

Section 16 Reporting Update: SEC Allows Aggregate Form 4 and Form 5 Reporting of Same-Day, Same-Way Open Market Transactions

On June 25, the Securities and Exchange Commission issued a no-action letter to the Society of Corporate Secretaries & Corporate Governance Professionals indicating that it would allow “aggregate reporting of same-day, same-way open market purchases or sales on Form 4 and Form 5 under Section 16(a) of the Securities Exchange Act of 1934.”¹ This effectively relaxes the current rule, embodied in Instruction 4(a)(ii) to Form 4 and Form 5, whereby Section 16 filers were required to report all transactions for different prices on separate lines.²

The SEC has indicated that it will not attempt to enforce this rule against Section 16 filers, allowing these same-way, same-day transactions to be reported in the aggregate, provided four conditions are met:

- Aggregated transactions reported on the same line must all be within a one-dollar price range.
- The price reported must be the weighted average purchase or sale price of the aggregated transactions for that line.
- A footnote to the form must specify the range of prices for each line of aggregated transactions.
- A footnote to the form must indicate that full information about the number of shares bought or sold at each price will be provided upon request to the Commission, the issuer, or a security holder of the issuer.

This method of aggregate reporting only applies to transactions coded “P” or “S,” and may not be used to report separate transactions “involving direct and indirect forms of beneficial ownership, or different forms of indirect beneficial ownership.”

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com.

¹ Society of Corporate Secretaries & Governance Professionals, SEC No-Action Letter (Jun. 25, 2008).

² Instruction 4(a)(ii) to Form 4 and Form 5; *see also* Section 16 *Compliance and Disclosure Interpretations*, Q. 133.08 (May 23, 2007). Because Section 16 insiders’ brokers often execute sales of shares through a series of small transactions at slightly different prices, reporting each transaction separately is extremely inconvenient--often, filers have to report many separate transactions at prices that are only fractionally different from each other. Furthermore, these filings can be confusing to investors.