

**§ 240.16a-8**

**17 CFR Ch. II (4-1-03 Edition)**

connection with the distribution of a substantial block of securities shall be exempt from the provisions of section 16(a) of the Act, to the extent specified in this rule, subject to the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities; and

(2) The security involved in the transaction is:

(i) Part of such block of securities and is acquired by the person effecting the transaction, with a view to distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; or

(ii) A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(b) Each person participating in the transaction must qualify on an individual basis for an exemption pursuant to this section.

**§ 240.16a-8 Trusts.**

(a) *Persons subject to section 16.* (1) *Trusts.* A trust shall be subject to section 16 of the Act with respect to securities of the issuer if the trust is a beneficial owner, pursuant to § 240.16a-1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (“ten percent beneficial owner”).

(i) The trust is a beneficial owner, pursuant to § 240.16a-1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (“ten percent beneficial owner”); or

(ii) The trustee otherwise is subject to section 16 of the Act and exercises or shares investment control over the issuer’s securities held by the trust, and either the trustee or a member of the trustee’s immediate family has a pecuniary interest in the issuer’s secu-

rities held by the trust, except where the trustee is:

(A) An entity or person that in the ordinary course of business acts as trustee, and is specified in § 240.16a-1(a)(1) (i) through (viii); or

(B) An officer or director of the issuer serving as trustee for the issuer’s employee benefit plan trust.

(2) *Trustees, beneficiaries, and settlors.* In determining whether a trustee, beneficiary, or settlor is a ten percent beneficial owner with respect to the issuer:

(i) Such persons shall be deemed the beneficial owner of the issuer’s securities held by the trust, to the extent specified by § 240.16a-1(a)(1); and

(ii) Settlers shall be deemed the beneficial owner of the issuer’s securities held by the trust where they have the power to revoke the trust without the consent of another person.

(b) *Trust Holdings and Transactions.* Holdings and transactions in the issuer’s securities held by a trust shall be reported by the trustee on behalf of the trust, if the trust is subject to section 16 of the Act, except as provided below. Holdings and transactions in the issuer’s securities held by a trust (whether or not subject to section 16 of the Act) may be reportable by other parties as follows:

(1) *Trusts.* The trust need not report holdings and transactions in the issuer’s securities held by the trust in an employee benefit plan subject to the Employee Retirement Income Security Act over which no trustee exercises investment control.

(2) *Trustees.* If, as provided by § 240.16a-1(a)(2), a trustee subject to section 16 of the Act has a pecuniary interest in any holding or transaction in the issuer’s securities held by the trust, such holding or transaction shall be attributed to the trustee and shall be reported by the trustee in the trustee’s individual capacity, as well as on behalf of the trust. With respect to performance fees and holdings of the trustee’s immediate family, trustees shall be deemed to have a pecuniary interest in the trust holdings and transactions in the following circumstances:

(i) A performance fee is received that does not meet the proviso of § 240.16a-1(a)(2)(ii)(C); or

(ii) At least one beneficiary of the trust is a member of the trustee's immediate family. The pecuniary interest of the immediate family member(s) shall be attributed to and reported by the trustee.

(3) *Beneficiaries.* A beneficiary subject to section 16 of the Act shall have or share reporting obligations with respect to transactions in the issuer's securities held by the trust, if the beneficiary is a beneficial owner of the securities pursuant to §240.16a-1(a)(2), as follows:

(i) If a beneficiary shares investment control with the trustee with respect to a trust transaction, the transaction shall be attributed to and reported by both the beneficiary and the trust;

(ii) If a beneficiary has investment control with respect to a trust transaction without consultation with the trustee, the transaction shall be attributed to and reported by the beneficiary only; and

(iii) In making a determination as to whether a beneficiary is the beneficial owner of the securities pursuant to §240.16a-1(a)(2), beneficiaries shall be deemed to have a pecuniary interest in the issuer's securities held by the trust to the extent of their pro rata interest in the trust where the trustee does not exercise exclusive investment control.

NOTE TO PARAGRAPH (B)(3): Transactions and holdings attributed to a trust beneficiary may be reported by the trustee on behalf of the beneficiary, provided that the report is signed by the beneficiary or other authorized person. Where the transactions and holdings are attributed both to the trustee and trust beneficiary, a joint report may be filed in accordance with §240.16a-3(j).

(4) *Settlors.* If a settlor subject to section 16 of the Act reserves the right to revoke the trust without the consent of another person, the trust holdings and transactions shall be attributed to and reported by the settlor instead of the trust; *Provided, however,* That if the settlor does not exercise or share investment control over the issuer's securities held by the trust, the trust holdings and transactions shall be attributed to and reported by the trust instead of the settlor.

(c) *Remainder interests.* Remainder interests in a trust are deemed not to confer beneficial ownership for pur-

poses of section 16 of the Act, provided that the persons with the remainder interests have no power, directly or indirectly, to exercise or share investment control over the trust.

(d) A trust, trustee, beneficiary or settlor becoming subject to section 16(a) of the Act pursuant to this rule also shall be subject to sections 16(b) and 16(c) of the Act.

[56 FR 7265, Feb. 21, 1991, as amended at 56 FR 19927, May 1, 1991; 61 FR 30392, June 14, 1996; 67 FR 56467, Sept. 3, 2002]

**§ 240.16a-9 Stock splits, stock dividends, and pro rata rights.**

The following shall be exempt from section 16 of the Act:

(a) The increase or decrease in the number of securities held as a result of a stock split or stock dividend applying equally to all securities of a class, including a stock dividend in which equity securities of a different issuer are distributed; and

(b) The acquisition of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities registered under section 12 of the Act.

NOTE: The exercise or sale of a pro rata right shall be reported pursuant to §240.16a-4 and the exercise shall be eligible for exemption from section 16(b) of the Act pursuant to §240.16b-6(b).

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30393, June 14, 1996]

**§ 240.16a-10 Exemptions under section 16(a).**

Except as provided in §240.16a-6, any transaction exempted from the requirements of section 16(a) of the Act, insofar as it is otherwise subject to the provisions of section 16(b), shall be likewise exempt from section 16(b) of the Act.

**§ 240.16a-11 Dividend or interest reinvestment plans.**

Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from section 16 of the Act if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for