

**Part 12** and Appendix 12 of Title 13 NYCRR is repealed and a new Part 12 is added as follows:

PART 12  
SECURITY TAKEOVER DISCLOSURE RULES  
(Statutory authority: Business Corporation Law, art. 16)

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Section 12.1 Short title. This Part shall be known as the "Security Takeover Disclosure Rules."

12.2 General provisions. (a) The Bureau of Investor Protection and Securities of the Office of the Attorney General (hereinafter the "Bureau") shall be responsible for the administration of article 16 of the Business Corporation Law.

(b) As used in section 1602 of the Business Corporation Law, "New York City" office refers to the Bureau, 120 Broadway, New York, New York 10271 or to any subsequent address to which the Bureau may move.

(c) As used in article 16 of the Business Corporation Law and in this Part, the term "days" shall mean calendar days.

(d) Filings with the Bureau shall be made, if made by hand delivery, between the hours of 9 a.m. and 5 p.m. during the normal business days of the Department of Law. Deliveries to the target company shall be made at its principal executive offices. The date of receipt by the Bureau and the target company shall be considered the date of filing and delivery, respectively.

(e) Whenever required to file or deliver registration statements or amended registration statements, offerors shall file four copies thereof with the Bureau and deliver two copies to the target company. Additional copies shall be supplied to the Bureau upon request by the Bureau. Offerors shall, within three days of delivering the registration statement or amended registration statements to the target company, file with the Bureau a statement that

that such delivery to the target company has been made, including the date and location of the delivery.

(f) Whenever used in this Part, unless otherwise indicated, any reference to a section number shall be a reference to that section of the Business Corporation Law.

(g) This Part shall become effective February 14, 1986.

12.3 Definitions. As used in article 16 of the Business Corporation Law, the following terms shall have the following meanings:

(a) "Person" means an individual (natural person), partnership, limited partnership, syndicate, corporation, joint-stock company, unincorporated organization, trust, association, affiliate and/or associate of a person, or other entity. When two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of making a takeover bid, such group shall be deemed to be a single person for the purpose of section 1601 (b). A single registration statement may be filed on behalf of such a group required to file the statement under section 1602.

(b) "Affiliate of a person" means any person controlling, controlled by, or under common control with such person. "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Associate of a person" means:

(1) Any corporation or other organization in which the person is an executive officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any person who is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities of the person;

(3) Any trust or estate in which the person has substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; or

(4) The spouse of the person, or any relative of the person or of such spouse who has the same home as the person.

(d) "Beneficial owner" of equity securities means any person who directly or indirectly through any contract, arrangement, understanding or relationship has or shares the power to direct the voting of such securities provided, however, that:

(1) A person shall be deemed to be a beneficial owner of all securities beneficially owned by all individuals who are related by blood, marriage or adoption to such person and who have the same home as such person;

(2) A person shall be deemed to be a beneficial owner of securities which such person has the right to acquire (i) through the exercise of an option, warrant or right exercisable within 60 days, (ii) through the conversion of securities convertible within 60 days, or (iii) pursuant to the power to revoke within 60 days a trust or similar arrangement. Any securities not outstanding which are subject to such option, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

(e) "Bank" means (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under section 11 (k) of the Federal Reserve Act, as amended, and which is supervised and examined by the State or Federal authority having supervision over banks.

(f) A person "participates or aids in making a takeover bid" within the meaning of section 1601, if (1) that person is involved in a takeover bid as principal, for or on whose behalf a

takeover bid is being made, (2) as a result of the takeover bid, that person may acquire, directly or indirectly, the right to exercise any voting rights attached to the equity securities which are the subject of the takeover bid or any other beneficial interest in the equity securities which are the subject of the takeover bid or (3) that person is an associate or an affiliate of a person who participates or aids in making a takeover bid. The term "participates or aids in making a takeover bid", does not include the following activities, provided that the actor does not otherwise acquire a direct or indirect voting or other beneficial interest in equity securities of the target company as a result of the takeover bid:

- (1) soliciting tenders under a takeover bid, or soliciting others to solicit such tenders, or otherwise furnishing the usual and customary services of a dealer manager, soliciting dealer or soliciting agent;
- (2) receiving and processing tenders of securities from security holders of the target company, arranging or making payment therefor on behalf of or for the offeror, or otherwise furnishing the usual and customary services of a depository, exchange agent or forwarding agent;
- (3) receiving, holding in safekeeping or acting as a nominee or record owner of equity securities which are the subject of a takeover bid, or otherwise furnishing the usual and customary services of a custodian, nominee or record holder of securities for or on behalf of an offeror;
- (4) transferring or registering equity securities which are the subject of a takeover bid, or otherwise furnishing the usual and customary services of a transfer agent, or registrar of securities; and
- (5) publishing or assisting in the publication of any prospectus, brochure, advertisement, circular, letter or other written or oral statement relating to a takeover bid, or otherwise furnishing the usual and customary services of a newspaper, printer, typesetter, composer, mailing agent, public relations advisor, advertising agency or similar publicity function.

