



Ohio Revised Code

Section 1704.03 Corporation engaging in certain transactions.

Effective: October 12, 2006

Legislation: House Bill 301 - 126th General Assembly

(A) At any time after the three-year period described in section 1704.02 of the Revised Code, the issuing public corporation may engage in a Chapter 1704. transaction, provided that if the Chapter 1704. transaction is of a type described in section 1701.76, 1701.78, 1701.79, 1701.80, 1701.801, 1701.802, or 1701.86 of the Revised Code, there is compliance with the provisions of that section, and provided that at least one of the following is satisfied:

(1) Any of the provisions of section 1704.05 of the Revised Code makes this chapter inapplicable;

(2) Prior to the interested shareholder's share acquisition date, the directors of the issuing public corporation had approved the purchase of shares by the interested shareholder on the interested shareholder's share acquisition date;

(3) The Chapter 1704. transaction is approved, at a meeting held for that purpose, by the affirmative vote of the holders of shares of the issuing public corporation entitling them to exercise at least two-thirds of the voting power of the issuing public corporation in the election of directors, or of such different proportion as the articles may provide, provided the Chapter 1704. transaction also is approved by the affirmative vote of the holders of at least a majority of the disinterested shares;

(4) The Chapter 1704. transaction meets both of the following conditions:

(a) It results in the receipt per share by the holders of all outstanding shares of the issuing public corporation not beneficially owned by the interested shareholder of an amount of cash that, when added to the fair market value as of the consummation date of the Chapter 1704. transaction of noncash consideration, aggregates at least the higher of the following:

(i) The figure determined under division (B)(1) of this section;

(ii) The preferential amount per share, if any, to which holders of shares of that class or series of



shares are entitled upon voluntary or involuntary dissolution of the issuing public corporation, plus the aggregate amount per share of dividends declared or due that those holders are entitled to receive before payment of dividends on another class or series of shares, unless the aggregate amount per share of those dividends is included in the preferential amount.

(b) The form of consideration to be received by holders of each particular class or series of outstanding shares of the issuing public corporation in the Chapter 1704. transaction, apart from any portion that is interest, is in cash or, if the interested shareholder previously purchased shares of that class or series, is in the same form the interested shareholder previously paid to acquire the largest number of shares of that class or series, but in no event shall the fair market value of the consideration received by a holder of a share of a particular class or series of outstanding shares in the Chapter 1704. transaction be less than the current fair market value of a share of the issuing public corporation of the same class or series.

(B)(1) For purposes of making a determination under division (A)(4)(a) of this section, the figure to be used in division (A)(4)(a)(i) of this section shall be the highest, after taking into account interest to the extent provided in division (B)(2) of this section, of the following:

(a) The fair market value per share on the announcement date of the Chapter 1704. transaction;

(b) The fair market value per share on the interested shareholder's share acquisition date;

(c) The highest price per share paid, including brokerage commissions, transfer taxes, and soliciting dealers' fees, by the interested shareholder, or by an affiliate or associate of the interested shareholder, for shares of the same class or series within the three years immediately before and including the announcement date of the Chapter 1704. transaction;

(d) The highest price per share paid, including brokerage commissions, transfer taxes, and soliciting dealers' fees, by the interested shareholder, or by an affiliate or associate of the interested shareholder, for shares of the same class or series within the three years immediately before and including the interested shareholder's share acquisition date.

(2) Each determination under division (B)(1)(a), (b), (c), or (d) of this section shall include interest



compounded annually from the earliest date as of which the per share fair market value was determined or on which that highest per share purchase price was paid through the consummation date of the Chapter 1704. transaction, at the rate of interest paid on one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash and the fair market value, as of the payment date, of any noncash dividends or other distributions paid per share since that date, up to the amount of the interest.