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Section 13 SEC Reporting by Advisers and Brokers and Section 16 SEC Reporting by “Insiders” of Public Companies

By the [Investment Management Group](#)

Under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), advisers and brokers who exercise investment discretion over accounts which hold exchange traded equity securities may be required to file acquisition and ownership reports with the Securities and Exchange Commission (the “**SEC**”) in certain circumstances. These reports, which are required by Section 13 of the Exchange Act, may be filed on Schedule 13D, Schedule 13G, Form 13F, and/or Form 13H, each of which is discussed in more detail below. A firm (and in some cases its “controlling persons”) will likely have a Section 13 reporting obligation if the firm:

- manages discretionary accounts (including accounts managed for insiders) that, in the aggregate, hold more than 5% of the voting, equity securities of any SEC reporting company, closed-end fund or insurance company, as described further below (a “Section 13(d) or Section 13(g) reporting obligation”);
- manages discretionary accounts holding, in the aggregate, equity securities with a market value of \$100 million or more (a Section 13(f) reporting obligation); or
- manages discretionary accounts that purchase or sell any equity securities in an aggregate amount equal to or greater than (i) 2 million shares or shares with a fair market value of over \$20 million during a day, or (ii) 20 million shares or shares with a fair market value of over \$200 million during a calendar month (a “Section 13(h) reporting obligation”).

The determination of whether a firm is required to report its holdings is generally made based on the firm’s holdings on December 31 of each year, however, a reporting obligation can arise earlier if the firm acquires more than 10% of an issuer’s outstanding “**Section 13 Securities**”.¹

In addition, Section 16 of the Exchange Act imposes a reporting obligation on certain persons considered insiders of a company that has a class of equity securities registered under Section 12 of the Exchange Act. Such insiders may be liable for short-swing profits i.e., profits made from sales and purchases of the company’s securities within a six-month time period.

This memorandum summarizes the Section 13 reporting requirements applicable to investment advisers and brokers, focusing particularly on firms holding more than 5%, but less than 10%, of an



issuer's Section 13 Securities (and as such are generally required to file Schedule 13G as further described below),² and the Section 16 reporting requirements applicable to insiders of public companies, and includes a schedule of the filing deadlines for 2017.

Schedules 13D and 13G: Reporting Significant Acquisition and Ownership Positions

Sections 13(d) and 13(g) of the Exchange Act require any person or group who directly or indirectly acquires or has beneficial ownership³ of more than 5% of any issuer's outstanding Section 13 Securities to report such beneficial ownership on Schedule 13D or Schedule 13G, as appropriate. Schedule 13D is a far more detailed and burdensome form than Schedule 13G, although most firms will be able to use the simpler Schedule 13G filing. However, note that Schedule 13G may only be used if the person in question meets certain criteria described below. If Schedule 13G is not available, a person must report on Schedule 13D. There is currently no filing fee for Schedule 13G or Schedule 13D. In addition to filing such reports with the SEC, firms are generally required to send a copy of such filing to the issuer of the Section 13 Security at its principal executive office and to each exchange on which the Section 13 Securities are traded.

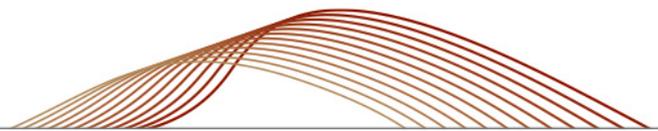
The measuring date for determining the level of ownership of Section 13 Securities for Schedule 13G purposes is initially December 31.⁴ In determining whether your firm has crossed the 5% threshold, you must combine the positions of all discretionary client accounts managed by your firm (including accounts managed by or for the firm's insiders and control persons), any private or public funds your firm manages, any proprietary firm accounts, and any accounts of the firm's control persons (which may include certain officers and directors) and their spouses and dependent children (including IRA and most trust accounts). Firms eligible to report their holdings using Schedule 13G must file this Schedule by February 14, 2017. If at any time a firm determines that it holds more than 10% of an issuer's Section 13 Securities, the filing deadline is the tenth day of the month following the month in which the firm attains such 10% ownership. Likewise, an earlier filing deadline applies if the firm is not eligible to use Schedule 13G.

In general, Schedule 13G is available to firms which fall within one of the following three categories: (1) qualified institutional investor ("**QII**"); (2) exempt investor ("**Exempt Investor**"); or (3) passive investor ("**Passive Investor**").

A firm that acts as an investment adviser is a **QII** if it is registered as an investment adviser with the SEC or under state law⁵ and (a) it acquired its position in the Section 13 Security in the ordinary course of its advisory business, (b) it did not acquire such security for the purpose of influencing control of the issuer, nor acquire such security in a transaction having such an effect; and (c) it notifies any discretionary account owner on whose behalf the firm holds more than 5% of such Section 13 Security of such account owner's potential reporting obligation.

