

conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person; or

(iv) Fiduciary in a similar capacity.

(2) Transactions by such person or entity acting in a capacity specified in paragraph (d)(1) of this section after the period specified in that paragraph shall be subject to section 16 of the Act only where the estate, trust or other entity is a beneficial owner of more than ten percent of any class of equity security registered pursuant to section 12 of the Act.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30392, June 14, 1996; 67 FR 43535, June 28, 2002]

§ 240.16a-3 Reporting transactions and holdings.

(a) Initial statements of beneficial ownership of equity securities required by section 16(a) of the Act shall be filed on Form 3. Statements of changes in beneficial ownership required by that section shall be filed on Form 4. Annual statements shall be filed on Form 5. At the election of the reporting person, any transaction required to be reported on Form 5 may be reported on an earlier filed Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person filing statements pursuant to section 16(a) of the Act with respect to any class of equity securities registered pursuant to section 12 of the Act need not file an additional statement on Form 3:

(1) When an additional class of equity securities of the same issuer becomes registered pursuant to section 12 of the Act; or

(2) When such person assumes a different or an additional relationship to the same issuer (for example, when an officer becomes a director).

(c) Any issuer that has equity securities listed on more than one national securities exchange may designate one exchange as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity security of the issuer

is listed at the time of such election. The reporting person's obligation to file reports with each national securities exchange on which any equity security of the issuer is listed shall be satisfied by filing with the exchange so designated.

(d) Any person required to file a statement with respect to securities of a single issuer under both section 16(a) of the Act (15 U.S.C. 78p(a)) and either section 17(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a)) or section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(h)) may file a single statement containing the required information, which will be deemed to be filed under both Acts.

(e) Any person required to file a statement under section 16(a) of the Act shall, not later than the time the statement is transmitted for filing with the Commission, send or deliver a duplicate to the person designated by the issuer to receive such statements, or, in the absence of such a designation, to the issuer's corporate secretary or person performing equivalent functions.

(f)(1) A Form 5 shall be filed by every person who at any time during the issuer's fiscal year was subject to section 16 of the Act with respect to such issuer, except as provided in paragraph (f)(2) of this section. The Form shall be filed within 45 days after the issuer's fiscal year end, and shall disclose the following holdings and transactions not reported previously on Forms 3, 4 or 5:

(i) All transactions during the most recent fiscal year that were exempt from section 16(b) of the Act, except:

(A) Exercises and conversions of derivative securities exempt under either § 240.16b-3 or § 240.16b-6(b), and any transaction exempt under § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f) (these are required to be reported on Form 4);

(B) Transactions exempt from section 16(b) of the Act pursuant to § 240.16b-3(c), which shall be exempt from section 16(a) of the Act; and

(C) Transactions exempt from section 16(a) of the Act pursuant to another rule;

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(ii) Transactions that constituted small acquisitions pursuant to § 240.16a-6(a);

(iii) All holdings and transactions that should have been reported during the most recent fiscal year, but were not; and

(iv) With respect to the first Form 5 requirement for a reporting person, all holdings and transactions that should have been reported in each of the issuer's last two fiscal years but were not, based on the reporting person's reasonable belief in good faith in the completeness and accuracy of the information.

(2) Notwithstanding the above, no Form 5 shall be required where all transactions otherwise required to be reported on the Form 5 have been reported before the due date of the Form 5.

Persons no longer subject to section 16 of the Act, but who were subject to the Section at any time during the issuer's fiscal year, must file a Form 5 unless paragraph (f)(2) is satisfied. *See also* § 240.16a-2(b) regarding the reporting obligations of persons ceasing to be officers or directors.

(g)(1) A Form 4 must be filed to report: All transactions not exempt from section 16(b) of the Act; All transactions exempt from section 16(b) of the Act pursuant to § 240.16b-3(d), § 240.16b-3(e), or § 240.16b-3(f); and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act. Form 4 must be filed before the end of the second business day following the day on which the subject transaction has been executed.

(2) Solely for purposes of section 16(a)(2)(C) of the Act and paragraph (g)(1) of this section, the date on which the executing broker, dealer or plan administrator notifies the reporting person of the execution of the transaction is deemed the date of execution for a transaction where the following conditions are satisfied:

(i) the transaction is pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer (as defined in § 16a-1(d)) that satisfies the affirmative defense conditions of § 240.10b5-1(c) of this chapter; and

(ii) the reporting person does not select the date of execution.

