

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.  
Act 533 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

# A Bill

HOUSE BILL 1876

4  
5 By: Representative Wells  
6 By: Senator Horn

## For An Act To Be Entitled

10 AN ACT TO REPEAL THE INVESTOR PROTECTION TAKEOVER  
11 ACT, § 23-43-101 et seq.; AND FOR OTHER PURPOSES.

### Subtitle

14 TO REPEAL THE INVESTOR PROTECTION  
15 TAKEOVER ACT, § 23-43-101 et seq.

16  
17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. Arkansas Code Title 23, Chapter 43 is repealed.

21 ~~23-43-101. Title.~~

22 ~~This chapter shall be known as the "Investor Protection Takeover Act."~~

23  
24 ~~23-43-102. Definitions.~~

25 ~~As used in this chapter, unless the context otherwise requires:~~

26 ~~(1) "Commissioner" means the Securities Commissioner appointed~~  
27 ~~under § 23-42-201;~~

28 ~~(2) "Equity security" means any share of stock, limited~~  
29 ~~partnership units of ownership or similar securities, or any securities~~  
30 ~~convertible into those securities, or carrying any warrant or right to~~  
31 ~~subscribe to or purchase those securities;~~

32 ~~(3) (A) "Offeror" means a person who makes, or in any way~~  
33 ~~participates in making, a takeover offer. This includes all affiliates and~~  
34 ~~associates of that person and all persons acting jointly or in concert for~~  
35 ~~the purpose of acquiring, holding, or disposing of, or exercising any voting~~



1 ~~rights attached to, the equity securities for which a takeover offer is made,~~

2 ~~(B) "Offeror" does not include any bank or broker-dealer~~  
 3 ~~loaning funds to an offeror in the ordinary course of its business or any~~  
 4 ~~bank, broker-dealer, attorney, accountant, consultant, employee, or other~~  
 5 ~~person furnishing information or advice to, or performing ministerial duties~~  
 6 ~~for, an offeror and not otherwise participating in the takeover offer;~~

7 ~~(4) "Offeree" means, in addition to the record owner, the~~  
 8 ~~beneficial owner of equity securities which an offeror acquires or offers to~~  
 9 ~~acquire in connection with a takeover offer;~~

10 ~~(5) (A) "Takeover offer" means the offer to acquire, or the~~  
 11 ~~acquisition of, any equity security of a target company pursuant to a tender~~  
 12 ~~offer or request or invitation for tenders if, after the acquisition thereof,~~  
 13 ~~the offeror would be directly or indirectly a beneficial owner of more than~~  
 14 ~~five percent (5%) of any class of the outstanding equity securities of the~~  
 15 ~~issuer.~~

16 ~~(B) "Takeover offer" does not include an offer or~~  
 17 ~~acquisition of any equity security of a target company pursuant to:~~

18 ~~(i) Transactions effected by or through a broker-~~  
 19 ~~dealer in the ordinary course of its business;~~

20 ~~(ii) An exchange offer for securities of another~~  
 21 ~~issuer if the offer is registered or exempted from registration under chapter~~  
 22 ~~42 of this title;~~

23 ~~(iii) An offer made to not more than thirty-five~~  
 24 ~~(35) persons in this state during any period of twelve (12) consecutive~~  
 25 ~~months;~~

26 ~~(iv) An offer made to all the equity security~~  
 27 ~~holders of the target company if the total number of its equity security~~  
 28 ~~holders does not exceed one hundred (100) at the time of the offer;~~

29 ~~(v) An offer, if the acquisition of any equity~~  
 30 ~~security pursuant thereto, together with all other acquisitions by the~~  
 31 ~~offeror of securities of the same class during the preceding twelve (12)~~  
 32 ~~months, would not exceed two percent (2%) of that class of the outstanding~~  
 33 ~~securities of the issuer; or~~

34 ~~(vi) An offer by the target company to acquire its~~  
 35 ~~own equity securities;~~

36 ~~(6) "Target company" means a corporation, limited partnership,~~

1 ~~or other issuer of securities which is or may be involved in a takeover offer~~  
 2 ~~relating to any class of equity securities if the issuer:~~

