Wis. Stats.:

(1) Offers to purchase securities made in connection with a distribution of securities permitted by Rule 10b-7 or 10b-8 of the securities exchange act of 1934;

(2) The call or redemption of any security in accordance with the terms and conditions of the governing instruments;

(3) Offers to purchase securities evidenced by a script certificate, order form or similar document which represents a fractional interest in a share of stock or similar security;

(4) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholder's securities.

(5) The furnishing of information and advice regarding a take-over offer to customers or clients by attorneys, banks, broker-dealers, fiduciaries or investment advisers, who are not otherwise participating in the take-over offer or solicitation.

Chapter SEC 25

FALSE OR MISLEADING SOLICITATION MATERIALS

SEC 25.01 False or Misleading Solicitation Materials. The following solicitation materials are deemed to be "false or misleading" under section 552.07(2), Wis. Stats., without limiting the commissioner's authority thereunder:

(1) Any additional solicitation materials used by the offeror subsequent to the delivery of the initial take-over offer to the security holders of the target company, if they do not contain the name of the persons making such solicitation and the information required by Items B(1), (3) and (5), C, D, E, and F of form TO-1, or a fair and adequate summary thereof, unless such information has been previously furnished to security holders of the target company who are solicited.

(2) Solicitation materials used in connection with a take-over offer by persons other than the offeror if they do not include the name of the person making such solicitation and the information required by Wis. Adm. Code section SEC 26.01(1)(d), (e) and (f), or a fair and adequate summary thereof, unless such information has been previously furnished to security holders of the target company who are solicited.

(3) Any solicitation materials filed and in compliance with the first two subsections of this rule are deemed to have become false and misleading if, after filing, the person filing fails to promptly notify the commissioner and the target company or offeror by telephone or telegraph confirmed by letter of any material change in the facts disclosed in the solicitation materials or if, within 10 days of learning of such change, the person filing has not filed the changes with the commissioner and sent them by mail to all target company security holders who had received the initial solicitation material in which the original facts were first disclosed.

Chapter SEC 26

FRAUDULENT AND DECEPTIVE PRACTICES

SEC 26.01 Fraudulent, Deceptive or Manipulative Acts or Practices.

The following practices or acts are deemed to be "fraudulent, deceptive or manipulative" within the meaning of section 552.09, Wis. Stats., without limiting the commissioner's authority thereunder:

(1) The publication, use of or sending to the equity security holders of the target company solicitation materials to be used in connection with a take-over offer by persons other than the offeror if, before such solicitation materials are used, published or sent, the persons intending to use, publish or send them fail to file with the commissioner a statement disclosing the following information:

(a) The name and business address of the person filing the statement;

(b) Name of the target company and the address of its principal office;

(c) Title of the class of the equity security to which the solicitation materials relate;

(d) Identification of the take-over offer to which the solicitation material relates;

(e) Reasons for the solicitation of equity security holders of the target company to accept or reject such take-over offer or request for invitation for tenders;

(f) Where the solicitation materials are to be used, published or sent by persons other than the target company, a description of any arrangement or understanding which the persons making the solicitation have with the target company, its management or the offeror;

(g) The identification of any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on his behalf, to make solicitations to equity security holders of the target company to accept or reject the take-over offer and a brief description of the terms of such employment, retainer or arrangement for compensation; and

(h) Where the person filing this statement is the target company, information as to all transactions in the class of equity securities of the target company to which this statement relates which were effected during the 60 days immediately precedent to the filing of this statement by the target company and its subsidiaries and their principal officers, directors, and affiliated persons.

This rule does not apply to a person, other than the target company, who makes no written solicitations other than those for which copies have been filed by other persons pursuant to section 552.07, Wis. Stats.

Chapter SEC 27

GENERAL PROVISIONS

SEC 27.01 Examination Expenses. The following amounts are prescribed for the expenses of examination of various matters arising under chapter 552, Wis. Stats., are chargeable to the person filing or registrant, and are payable unless otherwise provided at the time the required form or solicitation material is filed:

- (1) Examination of ownership information matters filed pursuant to section 552.03, Wis. Stats.:
 - (a) Form TO-1 Statement of Ownership Information-----\$50
 - (b) Statement prescribed in section 13(d) of the securities exchange act of 1934-----\$50
 - (c) Form TO-2 Statement of Ownership Information-----\$20
 - (d) Amendment to Statement of Ownership Information-----\$20
- (2) Examination of certified statement required to be filed under Wis. Adm. Code section SEC 26.01(1)-----\$20
- (3) Examination of solicitation materials filed by an offeror, target company or other person-----\$10
Per Item
- (4) Examination of matter relating to issuance of interpretive opinion-----\$50

Chapter SEC 28

FORMS

SEC 28.01 Forms. (1) The following forms are adopted under chapter 552, Wis. Stats., for use in this state and may be obtained from the office of the commissioner of securities, Madison, Wisconsin:

- TO-1 Long-Form Statement of Ownership Information,
Amendment to Long-Form Statement of Ownership Information and
Registration Statement of Take-Over Offer
- TO-2 Short-Form Statement of Ownership Information and
Amendment to Short-Form Statement of Ownership Information

(2) Any other statement or report may be filed containing the information specified in the applicable rule.