Table of Contents

CHAPTER 1. INTRODUCTION

§ 1:1 Generally

CHAPTER 2. SECTION 16(a)

I. IN GENERAL

§ 2:1 Generally

II. BENEFICIAL OWNERSHIP

A. INTRODUCTION

- § 2:2 Generally
- § 2:3 Legislative history

B. DETERMINATION OF WHETHER A PERSON IS A 10 PERCENT OWNER

- § 2:4 Pre-1991 law
- § 2:5 Present law—Rule 16a-1(a)(1) and Section 13(d)

C. BENEFICIAL OWNERSHIP—RULE 13d-3 AND RULE 13d-4

- § 2:6 Introduction—Rule 13d-3 and Rule 13d-4
- § 2:7 Voting and investment power—Rule 13d-3(a)
- § 2:8 Evading reporting—Rule 13d-3(b)
- § 2:9 Aggregation of holdings—Rule 13d-3(c)
- § 2:10 Rights to acquire; Broker-dealers; Pledges; Underwriters—Rule 13d-3(d)—Introduction
- § 2:11 —Rule 13d-3(d)—Right to acquire—Rule 13d-3(d)(1)
- $\S 2:12$ Broker-dealers—Rule 13d-3(d)(2)
- § 2:13 ——Pledges—Rule 13d-3(d)(3)
- $\S 2:14$ Underwriters—Rule 13d-3(d)(4)
- § 2:15 Disclaimer of beneficial ownership—Rule 13d-4

D. DEFINITION OF "GROUP"—SECTION 13(d)(3), RULE 13d-1(k), AND RULE 13d-5(b)

- § 2:16 Introduction
- § 2:17 Applicable statutes and rules
- § 2:18 When is a group formed?
- § 2:19 When does a group dissolve?
- § 2:20 Specific fact patterns related to group formation
- § 2:21 "For the purpose of acquiring, holding, voting or disposing of equity securities of an issuer"
- § 2:22 Proving a group was formed
- § 2:23 Miscellaneous issues regarding group formation
- § 2:24 Acquisition of shares by group members
- § 2:25 The content of a group Schedule 13D or Schedule 13G

E. DETERMINATION OF PECUNIARY INTEREST

4	т .	\sim
	ln	Genera
		Genera

§ 2:26 Generall	y
-----------------	---

2. Present Law—Rule 16a-1(a)(2)

a. Pecuniary Interest—Rule 16a-1(a)(2)(i)

§ 2:27 Generally

b. Indirect Pecuniary Interest—Rule 16a-1(a)(2)(ii)

- § 2:28 Family members—Rule 16a-1(a)(2)(ii)(A)
- § 2:29 General partners—Rule 16a-1(a)(2)(ii)(B)
- § 2:30 Investment advisory fee—Rule 16a-1(a)(2)(ii)(C)
- § 2:31 Right to dividends—Rule 16a-1(a)(2)(ii)(D)
- § 2:32 Trusts—Rule 16a-1(a)(2)(ii)(E) and Rule 16a-8
- § 2:33 —1989 Amended Proposing Release Version of Rule 16a-8
- § 2:34 —Trust of 10 percent owner—Rule 16a-8(a) (1989 Amended Proposing Release)
- § 2:35 —Trustee as an insider—Rule 16a-8(b) (1989 Amended Proposing Release)
- § 2:36 Who beneficially owns securities held in trust—Rule 16a-8(c) (1989 Amended Proposing Release)
- § 2:37 ——Reporting—Rule 16a-8(d) (1989 Amended Proposing Release)
- § 2:38 ——Applicability of Section 16(b) and Section 16(c)—Rule 16a-8(e) (1989 Amended Proposing Release)
- § 2:39 —Rule 16a-8 (1991–1996 Version)
- § 2:40 Trust, trustee, beneficiary, or settlor becomes an insider—Rule 16a-8(a)
- § 2:41 ——Reporting and short-swing obligations of a 10 percent owner—Rule 16a-8(b)
- § 2:42 ——Remainder interests—Rule 16a-8(c)
- § 2:43 ——Applicability of Section 16(b) and Section 16(c)—Rule 16a-8(d)
- § 2:44 —Omitted pre-1991 rules relating to trusts—Pre-1991 Rule 16a-8(b), Pre-1991 Rule 16a-8(g)(3), Pre-1991 Rule 16a-8(g)(4), and Pre-1991 Rule 16a-8(d)
- § 2:45 —Present version of Rule 16a-8
- § 2:46 Derivative securities—Rule 16a-1(a)(2)(ii)(F)

