CHAPTER 80B

CORPORATE TAKEOVERS

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80B.01 DEFINITIONS.

Subdivision 1. **Scope.** 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.** "Affiliate" of a person means any person controlling, controlled by, or under common control with such person.

Subd. 3. **Associate.** "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.** "Commissioner" means the commissioner of commerce.

Subd. 5. **Equity security.** "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 the commissioner may prescribe in the public interest and for the protection of investors, to treat as an equity security.

Subd. 6. **Offeror.** "Offeror" means a person who makes or in any way participates in making a takeover 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 takeover offer. When two or more persons act as a partnership, limited partnership, limited liability company, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) for the purpose of acquiring, owning, or voting securities of a target company, all members of the partnership, limited liability company, syndicate, or other group constitute "a person."

Subd. 7. **Offeree.** "Offeree" means the beneficial owner, residing in Minnesota, of equity securities which an offeror offers to acquire in connection with a takeover offer.

Subd. 8. **Takeover offer.** "Takeover offer" means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either (1) 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 and was directly or indirectly the beneficial owner of less than ten percent of any class of the outstanding equity securities of the target company prior to the commencement of the offer; or (2) the beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than ten percent of that class and the offeror was directly or indirectly the

beneficial owner of ten percent or more of any class of the outstanding equity securities of the target company prior to the commencement of the offer. Takeover offer does not include:

(a) an offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the issuer, would not result in the offeror having acquired more than two percent of this class during the preceding 12-month period;

(b) an offer by the issuer to acquire its own equity securities unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

(c) an offer in which the target company is an insurance company subject to regulation by the commissioner, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the Public Utilities Commission.

Subd. 9. **Target company.** "Target company" means an issuer of publicly traded equity securities (a) which (1) has its principal place of business or its principal executive office located in this state, or (2) owns or controls assets located within this state which have a fair market value of at least $1,000,000, and (b) which (1) has more than ten percent of its beneficial or record equity security holders resident in this state, (2) has more than ten percent of its equity securities owned beneficially or of record by residents in this state, or (3) has more than 1,000 beneficial or record equity security holders resident in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security at the time the offeror makes a takeover offer for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or the over-the-counter market.

Subd. 10. **Beneficial owner.** "Beneficial owner" includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security and/or the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes, but is not limited to, the right, exercisable within 60 days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these 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 this person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person shall be deemed the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which this person owns ten percent or more of the equity, and any affiliate or associate of this person.

History: *1973 c 331 s 1; 1974 c 406 s 94,95; 1980 c 516 s 2; 1984 c 488 s 2; 1Sp1985 c 5 s 1-3; 1986 c 444; 1Sp1987 c 1 s 1,2; 2014 c 170 s 2*

80B.02 [Repealed, 1984 c 488 s 19]

80B.03 REGISTRATION OF TAKEOVER OFFERS.

Subdivision 1. **Effective offer required; filing and delivery of offer.** It is unlawful for any person to make a takeover offer or to acquire any equity securities pursuant to the offer, unless the offer is effective under sections 80B.01 to 80B.13. A takeover offer is effective when the offeror files with the commissioner a registration statement containing the information prescribed in subdivisions 2 and 6. The offeror shall deliver a copy of the registration statement by personal service to the target company at its principal office

not later than the filing of the registration statement. The offeror shall send or deliver to all offerees as soon as practicable after the filing, the material terms of the proposed offer and the information specified in subdivision 6.

Subd. 2. **Statement to be filed; contents.** 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:

(a) all of the information specified in subdivision 6;

(b) two copies of all solicitation materials intended to be used in the takeover 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 persons directly or indirectly controlling the offeror, directors and executive officers of the offeror and their material business activities, their business affiliations during the past three years and any material legal or administrative proceedings in which the controlling persons, directors, or executive officers are or were a party 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 that person's identity and background, including 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. [Repealed, 1984 c 488 s 19]

Subd. 3a. **Registration is not approval.** Registration is not deemed approval by the commissioner and any representation to the contrary is unlawful.

Subd. 4. [Repealed, 1984 c 488 s 19]

Subd. 4a. **Summary suspension.** Within three business days of the date of filing of the registration statement, the commissioner may by order summarily suspend the effectiveness of the takeover offer if the commissioner determines that the registration statement does not contain all of the information specified in subdivisions 2 and 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subdivision 5.