(g) Securities of an issuer "are or are to be the subject of a takeover bid" within the meaning of section 1601(b) at any time after an offeror has filed a registration statement pursuant to section 1602 concerning a takeover bid for such issuer and while such takeover bid is still pending for such issuer.

12.4 Financial statements required. The financial statements of the offeror shall include audited balance sheets and related statements of income and changes in financial position for the three most recent annual fiscal periods. The audited balance sheets and related statements of income and changes in financial position shall be based on examinations made by independent public accountants in accordance with generally accepted auditing standards and prepared in accordance with generally accepted accounting principles applied on a basis consistent with previous periods and shall include opinions by said independent public accountants as to the fairness of presentation of the offeror's financial position, results of operations, and changes in financial position reflected in the financial statements. If the most recent audited financial statements are for a period ended more than 90 days prior to the date of filing, interim statements covering the period from the date of the last audited statement to a date within 90 days of the date of filing are required to be filed hereunder. Interim statements, if not audited by independent public accountants, shall be attested to by the offeror as to completeness and fairness of

presentation to the best of the offeror's knowledge and belief.

12.5 Registration statement. The registration statement required to be filed pursuant to section 1602 shall:

- (a) be in bound booklet form,
- (b) have a cover page listing the name of the offeror and the target company,
- (c) be in easily readable print and
- (d) contain all the information set forth below:

(i) Item 1 - Identity and Background

State the following with respect to the person(s) filing this statement:

- (a) Name.
- (b) Residence address.
- (c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.
- (d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business, corporation or other organization in which such occupation, position, office or employment was carried on.
- (e) Whether or not, during the last 5 years, such person(s) has been convicted of any crime (excluding traffic violations) and, if so, give the date, nature of conviction, name and location of court, and penalty imposed, or other disposition of the case. A negative answer to this subitem need not be furnished.
- (f) Whether or not, during the last 5 years, such person(s) has been suspended or expelled from membership in any securities exchange or association of securities dealers or investment advisors; has had a license or registration as a securities dealer, broker, investment advisor or salesperson denied, suspended or revoked; or has been enjoined or restrained by a court or government agency from the issuance, sale or offer for sale of securities, from rendering securities advice or from continuing any practice in connection with securities. A negative answer to any of these subitems need not be furnished.

(ii) Item 2 - Equity Security and Target Company

- (a) State the name of the target company and its principal place of business.
- (b) State the exact title and the number of shares outstanding of the class of equity securities being sought, the number of such securities being sought and the consideration being offered therefor.

(iii) Item 3 - Source and Amount of Funds or Other Consideration

State the source and amount of funds or other consideration used or to be used in acquiring any equity security, including a description of any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the target company. If any part of the acquisition price is or will be represented by borrowed funds or other consideration, include a description of the transaction and the names of the parties thereto.

Attach copies of all loan or credit agreements and letters of commitment used or to be used to secure financing for the acquisition of any equity security of the target company. In any case where two or more agreements or letters required to be attached are

substantially identical in all material respects except as to the parties thereto, dates of execution or other details, only one of such agreements or letters need be attached if accompanied by a schedule identifying the other agreements or letters omitted and setting forth the material details in which such agreements or letters differ from the copy filed. The Bureau may at any time within its discretion require the filing of any document so omitted. Copies, rather than originals, of each agreement or letter need be attached except as otherwise specifically noted. Schedules, exhibits or other attachments to any such agreement or letter need not be attached unless such schedules, exhibits or other attachments contain information which is material to any investment decision and which is not otherwise disclosed in the agreement, letter or registration statement. The agreement or letter attached shall contain a list briefly identifying the contents of all omitted schedules, exhibits or other attachments. The Bureau may at any time within its discretion require the filing of such omitted schedules, exhibits or other attachments.

(iv) Item 4 - Plans or Proposals of Offeror

State any plans or proposals which the offeror, upon gaining control, may have to:

- (a) liquidate the target company
- (b) sell at least fifteen percent of the assets of the target company
- (c) effect a merger or consolidation of the target company, or
- (d) make any other major change in the business, corporate structure, management personnel, or policies of employment of the target company.

