Question 101.01

Question: A security holder owns over five percent of a class of an issuer's equity securities. The issuer's Form 10 registering this class of securities under Section 12(g) of the Exchange Act just became effective. If the security holder has not added any securities to its holdings since the effective date of the Form 10, ~~may~~should the security holder report its beneficial ownership on Schedule 13G pursuant to Rule 13d-1(d)?

Answer: Yes. The security holder ~~is eligible to~~must file a Schedule 13G pursuant to Rule 13d-1(d) ~~since~~. Since the security holder has not "acquired" any securities of a class registered under Section 12 of the Exchange Act~~. See Section 13(d), which requires an "acquisition" for the application of the reporting provisions~~, the security holder is not required to file a Schedule 13D pursuant to Rule 13d-1(a), or under Section 13(d). The security holder must file the Schedule 13G within 45 days after the end of calendar ~~year~~quarter in which the class of securities was registered. Note that the security holder is not required to certify that the shares were acquired or are held in the ordinary course or without the purpose or the effect of changing or influencing the control of the issuer of the securities.

If the security holder acquires additional equity securities after the effective date of the Form 10, the security holder must report its entire holdings on Schedule 13D or evaluate whether it is eligible to rely on Rules 13d-1(b) or 13d-1(c) to continue to report on Schedule 13G if the most recent acquisition, when added to all other acquisitions of securities of the same class during the 12 months immediately preceding the date of the most recent acquisition, aggregates to more than two percent of the class of such securities. See Section 13(d)(6)(B) of the Exchange Act. This 12-month period will run back from the date of the acquisition to the time when the issuer was privately held if the acquisition occurs within 12 months after the effective date of the Form 10. If the security holder has acquired two percent or less during this period, the security holder simply may continue to rely on Rule 13d-1(d) and reflect the present acquisition in its Schedule 13G pursuant to Rule 13d-2(b). [~~Sep. 14, 2009~~July 11, 2025]

Question 101.06

Question: A customer instructed its broker to purchase up to 4.9 percent of the outstanding class of ~~a~~ Section 12 registered voting common stock of a company. The broker mistakenly purchased over five percent for the customer's account. The customer refused to pay for the excess shares and instructed the broker to sell all shares in excess of 4.9 percent. Is the customer required to file a Schedule 13D or 13G pursuant to Rule 13d-~~3(a)~~1?

Answer: Yes. The customer is "deemed" to have acquired beneficial ownership of greater than five percent of the class pursuant to Rule 13d-~~3~~5(a) and, therefore, ~~is required to~~must file a Schedule 13D, or Schedule 13G in lieu thereof, under ~~Sections~~Section 13(d~~) and 13(g~~) of the Exchange Act and corresponding Rule 13d-1. The absence of an intent to acquire in excess of five percent is not a consideration with respect to the applicability of ~~Sections~~Section 13(d~~) and 13(g~~). [~~Sep. 14, 2009~~ July 11, 2025]

Question 103.01

Question: If a security holder acquires more than 10 percent of a class of equity securities before the registration of that class under Section 12 of the Exchange Act, is it required to file a Schedule 13D when the issuer registers the class of securities under Section 12? If the security holder is not required to file a Schedule 13D, when must it file a Schedule 13G?

Answer: The security holder is not required to file a Schedule 13D upon registration of the class of securities under Section 12. See Section 13(d), which requires a filing of Schedule 13D only upon the "acquisition" of equity securities of a class registered under Section 12. However, the security holder must file a Schedule 13G pursuant to Rule 13d-1(d) within 45 days after the end of the calendar ~~year~~quarter in which the Exchange Act registration becomes effective. Note that the provisions of Rule 13d-1(b)(2), which require certain beneficial owners of greater than 10 percent of a class of equity securities registered under Section 12 to file a Schedule 13G within ~~10~~five business days after the end of a designated month, are limited to the institutional investors listed in Rule 13d-1(b)(1), and do not apply to beneficial owners that file a Schedule 13G pursuant to Rule 13d-1(d). [~~Sep. 14, 2009~~ July 11, 2025]

Question 103.06

Question: A group comprised of three entities filed a Schedule 13G pursuant to Rules 13d-1(c) and 13d-1(k)(1). One of the group members transfers its securities (constituting six percent of the issuer's class of equity securities registered under Section 12 of the Exchange Act) to its parent as a dividend. The parent, a Schedule 13G filer with respect to these securities, has not ~~agreed to act together~~acted as a group with the other group members for the purpose of acquiring, holding, voting or disposing of equity securities of the issuer. What beneficial ownership reports must the parent and the group file after the subsidiary transfers the securities to its parent?

