

CERTIFICATE

STATE OF WISCONSIN)
OFFICE OF THE) SS
COMMISSIONER OF SECURITIES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

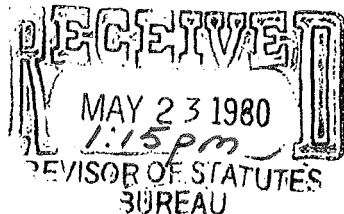
I, Richard R. Malmgren, Commissioner of Securities for the State of Wisconsin, and custodian of the official records of said agency, do hereby certify that the annexed rules and amendments to rules relating to filing and review procedures applicable to registration applications submitted under the Wisconsin Corporate Take-Over Law, were duly approved and adopted by this agency on May 23, 1980.

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 the Office of the Commissioner of Securities in the city of Madison, this 23rd day of May, 1980.

(SEAL)

Richard R. Malmgren
RICHARD R. MALMGREN
Commissioner of Securities



sent off. date 7-1-80

ORDER OF THE
OFFICE of the COMMISSIONER OF SECURITIES
STATE OF WISCONSIN
ADOPTING AND AMENDING RULES

RELATING TO rules concerning the treatment of registration applications filed under the Wisconsin Corporate Take-Over Law, providing authority to permit conditional offers, prescribing the content of public disclosures, and providing for confidential treatment of certain information in registration applications.

Pursuant to authority vested in the Office of the Commissioner of Securities by secs. 552.13(1) and (2), Wis. Stats., the Office of the Commissioner of Securities hereby amends and adopts rules interpreting secs. 552.05(1), (2), (3), (4) and (5), Wis. Stats., as follows:

Section 1. Section SEC 21.01(6), Wis. Adm. Code, is amended to read:

(6) "Public disclosure" of the material terms of the proposed offer within the meaning of s. 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 ~~contains~~ states only the following information:

(a) The name of the offeror;

(b) The name of the target company;

~~(c) The class of security for which a takeover offer is intended to be made;~~

~~(d) The amount and nature of the consideration, including each 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;~~

(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;

~~(f)~~ (d) The date of filing of the registration statement with the commissioner; and

~~(g)~~ (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 COMMISSIONER, 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 as the commissioner 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), Wis. 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.

Section 2. Section SEC 23.01(4), Wis. Adm. Code, is adopted to read:

(4) All materials filed with the commissioner pursuant to s. 552.05, Wis. Stats., shall be confidential and shall not be subject to public disclosure until such time and only to the extent that the commissioner determines the public disclosure is necessary and appropriate to satisfy the purposes of this chapter and will not cause the person filing such material to violate either Regulation 14D under the Securities Exchange Act of 1934 or this chapter.

Section 3. Section SEC 28.01, Wis. Adm. Code, is renumbered SEC 29.01, Wis. Adm. Code.

Section 4. Section SEC 28.01, Wis. Adm. Code, is adopted to read:

SEC 28.01 Conformity with federal law. (1) The commissioner may by order hold any filings or proceedings confidential.

(2) The commissioner may exercise the authority in s. 552.05(1), Wis. Stats., to permit a conditional take-over offer to be made for the equity securities of a target company without prior registration under Ch. 552, Wis. Stats., under such conditions as the commissioner may impose for the protection of investors, provided that: the offeror's purchase of the securities is conditioned upon subsequent registration under Ch. 552, Wis. Stats.; and the commissioner determines such action is necessary and appropriate to satisfy the purposes of this chapter and to conform the procedures contained in this chapter to those prescribed by Regulations 14D and 14E under the Securities Exchange Act of 1934.

Analysis Prepared by the
Office of the Commissioner of Securities
Relating to Proposed Amendments to
Rules of the Commissioner of Securities

(a) Findings of Fact

- (1) Recently enacted rules of the federal Securities and Exchange Commission pertaining to tender offers to purchase a target corporation's securities created conflicts with certain requirements of the Wisconsin Take-Over Law and Administrative Rules thereunder in their present form.
- (2) The form of the "public disclosure" required to be made under section SEC 21.01(6), Wis. Adm. Code, should be amended to conform to the form of "public announcement" under Rule 14d-2(d) of the federal Securities Exchange Act of 1934 that does not result in the "commencement" of a tender offer under federal law.
- (3) An administrative rule is warranted to allow the Commissioner to provide for confidential treatment of information filed in a registration statement under the Wisconsin Take-Over Law where confidential treatment is necessary to avoid a conflict with federal take-over law regulations.
- (4) It is appropriate under the Commissioner's authority in sec. 552.05(1), Wis. Stats., relating to adopting rules exempting certain take-over offers, to adopt a rule permitting a conditional take-over offer to be made under such conditions as the Commissioner may impose and where the offeror's purchase of any securities tendered in the offer is conditioned upon subsequent registration under the Wisconsin Take-Over Law.

(b) Statement Explaining Need for Proposed Rules

The statutory rule-making process is being used in this matter to adopt permanent rules under the Wisconsin Corporate Take-Over Law, Chapter 552 of the Wisconsin Statutes, to replace emergency rules that were previously adopted by this agency under sec. 227.027, Wis. Stats., and became effective on February 15, 1980.

The purpose of the proposed permanent rules is the same as the adoption of the emergency rules. It is to make necessary amendments and to create new rules in order

federal five-day requirement. The Wisconsin Take-Over Law provides that an offer may not commence until the conclusion of a ten-day review period by the Commissioner's office, or until after a hearing process has been completed if a hearing is called with respect to the offer.