(v) Item 5 - Interest in Securities of Target Company

(a) State the number of shares of any equity security of the target company owned, beneficially or of record, and the number of shares concerning which there is a right to acquire, directly or indirectly, by:

- (1) such offeror(s)
- (2) each affiliate and/or associates of such offeror, and
- (3) any director, executive officer, or subsidiary of such offeror if the person is a corporation giving the name and address of each person.

(b) Describe any transactions in the class of securities to which this statement relates which were effected during the past 60 days by each person named in response to paragraph (a).

(vi) Item 6 - Contracts, Arrangements, Understandings Or Relationships with Respect to The Target Company's Securities

(a) Furnish material information regarding any contracts, arrangements, or understandings or relationships to which an offeror is a party with respect to any equity security of the target company, concerning but not limited to:

- 1) transfer or voting of any such security
- 2) joint ventures
- 3) loan or option arrangements
- 4) puts and calls
- 5) guarantees of loans
- 6) guarantees against loss

- 7) guarantees of profits
  - 8) division of losses or profits
  - 9) the giving or withholding of proxies, or
  - 10) voting trusts
- naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the details thereof.

(vii) Item 7 - Information Required to be Filed Pursuant to Sections 1603(a)(2) and 1603(a)(8)

(a) Identity and Background

(1) If the Registration Statement required to be filed pursuant to Section 1602 is filed by a partnership, limited partnership, syndicate or other group which is an offeror within the meaning of Section 1601(b), the identity and background information called for in Item 1 hereof shall be given with respect to (a) each partner of a general partnership, (b) each partner who is denominated a general partner of a limited partnership or who functions as a general partner of a limited partnership, (c) each member of any syndicate or other group, and (d) each person controlling such partner or member.

(2) If the Registration Statement required to be filed pursuant to Section 1602 is filed by a corporation which is an offeror within the meaning of Section 1601(b), the identity and background information called for in Item 1 hereof shall be given with respect to (a) each director, executive officer and controlling person of such corporation, and (b) each director and executive officer of any corporation ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer and vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy-making functions for the corporation.

(b) Organization and Operations of Offeror

1) If the offeror is an individual, the information required to be filed under Section 1603(a)(8), in addition to the information required to be filed under Item 1 hereof, shall include:

- a) Financial Statements for the current period and for the three most recent annual accounting periods, as prescribed by Rule 12.4.
- b) A brief description of any pending legal or administrative proceeding, other than routine and immaterial litigation, to which the offeror, or any of its subsidiaries, is a party or of which any of their property is the subject.
- c) To the extent not otherwise provided, a brief description of the business done and project by the offeror and its subsidiaries and the general development of such business over the past 5 years.

2) If the offeror is a partnership, limited partnership, syndicate, corporation, or other group, the information required to be filed under Section 1603(a)(8) shall include:

- a) The year, form and jurisdiction of its organization.
- b) In the case of a corporation, a description of each class of the offeror's capital stock and of its long-term indebtedness.
- c) Financial statements for the current period and for the three most recent annual accounting periods, as prescribed by Rule 12.4.
- d) A brief description of any pending legal or administrative proceedings, other than

routine and immaterial litigation, to which the offeror, or any of its subsidiaries, is a party or of which any of their property is the subject.

e) To the extent not otherwise provided, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past 5 years.

f) The names of all directors and executive officers together with biographical summaries for the preceding three years.

(viii) Item 8 - Potential Impact Statement

State the potential impact, if any, of the offeror's plans or proposals on the residents of New York including:

(a) any material change in the location of the target company's offices or business activities in New York,

(b) the relocation or closing of any plant or facility in New York,

(c) any significant reduction in the workforce at an individual plant or facility in New York,

(d) any other material change in the number, job classification, compensation, or other terms and conditions of employment of persons employed by the target company in New York,

(e) any material change in the relationship of the target company with suppliers or customers in New York and

(f) any other material change in the target company's business, corporate structure, management, personnel or activities which would have a substantial impact on residents of New York.

(ix) Item 9 - Particulars Relating to Offeror

State the following information with respect to each offeror in reasonable detail or refer to and annex relevant portions of the offeror's annual report for the most recent period filed with the Securities and Exchange Commission, and any subsequent changes thereto:

(a) particulars as to any existing pension plans, profit sharing plans, savings plans, educational opportunities and relocation adjustments;

(b) labor relations records for the five years prior to the commencement of the takeover bid, including violations of the federal national labor relations act, occupational safety and health act of 1970, fair labor standards act, or employee retirement and income security act, as amended, finally adjudicated or settled within five years of the commencement of the takeover bid;

(c) earnings and dividend growth for the three years prior to the commencement of the takeover bid and

(d) community activities and charitable, cultural, educational and civic contributions for the three years prior to the commencement of the takeover bid.