3 ~~(A) Is organized under the laws of this state or has its~~  
 4 ~~principal offices in this state; or~~

5 ~~(B) Has equity security holders resident in this state who~~  
 6 ~~own a majority in interest of any class of equity securities.~~

7  
 8 ~~23-43-103. Exceptions.~~

9 ~~(a) If the target company is a public utility, public utility holding~~  
 10 ~~company, national banking association, bank holding company, or savings and~~  
 11 ~~loan association subject to regulation by a federal agency, and the agency~~  
 12 ~~affords equity security holders similar protections as are afforded in this~~  
 13 ~~chapter, this chapter shall not apply.~~

14 ~~(b) This chapter shall not apply to state or national banks.~~

15 ~~(c) This chapter shall not apply to any offer involving a class vote~~  
 16 ~~by equity security holders of the target company, pursuant to its articles of~~  
 17 ~~incorporation or the applicable corporation statute, on a merger,~~  
 18 ~~consolidation, or sale of corporate assets in consideration of cash or the~~  
 19 ~~issuance of securities of another corporation or both, or sale of its~~  
 20 ~~securities in exchange for cash or securities of another corporation.~~

21  
 22 ~~23-43-104. Applicability of chapter 42 of this title.~~

23 ~~All of the provisions of chapter 42 of this title which are not in~~  
 24 ~~conflict with this chapter shall apply to any takeover offer involving a~~  
 25 ~~target company in this state.~~

26  
 27 ~~23-43-105. Criminal penalties — Prosecutions.~~

28 ~~(a) Any person, including a controlling person of an offeror or target~~  
 29 ~~company, who willfully violates any provision of this chapter, except § 23-~~  
 30 ~~43-115, or who willfully violates § 23-43-115 knowing the statement to be~~  
 31 ~~false or misleading in any material respect, shall be guilty of a Class B~~  
 32 ~~felony as that term is defined in § 5-1-101 et seq.~~

33 ~~(b) Prosecutions for offenses described in this section must be~~  
 34 ~~commenced within five (5) years from date of occurrence. The five-year felony~~  
 35 ~~period of limitation does not begin to run until after the commission of the~~  
 36 ~~last overt act in the furtherance of a scheme or course of conduct.~~

1           ~~(c) The Securities Commissioner may refer any evidence which is~~  
 2 ~~available concerning violations of this chapter or of any rule or order under~~  
 3 ~~this chapter to the Attorney General or the prosecuting attorney of the~~  
 4 ~~appropriate county who may, with or without any reference, institute the~~  
 5 ~~appropriate criminal proceedings under this chapter.~~

6           ~~(d) Nothing in this chapter limits the power of the state to punish~~  
 7 ~~any person for any conduct which constitutes a crime under any other statute.~~

8  
 9           ~~23-43-106. Civil liability of purchasers and others.~~

10          ~~(a) (1) Any offeror who purchases a security in connection with a~~  
 11 ~~takeover offer not in compliance with this chapter, or by means of any untrue~~  
 12 ~~statement of a material fact or any omission to state a material fact~~  
 13 ~~necessary in order to make the statements made, in the light of the~~  
 14 ~~circumstances under which they were made, not misleading, shall be liable to~~  
 15 ~~the person selling the security to him, who may sue either at law or in~~  
 16 ~~equity to recover the security plus any income received by the purchaser~~  
 17 ~~thereon, upon tender of the consideration received, or for damages.~~

18           ~~(2) Damages are the excess of either the value of the security~~  
 19 ~~on the date of purchase or its present value, whichever is greater, over the~~  
 20 ~~present value of the consideration received for the security.~~

21           ~~(3) Tender requires only notice of willingness to pay the amount~~  
 22 ~~specified in exchange for the security.~~

23           ~~(4) Any notice may be given by service as in civil actions or by~~  
 24 ~~certified mail to the last known address of the person liable.~~