Answer: The parent must file an amended Schedule 13G 45 days after the end of the calendar ~~year~~quarter in which the subsidiary transfers the securities if becoming the direct beneficial owner of the transferred securities constitutes a material change in the information the parent previously disclosed. See Rule 13d-2(b). Because the parent already was the indirect beneficial owner of the securities owned by the subsidiary before the transfer, the parent does not "acquire" the securities within the meaning of Section 13(d)(1) as a result of the transfer and, therefore, does not incur an obligation to file a Schedule 13D. The group is required to amend its Schedule 13G to reflect the reduction in the amount beneficially owned and the departure of the subsidiary from the group. [~~Sep. 14, 2009~~July 11, 2025]

Question 103.09

Question: A security holder of a parent company receives more than five percent of a Section 12 registered class of equity securities of the parent's subsidiary in a spin-off transaction. The spin-off was not conditioned upon the approval of the parent's security holders. Does the security holder have an obligation to file a beneficial ownership report to reflect its ownership of the subsidiary's equity securities?

Answer: Yes, but the security holder is eligible to file a Schedule 13G pursuant to Rule 13d-1(d) within 45 days after the end of the calendar ~~year~~quarter in which the spin-off occurred, since the receipt of securities in a spin-off transaction does not constitute an "acquisition" within the meaning of Section 13(d) and Rule 13d-1. This exception from the obligation to file a Schedule 13D is not available to persons who influence or control the parent's decision to spin-off the subsidiary, including, but not limited to, officers and directors of the parent. Instead, this exception only applies to those security holders that became beneficial owners as a result of an involuntary change in circumstances. [~~Sep. 14, 2009~~ July 11, 2025]

Question 103.10

Question: Rule 13d-1(a) states that a Schedule 13D must be filed within ~~10~~five business days after the date of acquisition of more than five percent of a class of equity securities registered under Section 12 of the Exchange Act. Is the Schedule 13D due ~~10~~five business days after the trade date or the settlement date of a securities transaction that creates the reporting obligation?

Answer: The Schedule 13D beneficial ownership report must be filed within ~~10~~five business days ~~of~~after the trade date of the securities transaction. Although under contract law the date on which the ownership of the shares is transferred may be the settlement date, an investor may, at a minimum, exercise investment power over the securities that were acquired through the trade as of the trade date. For purposes of calculating the ~~10~~ five business day time period, the first calendar day after the trade date counts as day number one. [~~Nov. 16, 2009~~ July 11, 2025]

Question 104.01

Question: When a Schedule 13D or 13G reporting person sells the subject securities short, does the reporting person's beneficial ownership change?

Answer: No. Short sales normally will not change a reporting person's Rule 13d-3 beneficial ownership since such sales do not change the amount of shares over which the person has "voting or investment power." However, short sales may trigger a requirement to amend the Schedule 13D pursuant to Rule 13d-2 unless all applicable changes in the facts previously set forth in the reporting person's Schedule 13D are not material. For example, the short sale may represent a change in the source of funds (Item 3), a possible shift in purpose (Item 4) (particularly to the extent that a plan or proposal to dispose of securities of the issuer was not disclosed previously), a "transaction" in the subject security (Item 5), as well as a ~~"~~contract, ~~agreement~~arrangement, understanding, or relationship ~~...~~ with respect to ~~...~~ securities of the issuer~~"~~ (Item 6) or require that an exhibit be filed (Item 7). The same analysis applies to a pledge of the securities in a secured transaction or the writing of call options. [~~Sep. 14, 2009~~ July 11, 2025]

Question 104.02

Question: Are all Schedule 13G filers required to file an ~~annual~~ amendment to the Schedule within 45 days after the end of the calendar ~~year~~quarter to report any material changes in the information previously disclosed, or is this obligation limited to institutional investors who file on Schedule 13G pursuant to Rule 13d-1(b)?

