

## ARTICLE 3. BUSINESS TAKEOVER OFFERS

### Rule 1. General Provisions

#### 710 IAC 3-1-1 Filing a statement

Authority: IC 23-2-3.1-9

Affected: IC 23-2-3.1-3

Sec. 1. (a) The offeror must file with the commissioner the takeover offer statements before or at the same time that the offeror delivers the statement to the target company. If the takeover offer is not subject to the filing requirements of the Exchange Act of 1934, as amended, the takeover offer statements must be filed before or at the time that the offeror first publishes, sends, or gives an offer or solicitation for tenders to security holders. If the takeover offer is subject to the filing requirements of the Exchange Act, the statements must be filed on the same date as the offeror files with the Securities and Exchange Commission.

(b) After a tender offer statement has been filed with the commissioner, the offeror must file with the commissioner amendments to the statement and news releases, and the target company must file with the commissioner written materials delivered to offerees and news releases. (*Securities Division; 710 IAC 3-1-1; filed Aug 27, 1990, 4:10 p.m.: 14 IR 134; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA*)

#### 710 IAC 3-1-2 Notice; appearances; objections

Authority: IC 23-2-3.1-9

Affected: IC 23-2-3.1-7

Sec. 2. (a) The hearing officer may require the offeror to provide notice of the takeover offer hearing to the shareholders of the target company. The notice may be by mail or may be published in each publication in an Indiana newspaper of general circulation in which the offeror had published the offer, unless the target company has published the offer.

(b) The hearing officer may by order establish a time within which any person desiring to become a party to the proceeding pursuant to IC 23-2-3.1-7(d) must file an appearance.

(c) The hearing officer may by order establish a time within which a party desiring to present evidence must file with the hearing officer.

(d) The hearing officer shall prohibit the participation in any proceeding of any person who does not comply with an order under subsections (b) through (c), unless good cause is shown why relief from an order should be granted. (*Securities Division; 710 IAC 3-1-2; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA*)

#### 710 IAC 3-1-3 Financial sources; takeover date

Authority: IC 23-2-3.1-9

Affected: IC 23-2-3.1-5.5

Sec. 3. (a) If the statement required under IC 23-2-3.1-5.5(d) does not apply to the offeror because of IC 23-2-3.1-5.5(b), the offeror must file a certified document signed by a duly authorized officer that IC 23-2-3.1-5.5(d) does not apply.

(b) If the offeror has included in its statement filed with the commissioner the information required in IC 23-2-3.1-5.5(e), the offeror may satisfy the requirement of IC 23-2-3.1-5.5(d) by a filing titled "Statement under 5.5" and by referring to the appropriate sections in the tender offer statement. (*Securities Division; 710 IAC 3-1-3; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA*)

#### 710 IAC 3-1-4 Contracts

Authority: IC 23-2-3.1-9

Affected: IC 23-2-3.1-5

Sec. 4. (a) "Contract", for the purposes of this article, means a written or verbal agreement for the purchase, sale, lease, or assignment of goods, services, or intellectual property.

(b) A description of a contract required under this section must be in English and include the following:

(1) The date the contract was entered into.

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- (2) The parties to the contract.
- (3) The goods, services, or intellectual property that is the subject of the contract.
- (4) The approximate aggregate amount, in United States dollars, of the subject of the contract.
- (5) The term of the contract.
- (6) Any other information necessary to understand the contract.
- (c) In determining if a government is "in free association with the United States", the hearing officer may consider the following:
  - (1) Whether the United States maintains a diplomatic relationship, including, but not limited to, any of the following:
    - (A) Recognizing the foreign government.
    - (B) Establishing an embassy or consulate in the foreign country.
    - (C) Having the United States representative granted diplomatic status in the foreign country.
  - (2) Whether federal legislation exists that limits trade including, but not limited to, military goods or "dual use" goods, with foreign governments because of national security concerns.
  - (3) Whether the foreign government has legislative or other barriers to the import or export of goods or services produced by individuals or organizations domiciled or incorporated in Indiana.
  - (4) Any other factors the hearing officer deems relevant.
  - (d) Along with the tender offer statement, the offeror will file a list of all foreign governments with which the offeror and its affiliates have contracts.
  - (e) If the information required under IC 23-2-3.1-5(c) does not apply to the offeror, the offeror must file a certified document signed by a duly authorized officer that:
    - (1) the offeror and its affiliates are not a party to a contract specified in IC 23-2-3.1-5(c)(1);
    - (2) the offeror and its affiliates have not received a subsidy as specified in IC 23-2-3.1-5(c)(2); and
    - (3) none of the officers or directors of the offeror or its affiliates hold any office or appointments as specified in IC 23-2-3.1-5(c)(3).

*(Securities Division; 710 IAC 3-1-4; filed Aug 27, 1990, 4:10 p.m.: 14 IR 135; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA)*

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