



Ohio Revised Code

Section 1704.01 Transactions involving interested shareholders definitions.

Effective: July 10, 2014

Legislation: Senate Bill 202 - 130th General Assembly

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

(A) "Corporation," "domestic corporation," "foreign corporation," "state," "articles," "shareholder," "person," "principal office," "express terms," "treasury shares," "parent corporation," "parent," "subsidiary corporation," "subsidiary," "combination," "transferee corporation," "majority share acquisition," "acquiring corporation," "voting shares" when used in connection with a combination or majority share acquisition, "constituent corporation," "surviving corporation," "close corporation agreement," and "issuing public corporation" have the same meanings as in section 1701.01 of the Revised Code.

(B) "Chapter 1704. transaction" means any of the following:

(1) A merger, consolidation, combination, or majority share acquisition between or involving an issuing public corporation or any subsidiary of an issuing public corporation and any of the following:

(a) An interested shareholder;

(b) A person, partnership, corporation, or other entity, however organized, whether or not it is an interested shareholder, that is, or after the merger, consolidation, combination, or majority share acquisition would be, an affiliate or associate of an interested shareholder.

(2)(a) Subject to the exception in division (B)(2)(b) of this section, a purchase, lease, sale, distribution, dividend, exchange, mortgage, pledge, transfer, or other disposition of assets, directly or indirectly owned or controlled by the issuing public corporation, by, to, with, or for the benefit of an interested shareholder or an affiliate or associate of an interested shareholder in one or more transactions, if, in any of those transactions, the assets meet any of the following conditions:



(i) The assets have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the assets, determined on a consolidated basis, of the issuing public corporation;

(ii) The assets have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the outstanding shares of the issuing public corporation;

(iii) The assets represent at least ten per cent of the earning power or income of the issuing public corporation, determined on a consolidated after-tax basis and after excluding any transaction other than in the ordinary course of business.

(b) One or more transactions in the ordinary course of business of an issuing public corporation on terms no more favorable to the interested shareholder than those acceptable to third parties, as shown by contemporaneous transactions, is not a Chapter 1704. transaction under division (B)(2)(a) of this section.

(3)(a) Subject to the exception in division (B)(3)(b) of this section, a purchase, lease, sale, exchange, transfer, or other disposition of assets directly or indirectly owned or controlled by the interested shareholder or an affiliate or associate of the interested shareholder, by, to, with, or for the benefit of the issuing public corporation in one or more transactions, if, in any of those transactions, the assets meet any of the conditions set forth in division (B)(2)(a)(i), (ii), or (iii) of this section.

(b) One or more transactions in the ordinary course of business of an issuing public corporation on terms no more favorable to the interested shareholder than those acceptable to third parties, as shown by contemporaneous transactions, is not a Chapter 1704. transaction under division (B)(3)(a) of this section.

(4) The issuance or transfer to an interested shareholder or an associate or affiliate of an interested shareholder of any shares, or of any rights to acquire shares, of the issuing public corporation or a subsidiary of the issuing public corporation by the issuing public corporation or a subsidiary of the issuing public corporation, in one or more transactions, if the shares, or the rights, have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the outstanding shares of the issuing public corporation and if the shares, or the rights, are not issued or transferred pursuant to the exercise of warrants, rights, or options to purchase that have been issued,



or pursuant to a dividend paid or a distribution made, proportionately to all shareholders of the issuing public corporation.

(5) The adoption of a plan or proposal for the dissolution, winding up of the affairs, or liquidation of the issuing public corporation that is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement, or understanding with an interested shareholder or an affiliate or associate of an interested shareholder.

(6) Any of the following, if the direct or indirect effect is to increase the proportionate share of the outstanding shares of the issuing public corporation or a subsidiary of the issuing public corporation beneficially owned by an interested shareholder or an affiliate or associate of an interested shareholder, unless the increase is the result of immaterial changes due to fractional share adjustments:

(a) A reclassification of securities, including a share split, a share dividend or other distribution of shares, or a reverse share split;

(b) A recapitalization of the issuing public corporation;

(c) A merger, consolidation, combination, or majority share acquisition between or involving the issuing public corporation and a subsidiary of the issuing public corporation;

(d) Any other transaction, whether or not with, into, or involving the interested shareholder, that is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement, or understanding with the interested shareholder or an affiliate or associate of the interested shareholder.