Answer: All Schedule 13G filers must file an ~~annual~~ amendment to report any material changes in the information previously disclosed. The Schedule 13G does not need to be amended if there has been no material change to the information disclosed in the Schedule or if the only change is to the percentage of securities beneficially owned by the filing person resulting solely from a change in the aggregate number of the issuer's securities outstanding. See Rule 13d-2(b) ~~and Exchange Act Release No. 19188 (October 28, 1982)~~. [~~Sep. 14, 2009~~ July 11, 2025]

Question 104.03

Question: What steps should a security holder take if it failed to file required amendments to a Schedule 13D in a timely manner?

Answer: Rule 13d-2(a) requires that a security holder amend its Schedule 13D ~~promptly when~~within two business days after the date of "any material ~~changes occur~~change … in the facts set forth in the Schedule 13D." If a security holder has failed to timely file any required Schedule 13D amendments, the security holder should immediately amend its Schedule 13D to disclose the required information. If the security holder failed to file multiple amendments to the Schedule 13D when required, it may disclose that information by filing multiple amendments or filing one combined amendment. Regardless of the approach taken, the security holder must ensure that the filings contain the information that it should have disclosed in each required amendment, including the dates and details of each event that necessitated a required amendment. Any of these steps taken by the security holder in these situations will not necessarily affect the determination of liability under the federal securities laws for the failure to ~~promptly~~timely file a required amendment to a Schedule 13D. [~~Sep. 14, 2009~~ July 11, 2025]

Question 104.04

Question: A security holder owns variable-rate convertible notes. The number of common shares into which the notes are convertible within the next 60 days varies daily with the price of the underlying common stock. Does the holder of the convertible notes have the obligation to ~~promptly~~ amend the Schedule 13D pursuant to Rule 13d-2(a) whenever a change in the conversion rate ~~would result~~results in a one percent or more change in beneficial ownership of the underlying common shares?

Answer: Yes. Under Rule 13d-3(d), the right to acquire additional securities through changes in the amount of securities deemed beneficially owned based on a conversion rate is viewed in the same manner as the initial receipt of the right to acquire securities upon conversion that first triggered a filing obligation under Rule 13d-1(a). [~~Sep. 14, 2009~~ July 11, 2025]

Question 104.06

Question: Are individual security holders that separately report on Schedule 13D required to amend their Schedules 13D when they later form a group together under Section 13(d)(3) of the Exchange Act ~~and Rule 13d-5(b)~~?

Answer: Yes. The security holders are required to amend their Schedules 13D because becoming a member of a group constitutes a material change under Rule 13d-2(a). The security holders may file separate amendments to their individual Schedules 13D, which would also satisfy the group's reporting obligation pursuant to Rule 13d-1(k)(2). Alternatively, they may file a joint Schedule 13D under Rule 13d-1(k)(1). The joint filing would constitute an initial Schedule 13D by the newly-formed group, but the group is required to file the Schedule 13D ~~promptly~~within two business days under Rule 13d-2(a) rather than within ~~10~~five business days of the group's formation since the report is intended to amend the three previously filed individual Schedules 13D. [~~Sep. 14, 2009~~ July 11, 2025]

Question 104.07

Question: If a security holder reporting on Schedule 13D sells all of its shares after a voting record date but before the date of the shareholder meeting and retains the right to vote the shares through the meeting date, when should it file a final amendment on Schedule 13D to report that it is no longer a beneficial owner of more than five percent of the class of securities?