(3) Solely for purposes of section 16(a)(2)(C) of the Act and paragraph (g)(1) of this section, the date on which the plan administrator notifies the reporting person that the transaction has been executed is deemed the date of execution for a discretionary transaction (as defined in § 16b-3(b)(1)) for which the reporting person does not select the date of execution.

(4) In the case of the transactions described in paragraphs (g)(2) and (g)(3) of this section, if the notification date is later than the third business day following the trade date of the transaction, the date of execution is deemed to be the third business day following the trade date of the transaction.

(5) At the option of the reporting person, transactions that are reportable on Form 5 may be reported on Form 4, so long as the Form 4 is filed no later than the due date of the Form 5 on which the transaction is otherwise required to be reported.

(h) The date of filing with the Commission shall be the date of receipt by the Commission; *Provided, however,* That a Form 3, 4, or 5 shall be deemed to have been timely filed if the filing person establishes that the Form had been transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the filing to the Commission no later than the required filing date.

(i) *Signatures.* Where Section 16 of the Act, or the rules or forms thereunder, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to

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the Commission or its staff a copy of any or all documents retained pursuant to this section.

(j) Where more than one person subject to section 16 of the Act is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities, either separately or jointly. Where persons in a group are deemed to be beneficial owners of equity securities pursuant to §240.16a-1(a)(1) due to the aggregation of holdings, a single Form 3, 4 or 5 may be filed on behalf of all persons in the group. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

[56 FR 7265, Feb. 21, 1991, as amended at 60 FR 26622, May 17, 1995; 61 FR 30392, 30404, June 14, 1996; 67 FR 43535, June 28, 2002; 67 FR 56467, Sept. 3, 2002]

§ 240.16a-4 Derivative securities.

(a) For purposes of section 16 of the Act, both derivative securities and the underlying securities to which they relate shall be deemed to be the same class of equity securities, *except that* the acquisition or disposition of any derivative security shall be separately reported.

(b) The exercise or conversion of a call equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) The exercise or conversion of a put equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

(d) The disposition or closing of a long derivative security position, as a result of cancellation or expiration, shall be exempt from section 16(a) of the Act if exempt from section 16(b) of the Act pursuant to §240.16b-6(d).

NOTE TO §240.16a-4: A purchase or sale resulting from an exercise or conversion of a derivative security may be exempt from sec-

tion 16(b) of the Act pursuant to §240.16b-3 or §240.16b-6(b).

[56 FR 7265, Feb. 21, 1991, as amended at 56 FR 19927, May 1, 1991; 61 FR 30392, June 14, 1996]

§ 240.16a-5 Odd-lot dealers.

Transactions by an odd-lot dealer (a) in odd-lots as reasonably necessary to carry on odd-lot transactions, or (b) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16(a) of the Act with respect to participation by such odd-lot dealer in such transaction.

§ 240.16a-6 Small acquisitions.

(a) Any acquisition of an equity security or the right to acquire such securities, other than an acquisition from the issuer (including an employee benefit plan sponsored by the issuer), not exceeding \$10,000 in market value shall be reported on Form 5, subject to the following conditions:

(1) Such acquisition, when aggregated with other acquisitions of securities of the same class (including securities underlying derivative securities, but excluding acquisitions exempted by rule from section 16(b) or previously reported on Form 4 or Form 5) within the prior six months, does not exceed a total of \$10,000 in market value; and

(2) The person making the acquisition does not within six months thereafter make any disposition, other than by a transaction exempt from section 16(b) of the Act.

(b) If an acquisition no longer qualifies for the reporting deferral in paragraph (a) of this section, all such acquisitions that have not yet been reported must be reported on Form 4 before the end of the second business day following the day on which the conditions of paragraph (a) of this section are no longer met.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30392, June 14, 1996; 67 FR 56467, Sept. 3, 2002]

§ 240.16a-7 Transactions effected in connection with a distribution.

(a) Any purchase and sale, or sale and purchase, of a security that is made in