25          ~~(b) Every person who directly or indirectly controls an offeror liable~~  
 26 ~~under subsection (a) of this section, every partner, principal executive~~  
 27 ~~officer or director of the offeror, every person occupying a similar status~~  
 28 ~~or performing similar functions, every employee of the offeror who materially~~  
 29 ~~aids in the act or transaction constituting the violation, and every broker-~~  
 30 ~~dealer or agent who materially aids in the act or transaction constituting~~  
 31 ~~the violation is also liable jointly or severally with and to the same extent~~  
 32 ~~as the offeror unless the person liable hereunder proves that he did not know~~  
 33 ~~and, in the exercise of reasonable care, could not have known of the~~  
 34 ~~existence of the facts by reason of which the liability is alleged to exist.~~  
 35 ~~There is contribution as in cases of contract among the several persons so~~  
 36 ~~liable.~~

1           ~~(c) No action may be maintained under this section unless commenced~~  
 2 ~~before the expiration of five (5) years after the act or transaction~~  
 3 ~~constituting the violation or the expiration of one (1) year after the~~  
 4 ~~discovery of the facts constituting the violation, whichever first expires.~~

5  
 6           ~~23-43-107. Rights and remedies cumulative.~~

7           ~~The rights and remedies provided by this chapter are in addition to any~~  
 8 ~~other rights or remedies that may exist at law or in equity.~~

9  
 10          ~~23-43-108. Commissioner's powers and duties generally.~~

11          ~~(a) This chapter shall be administered by the Securities Commissioner,~~  
 12 ~~who may exercise all powers granted to him under chapter 42 of this title,~~  
 13 ~~which are not inconsistent with this chapter.~~

14          ~~(b) The commissioner may make rules necessary to carry out the~~  
 15 ~~purposes of this chapter, including rules defining fraudulent or deceptive~~  
 16 ~~practices and other terms used in this chapter.~~

17          ~~(c) The commissioner may by rule or order exempt from any provisions~~  
 18 ~~of this chapter takeover offers that he determines are not made for the~~  
 19 ~~purpose or do not have the effect of changing or influencing the control of a~~  
 20 ~~target company or where compliance with this chapter is not necessary for the~~  
 21 ~~protection of the equity security holders of the target company. He may~~  
 22 ~~similarly exempt any persons from the filing of statements under this~~  
 23 ~~chapter.~~

24          ~~(d) The commissioner may by order direct any person to file any~~  
 25 ~~statement provided for in this chapter if it appears that the person is~~  
 26 ~~required to file the statement and is delinquent in the filing of the~~  
 27 ~~statement.~~

28          ~~(e) The commissioner may designate the assistant commissioner in his~~  
 29 ~~place as a hearing officer under this chapter.~~

30  
 31          ~~23-43-109. Injunction against violation of chapter.~~

32          ~~(a) Whenever it appears to the Securities Commissioner that any~~  
 33 ~~person, including a controlling person of an offeror or target company, has~~  
 34 ~~engaged in or is about to engage in any act or practice constituting a~~  
 35 ~~violation of this chapter or any rule or order under this chapter, he may~~  
 36 ~~bring an action in the name of the state in the Chancery Court of Pulaski~~

1 County to enjoin the acts or practices and to enforce compliance with this  
 2 chapter or any rule or order under this chapter.

3 (b) Upon a proper showing, the court in its discretion may grant a  
 4 permanent or temporary injunction or restraining order or may order  
 5 rescission of any sales or purchases of securities determined to be unlawful  
 6 under this chapter or any rule or order under this chapter.

7 (c) The court may not require the commissioner to post a bond.

8  
 9 ~~23-43-110. Filing of ownership information.~~

10 (a) Any person who, after directly or indirectly acquiring the  
 11 beneficial ownership of any equity security of a target company, is directly  
 12 or indirectly a beneficial owner of more than five percent (5%) of any class  
 13 of the outstanding equity securities of the issuer shall file with the  
 14 Securities Commissioner within ten (10) days after the acquisition a  
 15 statement containing the following information and any additional information  
 16 which the commissioner by rule prescribes:

17 (1) The identity and background of all persons on whose behalf  
 18 the acquisition of any equity security of the target company has been or is  
 19 to be effected;

20 (2) The source and amount of funds or other consideration used  
 21 or to be used in acquiring any equity security, including a statement  
 22 describing any securities which are being offered in exchange for the equity  
 23 securities of the target company and, if any part of the acquisition price is  
 24 or will be represented by borrowed funds or other consideration, a  
 25 description of the transaction and the names of the parties thereto;