Subd. 5. **Suspension hearing.** A hearing shall be scheduled by the commissioner with respect to each suspension under this section and shall be held within ten calendar days of the date of the suspension. Chapter 14 does not apply to the hearing. The commissioner may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the commissioner. The commissioner's determination made following the hearing shall be made within three calendar days after such hearing has been completed but not more than 16 calendar days after the date of the suspension. The commissioner may prescribe time limits that are shorter than those specified in this subdivision by rule or order. If, based upon the hearing, the commissioner finds that the registration statement does not contain all of the information provided in subdivisions 2 and 6 or that the takeover offer materials provided to offerees do not provide full disclosure

to offerees of all material information concerning the offer, or that the takeover offer is in material violation of any provision of sections 80B.01 to 80B.13, the commissioner shall permanently suspend the effectiveness of the takeover offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the commissioner and to reinstitute the takeover offer by filing a new or amended registration statement pursuant to this section.

Subd. 6. **Additional statement contents.** The form required to be filed by subdivision 2, clause (a), shall contain the following information:

(a) the identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected including the identity and background of each member of a partnership, limited partnership, syndicate, or other group constituting the person and the identity and background of each affiliate and associate of the person, including the identity and background of each affiliate and associate of each member of the partnership, syndicate, or other group; provided, however, that with respect to a limited partnership, the information need only be given with respect to a partner who is denominated or functions as a general partner and each affiliate and associate of the general partner;

(b) the source and amount of funds or other consideration used or to be used in acquiring any equity security, including the material terms of the financial arrangements for the take-over;

(c) any plans or proposals of any person identified under paragraph (a), including plans or proposals under consideration, to (1) liquidate or dissolve the target company, (2) sell all or a substantial part of its assets, or merge it or exchange its shares with another person, (3) change the location of its principal place of business or its principal executive office or of a material portion of its business activities, (4) change materially its management or policies of employment, (5) change materially its charitable or community contributions or related policies, programs, or practices, (6) change materially its relationship with suppliers or customers or the communities in which it operates, or (7) make any other material change in its business, corporate structure, management or personnel, and other objective facts as would be substantially likely to affect the decision of a shareholder with respect to the take-over offer;

(d) the number and class or series of shares of the target company beneficially owned, directly or indirectly, by each of the persons identified under paragraph (a).

History: *1973 c 331 s 3; 1974 c 406 s 97; 1984 c 488 s 3-8; 1Sp1985 c 5 s 4-8; 1986 c 444; 1988 c 692 s 1,2; 2001 c 208 s 8*

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 takeover 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.

History: *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 takeover 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 incorporated under the laws of this state 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 statutes and rules of this state and the United States, for the purpose of making a takeover 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;

(4) except for forms of communication described in section 80C.19, subdivision 4, the solicitation of any offeree for acceptance or rejection of a takeover offer or acquisition of any equity security pursuant to a takeover offer before the takeover offer is effective under sections 80B.01 to 80B.13 or while the offer is suspended under sections 80B.01 to 80B.13.

Notwithstanding any contrary provisions of this chapter, during the time a takeover offer is suspended under sections 80B.01 to 80B.13, the offeror may distribute to offerees who are residents of this state the takeover offer materials, and any amendments to the offer, if the following statement, printed in not less than 10-point boldface type, is affixed by the offeror or with the offeror's consent to the front cover of the materials: "The commissioner of commerce, state of Minnesota, has suspended the solicitation and effectiveness within the state of Minnesota of the attached offering materials. Until further notice, the attached materials are sent for informative purposes only and are not a solicitation to purchase shares." During the time any takeover offer is suspended under sections 80B.01 to 80B.13, if the offeror elects to distribute materials to offerees who are residents of this state for informational purposes, the target company may distribute to offerees who are residents of this state a statement of the target company's position with respect to the takeover offer and the takeover offer materials, if the following statement, printed in not less than 10-point boldface type, is attached to the front cover of the target company's communication: "The commissioner of commerce, state of Minnesota, has suspended the solicitation and effectiveness within the state of Minnesota of the offer addressed herein. Until further notice, the attached materials are sent for informative purposes only and are not a solicitation to reject or accept the offer."

History: *1973 c 331 s 5; 1984 c 488 s 9; 1Sp1985 c 5 s 9*

80B.06 LIMITATIONS ON OFFERORS.