Exempt Investors are persons holding more than 5% of a Section 13 Security at the end of the calendar year, but whose acquisition of Section 13 Securities is exempt from Section 13(d) under certain circumstances. For example, a firm that acquired all of its Section 13 Securities prior to the issuer's registration of such securities under the Exchange Act, or acquired not more than 2% of the Section 13 Securities within a 12-month period, is considered to be an Exempt Investor and would be eligible to file reports on Schedule 13G.

A firm is a **Passive Investor** if it beneficially owns more than 5% but less than 20% of a Section 13 Security and (a) the Section 13 Security was not acquired or held for the purpose, nor has the effect, of changing or influencing the control of the issuer, and (b) the Section 13 Security was not acquired



in connection with any transaction having such purpose or effect. There is no requirement that a Passive Investor limit its acquisition of Section 13 Securities to purchases made in the ordinary course of its business. In addition, a Passive Investor does not have an obligation to notify discretionary account owners on whose behalf the firm holds more than 5% of such Section 13 Security of such account owner's potential reporting obligation.

Reporting Obligations of Firms and Their "Control Persons"

The Firm's Obligations. As discussed above, a firm is deemed to be the beneficial owner of securities in all accounts over which it exercises investment and/or voting discretion. Therefore, a firm will have a Schedule 13G or Schedule 13D filing obligation if it directly or indirectly acquires or has beneficial ownership of more than 5% of an issuer's Section 13 Securities (including for purposes of this calculation any discretionary accounts managed for the firm's insiders) as of the end of the calendar year, or more than 10% as of the end of a calendar month.

Obligations of a Firm's Control Persons. In addition to a firm's reporting obligation, the direct or indirect control persons of a firm may have their own reporting obligations with respect to the same Section 13 Security.⁶ The following persons are likely to be considered "**control persons**" of a firm:

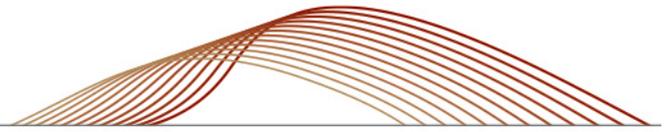
- any direct or indirect controlling partner or shareholder of the firm;
- the direct or indirect parent company of the firm and any other person or entity that directly or indirectly controls the firm (e.g., a controlling shareholder of the parent holding company);
- if the firm (or parent holding company) is directly or indirectly owned by two partners or shareholders, generally each such partner or shareholder is deemed to be a control person; and
- if the firm (or parent holding company) is directly or indirectly owned by three or more partners or shareholders, each partner or shareholder who owns a significant interest in the firm and who is actively involved in the management of the firm or who has entered into an oral or written agreement with respect to the disposition of the Section 13 Security is considered a control person.

For example, if a firm with a Schedule 13G or Schedule 13D reporting obligation is directly owned by a corporation that in turn is owned in roughly equal proportions by two shareholders, each of the firm, the parent corporation and the two shareholders of the parent corporation likely will have a Schedule 13G or Schedule 13D reporting obligation.

The determination of who the control persons of a firm are for purposes of Schedule 13G/Schedule 13D reporting is very fact specific and may have important ramifications with respect to such control person's obligations and liabilities under Section 16 of the Exchange Act, particularly relating to insider reporting and short-swing profits. Please contact us if you would like further guidance in determining who may constitute a "control person" of your firm for these purposes.

Filing Schedule 13G vs. Schedule 13D

Initial filings. In general, persons who are not qualified to file using Schedule 13G must file a Schedule 13D within 10 days of such persons' direct or indirect acquisition of beneficial ownership of



more than 5% of a Section 13 Security. Such persons are subject to a 10-day “cooling off” period which is discussed further below.

Except for Passive Investors, a person is generally required to file its initial report on Schedule 13G within 45 days of the end of the calendar year in which the person exceeds the 5% threshold. Such person must report only with respect to those Section 13 Security holdings that exceeded the 5% threshold as of the end of that calendar year. Also, as mentioned above and below, an earlier filing will be required if a firm’s holdings of an issuer’s Section 13 Securities exceed 10%.

A Passive Investor must report on Schedule 13G within 10 days of acquiring more than 5% of a Section 13 Security. A Passive Investor must also report on Schedule 13D within 10 days of acquiring beneficial ownership of a class of Section 13 Security equal to or in excess of 20% of the outstanding securities of such class (the 10-day “cooling off” period will then apply).