(x) Item 10 - Debt Security and Preferred Stock Rating

State the investment rating, if any, given by a generally recognized rating service, for any debt securities or preferred stock either offered or used as a source of funds in making the takeover bid.

(xi) Item 11 - Public Hearing

Set forth the name of the person and address to whom the Attorney General shall give notice of public hearings held pursuant to section 1612.

(xii) Item 12 - Copies of Relevant Materials

Attach copies of all prospectuses, offers to purchase, brochures, circulars, letters or other matter which the offeror has sent to offerees or by means of which the offeror proposes to disclose the offerees all material information set forth in the registration statement.

Attach

a copy of the takeover bid which includes all material terms thereof and is in the form published or sent or delivered to equity security holders of the target company.

(xiii) Item 13 - Signatures to Registration Statement

The signature of the person filing the registration statement shall be executed and notarized as follows:

**Signatures**

In Witness Whereof, the person filing this Registration Statement has caused this Registration Statement to be prepared and executed on his or its behalf (and has affixed hereto its official seal) this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Name of Person Filing

( By

( \_\_\_\_\_

( President or Vice President

If person filing  
is a corporation

(Corporate Seal)

(  
(Where there is a  
(delegated attorney-  
(in-fact authorized  
(to sign by all  
(members

(  
( By  
( \_\_\_\_\_  
( Delegated Attorney-in-fact

(  
If person (filing is a (partnership,(limited part-(nership, (syndicate or other group (

(  
( By  
( \_\_\_\_\_  
( Partner, General Partner or Member

(  
( By \_\_\_\_\_  
( Partner, General Partner or Member

(  
( By \_\_\_\_\_

(Where each partner, general partner or member is signing ( Partner, General Partner or Member  
(individually) (

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says

that he is \_\_\_\_\_

(Here describe qualification to verify)

that he has read the foregoing application; that he has knowledge of the facts, and that the facts therein stated are true, as he verily believes.

\_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

Notary Public \_\_\_\_\_

County

12.6 Hearings and investigations. (a) Notice of the scheduling of a public hearing or the commencement of an investigation pursuant to section 1612 shall be made by mailing such notice to the person and address specified in item 11 of the registration statement.

12.7 Fees (a) The Bureau shall collect the following fees for the filing of each registration statement:

(1) \$500 for every registration statement where the maximum consideration payable by the offeror for the securities which are the subject of the takeover bid is less than \$250,000;

(2) \$1,000 where the minimum consideration is \$250,000 and where the maximum consideration is less than \$1,000,000; and

(3) \$2,500 where the consideration is \$1,000,000 or more.

(b) The fees set forth in this section shall be paid upon the initial filing of the registration statement with the Bureau and shall not be refundable.

12.8 Safe Harbor. An offeror shall be deemed to be in compliance with section 1602(b) if the offeror makes full and fair disclosure to the offerees of the material information set forth in the registration statement filed pursuant to section 1602(a) as soon as practicable after the commencement of the takeover bid. An offeror shall be deemed to have made such disclosure, if, within 7 days of the commencement of the takeover bid, copies of a document or documents making full and fair disclosure of the material information set

forth in the registration statement filed pursuant to section 1602(a) are mailed to all record owners of the equity securities of the target company who are listed on the stock records of the company, determined as of a date not more than thirty days prior to the commencement of the takeover bid, as having addresses of record in New York State at such New York State address and, within 5 days of the commencement of the takeover bid, a notice is published in The New York Times or the New York edition of the Wall Street Journal and a newspaper of general circulation in Albany, Buffalo, Rochester or Syracuse stating that a takeover bid is being made for the equity securities of the target company and that material information concerning the offer as required by statute is available to New York resident owners of the equity securities upon request at an address specified in the notice and copies of such document or documents are promptly sent to those New York resident owners who so request. Such newspaper notice shall be no less than 5 inches by 7 inches in size.

#### 12.9 Insider Trading Restrictions.

(a) A person other than a natural person shall not be deemed in violation of section 1609(b) if such person shows that:

(1) The individuals making the investment decision on behalf of such person to purchase or sell any security described in section 1609(b) or to cause any such security to be purchased or sold by or on behalf of others did not know the material non-public information; and

(2) Such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person's business, to insure that individuals making investment decisions would not violate section 1609(b), which policies and procedures may include but are not limited to (i) those which restrict any purchase, sale and causing any purchase and sale of any such security or (ii) those which prevent such individuals from knowing such information.

(b) The following transactions shall not be deemed violations of section 1609(b);

(1) Purchase(s) of any security described in section 1609(b) by a securities broker or by another agent on behalf of the offeror; or

(2) Sales(s) by any person of any security described in section 1609(b) to the offeror.