Subdivision 1. **Uniformity of terms.** No offeror may make a takeover offer 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. **Right to withdraw equity securities.** An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover 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. [Repealed, 1Sp1985 c 5 s 20]

Subd. 4. [Repealed, 1Sp1985 c 5 s 20]

Subd. 5. **Affect of allegations of securities-related violations.** No offeror may make a takeover offer or acquire any equity securities in this state pursuant to the takeover offer, at any time when any proceeding by the commissioner is pending against the offeror alleging a violation of any provision of sections 80B.01 to 80B.13 or chapter 80A.

Subd. 6. [Repealed, 1Sp1985 c 5 s 20]

Subd. 7. [Repealed, 1991 c 58 s 16]

History: *1973 c 331 s 6; 1974 c 406 s 98; 1984 c 488 s 10; 1Sp1985 c 5 s 10*

80B.07 ADMINISTRATION, RULES AND ORDERS.

Subdivision 1. **Commissioner's powers generally.** In administering the provisions of sections 80B.01 to 80B.13, the commissioner may exercise all powers granted under chapter 80A, which are not inconsistent with sections 80B.01 to 80B.13.

Subd. 2. **Rulemaking.** 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. **Exemption authority.** The commissioner may by rule or order exempt from any provisions of sections 80B.01 to 80B.13 any proposed takeover offer or any category or type of takeover offer which the commissioner determines does not have the purpose or effect of changing or influencing the control of a target company or where the commissioner determines that compliance with sections 80B.01 to 80B.13 is not necessary for the protection of the offerees.

History: *1973 c 331 s 7; 1974 c 406 s 99; 1980 c 516 s 2; 1984 c 488 s 11; 1Sp1985 c 5 s 11; 1986 c 444*

80B.08 FEES AND EXPENSES.

The commissioner shall charge a filing fee of $250 for a registration statement filed by an offeror.

History: *1973 c 331 s 8; 1984 c 488 s 12*

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, the commissioner (1) 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) 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 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.

History: *1973 c 331 s 9; 1986 c 444*

80B.10 PENALTIES.

Subdivision 1. **Civil and criminal penalties.** Any person, including a controlling person of an offeror or target company, who willfully violates any provision of sections 80B.01 to 80B.13 or any rule thereunder, or any order of the commissioner of which this person has notice, may be fined not more than $25,000 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. **Referral of evidence to criminal prosecutors.** 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. A county attorney, on receiving a referral, 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. **Impact of chapter on other crimes.** 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.

Subd. 4. **Effect on shares.** All shares of a target company incorporated under the laws of this state acquired from a Minnesota resident in violation of any provision of this chapter or any rule hereunder, or any order of the commissioner of which the person has notice, shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the target company for one year after acquisition and the target company shall, during this one-year period, have the option to call the shares for redemption at the price at which the shares were acquired. Such a redemption shall occur on the date set in the call notice but not later than 60 days after the call notice is given.

Subd. 5. **Rights of action.** Offerors, offerees, and target companies may sue at law or in equity to enforce the provisions of this chapter.

History: *1973 c 331 s 10; 1984 c 488 s 13; 1Sp1985 c 5 s 12-14; 1986 c 444*

80B.11 CIVIL LIABILITIES.

Subdivision 1. **Private remedy.** Any offeror who purchases a security in connection with a takeover offer in violation of sections 80B.01 to 80B.13 shall be liable to the person selling the security to the offeror 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. **Joint and several liability.** 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. Persons who would otherwise be so liable but who prove that they 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 are not liable. There is contribution as in cases of contract among the several persons so liable.

Subd. 3. **Limitation on actions.** 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. **Rights and remedies cumulative.** 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.

History: *1973 c 331 s 11; 1986 c 444*

80B.12 APPLICATION OF CORPORATE TAKEOVER LAW.

Subdivision 1. [Repealed, 1984 c 488 s 19]

Subd. 2. **Nonapplication to certain utilities and financial institutions.** If the target company is a public utility, public utility holding company, national banking association, bank holding company or savings association subject to regulation by a federal agency and the takeover of such company is subject to approval by that agency sections 80B.01 to 80B.13 shall not apply.

Subd. 3. [Repealed, 1984 c 488 s 19]

History: *1973 c 331 s 12; 1980 c 614 s 123; 1995 c 202 art 1 s 25*

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 takeover offer involving a target company in this state.

History: *1973 c 331 s 13; 1974 c 406 s 100*