Answer: The security holder should not file the final amendment on Schedule 13D until the end of the shareholder meeting. While the security holder must file an amendment to the Schedule 13D under Rule 13d-2(a) ~~promptly~~ after the sale to disclose the disposition of greater than one percent of the outstanding shares, it should not file a final amendment upon the sale of all of its shares because its voting power is not extinguished until the conclusion of the meeting. [~~Sep. 14, 2009~~ July 11, 2025]

Question 105.01

Question: A pledgee of securities was not required to file a beneficial ownership report on Schedule 13D or Schedule 13G before default by the obligor because the pledgee lacked the power either to vote or to dispose of the pledged securities and was not otherwise deemed to be a beneficial owner by application of Rules 13d-3(d)(3)(i)~~—~~-(iii). Upon default by the pledgor, should the pledgee immediately examine whether it is required to file a beneficial ownership report or may it wait until it takes all formal steps necessary to declare a default?

Answer: After a default by the pledgor has occurred, the pledgee should re-examine the pledge agreement to determine whether the pledgee has been granted voting power or investment power irrespective of whether it has taken all formal steps necessary to declare a default or perfect its rights. To the extent that, upon default, the pledge agreement grants the pledgee voting or investment power over greater than five percent of the class of outstanding securities, the pledgee will be deemed to have acquired beneficial ownership of the pledged securities on the date of default and must report its beneficial ownership on a Schedule 13D within ~~10~~five business days ~~thereafter~~after that date or, if eligible, a Schedule 13G within the requisite time frame. [~~Sep. 14, 2009~~ July 11, 2025]

Question 105.06

Question: Certain shareholders have entered into a voting agreement under which each shareholder agrees to vote the shares of a voting class of equity securities registered under Section 12 that it beneficially owns in favor of the director candidates nominated by one or more of the other parties to the voting agreement. Under ~~Rule~~Section 13(d~~-5~~)(~~b~~3), the shareholders have formed a group ~~because~~given that they have agreed to act together for the purpose of voting the equity securities of the issuer. Under what circumstances is the beneficial ownership of a party to the voting agreement attributed to one or more other parties to the agreement?

Answer: The formation of a group under ~~Rule~~Section 13(d~~-5~~)(~~b~~3), without more, does not result in the attribution of beneficial ownership to each group member of the securities beneficially owned by other members. Under Section 13(d)(3) of the Exchange Act, ~~the~~this group is treated as a new "person" for purposes of Section 13(d)(1)~~,~~ and ~~the group~~ is deemed to have acquired, ~~by~~due to the agreement among its members and corresponding operation of Rule 13d-5(b), beneficial ownership of the shares beneficially owned by its members. (Note that the analysis is different for Section 16 purposes. See Section II.B.3 of Exchange Act Release No. 28869 (February 8, 1991).)

In order for one party to the voting agreement to be treated as having or sharing beneficial ownership of securities held by any other party to the voting agreement, evidence beyond formation of the group under ~~Rule~~Section 13(d~~-5~~)(~~b~~3) would need to exist. For example, if a party to the voting agreement has the right to designate one or more director nominees for whom the other parties have agreed to vote, the party with that designation right becomes a beneficial owner of the securities beneficially owned by the other parties under Rule 13d-3(a)~~, because~~ if the agreement gives that person the power to direct the voting of the other parties' securities. Similarly, if a voting agreement confers the power to vote securities pursuant to a bona fide irrevocable proxy, the person to whom voting power has been granted becomes a beneficial owner of the securities under Rule 13d-3. See ~~Q & A No.~~Example 7 ~~to~~in Exchange Act Release No. 13291 (February 24, 1977). Conversely, parties that do not have or share the power to vote or direct the vote of other parties' shares would not beneficially own such shares solely as a result of entering into the voting agreement. Note, however, that a contract, arrangement, understanding or relationship concerning voting or investment power among parties to the agreement, other than the voting agreement itself, may result in a party to the voting agreement having or sharing beneficial ownership of securities held by other parties to the voting agreement under Rule 13d-3. [~~Jan. 3, 2014~~ July 11, 2025]

Question 107.01

Question: An investment advisor represents several major shareholders of an issuer that is contemplating a rights offering. The major shareholders beneficially own, in the aggregate, more than five percent of the issuer's Section 12 registered voting class of equity securities and retained the investment advisor to persuade the issuer to revise or drop the offer. Would such an arrangement result in the formation of a group under Section 13(d)(3) ~~and corresponding Rule 13d-5(b)~~ by the major shareholders that engaged the investment advisor?