26 (3) If the purpose of the acquisition is to gain control of the  
 27 target company, a statement of any plans or proposals which the person has,  
 28 upon gaining control, to liquidate the target company, sell its assets,  
 29 effect its merger or consolidation, or make any other major change in its  
 30 business, corporate structure, management, or personnel;

31 (4) The number of shares or units of any equity security of the  
 32 target company of which each such person and each associate of the person and  
 33 each person included as an offeror is the beneficial owner or which each such  
 34 person has a right to acquire, directly or indirectly, together with the name  
 35 and address of each such person;

36 (5) Material information as to any contracts, arrangements, or

1 understandings with any person with respect to any equity security of the  
 2 target company, including transfers of any equity security, joint ventures,  
 3 loan or option arrangements, puts and calls, guarantees of loans, guarantees  
 4 against loss, guarantees of profits, division of losses or profits, or the  
 5 giving or withholding of proxies, naming the persons with whom the contracts,  
 6 arrangements, or understandings have been entered into.

7 (b) ~~If the target company is an issuer the acquisition of whose equity~~  
 8 ~~securities is subject to the requirements of Section 13(d) of the Securities~~  
 9 ~~Exchange Act of 1934, any person may file with the commissioner a signed copy~~  
 10 ~~of the statement prescribed therein in lieu of the statement prescribed in~~  
 11 ~~subsection (a) of this section.~~

12 (c) ~~Any person may file with the commissioner, in lieu of the~~  
 13 ~~statement prescribed in subsection (a) of this section and unless otherwise~~  
 14 ~~ordered by the commissioner, a statement containing his name and address, the~~  
 15 ~~number of shares or units of any equity security of the target company which~~  
 16 ~~are beneficially owned, directly or indirectly, by him and each of his~~  
 17 ~~associates, the date of their acquisition, and any other information which~~  
 18 ~~the commissioner may by rule prescribe if he certifies that the securities~~  
 19 ~~were acquired by him in the ordinary course of his business and not for the~~  
 20 ~~purpose or having the effect of changing or influencing the control of the~~  
 21 ~~issuer nor in connection with, or as a participant in, any transaction having~~  
 22 ~~such purpose or effect, and that he does not intend to make a takeover offer~~  
 23 ~~involving the target company.~~

24 (d) ~~If any material change occurs in the facts set forth in the~~  
 25 ~~statement, the person filing the statement shall, within ten (10) days~~  
 26 ~~thereafter, file with the commissioner an amendment describing the change, in~~  
 27 ~~accordance with any rules which the commissioner prescribes.~~

28 (e) ~~Each person required to file any statement or amendment thereto~~  
 29 ~~with the commissioner under this section shall send a signed copy of the~~  
 30 ~~statement or amendment by certified mail to the target company at its~~  
 31 ~~principal office not later than the date of filing.~~

32 (f) ~~No person required to file any ownership statement under this~~  
 33 ~~section who is delinquent in the filing of the statement may file a~~  
 34 ~~registration statement relating to a proposed takeover offer for a period of~~  
 35 ~~thirty (30) days after the date of filing of the ownership statement, except~~  
 36 ~~as may be permitted by order of the commissioner.~~

1           ~~(g) No person shall be required to file ownership information under~~  
 2 ~~this section if the target company has less than one million dollars~~  
 3 ~~(\$1,000,000) in assets or thirty five (35) or fewer equity security holders.~~

4  
 5           ~~23-43-111. Takeover offers — Procedure.~~

6           ~~(a) It is unlawful for any person to make a takeover offer involving a~~  
 7 ~~target company in this state, or to acquire any equity securities of a target~~  
 8 ~~company pursuant to the offer, unless the offer is effective under this~~  
 9 ~~chapter or is exempted by rule or order of the Securities Commissioner.~~

