



# Unlocking the Secrets to Section 16 Compliance

**Webinar**

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# Speakers



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# Section 16 Filing Basics (Overview)

# SEC Form Filings & Tracking Ownership



## Form 3

- New Insider

## Form 4

- Reporting Insider Transactions

## Form 5

- Reporting Insider Transactions not reported earlier

## Consequences for Late Filing

- Disclosure in 10-K and proxy statement
- SEC enforcement exposure
- Unhappy insider
- .

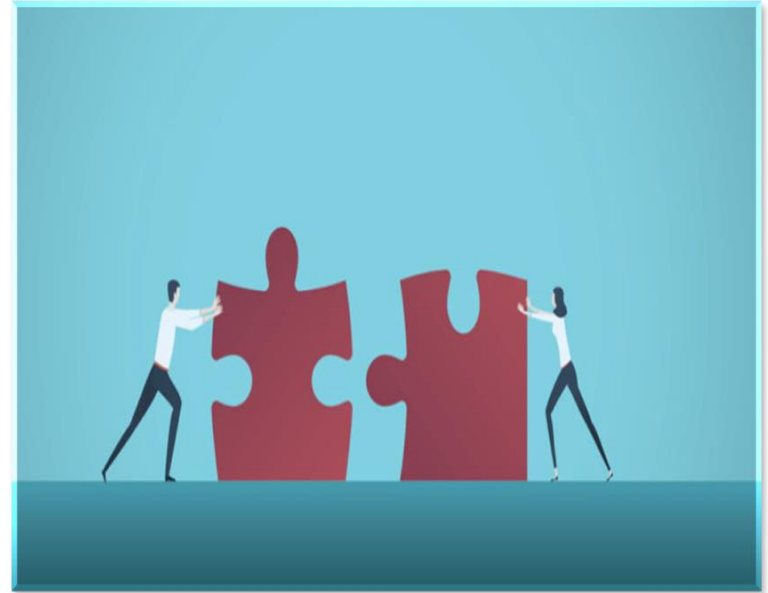


**U.S. Securities and  
Exchange Commission**

# Who Handles Forms 3, 4, & 5?



In House Counsel	60%
Stock Administrator	32%
Outside Counsel	17%
Corporate Secretary	15%
Finance	6%
HR / Comp / Ben.	5%
Third Party Admin	3%
Insider	0%
Other	3%



- Defined processes / Roles
- Coordination of departments
- Standardization / Consistency

- Check, check, and recheck (Data Quality)
- Power of Attorney Delegation



# Considerations & Actionable Advice

# Set Up For Success



- Edgar / CIC numbers
  - Tax Data
  - Demographics
  - .
- Who's providing the data?
  - Standardize review process
  - Nuances of 10b5-1 plans
  - .

# RSU Shares



## Table 1 or Table 2 Upon Grant



### **TABLE 1** **CONSIDERATIONS**

- File Form 4 once for grant and vest (if no taxes)
- If taxes withheld, still requires 2nd filing
- Beneficial ownership tracking – may have to be backed out if it does not vest
- Awards payable in stock use Table 1 or 2
- Reporting Sales
- .



### **TABLE 2** **CONSIDERATIONS**

- Form 4 for both grant & release events (in all tax situations) - may have additional forms for any subsequent STC executions
- Upon release move to Table 1 from Table 2
- Easier to track beneficial ownership as you only track actual shares
- Settled in Cash requires Table 2
- .



# ESPP Perspectives



## Considerations when reporting ESPP ownership for Section 16 insiders:

- Is transactional reporting exemption available?
- Is there a reason to report exempt acquisitions?
- How to update holdings if acquisitions are exempt.

# DRIP Programs



## Thoughts on Dividend Reinvestment Plans for Section 16 insiders:

- Make sure DRIP is Rule 16a-11 compliant.
- Reinvestment feature of brokerage account.
- Reinvestment under equity plans.



# Performance Grants



## Key Factors for Consideration

- Are performance conditions tied to market price of stock?
- Are performance conditions "material"?
- Potential reporting triggers: grant, interim performance, final earnout
- What to disclose in Form 4 & when?
- Failure of performance
- Performance as a vesting accelerator



# When Section 16 Insiders Leave Your Company



## Compliance & Regulatory Considerations

- Potential Section 16 "tail"
- Insider trading policy restrictions
- Rule 144 compliance
- Consider an "exit memo"

## Stock Administration Considerations

- Ensure insiders are "tagged" correctly – Platform reflects correct status



# When Section 16 Insiders Join Your Company



## Compliance & Regulatory Considerations

- Identify securities "beneficially owned"
- Insider trading policy restrictions
- Determine the date the Form 3 clock starts
- Report onboarding grants on Form 4

## Stock Administration Considerations

- Ensure insiders are tagged correctly
- File Form ID promptly
- Awareness of grant timing

# Minimizing Errors In Filing



## Process Considerations

- Managing time (getting ahead)
- Reviewing prior historical form
  - o SEC share balance vs Tracker balance
  - o Footnotes, Indirect shares
- Supporting documentation
  - o Beneficial ownership tracker
  - o Platform activity reports (do they match?)
- 2nd set of eyes
  - o Check each box for accuracy
  - o Beneficial shares owned
- Efficiency opportunities – E signatures example



# When Errors Do Occur...



## Material Errors

- Whether and when to amend report
- Item 405 disclosure considerations

## Immaterial Errors

- Amend, ignore, or address in next report?



Alright, any...

# Questions?

**Email to: [cbell@sos-team.com](mailto:cbell@sos-team.com)**





**Thank you!**