

[CHAPTER 414E]
CONTROL SHARE ACQUISITIONS

Section

414E-1 Definitions

414E-2 Control share acquisitions

" **[\$414E-1] Definitions.** As used in this chapter, unless the context otherwise requires:

"Acquiring person" means a person who is required to deliver an information statement.

"Beneficial ownership" shall be determined pursuant to section 13 of the federal Securities Exchange Act of 1934 and the rules adopted thereunder, as amended.

"Control share acquisition" means an acquisition of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person of a new range of voting power specified in this chapter, but does not include an acquisition:

- (1) Before or pursuant to an agreement entered into before July 1, 1987;
- (2) By a donee pursuant to an inter vivos gift not made to avoid this chapter or by a distributee as defined in chapter 560;
- (3) Pursuant to a security agreement not created to avoid this chapter;
- (4) Pursuant to a merger or share exchange executed in accordance with applicable law, if the issuing public corporation is a party to the plan of merger or share exchange;
- (5) From the issuing public corporation;
- (6) That is approved by resolution of the board of directors of the issuing public corporation before the acquisition occurs; or
- (7) That the board of directors of the issuing public corporation determines, by resolution before the acquisition occurs, is not a control share acquisition.

"Issuing public corporation" means a corporation incorporated in this State with at least one hundred shareholders and having its principal place of business or substantial assets located in this State. [L 2001, c 129, pt of §1]

" **[\$414E-2] Control share acquisitions.** (a) Unless otherwise expressly provided in the articles of incorporation of an issuing public corporation, this section applies to a control share acquisition.

(b) All shares acquired by an acquiring person in violation of subsection (e) shall be denied voting rights for one year after acquisition. The shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation, during the one-year period, shall have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of

the last day of the fiscal quarter ending prior to the date of the call for redemption. The redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

(c) A person proposing to make a control share acquisition shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

- (1) The identity of the person;
- (2) A reference that the statement is made under this section;
- (3) The number of shares of the issuing public corporation beneficially owned by the person;
- (4) A specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:
 - (A) At least ten per cent but less than twenty per cent;
 - (B) At least twenty per cent but less than thirty per cent;
 - (C) At least thirty per cent but less than forty per cent;
 - (D) At least forty per cent but less than a majority; or
 - (E) At least a majority; and
- (5) The terms of the proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition; any plans or proposals of the acquiring person to liquidate the issuing public corporation, sell all or substantially all of its assets, or merge it or exchange its shares with any other person, change the location of its principal executive office or of a material portion of its business activities, change materially its management or policies of employment, alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management, or personnel, and such other information which would affect the decision of a shareholder with respect to voting on the proposed control share acquisition.

(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 414-122, to vote on the proposed control

share acquisition. The meeting shall be held no later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date and no sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement. The notice of the meeting at a minimum shall be accompanied by a copy of the information statement, and a statement disclosing that the issuing public company recommends:

- (1) Acceptance of;
- (2) Expresses no opinion and is remaining neutral toward;
or
- (3) Is unable to take a position with respect to;

the proposed control share acquisition. The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.

(e) The acquiring person may consummate the proposed control share acquisition if and only if both the following occur:

- (1) The proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote which are not beneficially owned by the acquiring person. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and
- (2) The proposed control share acquisition is consummated within one hundred eighty days after shareholder approval. [L 2001, c 129, pt of §1]