10           ~~(b) Before a takeover offer becomes effective under this chapter, the~~  
 11 ~~offeror shall file with the commissioner a registration statement containing~~  
 12 ~~the information prescribed in subsection (c) of this section, notify the~~  
 13 ~~commissioner that the offeror has forwarded a copy of the registration~~  
 14 ~~statement by certified mail to the target company at its principal office,~~  
 15 ~~and notify the commissioner how the offeror will publicly disclose the~~  
 16 ~~material terms of the proposed offer.~~

17           ~~(c) The registration statement may be filed on forms prescribed by the~~  
 18 ~~commissioner, and shall be accompanied by a consent by the offeror to service~~  
 19 ~~of process specified in § 23-42-107(a), and the filing fee specified in § 23-~~  
 20 ~~43-117(a), and shall contain the following information and any additional~~  
 21 ~~information which the commissioner by rule prescribes:~~

22                   ~~(1) All of the information specified in § 23-43-110, any part of~~  
 23 ~~which may be incorporated by reference to the extent that it was previously~~  
 24 ~~filed;~~

25                   ~~(2) Three (3) copies of the proposed takeover offer, including~~  
 26 ~~all material terms thereof, in the form proposed to be published or sent or~~  
 27 ~~delivered to equity security holders of the target company;~~

28                   ~~(3) Material information concerning the organization and~~  
 29 ~~operations of any offeror which is a corporation or limited partnership,~~  
 30 ~~including:~~

31                           ~~(A) The year, form, and jurisdiction of its organization;~~

32                           ~~(B) A description of each class of its limited partnership~~  
 33 ~~units or capital stock and its long term debt;~~

34                           ~~(C) A description of the business done by the offeror and~~  
 35 ~~its subsidiaries and any material changes therein during the past three (3)~~  
 36 ~~years;~~



1                   ~~(D)—A description of the location and character of the~~  
 2 ~~principal properties of the offeror and its subsidiaries;~~

3                   ~~(E)—A description of any material pending legal or~~  
 4 ~~administrative proceedings in which the offeror or any of its subsidiaries is~~  
 5 ~~a party;~~

6                   ~~(F)—The names of all managing partners, directors, and~~  
 7 ~~executive officers of the offeror and their material business activities and~~  
 8 ~~affiliations during the past three (3) years; and~~

9                   ~~(G)—Financial statements of the offeror for its three (3)~~  
 10 ~~most recent annual accounting periods and any current period; and~~

11                   ~~(4)—Material information concerning the identity and background~~  
 12 ~~of any offeror who is not a corporation, including his material business~~  
 13 ~~activities and affiliations during the past three (3) years, and a~~  
 14 ~~description of any material pending legal or administrative proceedings in~~  
 15 ~~which the offeror is a party.~~

16                   ~~(d)(1)—The commissioner may require the offeror to file any other~~  
 17 ~~documents, exhibits, and information that he deems material to the takeover~~  
 18 ~~offer, and he may permit the omission of any of the information specified in~~  
 19 ~~subsection (b) of this section if he determines that the information is not~~  
 20 ~~required for the protection of offerees.~~

21                   ~~(2)—The commissioner may, by order, summarily delay the~~  
 22 ~~effective date of the offer if he determines that the registration statement~~  
 23 ~~does not contain all of the information specified in subsection (b) of this~~  
 24 ~~section or does not provide full disclosure to offerees of all material~~  
 25 ~~information concerning the offer.~~

26                   ~~(e)(1)—A takeover offer becomes effective ten (10) days after the date~~  
 27 ~~of filing the registration statement with the commissioner unless the~~  
 28 ~~commissioner by order delays registration for a period not to exceed thirty~~  
 29 ~~(30) days or unless prior to the expiration of the ten (10) days the~~  
 30 ~~commissioner calls a hearing with respect to the offer.~~

31                   ~~(2)—The commissioner may call a hearing if he deems it necessary~~  
 32 ~~or appropriate for the protection of offerees in this state. If a hearing is~~  
 33 ~~called, the offer shall not become effective until the registration statement~~  
 34 ~~is declared effective by order of the commissioner.~~

35                   ~~(f)—Any hearing called by the commissioner under this section shall be~~  
 36 ~~held within twenty (20) days of the date of filing of the registration~~