c. Corporation's Portfolio Securities—Rule 16a-1(a)(2)(iii)

§ 2:47 Generally

d. Exemptions from Beneficial Ownership—Rule 16a-1(a)(5)

- § 2:48 Generally
- § 2:49 Remainder interest of a trust—Amended proposing release version of Rule 16a-1(a)(5)(i)
- § 2:50 Portfolio securities of public utility holding companies Rule 16a-1(a)(5)(i)
- § 2:51 Portfolio securities of investment companies—Rule 16a-1(a)(5)(ii)
- § 2:52 Baskets or indexes of stocks—Rule 16a-1(a)(5)(iii)

e. Other Omitted Pre-1991 Rules

- § 2:53 Business trusts—Pre-1991 Rule 16a-8(g)(4)
- § 2:54 Pension plans—Pre-1991 Rule 16a-8(g)(3)

3. Pre-1991 Law

a. General Test of Beneficial Ownership under Section 16(a)

§ 2:55 Generally

b. Specific Fact Patterns of Beneficial Ownership under Section 16(a)

- § 2:56 Generally
- § 2:57 Family members
- § 2:58 Trusts—Pre-1991 Rule 16a-8
- § 2:59 —Beneficial ownership—Pre-1991 Rule 16a-8(a)
- § 2:60 —Remainder interests—Pre-1991 Rule 16a-8(f)
- § 2:61 —Insiders beneficially own a small portion of the trust or have no approval over transactions—Pre-1991 Rule 16a-8(b)
- § 2:62 —Reporting—Pre-1991 Rule 16a-8(c)
- § 2:63 —One report—Pre-1991 Rule 16a-8(d)
- § 2:64 —Immediate family—Pre-1991 Rule 16a-8(e); Remainder interests—Pre-1991 Rule 16a-8(f); Public utilities holding companies—Pre-1991 Rule 16a-8(g)(1); Investment companies—Pre-1991 Rule 16a-8(g)(2); Pension plans—Pre-1991 Rule 16a-8(g)(3); Business trusts—Pre-1991 Rule 16a-8(g)(4)
- § 2:65 Partnerships
- § 2:66 Corporations
- § 2:67 Pension and retirement plans
- § 2:68 Estates
- § 2:69 Options and convertible securities
- § 2:70 Pledging securities
- § 2:71 Lending securities
- § 2:72 Mergers and consolidations
- § 2:73 Underwriters
- § 2:74 Gifts

4. Beneficial Ownership under Section 16(b) and Section 16(c)

- § 2:75 Section 16(b) beneficial ownership
- § 2:76 Section 16(c) beneficial ownership

F. THE REMAINDER

- § 2:77 Ownership by more than one person
- § 2:78 Fact question
- § 2:79 No aggregation; Groups
- § 2:80 Joint and several liability
- § 2:81 Transfers between two persons both of whom have beneficial ownership
- § 2:82 Transactions by an insider matched against those of another entity
- § 2:83 Admissions of beneficial ownership
- § 2:84 Agency

III. DEFINITIONS

- § 2:85 "Equity security" (including "derivative security")
- § 2:86 "Class" of equity security
- § 2:87 Who is a 10 percent owner?
- § 2:88 Who is a "director"?