(7) Receipt by an interested shareholder or an affiliate or associate of an interested shareholder of the direct or indirect benefit of a loan, advance, pension or any other employee benefit plan termination, guarantee, pledge, mortgage, security agreement, financing statement, deed of trust, or other financial assistance, or a tax credit or other tax advantage, provided by or through the issuing public corporation or any subsidiary of the issuing public corporation unless the interested shareholder receives the benefit proportionately as a holder of shares of the issuing public



corporation.

(C) When used in connection with a Chapter 1704. transaction:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or acts in concert with, a specified person.

(2) "Announcement date" means the date of the first public announcement of a definitive proposal for a Chapter 1704. transaction.

(3) "Associate" of a person means any of the following:

(a) A corporation, partnership, or other entity, however organized, of which the person is an officer, director, or partner or is the beneficial owner of shares entitling that person to exercise at least ten per cent of the voting power in the election of the directors or other governing body of that corporation, partnership, or other entity;

(b) A trust or other estate, including any employee stock ownership or benefit plan, however designated, in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity;

(c) A relative or spouse of the person, or a relative of the spouse of the person, who has the same principal residence as the person.

(4) "Beneficial owner" of shares means a person who, with respect to particular shares, meets any of the following conditions:

(a) The person directly or indirectly, alone or with others, including affiliates or associates of that person, beneficially owns the shares;

(b) The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right, whether exercisable immediately or only after the passage of time, conditionally, unconditionally, or otherwise, to acquire the shares pursuant to a written or unwritten



agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, calls, options, or otherwise;

(c) The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right to vote or direct the voting of the shares pursuant to a written or unwritten agreement, arrangement, or understanding;

(d) The person has a written or unwritten agreement, arrangement, or understanding with another person who is directly or indirectly a beneficial owner, or whose affiliates or associates are direct or indirect beneficial owners, of the shares, if the agreement, arrangement, or understanding is for the purpose of the first person's or the other person's acquiring, holding, disposing of, voting, or directing the voting of the shares to or for the benefit of the first person. A bank, broker, nominee, trustee, or other person who acquires shares for the benefit of others in the ordinary course of business in good faith and not for the purpose of circumventing the provisions of this chapter shall, however, be deemed to be the beneficial owner only of shares in respect of which that person, without further instruction from others, holds voting power.

(5) "Consummation date" means the date on which consummation of a Chapter 1704. transaction occurs.

(6) "Control," "controlled by," or "under common control with" refers to the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the exercise of or the ability to exercise voting power, by contract, or otherwise, except that "control" of a corporation is not established for purposes of this division if a person, in good faith and not for the purpose of circumventing the provisions of this chapter, holds voting power as an agent, custodian, bank, broker, nominee, or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation.

(7) "Exchange Act" means the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78a-78jj, as amended, and any successor or replacement legislation and amendments to the successor or replacement legislation.

(8) "Interested shareholder," with respect to an issuing public corporation, means a person other than



the issuing public corporation, a subsidiary of that issuing public corporation, any employee stock ownership or benefit plan of the issuing public corporation or a subsidiary of that issuing public corporation, or any trustee or fiduciary with respect to any such plan acting in such capacity who meets either of the following criteria:

(a) Is the beneficial owner of a sufficient number of shares of the issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which that person may exercise or direct the exercise of voting power, would entitle that person, directly or indirectly, alone or with others, including affiliates and associates of that person, to exercise or direct the exercise of ten per cent of the voting power of the issuing public corporation in the election of directors after taking into account all of that person's beneficially owned shares that are not currently outstanding;

(b) At any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, was the beneficial owner of a sufficient number of shares of the issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which that person may have exercised or directed the exercise of voting power at the time it beneficially owned such shares, entitled that person, directly or indirectly, alone or with others, including affiliates and associates of that person, to exercise or direct the exercise of ten per cent of the voting power of the issuing public corporation in election of directors after taking into account all of the person's beneficially owned shares that were not, at the time it beneficially owned such shares, currently outstanding.

(9) "Disinterested shares" means voting shares beneficially owned by any person not an interested shareholder or an affiliate or associate of an interested shareholder.

(10) "Share acquisition date," with respect to any person, means the date on which that person first becomes an interested shareholder of an issuing public corporation.

(11) "Voting shares" means shares of a domestic or foreign corporation, entitling the holder of the shares to vote at the time in the election of directors of the corporation without regard to the voting power represented by shares that thereafter may exist upon a default, failure, or other contingency.