

February 5, 1976

To Our Clients

Tender Offers

The Ohio tender offer regulations have been amended in a manner that appears to be calculated to make tender offers for Ohio companies (or companies with a principal place of business and substantial assets as those terms were expansively interpreted in the Microdot case) virtually impossible. The new regulations [copy attached]

- (1) prohibit partial offers;
- (2) mandate a minimum 60-day offer period;
- (3) require an offeror that obtains 50% or more of the target to reopen the offer for another 30 days;
- (4) prohibit soliciting dealers fees to principals, thereby eliminating soliciting dealers fees to arbitrageurs;
- (5) prohibit arbitrage purchases prior to the approval of an offer by the Ohio Commission.

It is understood that the Senate Committee (Senator Williams) intends to look into state take-over regulations next week. The new Ohio provisions, coupled with the statutes under consideration in Delaware and at least five other states may provoke enactment of an express preemption provision for the Williams Act.

M. Lipton

Attachment

COs-2-041 (A) FRAUDULENT, EVASIVE, DECEPTIVE, OR GROSSLY UNFAIR PRACTICES DEFINED.

IN ACCORDANCE WITH THE AUTHORITY PROVIDED IN SECTION 1707.041 (F) (1) THE FOLLOWING PRACTICES ARE DEFINED AS FRAUDULENT, EVASIVE, DECEPTIVE OR GROSSLY UNFAIR.

- (1) THE MAKING OF A TAKE-OVER BID FOR LESS THAN ALL OF THE OUTSTANDING COMMON SHARES OF THE TARGET COMPANY.
- (2) THE MAKING OF A TAKE-OVER BID FOR A FIXED PERIOD OF TIME OF LESS THAN SIXTY DAYS WITH THE RIGHT TO EXTEND SUCH PERIOD RESERVED BY THE OFFEROR.
- (3) THE FAILURE OF THE OFFEROR, WHICH ACQUIRES 50% OR MORE OF THE TARGET COMPANY AS A RESULT OF THE TAKE-OVER BID, TO REOPEN THE OFFER FOR A PERIOD OF THIRTY DAYS OR MORE AFTER AN ADDITIONAL MAILING AND PUBLIC NOTICE TO THE REMAINING SHAREHOLDERS OF THE TARGET COMPANY TO PERMIT THEM TO TENDER THEIR SHARES AT THE ANNOUNCED PRICE.
- (4) THE OFFER TO PAY AN OFFEREE A FEE, COMMISSION OR ANY OTHER CONSIDERATION NOT OFFERED TO ALL OFFEREEES.

COs-2-041 (C) RC 1707.041 (F) (3) MATTERS.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1707.041(F)(3), REVISED CODE.

- (1) EFFECTIVE DISCLOSURE TO OFFEREEES, AS REQUIRED BY RC 1707.041(B)(3)(h), MAY ONLY BE HAD BY DELIVERY OF AN OFFERING CIRCULAR, SUBMITTED TO AND ACCEPTED BY THE DIVISION, TO OFFEREEES WHO ARE THE RECORD OWNERS OR THE BENEFICIAL OWNERS OF NONDISCRETIONARY TRUSTS AS OF THE DATE OF THE NOTICE OF THE OFFER OR THE NOTICE OF INTENT TO OFFER.
- (2) EVERY SOLICITING DEALER WHO TENDERS SHARES TO THE OFFEROR IN RESPONSE TO A TAKE-OVER BID IS DEEMED TO BE AN OFFEROR UNDER THE PROVISIONS OF SECTION 1707.041(A)(2) OF THE REVISED CODE.