1 ~~statement under subsection (b) of this section. Any determination made~~  
 2 ~~following the hearing shall be made within thirty (30) days after the filing~~  
 3 ~~unless extended by order of the commissioner for the convenience of the~~  
 4 ~~parties or for the protection of offerees in this state.~~

5 ~~(g) If, following the hearing, the commissioner finds that the take-~~  
 6 ~~over offer fails to provide for full and fair disclosure to offerees of all~~  
 7 ~~material information concerning the offer or will not be made to all members~~  
 8 ~~of the same class of equity security holders on substantially equal terms or~~  
 9 ~~is in violation of chapter 42 of this title, he shall by order deny~~  
 10 ~~registration of the offer.~~

11 ~~(h) Registration of the offer is not deemed approval of the offer by~~  
 12 ~~the commissioner.~~

13  
 14 ~~23-43-112. Takeover offers—Terms—Restrictions.~~

15 ~~(a) No offeror may make a takeover offer with respect to an equity~~  
 16 ~~security of a target company which is not made to the target company's equity~~  
 17 ~~security holders in this state or which is not made to the equity security~~  
 18 ~~holders in this state on substantially the same terms as the offer is made to~~  
 19 ~~holders of the same class of equity securities outside this state.~~

20 ~~(b)(1) An offeror shall provide that any equity securities of a target~~  
 21 ~~company deposited or tendered pursuant to a takeover offer may be withdrawn~~  
 22 ~~by or on behalf of an offeree at any time within seven (7) days from the date~~  
 23 ~~the offer has become effective under this chapter. Unless the takeover offer~~  
 24 ~~is consummated, any tendered or deposited equity securities may be withdrawn~~  
 25 ~~after sixty (60) days from the date the offer has become effective under this~~  
 26 ~~chapter, except as the Securities Commissioner may otherwise prescribe by~~  
 27 ~~rule or order.~~

28 ~~(2) No takeover offer shall be less than ten (10) days in~~  
 29 ~~duration.~~

30 ~~(3) Notwithstanding this subsection, the commissioner, by rule~~  
 31 ~~or order, may increase or decrease the withdrawal periods set forth herein to~~  
 32 ~~make the periods consistent to achieve uniformity with other takeover laws.~~

33 ~~(c) If an offeror makes a takeover offer for less than all the~~  
 34 ~~outstanding equity securities of any class, and where the number of~~  
 35 ~~securities deposited or tendered pursuant thereto within ten (10) days after~~  
 36 ~~the offer has become effective under this chapter is greater than the number~~

1 ~~the offeror has offered to accept and pay for, the securities shall be~~  
 2 ~~accepted pro rata, disregarding fractions, according to the number of~~  
 3 ~~securities deposited or tendered by the offeree.~~

4 ~~(d) If an offeror varies the terms of a takeover offer before its~~  
 5 ~~expiration date by increasing the consideration offered to security holders,~~  
 6 ~~the offeror shall pay the increased consideration for all equity securities~~  
 7 ~~accepted, whether the securities have been accepted by the offeror before or~~  
 8 ~~after the variation in the terms of the offer.~~

9 ~~(e) No offeror may make a takeover offer involving a target company in~~  
 10 ~~this state, or acquire any equity securities of a target company pursuant to~~  
 11 ~~the offer, at any time when an administrative or injunctive proceeding has~~  
 12 ~~been brought by the commissioner against the offeror for an anti-fraud~~  
 13 ~~violation of this chapter or that has not been finally determined.~~

14 ~~(f) No offeror may acquire, remove, or exercise control, directly or~~  
 15 ~~indirectly, over any assets of a target company located in this state unless~~  
 16 ~~the takeover offer is effective or exempt under this chapter, except as~~  
 17 ~~permitted by order of the commissioner.~~

18  
 19 ~~23-43-113. Solicitation material—Filing—False statements.~~

20 ~~(a) Copies of all advertisements, circulars, letters, or other~~  
 21 ~~materials published by the offeror or the target company, soliciting or~~  
 22 ~~requesting the acceptance or rejection of the takeover offer, shall be filed~~  
 23 ~~with the Securities Commissioner and sent to the target company or offeror,~~  
 24 ~~respectively, not later than the time copies of the solicitation materials~~  
 25 ~~are first published or used or sent to equity security holders of the target~~  
 26 ~~company.~~