Answer: Yes, the major shareholders have formed a group under Section 13(d)(3~~) and Rule 13d-5(b)(1~~) because they ~~have agreed to act together~~acted as a group for the common purpose or goal of holding their securities. The major shareholders' ~~agreement~~joint decision to retain an investment advisor in a collective attempt to gain influence over a management decision with respect to a rights offering accordingly requires that the security holdings of the major shareholders be aggregated and reported on a Schedule 13D. A shareholder will cease to be a member of the group when it no longer ~~agrees to act together~~acts as a group with the other group members for the purpose of holding the equity securities of the issuer. ~~See Exchange Act Section 16 and Related Rules and Forms C&DI 110.02 at http://www.sec.gov/divisions/corpfin/guidance/sec16interp.htm.~~ [~~Sep. 14, 2009~~ July 11, 2025]

Question 110.03

Question: Do the references to "securities of the issuer" in Items 4(a) and 6 of Schedule 13D include all securities of the issuer, such as debt securities?

Answer: Yes, the references to "securities of the issuer" in Items 4(a) and 6 of Schedule 13D include all of the issuer's securities, whether or not the securities are a class of equity, have voting rights or are registered or to be registered under Section 12 of the Exchange Act. For example, a reporting person who has formulated any plans or proposals or entered into any agreements involving the acquisition of debt securities of the issuer will be required to amend ~~promptly~~ its Schedule 13D Item 4 and 6 disclosures to the extent material. [~~Sep. 14, 2009~~ July 11, 2025]

Question 110.04

Question: When a Schedule 13D reporting person enters into a contingent contract with an unaffiliated third party for the sale of enough shares that would cause the third party to hold over five percent of a class of equity securities registered under Section 12 when the sale occurs, is the third party required to file a beneficial ownership report? Is the Schedule 13D reporting person required to amend its Schedule 13D ~~promptly~~ upon execution of the contract?

Answer: The third party does not acquire beneficial ownership until it has a right to acquire the shares within 60 days; accordingly, the third party has no beneficial ownership reporting obligation until the material contingencies over which it has no control are waived or satisfied. If all material contingencies are within the third party's control either to waive or satisfy, then the third party has a beneficial ownership reporting obligation upon execution of the contract. In addition, as a result of the execution of the contract, the person already reporting on Schedule 13D must ~~promptly~~ amend its Schedule 13D to disclose any material changes to its Item 4 and Item 6 disclosures ~~as a result of the contingent contract~~. [~~Sep. 14, 2009~~ July 11, 2025]

Question 110.06

Question: A security holder owns six percent of a public company's common stock and files beneficial ownership reports on Schedule 13D. In response to Item 4 of Schedule 13D, the security holder states that it has no current plans to engage in any of the kinds of transactions enumerated in Item 4(a)-(j), but reserves the right to engage in such a transaction in the future. The security holder later determines to take the subject company private and engages an investment bank that formulates terms for the contemplated transaction. The security holder has not yet approached management of the target company or taken other steps to commence the transaction. Does the security holder have an obligation to amend its Schedule 13D? If so, when is the amendment requirement triggered?

Answer: Yes, the security holder is required to ~~promptly~~ amend its Schedule 13D to disclose the material change to the information appearing in Item 4 because it has formed a plan that would or could result in delisting or deregistration of the subject securities and its existing Item 4 disclosure is no longer accurate. A plan or proposal, as those terms are used in Item 4, is not deemed to exist only upon execution of a formal agreement or commencement of a tender offer, solicitation or similar transaction. Generic disclosure reserving the right to engage in any of the kinds of transactions enumerated in Item 4(a)-(j) must be amended when the security holder has formulated a specific intention with respect to a disclosable matter. ~~See, e.g., *In the Matter of Tracinda Corporation*, Exchange Act Release No. 58451 (September 3, 2008).~~ [~~Sep. 14, 2009~~ July 11, 2025]