§ 2:89 § 2:90	Who is an "officer"? "Issuer"
IV. D	OUTY TO REPORT
A.	INTRODUCTION
§ 2:91	Generally
В.	WHEN THE FORMS ARE FILED
	Form 3 Form 4 (Until 2002) —Present Form 5 Receipt by the SEC Holidays No extensions
C.	REPORTING TRADING BEFORE OR AFTER INSIDER STATUS
§ 2:99 § 2:100 § 2:101	Directors and officers—During and after status 10 percent owners—During and after status Before and during status
D.	RULES RELATING TO FILING
	1. Overview
§ 2:102	Generally
	2. Rules Deferring a Duty to File
\$ 2:103 \$ 2:104 \$ 2:105 \$ 2:106	
	3. Rules Providing an Exemption from the Duty to Report
\$ 2:107 \$ 2:108 \$ 2:109 \$ 2:110 \$ 2:111 \$ 2:112 \$ 2:113 \$ 2:114 \$ 2:115 \$ 2:116 \$ 2:117	Generally Issuer purchases—Pre-1991 Rule 16a-4(c) Odd-lot dealers—Pre-1991 Rule 16a-5 and Rule 16a-5 Options—Pre-1991 Rule 16a-6(c) Derivative securities—Rule 16a-4 Stock splits, stock dividends, and rights—Rule 16a-9 Reinvestment plans—Pre-1991 Rule 16a-11 —Rule 16b-2 (1991-1996 Version) —Rule 16a-11 Domestic relations orders—Rule 16a-12 Changes in form of beneficial ownership—Rule 16a-13
§ 2:118 E.	Short selling—Proposed but not adopted Rule 16d-1 WHERE FORMS ARE FILED; MECHANICS

§ 2:119 Where the forms are filed

sale

F.	MECHANICS OF FILING
§ 2:120	Generally
G.	WHAT MUST BE DISCLOSED IN THE FORMS
	1. Overview
§ 2:121	Generally
	2. Pre-1991 Forms
\$ 2:122 \$ 2:123 \$ 2:124 \$ 2:125 \$ 2:126	Pre-1991 Forms—General information Pre-1991 Form 3—Table of securities beneficially owned—Table I Table of options—Table II Pre-1991 Form 4—Table of securities acquired or disposed of—Table I Table of options—Table II
	3. 1991-2002 Forms
\$ 2:127 \$ 2:128 \$ 2:129 \$ 2:130 \$ 2:131 \$ 2:132 \$ 2:133 \$ 2:134 \$ 2:135 \$ 2:136	Generally 1991–2002 Forms—General information 1991–2002 Form 3—Table of nonderivative securities owned—Table I —Table of derivative securities owned—Table II 1991–2002 Form 4—Table of nonderivative securities—Table I —Table of derivative securities—Table II 1991–2002 Form 5—Table of nonderivative securities—Table I —Table of derivative securities—Table II What must have been reported on a Form 5—1991–1996 Version of the rules —1996–2002 Version of the rules
	4. Present Forms
\$ 2:137 \$ 2:138 \$ 2:139 \$ 2:140 \$ 2:141 \$ 2:142 \$ 2:143 \$ 2:144 \$ 2:145 \$ 2:146	Generally General information Form 3—Table of nonderivative securities owned—Table I —Table of derivative securities owned—Table II Form 4—Table of nonderivative securities—Table I —Table of derivative securities—Table II Form 5—Table of nonderivative securities—Table I —Table of derivative securities—Table II What must be reported on a Form 5 Disclaiming beneficial ownership
H.	WHO MUST FILE A FORM
§ 2:147	Generally
I.	THE REMAINDER
\$ 2:148 \$ 2:149 \$ 2:150 \$ 2:151 \$ 2:152	Trusts Numbering of forms Remedies for Section 16(a) breaches No tolling of the Section 16(b) statute of limitations for failing to file Differences between a change in beneficial ownership and a purchase or a

