KIM: “Mini-tenders” not part of investor Happy Meal.

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In a traditional tender-offer, a purchaser offers to buy a certain number of shares, typically at a significant premium to the current market price. Many investors view this windfall as an unexpected gift and can’t wait to tender their shares to the purchaser.

This is ***exactly*** the reaction some practitioners of the ethically-challenged practice of “mini-tenders” count on. Mini-tenders are often used to catch small investors off guard and take advantage of their lack of knowledge. In fact, the Securities and Exchange Commission (SEC) warns of the possible abuses of and pitfalls for investors in its online brochure entitled “Mini-Tender Offers: Tips for Investors” (www.sec.gov).

Mini-tenders are offers that, when completed, will result in the purchaser owning less than 5% of the target company’s stock. Purchasers in mini-tenders limit the offer to 5% or less so they do not have to comply with many of the disclosure and procedural protections in place for larger, traditional tender offers.

For example, when a purchaser makes an offer to buy more than 5% of a target company’s stock, all of the SEC’s tender offer rules apply. These rules require purchasers to disclose important information about themselves and terms of the offer, file their offering documents with the SEC and provide the target company information about the tender offer.

Important investor protections include the right to change their mind and withdraw tendered shares while the offer remains open and have their shares accepted on a “pro rata” basis if the total number of shares tendered exceeds the number subject to the offer.

None of these rules apply to mini-tenders, which must only not engage in fraud or deceptive practices, hold the offer open for a minimum amount of time and make prompt payment after the offer closes.

If you receive an “Offer/Solicitation to Purchase Shares of XYZ,” first determine if you are dealing with a mini-tender. This is important because these offers are ***never*** labeled as such and once you tender your shares, you generally can’t withdraw them. It is likely you will initially receive only a single-page, bare bones summary, but make the effort to get the complete offering document. Finally, compare the current market price with the offer price (the mini-tender office price is typically ***lower***).

Toronto-based TRC Capital Corporation is probably the most active practitioner of mini-tenders (10 in past six months). On January 21, 2015, TRC announced a tender offer for up to 1.5 million shares of McDonald’s Corporation (0.15% of the shares) at a price of $86.80, a $4/share or 4.41% ***discount*** to McDonald’s closing price of $90.80 the day before.

The offering document is a densely-packed 40 pages, with “Certain Conditions of the Offer” (i.e. the 13 reasons TRC could cite to cancel the offer) taking four pages. Basically, TRC said it could cancel the offer for any reason, including if the price of MCD fell below $86.80 (of course).

Mini-tenders are the ultimate “heads I win, tails you lose” proposition for purchasers. I’ll never know, but am confident TRC confused enough investors that at least 1.5 million shares were tendered. McDonald’s closed at $94.58 on February 18, the day before the offer closed. This travesty means shareholders who tendered were legally taken for $7.78/share or a total of $11.7 million.

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