Availability of Schedule 13G to “Control Persons” and Joint Filings. As discussed above, each direct or indirect “control person” of a firm may have an independent Schedule 13G or Schedule 13D reporting obligation with respect to any class of Section 13 Security for which the firm has a reporting obligation. Such “control persons” may satisfy their reporting obligations by making a joint Schedule 13G filing with the firm, provided that:

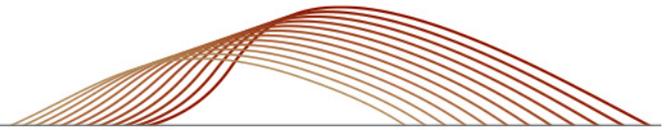
- the firm is eligible to file, and files, on Schedule 13G;
- the “1% test” (discussed below) is satisfied;
- no “control person” intends to influence the control of the issuer of the Section 13 Security; and
- each such “control person” files a separate Schedule 13G cover sheet along with the firm’s Schedule 13G filing; signs the Schedule 13G filing in his, her or its individual capacity (this can be done through a power of attorney); and attaches a joint filing agreement.⁷

The 1% Test. As noted above, QIIs include, in addition to investment advisers, broker-dealers, banks, savings associations, insurance companies, registered investment companies, employee benefit plans, and control persons of the foregoing entities. QIIs do not include other types of entities. In order for a control person to qualify as a QII, the maximum amount of an issuer’s class of Section 13 Security that may be attributable to such a control person and its subsidiaries and affiliates (in the aggregate) from sources other than a QII cannot exceed 1% of an issuer’s class of Section 13 Securities outstanding.

In addition to joint Schedule 13G filings that may be made by a firm and its “control persons,” if a firm’s client by itself beneficially owns more than 5% of an issuer’s class of Section 13 Security, the client has its own separate filing obligation.

Amendments. If a firm has previously filed a Schedule 13G with respect to a particular Section 13 Security, it may be required to file an amendment to that filing in the following circumstances:

- *Amendment Required if There Changes.* If there have been any changes to the information reported in a previous Schedule 13G filing,⁸ the firm must amend its filing within 45 days of the calendar year end. No filing fee is required to amend a Schedule 13G.



- *No Amendment Required if There are No Changes.* If there have been no changes to information provided in a previously filed Schedule 13G, there is no requirement to make any additional Schedule 13G filings with respect to that Section 13 Security after the initial filing. If an amended Schedule 13G has previously been filed indicating beneficial ownership of 5% or less of an issuer's Section 13 Securities, no additional Schedule 13G filings are required with respect to that Section 13 Security, even if the information in that amended filing changes, unless the firm subsequently again becomes the beneficial owner of more than 5% of the Section 13 Security.
- *If Schedule 13G Filing Conditions No Longer Satisfied.* If a firm previously filed a Schedule 13G with respect to a particular Section 13 Security, but no longer satisfies the conditions necessary to file a Schedule 13G, the firm must file a Schedule 13D within 10 days of the event which precludes it from filing a Schedule 13G, assuming that the firm continues to have attributed to it direct or indirect ownership of more than 5% of the Section 13 Security. In such case, the firm would be subject to a "cooling off" period, which runs from the time the event giving rise to a Schedule 13D obligation occurs (such as the change in investment purpose) to the 10th calendar day from the date the Schedule 13D is filed. During the "cooling off" period, the firm may not vote or direct the voting of the Section 13 Security or acquire additional beneficial ownership of such security. The firm will thereafter be subject to the Schedule 13D reporting requirements with respect to the Section 13 Security.
- *If Beneficial Ownership of Security Exceeds 10%.* An ownership level above 10% triggers additional filing obligations. If, as of the last day of any month, a firm is the direct or indirect beneficial owner of more than 10% of any issuer's outstanding Section 13 Security and is still eligible to file on Schedule 13G with respect to that security as a QII, the firm must file an amendment to Schedule 13G within 10 days after the end of such month. In this case, the amendment may not wait until year end. Thereafter, within 10 days after the end of any month that beneficial ownership of such Section 13 Security increases or decreases by more than 5% of the class (computed as of the end of the month), the firm must generally file an amendment to the Schedule 13G report with the SEC.⁹ If the initial Schedule 13G filing is as a Passive Investor, the firm must promptly file an amendment at any time its beneficial ownership of a Section 13 Security exceeds 10% of the class of such securities and, thereafter, promptly at any time that beneficial ownership of a Section 13 Security increases or decreases by more than 5% of the class.
- *Loss of Passive Investor Status if Beneficial Ownership of Security Equals or Exceeds 20%.* Passive Investor status is limited to beneficial ownership of less than 20% of a Section 13 Security. Accordingly, a Passive Investor loses this status at any time it acquires 20% or more of a Section 13 Security. In such case, the firm must file a Schedule 13D promptly unless it is eligible to continue reporting on Schedule 13G as a QII. Upon filing a Schedule 13D, the firm would be subject to a "cooling off" period commencing from the time the 20% threshold was reached until 10 calendar days after the filing of Schedule 13D.

