

## Section 16 Reporting Gets a Little Easier

2008-06-30

A new SEC no-action letter simplifies Form 4 and Form 5 filings for officers, directors and 10% stockholders (so-called "Section 16 insiders") by relaxing the requirement that every transaction at a different price be reported on a separate line.

When a Section 16 insider instructs his or her broker to sell shares, the broker often effects the transaction through a series of small sales in order to obtain the best aggregate price. As a result, a trade order for a large sale can result in numerous individual sales that occur on the same day, but each at a slightly different price. Because the instructions for Form 4 state that "[e]ach transaction should be reported on a separate line," Section 16 insiders were often required to file lengthy and confusing Form 4s (and sometimes multiple Form 4s) in order to report each of the incremental sales that resulted from a single sell order. The same issue arose when Section 16 insiders made open market purchases or reported purchases or sales on Form 5.

The no-action letter--which was issued by the SEC's Division of Corporation Finance on June 25, 2008, to the Society of Corporate Secretaries & Corporate Governance Professionals--eases the burden of Section 16 reporting of open market purchases and sales by allowing a Section 16 insider to combine same-day, same-way transactions that occur within a \$1.00 price range on a single line. When reporting such transactions on a single line, the Section 16 insider must:

- Report in the price column the weighted average purchase or sale price for the transactions reported on that line;
- Specify in a footnote the range of prices for the transactions reported on that line;
- Undertake in a footnote to provide upon request by the SEC staff, the issuer, or a security holder of the issuer the full information regarding the number of shares purchased or sold at each separate price; and
- Maintain copies of detailed breakouts that show the full information regarding the number of shares purchased or sold at each separate price so that this information may be provided to the SEC staff, the issuer, or a security holder of the issuer upon request.

This method of aggregate reporting may *only* be used to report open-market purchases and sales reportable using transaction codes "P" and "S." This method of reporting may not be used to report

separate transactions involving both direct and indirect forms of beneficial ownership or different forms of indirect beneficial ownership.

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## *Authors*



**Meredith B. Cross**

PARTNER

✉ [meredith.cross@wilmerhale.com](mailto:meredith.cross@wilmerhale.com)



**Hal J. Leibowitz**

PARTNER

Co-Chair, Mergers and  
Acquisitions Practice

✉ [hal.leibowitz@wilmerhale.com](mailto:hal.leibowitz@wilmerhale.com)

☎ +1 617 526 6461



**Knute J. Salhus**

RETIRED PARTNER

✉ [knute.salhus@wilmerhale.com](mailto:knute.salhus@wilmerhale.com)

☎ +1 212 230 8800