27 ~~(b) Solicitation materials used in connection with a takeover offer~~  
 28 ~~shall not contain any false statement of a material fact or omit to state a~~  
 29 ~~material fact necessary to make the statements therein not misleading. The~~  
 30 ~~commissioner may by rule or order prohibit the use of any solicitation~~  
 31 ~~materials deemed false or misleading.~~

32  
 33 ~~23-43-114. Fraudulent or deceptive practices.~~

34 ~~It is unlawful for any offeror or target company, or any controlling~~  
 35 ~~person of an offeror or target company, or any broker-dealer acting on behalf~~  
 36 ~~of an offeror or target company, to engage in any fraudulent, deceptive, or~~

1 ~~manipulative acts or practices in connection with a takeover offer.~~

2 ~~Fraudulent, deceptive, and manipulative acts or practices include, without~~  
 3 ~~limitation:~~

4 ~~(1) Solicitation of any offeree for acceptance or rejection of a~~  
 5 ~~take-over offer, or acquisition of any equity security of a target company~~  
 6 ~~pursuant to a takeover offer, that is not effective or exempt under this~~  
 7 ~~chapter;~~

8 ~~(2) Publication or use in connection with the offer of any false~~  
 9 ~~statement of a material fact or failure to state a material fact necessary to~~  
 10 ~~make the statements made by him not misleading. This does not include the~~  
 11 ~~mailing by a target company to its equity security holders of solicitation~~  
 12 ~~materials published by an offeror;~~

13 ~~(3) Sale by any controlling stockholders of a target company of~~  
 14 ~~all or any part of their equity securities to the offeror at a price higher~~  
 15 ~~than that to be paid other equity security holders pursuant to the offer;~~

16 ~~(4) Refusal by a target company to permit an offeror who is an~~  
 17 ~~equity security holder of record to examine its list of stockholders, and to~~  
 18 ~~make copies thereof or therefrom at the expense of the offeror, pursuant to~~  
 19 ~~the applicable corporation or other appropriate statute, for the purpose of~~  
 20 ~~making a takeover offer in compliance with this chapter; and~~

21 ~~(5) Acquisition by or through a broker-dealer acting on behalf~~  
 22 ~~of an offeror or a target company of any equity security of the target~~  
 23 ~~company in connection with a takeover offer unless the broker-dealer files~~  
 24 ~~with the Securities Commissioner any information which the commissioner~~  
 25 ~~requires and to the extent permitted by rule or order by the commissioner, or~~  
 26 ~~unless the broker-dealer did not know, and in the exercise of reasonable care~~  
 27 ~~could not have known, that the person for whom it acted was an offeror or a~~  
 28 ~~target company or that the acquisition was in connection with the takeover~~  
 29 ~~offer.~~

30  
 31 ~~23-43-115. False or misleading statements.~~

32 ~~It is unlawful for any person to make or cause to be made, in any~~  
 33 ~~documents filed with the Securities Commissioner or in any proceeding under~~  
 34 ~~this chapter, any statement which is, at the time and in the light of the~~  
 35 ~~circumstances under which it is made, false or misleading in any material~~  
 36 ~~respect.~~

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~~23-43-116. Registration or availability of exemption not construed as approval—Inconsistent representation.~~

~~(a) (1) Neither the fact that an application for registration, or a registration, nor that a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the Securities Commissioner that any document filed under this chapter is true, complete, and not misleading.~~

~~(2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.~~

~~(b) It is unlawful to make, or cause to be made, to any prospective seller, customer, or client any representation inconsistent with subsection (a) of this section.~~

~~23-43-117. Filing fee—Hearing expenses.~~

~~(a) The Securities Commissioner shall charge a filing fee of one-twentieth percent (0.05%) of the amount of the offering, but in no event shall the filing fee be less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a registration statement filed by an offeror.~~

~~(b) The expenses reasonably attributable to any hearing held under this chapter shall be charged ratably to the offeror and the target company, but the total amount charged shall not exceed court reporters' fees and other costs directly related to the hearing and, if applicable, an appeal therefrom.~~

~~APPROVED: 3/24/2009~~