Disclaim Beneficial Interest

We generally recommend that any Section 13 report, including Schedule 13G filings made by "control persons," also include an appropriate disclaimer of beneficial interest. This disclaimer is typically



inserted as a footnote to the ownership items on the cover page and on the Schedule. Please contact us if you have any questions about including such a disclaimer.

Incorporation by Reference

Some of the information called for by Schedule 13G may also be required to be reported on Form 13F (discussed below). If your firm is subject to both the Schedule 13G and Form 13F filing requirements, the information contained on your Form 13F may be incorporated by reference into your responses to Schedule 13G. If any such information is incorporated by reference, you must attach as exhibits to the Schedule 13G copies of the relevant pages of the Form 13F.

Form 13F: Reporting Equity Positions in Managed Portfolios of More than \$100 Million

Rule 13f-1 under the Exchange Act provides that every institutional investment manager¹⁰ that exercises investment discretion with respect to accounts holding equity securities that (1) are admitted for trading on a national securities exchange or quoted on NASDAQ,¹¹ and (2) have an aggregate fair market value of at least \$100 million on the last trading day of any month of any calendar year, must file a report on Form 13F with the SEC. The Form 13F report must be filed within 45 days after the last day of such calendar year and also within 45 days after the last day of each of the first three calendar quarters of the following calendar year. Once a manager's obligation to file Form 13F is established, the manager must make quarterly filings as long as it has discretion over exchange-traded or listed equity securities of at least \$100 million at the end of the last trading day of any calendar month during the prior year.

Please note that Form 13F is designed to elicit information on all listed equity securities over which an institutional investment manager has discretion once the \$100 million threshold has been met.¹² Schedule 13G filings, on the other hand, focus on specific issuers in whose securities a firm or its clients have substantial positions.

Reporting Obligations of Firms and Their "Control Persons"

If a firm manages a private investment fund holding more than \$100 million in exchange-traded or listed equity securities, the private investment fund should not be required to file a Form 13F with the SEC. Because reporting obligations under Rule 13f-1 are tied to the exercise of investment discretion, unless the investment fund itself actually engages in the investment decision making process, it should not have any such reporting obligations. The firm, however, as an institutional investment manager (a term which would include an investment adviser that manages private accounts), would be required to file Form 13F. In addition, any entity that directly or indirectly controls such a firm will also have a Form 13F filing obligation with respect to the securities reported on that firm's Form 13F filing. An individual (as opposed to an entity) who directly or indirectly controls such a firm may have a Form 13F filing obligation with respect to the securities reported on the firm's Form 13F depending on the facts and circumstances relating to the level of investment discretion exercised by the individual.¹³ You can request confidential treatment of the information contained in the Form 13F filing. Please contact us if you require any assistance in seeking confidential treatment of your Form 13F filing.

Form 13H: Reporting Identifying Information for Large Traders

Rule 13h-1 of the Exchange Act requires firms that are large traders (each, a "Large Trader") to disclose their trading affiliates to the SEC on Form 13H. A firm is a Large Trader if it, directly or

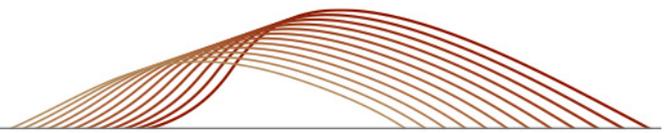


indirectly, exercises investment discretion over one or more accounts and effects transactions for those accounts in NMS securities (as defined below) that, in the aggregate, equal or exceed two million shares or \$20 million in fair market value during any calendar day, or 20 million shares or \$200 million in fair market value during any calendar month (each, an “**identifying activity level**”) through one or more registered broker-dealers. “**NMS securities**” include exchange-listed equity securities and exchange-listed options on individual or groups of equity securities, but do not include exchange-listed debt securities, securities futures, or shares of open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan under the Exchange Act. A Large Trader must file an initial Form 13H promptly after effecting aggregate transactions equal to or greater than an identifying activity level. The SEC staff as indicated that filing within 10 days will be deemed a prompt filing. Amendments to Form 13H must be filed within 45 days after the end of each full calendar year and then promptly following the end of a calendar quarter if any information on the Form 13H becomes inaccurate.

Form 13H requires that a Large Trader, reporting for itself and for any affiliate that exercises investment discretion over NMS securities, list the broker-dealers at which the Large Trader and its affiliates have accounts and designate each broker-dealer as a “prime broker,” “executing broker,” and/or “clearing broker.” Form 13H filings with the SEC are confidential and exempt from disclosure under the United States Freedom of Information Act. The information is, however, subject to disclosure to Congress and other federal agencies and when ordered by a court.

If a firm has multiple affiliates in its organization that qualify as Large Traders, Rule 13h-1 permits the firm to shift the reporting obligation to a control person which would file a Form 13H for all of the Large Traders it controls or to each Large Trader which would file a separate Form 13H.