- § 2:153 Some four-letter words
 § 2:154 —GRAT
 § 2:155 —SPVs (and, more broadly, investing in a vehicle)
 § 2:156 —LLCs
- V. PRE-1991 RULES UNDER SECTION 16(a)
- § 2:157 Introduction
- § 2:158 Pre-1991 Rule 16a-1
- § 2:159 Pre-1991 Rule 16a-2
- § 2:160 Pre-1991 Rule 16a-3
- § 2:161 Pre-1991 Rule 16a-4
- § 2:162 Pre-1991 Rule 16a-5
- § 2:163 Pre-1991 Rule 16a-6
- § 2:164 Pre-1991 Rule 16a-7
- § 2:165 Pre-1991 Rule 16a-8
- § 2:166 Pre-1991 Rule 16a-9
- § 2:167 Pre-1991 Rule 16a-10
- § 2:168 Pre-1991 Rule 16a-11

VI. PRESENT RULES UNDER SECTION 16(a)

- § 2:169 Introduction
- § 2:170 Rule 16a-1
- § 2:171 Rule 16a-2
- § 2:172 Rule 16a-3 (including the history of Form 3, Form 4, and Form 5)
- § 2:173 Rule 16a-4
- § 2:174 Rule 16a-5
- § 2:175 Rule 16a-6
- § 2:176 Rule 16a-7
- § 2:177 Rule 16a-8
- § 2:178 Rule 16a-9
- § 2:179 Rule 16a-10
- § 2:180 Rule 16a-11
- § 2:181 Rule 16a-12
- § 2:182 Rule 16a-13

CHAPTER 3. SECTION 16(b)

I. IN GENERAL

- § 3:1 Introduction
- § 3:2 Legislative history
- § 3:3 Purpose of Section 16(b)
- § 3:4 Rules of construction for Section 16(b)
- § 3:5 Absence of an intent requirement

II. TRADING BY 10 PERCENT OWNERS, DIRECTORS, AND OFFICERS

- § 3:6 Trading by 10 percent owners
- § 3:7 Trading by directors and officers

III. PURCHASE AND SALE

- § 3:8 Introduction
- § 3:9 Definitions of unorthodox and orthodox transactions
- § 3:10 Can a transaction be a purchase or a sale: The transfer question
- § 3:11 Orthodox transactions
- § 3:12 Unorthodox transactions—In general
- § 3:13 —Conversions
- § 3:14 —Mergers and related transactions
- § 3:15 —Contests for control
- § 3:16 —Options and warrants
- § 3:17 —Recapitalizations
- § 3:18 —Rescission
- § 3:19 When does a purchase or sale occur?

IV. MATCHING TRADING IN ONE SECURITY AGAINST TRADING IN ANOTHER

§ 3:20 Generally

V. SIX-MONTH PERIOD

§ 3:21 Generally

VI. DETERMINATION OF "PROFIT"

- § 3:22 Introduction
- § 3:23 Matching multiple purchases and sales
- § 3:24 Matching certificates
- § 3:25 Realized "by him"
- § 3:26 Treatment of dividends
- § 3:27 Expenses as a reduction of profit
- § 3:28 Interest on profit
- § 3:29 Special rules—Introduction
- $\ \, \$ \ \, 3:\!30 \quad \, -\!Stock \ options, stock \ appreciation \ rights, and \ warrants--Rule \ 16b-6(c)(1)$ and Rule 16b-6(d)
- § 3:31 —Trading in different securities—Rule 16b-6(c)(2)
- § 3:32 —Liquidations

VII. DEBT EXCEPTION

§ 3:33 Generally

VIII. PRACTICE AND PROCEDURE

- § 3:34 Generally
- § 3:35 Introduction
- § 3:36 Capacity and standing to sue
- § 3:37 Sixty-day demand
- § 3:38 Subject matter jurisdiction
- § 3:39 Personal jurisdiction
- § 3:40 Venue
- § 3:41 Service of process
- § 3:42 Complaints