It is, therefore, apparent that there is a probable conflict between Rule 14d-2(b) and the requirements of sec. 552.05(4), Wis. Stats., which could lead to a judicial determination that the Wisconsin Corporate Take-Over Law is preempted by the rules of the Securities and Exchange Commission that became effective on January 7, 1980. See Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963), which held that state law is preempted when compliance with both state and federal regulations is a physical impossibility. As stated previously, the intent of the proposed permanent rule revisions is to eliminate the apparent conflicts between the federal and the Wisconsin regulations governing corporate take-over matters.

The specific revisions to accomplish that purpose are as follows. Section 1 contains amendments to the definition of "public disclosure" in section SEC 21.01(6), Wis. Adm. Code, that serve two purposes: (1) to keep the informational content of such disclosure from containing all of the triggering elements of the federal Rule 14d-2(b) definition of "commencement;" and (2) to make the content of the "public disclosure" required under the Wisconsin Take-Over Law and section SEC 21.01(6) thereunder consistent with the purpose and intent of the federal "safe harbor" provisions in Rule 14d-2(d). Section 2 creates new rule section SEC 23.01(4), Wis. Adm. Code, to provide for confidential treatment, where necessary, of information in a registration statement filed under the Wisconsin Take-Over Law. The confidential treatment of such information is for the purpose of preventing the filing of a take-over registration statement from becoming a public announcement in Wisconsin of the material terms of the offer which would result in a tender offer "commencement" for purposes of the rules of the federal Securities and Exchange Commission. Section 3 renumbers existing rule section SEC 28.01, Wis. Adm. Code, to be section SEC 29.01, Wis. Adm. Code, in order to make room for the new rule provision in the following section. Section 4 creates new rule section SEC 28.01, Wis. Adm. Code, to provide that the Wisconsin Commissioner of Securities may exercise his authority under sec. 552.05(1), Wis. Stats., to take certain steps, when necessary for the protection of investors, to allow a conditional take-over offer to be made under Chapter 552 of the Wisconsin

that the provisions of the Wisconsin Corporate Take-Over Law will not be preempted by the operation of recently enacted rules of the U. S. Securities and Exchange Commission.

On November 29, 1979, the U. S. Securities and Exchange Commission announced the adoption of new rules of the Commission pertaining to tender offers to purchase a target corporation. These rules became effective on January 7, 1980. The rules implemented existing statutory requirements under section 14(d) and (e) of the federal Securities and Exchange Act of 1934 by providing specific filing, delivery and disclosure requirements, optional dissemination provisions, substantive regulatory protections, and certain anti-fraud rules applicable to tender offers. The new rules of the Securities and Exchange Commission are generally applicable to tender offer transactions governed by Chapter 552 of the Wisconsin Statutes, the Wisconsin Corporate Take-Over Law.

Because of the language and operation of certain of the federal rules, the current take-over laws of many states, including Wisconsin's, appear to be subject to being struck down as violative of the U. S. Constitution on Supremacy Clause grounds due to conflicts between the federal rule requirements and the requirements under the state take-over laws and rules.

One area of conflict is caused by new federal Rule 14d-2(b) and its interrelationship with the requirement under sec. 552.05(1), Wis. Stats. The Wisconsin statutory provision requires a "public disclosure" be made, via newspaper ad or some other means, of the basic terms of a take-over offer contemporaneously with the filing of a take-over registration application under state law.

Under the language of federal Rule 14d-2(b), a bidder's public announcement through a press release, a newspaper advertisement or a public statement of certain material terms of a cash tender offer--specifically: (1) the identity of the bidder, (2) the identity of the subject company, and (3) the amount and class of securities being sought and the price or range of prices being offered--is deemed to be a "commencement" of the offer and requires the bidder within five days thereafter to either withdraw the offer or to file the offering materials with the S.E.C. and begin the offeree notification procedures. It is at this point that the conflict between the federal and the Wisconsin requirement occurs since our law does not permit the offer to commence until after a waiting period longer than the

Statutes. This would avoid a potential preemption of the Wisconsin Corporate Take-Over Law by providing a mechanism whereby an offeror can comply with both the federal and state requirements and procedures incident to a take-over offer.

(c) Explanation of Modifications Made as a Result of Public Hearing Testimony

--No such modifications are being made inasmuch as no person appeared at the public hearing to provide any comments, nor were any written comments received. The only modifications are as a result of the Rules Clearinghouse Report which made several language-type suggestions.

(d) List of Persons Appearing or Registering at Public Hearing

--No interested persons appeared at the hearing.

--Randall E. Schumann, General Counsel of the agency's staff, made an appearance on behalf of the staff and submitted the necessary materials to make a record before the Commissioner of Securities who acted as the hearing officer.

(e) Response to Legislative Council/Rules Clearinghouse Report Recommendations

(1) Acceptance of recommendations in whole.

--the Council Report noting a renumbering problem in proposed SEC 28.01 was accepted and the necessary revision was made.

--suggested non-substantive language changes by the Council to sections SEC 21.01(6) and 29.01, Wis. Adm. Code, have been incorporated in the proposed final draft form of the rules.


(2) through (4)

--not applicable.

The rules and amendments contained in this Order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in sec. 227.026(1), Wis. Stats.

DATED this 23rd day of May, 1980.

(SEAL)



RICHARD R. MALMGREN
Commissioner of Securities