<i>TYPE OF SECTION 13 FILING</i>	<i>TRIGGERING EVENTS</i>	<i>FREQUENCY OF FILING</i>	<i>FILING DEADLINE (if deadline falls on a weekend or holiday, the deadline is extended to the next business day)</i>
Initial Schedule 13G	1. When beneficial ownership of a class of Section 13 Security exceeds 5% and filing status is QII or Exempt Investor	N/A	February 14, 2017
	2. When beneficial ownership of a class of Section 13 Security exceeds 10% at month end for persons reporting as QIIs with no previous Section 13 filing	Monthly	10th Day of Following Month
	3. When beneficial ownership of a class of Section 13 Security exceeds 5% and the filing status is Passive Investor	N/A	10th Day after the “triggering” transaction
Amendments to Schedule 13G	1. Change in beneficial ownership of a class of Section 13 Security	Annually	February 14, 2017



TYPE OF SECTION 13 FILING	TRIGGERING EVENTS	FREQUENCY OF FILING	FILING DEADLINE <i>(if deadline falls on a weekend or holiday, the deadline is extended to the next business day)</i>
	2. When beneficial ownership of a class of Section 13 Security exceeds 10% at end of a month for persons reporting as QII s	Monthly	10th Day of Following Month
	3. When beneficial ownership of a class of Section 13 Security exceeds 10% for Passive Investors	N/A	Promptly after the "triggering" transaction
	4. When beneficial ownership by a firm holding over 10% of a class of Section 13 Security increases or decreases by 5% or more computed as of the last day of the month from the last Schedule 13G filing for QII s	Monthly	10th Day of Following Month
	5. When beneficial ownership of a class of Section 13 Security increases or decreases by 5% or more from the last Schedule 13G filing for Passive Investors	N/A	Promptly after the "triggering" transaction
Schedule 13D	When beneficial ownership by a firm holding over 10% of a class of Section 13 Security exceeds more than 5% and is ineligible to use Schedule 13G	Ongoing	Within 10 days of "triggering" transaction
	When beneficial ownership of a class of Section 13 Security equals or exceeds 20% and person has previously filed a Schedule 13G as a Passive Investor	Ongoing	Within 10 days of "triggering" transaction
Initial Form 13F	When accounts under discretionary management contain \$100 million or more of exchange-traded or listed equity securities on the last trading day of any month during a calendar year	See Below	February 14, 2017
Subsequent Form 13F Filings	Once Form 13F filing requirements arise, filings must continue for at least the next three calendar quarters AND must continue quarterly until the accounts under	Quarterly	February 14, 2017 May 15, 2017



TYPE OF SECTION 13 FILING	TRIGGERING EVENTS	FREQUENCY OF FILING	FILING DEADLINE (if deadline falls on a weekend or holiday, the deadline is extended to the next business day)
	discretionary management do not contain \$100 million or more of exchange-traded or listed equity securities on the last trading day of any month in any calendar year		August 14, 2017 November 14, 2017 February 14, 2018
Initial Form 13H	When accounts under discretionary management transact in NMS securities in an amount equal to or more than two million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month	Ongoing	Within 10 days of "triggering" transaction
Subsequent Form 13H Filings	Once Form 13H filing requirements arise, amendments to Form 13H must be filed within 45 days after the end of each full calendar year and then promptly following the end of a calendar quarter if any information on the Form 13H becomes inaccurate	Annual	February 14, 2017

Report of Directors, Officers, and Principal Stockholders

Purpose and Background of Section 16

Section 16 of the Exchange Act and the rules thereunder impose certain obligations on persons that are considered insiders of any company that has a class of equity security registered under Section 12 of the Exchange Act. For purposes of Section 16, an **"insider"** generally includes: (1) a director of the issuer; (2) certain key officers of the issuer; or (3) a person who is a beneficial owner of more than 10% of any class of the issuer's equity securities registered under Section 12 of the Exchange Act.

Section 16 requires insiders to disclose their positions in issuer shares and to disgorge any trading profits made within six months of buying or selling an issuer's security. These provisions attempt to discourage insiders from profiting by trading on the basis of superior information that they may have obtained because of their position with the issuer. This is a "strict liability" provision, however, and the disgorgement requirement applies even if the insider can show that his or her trades were not made using any inside information.

Reporting Requirement under Section 16

Section 16 requires all insiders to file certain disclosure forms with the SEC, the issuer, and the organized exchange on which the issuer's shares are traded.



Form 3 – Initial Statement of Beneficial Ownership of Securities. Form 3 must be filed with the SEC within 10 days of anyone first becoming an insider. In addition, a copy of Form 3 must also be filed with the issuer and the organized exchange on which the issuer's securities are traded. Form 3 includes the details of the initial holdings of the insider. Any subsequent changes to an insider's position must be disclosed on Form 4.

