



Ohio Administrative Code

Rule 3901-2-12 Special provisions applicable to election contests.

Effective: November 14, 2024

(A) Purpose

The purpose of this rule is to set forth the manner and form of solicitations that are subject to Chapter 3901-2 of the Administrative Code for election contests.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.31 of the Revised Code.

(C) This rule applies to any solicitation subject to Chapter 3901-2 of the Administrative Code by any person or group for the purpose of opposing a solicitation subject to Chapter 3901-2 of the Administrative Code by any other person or group with respect to the election or removal of directors at any annual or special meeting of security holders.

(D) Participant or participant in a solicitation.

(1) For purposes of this rule, the terms "participant" and "participant in a solicitation" mean:

(a) The issuer;

(b) Any director of the issuer, and any nominee for whose election as a director proxies are solicited;
or

(c) Any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing, or financing the solicitation.

(2) For the purpose of this rule, the terms "participant" and "participant in a solicitation" do not



include:

- (a) A bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant;
 - (b) Any person or organization retained or employed by a participant to solicit security holders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;
 - (c) Any person employed in the capacity of attorney, accountant, advertising, public relations, or financial adviser, and whose activities are limited to the performance of that person's duties in the course of such employment;
 - (d) Any person regularly employed as an officer or employee of the issuer or any of its subsidiaries or affiliates who is not otherwise a participant; or
 - (e) Any officer or director of, or any person regularly employed by any other participant, if such officer, director, or employee is not otherwise a participant.
- (E) Filing of information required by rule 3901-2-14 of the Administrative Code.
- (1) No solicitation subject to this rule may be made by any person other than the issuer unless at least five business days prior thereto, or such shorter period as the superintendent of insurance may authorize upon a showing of good cause therefor, there has been filed with the superintendent of insurance, by or on behalf of each participant in such solicitation other than the issuer, a statement containing the information specified by rule 3901-2-14 of the Administrative Code.
 - (2) Within five business days after a solicitation subject to this rule is made by the issuer, or such longer period as the superintendent of insurance may authorize upon a showing of good cause therefor, there shall be filed with the superintendent of insurance, by or on behalf of each participant in such solicitation other than the issuer, a statement containing the information specified by rule 3901-2-14 of the Administrative Code.
 - (3) If any solicitation on behalf of the issuer or any other person has been made, or if proxy material



is ready for distribution, prior to a solicitation subject to this rule in opposition thereto, a statement containing the information specified in rule 3901-2-14 of the Administrative Code shall be filed with the superintendent of insurance, by or on behalf of each participant in such prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto.

(4) If, subsequent to the filing of the statements required by paragraphs (C), (D), and (E) of this rule, additional persons become participants in a solicitation subject to this rule, there shall be filed with the superintendent of insurance, by or on behalf of each such person, a statement containing the information specified by rule 3901-2-14 of the Administrative Code, within three business days after such person becomes a participant, or such longer period as the superintendent of insurance may authorize upon a showing of good cause therefor.

(5) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the superintendent of insurance.

(6) Each statement and amendment thereto filed pursuant to paragraph (E) of this rule shall be part of the public files of the superintendent of insurance.

(F) Solicitations prior to furnishing required written proxy statement.

Notwithstanding the provisions of paragraph (C) of rule 3901-2-04 of the Administrative Code, a solicitation subject to this rule may be made prior to furnishing security holders a written proxy statement containing the information specified in rule 3901-2-13 of the Administrative Code with respect to such solicitation, provided that:

(1) The statements required by paragraph (E) of this rule are filed by or on behalf of each participant in such solicitation.

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by paragraph (C) of rule 3901-2-04 of the Administrative Code is furnished to such persons, provided that this paragraph does not apply where a proxy statement then meeting the requirements



of rule 3901-2-13 of the Administrative Code has been furnished to security holders.

(3) At least the information specified in paragraphs (E)(2) and (E)(3) of this rule to be filed by each participant, or an appropriate summary thereof, are included in each communication sent or given to security holders in connection with the solicitation.

(4) A written proxy statement containing the information specified in rule 3901-2-13 of the Administrative Code with respect to a solicitation is sent or given security holders at the earliest practicable date.

(G) Solicitations prior to furnishing required written proxy statement - filing requirements.

A copy of any soliciting materials proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by paragraph (C) of rule 3901-2-04 of the Administrative Code shall be filed with the superintendent of insurance in preliminary form at least five business days prior to the date definitive copies of such material are first sent or given to such persons, or such shorter period as the superintendent of insurance may authorize upon a showing of good cause therefor.

(H) Notwithstanding the provisions of paragraph (D)(3) of rule 3901-2-04 of the Administrative Code, a copy of any portion of the annual report referred to in paragraph (D) of rule 3901-2-04 of the Administrative Code which comments upon or refers to any solicitation subject to this rule or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the superintendent of insurance as proxy material subject to this rule. Such portion of the report shall be filed with the superintendent of insurance, in preliminary form, at least five business days prior to the date copies of the report are first sent or given to security holders.

(I) Severability

If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.