- § 3:43 Indispensable parties
- § 3:44 Counterclaims
- § 3:45 Intervention
- § 3:46 Death of a party
- § 3:47 Security for expenses
- § 3:48 Burden of proof
- § 3:49 Right to a jury trial
- § 3:50 Settlement

IX. ATTORNEYS' FEES

§ 3:51 Generally

X. STATUTE OF LIMITATIONS

§ 3:52 Generally

XI. PRE-1991 RULES UNDER SECTION 16(b)

- § 3:53 Pre-1991 Introduction
- § 3:54 Pre-1991 Rule 16b-1
- § 3:55 Pre-1991 Rule 16b-2
- § 3:56 Pre-1991 Rule 16b-3
- § 3:57 Pre-1991 Rule 16b-4
- § 3:58 Pre-1991 Rule 16b-5
- § 3:59 Pre-1991 Rule 16b-6
- § 3:60 Pre-1991 Rule 16b-7
- § 3:61 Pre-1991 Rule 16b-8
- § 3:62 Pre-1991 Rule 16b-9
- § 3:63 Pre-1991 Rule 16b-10
- § 3:64 Pre-1991 Rule 16b-11

XII. PRESENT RULES UNDER SECTION 16(b)

- § 3:65 Introduction
- § 3:66 Rule 16b-1
- § 3:67 Rule 16b-2 (1991–1996 Version)
- § 3:68 Rule 16b-3 (1991–1996 Version)
- § 3:69 Rule 16b-3 (current version)
- § 3:70 —Administrative history
- § 3:71 —Content—Introductory matters
- § 3:72 Rule 16b-3(a) (current version)—Content—Rule 16b-3(a): General exemption for transactions between the issuer and an officer or director
- § 3:73 Rule 16b-3(b) (current version)—Content—Rule 16b-3(b): Definitions
- § 3:74 Rule 16b-3(c) (current version)—Content—Rule 16b-3(c): Tax-conditioned plans
- § 3:75 Rule 16b-3(d) (current version)—Content—Rule 16b-3(d): Acquisitions from the issuer
- § 3:76 Rule 16b-3(e) (current version)—Content—Rule 16b-3(e): Dispositions to the issuer
- § 3:77 Rule 16b-3(f) (current version)—Content—Rule 16b-3(f): Discretionary transactions
- § 3:78 Rule 16b-3—Note (1) (current version)—Content—Rule 16b-3—Note (1): Other exercises or conversions of derivative securities

- § 3:79 Rule 16b-3—Note (2) (current version)—Content—Rule 16b-3—Note (2): Reporting requirements
- § 3:80 Rule 16b-3—Note (3) (current version)—Content—Rule 16b-3—Note (3): Approval conditions
- § 3:81 Rule 16b-4
- § 3:82 Rule 16b-5
- § 3:83 Rule 16b-6
- § 3:84 Rule 16b-7
- § 3:85 Rule 16b-8

XIII. DEFENSES TO SECTION 16(b) LIABILITY

§ 3:86 Generally

CHAPTER 4. SECTION 16(c)

§ 4:1 Generally

CHAPTER 5. SECTION 16(d)

§ 5:1 Generally

CHAPTER 6. SECTION 16(e)

§ 6:1 Generally

APPENDICES

- Appendix A. Memorandum to Directors and Officers Regarding Section 16
- Appendix B. Pre-1991 Rules Under Section 16
- Appendix C. Rules Under Section 16 (1991–1996 Version)
- Appendix D. Rules Under Section 16 (1996–2002 Version)
- Appendix E. Rules Under Section 16 (2002–2005 Version)
- Appendix F. Rules Under Section 16 (2005-2008 Version)
- Appendix G. Present Rules Under Section 16
- Appendix H. SEC Forms Under Section 16 (1991–2002 Version)
- Appendix I. SEC Forms Under Section 16 (2002-2003 Version)
- Appendix J. SEC Forms Under Section 16 (2003–2023)
- Appendix K. SEC Forms Under Section 16 (Present Version)

Table of Laws and Rules

Table of Additional Authorities

Table of Cases

Index