Form 4 – Statement of Changes of Beneficial Ownership of Securities. Whenever any change occurs in an insider's ownership position, it must be reported on Form 4 to the SEC, the issuer, and the organized exchange on which the issuer's securities are traded. A Form 4 filing must be submitted before the end of the second business day following the day on which the subject transaction was executed (except where the SEC has determined by rule that the two-day period is not feasible).¹⁴

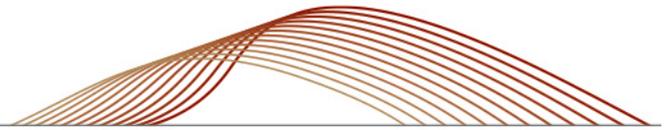
Form 5 – Annual Statement of Beneficial Ownership of Securities. Anyone who was an insider during the issuer's fiscal year must file a Form 5 to disclose holdings and transactions that were not previously reported on Forms 3, 4, or 5. Disclosures that should have been reported during the year but were not, or that were characterized as exempt,¹⁵ should be reported on Form 5, which must be filed with the SEC, the issuer, and the organized exchange on which the issuer's securities are traded. Form 5 must be filed no later than 45 days after the end of the issuer's fiscal year. In lieu of using Form 5, a report may be filed using Form 4; however, if this option is chosen, the Form 4 filing must be submitted before the end of the second business day following the day on which the transaction that triggered the filing has been executed. A limited exemption exists for the acquisition of equity shares not exceeding \$10,000. Exempt transactions do not trigger a Form 4 filing; however, they must be reported on the next required Form 4 or Form 5 whichever is due sooner.

Insiders: Officers, Directors, and 10% Beneficial Owners

Section 16 insider reporting requirements apply to certain key officers and all directors of the issuer, even if such persons do not own any covered securities of the issuer.¹⁶

Section 16 reporting requirements also apply to all beneficial owners (regardless of whether they control the shares directly or indirectly) of more than 10% of any class of equity securities subject to the Section 16 reporting requirements. Such control can be established either by outright individual ownership of more than 10% of any class of equity securities or by the holder's ability to exercise voting or investment discretion over more than 10% of a class of such securities.¹⁷ The 10% rule is intended to reach those persons who may be presumed to influence or control an issuer as a result of their personal equity ownership or discretionary control of a significant block of equity securities. Accordingly, an investment adviser will frequently satisfy the beneficial ownership test because the adviser may have voting and/or investment discretion over a substantial amount of equity securities owned by its client. Section 16 requires the aggregation of equity securities owned by various clients of an investment adviser in calculating the 10% threshold.¹⁸

There is an exception to the beneficial owner rule under Section 16 for investment advisers registered with the SEC or under state law. Under this provision, beneficial ownership of client-owned shares will not be attributed to an investment adviser if, in the ordinary course of business, the shares were acquired or held for the benefit of third parties such as a customer or fiduciary account, and the shares were not acquired for the purpose or effect of changing or influencing control of an issuer.¹⁹ Shares not held in an investment adviser's fiduciary capacity or which were procured for the purpose of effecting a change in control of the issuer are attributable to the investment adviser and will be counted to determine beneficial ownership.²⁰



Pecuniary Interest

If a person is deemed to be a 10% beneficial owner, then such person is required to file beneficial ownership reports on Forms 3, 4, and 5, as applicable. The securities' holdings to be reported on such forms, however, depend on whether such person is deemed to have a pecuniary interest in such holdings. "**Pecuniary interest**" is defined for this purpose as the opportunity to profit, directly or indirectly, from purchases and sales of securities. The opportunity to profit may exist as the result of any contract, arrangement, understanding, or relationship the reporting party may have with another person or organization. Examples of indirect pecuniary interests that will trigger Section 16 reporting are: (1) shares held by family members in the same household, or (2) a general partner's proportionate interest in shares held by a general or a limited partnership.²¹

Filing Forms 3, 4, and 5 Using EDGAR

Filings on Forms 3, 4, and 5 must be submitted to the SEC via EDGAR (unless a hardship exemption of the type specified in Regulation S-T applies).²²

Short-Swing Profits

A person subject to reporting under Section 16 as an insider is prohibited from earning "**short-swing profits**" in covered securities of an issuer. A short-swing profit results if an insider (1) sells a covered security within six months of purchasing it, or (2) buys a covered security within six months of selling it. Any profit an insider realizes from trading within this six-month window must be disgorged. Although this violation is not regarded as a criminal offense, the liability is strict, which means that an insider may not offer any defenses (reasonable or otherwise) for committing this violation. To avoid a short-swing violation, an insider must hold all covered securities for at least six months after purchasing any securities of that class, and refrain from buying covered securities for at least six months after selling any securities of that class.

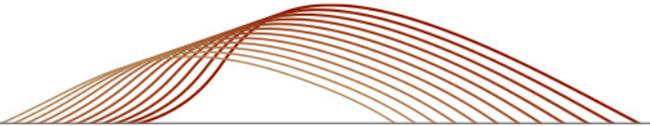
Prohibition on Short-Sales and Sales-Against-the-Box

Section 16 also prohibits an insider (including a 10% beneficial owner) from engaging in short-sale transactions in covered securities or making sales-against-the-box. An insider is not permitted to use these trading methods as a hedge or as a profit-making opportunity.

Filing Section 13 or Section 16 Reports using EDGAR

You may file electronically on EDGAR yourself or have an outside vendor, such as a financial printer, do so on your behalf. Because EDGAR submissions require the use of specialized software, we do not recommend that you make EDGAR filings yourself unless you fully understand the process. Instead, we recommend that you make EDGAR filings through an outside vendor. Paul Hastings has an arrangement with an outside vendor to make EDGAR filings for our clients, and would be willing to do so as requested. The vendor engaged by Paul Hastings charges a service fee for each filing. We can also provide the names of additional vendors for your consideration. Whether you use an outside vendor or you make your EDGAR filings yourself, you must first obtain several different identification codes from the SEC before the filings can be submitted. You have to submit a Form ID with the SEC in order to receive your filing codes. Form ID must be submitted electronically through the SEC's Filer Management website, which can be accessed at <https://www.filermanagement.edgarfiling.sec.gov>. A signed, notarized copy of Form ID also must be submitted to the SEC when the Form ID is filed electronically. You are required to retain a manually signed hard copy of all EDGAR filings (and related documents like powers of attorney) in your records available for SEC inspection for a period of five years after the date of filing.

STAY CURRENT



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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ A “**Section 13 Security**” means any voting, equity security that is (1) of a class that is registered pursuant to Section 12 of the Exchange Act (which includes all exchange-traded and NASDAQ-listed securities); (2) issued by an insurance company, which security would have been required to be registered under Section 12 of the Exchange Act but for the exemption contained in Section 12(g)(2)(G) of the Exchange Act; or (3) issued by a closed-end investment company registered under the Investment Company Act of 1940, as amended (“**Investment Company Act**”).

² This Memorandum focuses on Schedule 13G filing requirements. If you are not eligible to report on Schedule 13G, please contact us if you would like guidance regarding Schedule 13D.

³ For this purpose, “**beneficial ownership**” of a security exists if a person, directly or indirectly, has or shares voting and/or investment power over a security. “**Voting power**” means the power to vote or direct the voting of a security. “**Investment power**” means the power to dispose of or direct the disposition of a security. Importantly, a person is also deemed to beneficially own a security if that person has the right to acquire beneficial ownership in 60 days, such as with warrants or exercisable options.

⁴ In calculating the 5% test, a person is permitted to rely upon the issuer’s most recent quarterly or annual report for purposes of determining the amount of outstanding voting securities of the issuer, unless the person knows or has reason to believe that such information is inaccurate.

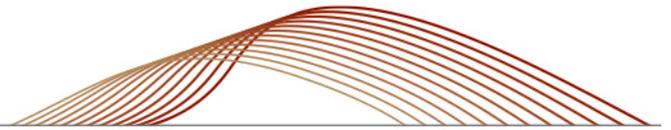
⁵ A firm would also be a QII if it is a broker-dealer registered under Section 15(b) of the Exchange Act, a bank as defined in Section 3(a)(6) of the Exchange Act, an insurance company as defined in Section 3(a)(19) of the Exchange Act, employee benefit plans, savings associations, or an investment company registered under the Investment Company Act. The term “**QII**” also includes control persons and parent holding companies of an entity that qualifies as a QII.

⁶ The direct or indirect control persons of a firm may, by virtue of their ability to control the firm, be considered the “indirect beneficial owners” of a Section 13 Security held by the firm. Since the Schedule 13G/Schedule 13D reporting obligations apply to any person with direct or indirect beneficial ownership of a Section 13 Security, such control persons will have their own Schedule 13G/Schedule 13D reporting obligations.

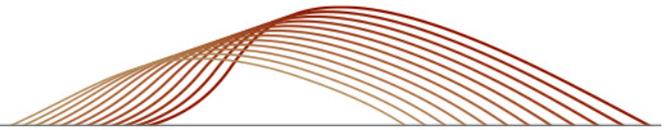
⁷ We have standard forms of powers of attorney and joint filing agreements for Schedule 13G filings. Please contact us if you need these forms.

Paul Hastings LLP

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- ⁸ An amendment need not be filed simply to reflect a change in the percent of the class outstanding that a firm has previously reported if such change results solely from a change in the aggregate number of securities outstanding of the issuer i.e., you have not purchased or sold additional shares.
- ⁹ A person or entity that beneficially owns more than 10% of a Section 13 Security may also have filing or other obligations under the Hart Scott Rodino Act and/or Section 16 of the Exchange Act. If your firm beneficially owns more than 10% of any Section 13 Security and is not aware of these possible obligations, please contact us.
- ¹⁰ Section 13(f)(5)(A) of the Exchange Act defines the term “**institutional investment manager**” to include any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Discretionary brokerage accounts could trigger a filing obligation for broker dealers.
- ¹¹ The SEC publishes a list of such securities each quarter upon which you may rely if there is any question with respect to a particular security. Shares of mutual funds are not 13F securities. The list is available on the SEC’s official website, which can be accessed at <http://www.sec.gov/divisions/investment/13flists.htm>.
- ¹² There are three Form 13F Report Types: (i) a 13F Holdings Report includes all holdings as to which a reporting manager has investment discretion; (ii) a 13F Notice indicates that all holdings as to which a reporting manager has investment discretion are reported by another reporting manager or managers; and (iii) a 13F Combination Report, which is used when part of a reporting manager’s holdings are reported by another reporting manager or managers.
- ¹³ In order to avoid duplicative reporting, where more than one manager is required to file Form 13F with respect to the same securities, only one manager would file Form 13F with respect to the securities in such account. A manager having such securities reported by another manager or managers would file an information statement identifying the manager or managers reporting on its behalf.
- ¹⁴ Rule 16a-3(g) under the Exchange Act provides that the two-day filing requirement for Form 4 does not apply in the following cases: (a) transactions pursuant to arrangements that satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c) where the reporting person does not select the date of execution; and (b) discretionary transactions pursuant to employee benefit plans where the reporting person does not select the date of execution. The obligation to file a Form 4 also applies to the purchase or sale of a security-based swap agreement involving equity securities covered by Section 16(a) and rules.
- ¹⁵ Transactions exempted from Section 16 do not have to be reported on Form 4; however, they must be reported on Form 5 when it is filed. Reportable exemptions for Section 16 purposes are: (1) transactions approved by a regulatory authority; (2) acquisitions made through dividend or interest reinvestment plans; (3) qualifying employee benefit plan transactions; (4) acquisitions of securities issued in certain issuer redemptions; (5) bona fide gifts and inheritances; (6) certain exercises of derivatives; (7) certain securities acquired as a result of qualifying mergers, reclassifications, or consolidations; and (8) deposit or withdrawal of securities from a voting trust. The rules must be consulted before relying on any of these exemptions.
- ¹⁶ The term “**officer**,” for Section 16 purposes, is defined in Rule 16a-1(f) under the Exchange Act as an issuer’s (1) president; (2) principal financial officer; (3) principal accounting officer or controller; (4) any vice president of the issuer in charge of a principal business unit, division, or function; (5) any other officer who performs a policy-making function; or (6) any other person who performs a similar policy-making function for the issuer. Officers of the issuer’s parent(s) or subsidiary(ies) shall be deemed officers of the issuer if they perform such policy-making functions for the issuer.
- ¹⁷ However, an insider who serves as a director of a company that owns issuer securities will not have or share investment power over those securities solely based on his position on the company’s board of directors.
- ¹⁸ When calculating the 10% threshold under Section 16, nonvoting securities are excluded and derivatives (e.g., options and warrants) are included only if they are exercisable within 60 days.
- ¹⁹ A firm would also qualify for this exception to the beneficial owner rule if it is a broker-dealer registered under Section 15(b) of the Exchange Act, a bank as defined in Section 3(a)(6) of the Exchange Act, an insurance company as defined in Section 3(a)(19) of the Exchange Act, an employee benefit plan, savings association, an investment company registered under the Investment Company Act, or the control persons and parent holding companies of any of the above qualifying entities.
- ²⁰ In addition, Rule 16a-1 defines “**beneficial owner**” in part by reference to Section 13(d) of the Exchange Act, which provides that if two or more persons act in concert, they may be deemed to be a “group” that is treated as one person for the purposes of Section 13(d) and, thus, Section 16.



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- ²¹ An adviser may also be deemed to have an indirect pecuniary interest in a client, for purposes of Section 16, if it receives performance-based fees from the client, unless the fee is calculated based upon the capital gains or capital appreciation of a portfolio measured over a period of one year or longer, and the equity securities held in the portfolio do not account for more than 10% of the market value of the portfolio. Asset-based fees are not performance-based fees, and do not trigger Section 16 concerns. Advisers who serve as trustees for a trust may need to comply with Section 16 if the trust beneficially owns over 10% of a registered class of equity securities.
- ²² Rule 16a-3(k) also requires each issuer that maintains a corporate website to post on its website all Forms 3, 4, and 5 filed with respect to its equity securities by the end of the business day after filing with the SEC.