

**Year-End Tool Kit**

**FORM 5 AND SECTION 16 REPORTING DIRECTOR AND OFFICER QUESTIONNAIRE**

**2022-2023**

**PREPARER NOTES**:

Section 16 of the Securities Exchange Act of 1934 and the rules adopted by the Securities and Exchange Commission (“SEC”) under Section 16 impose liability and reporting obligations on directors and executive officers (and greater than 10% stockholders) for short-swing trading in their company’s equity securities. These rules also include an end-of-year reporting requirement on SEC Form 5. Most public companies have an executive officer who assists directors and executive officers with the preparation and filing of Forms 3, 4 and 5. This questionnaire is intended to document whether directors and executive officers are required to file Form 5s and, if so, to assist with the collection of the information required to prepare these Form 5 reports.

Companies are required to report in their proxy statements any known failure to file a Section 16 report on a timely basis during the most recently completed fiscal year by any person who was a director, executive officer, 10% stockholder or other person subject to Section 16. Under SEC rules, a “known failure to file” includes the failure of any of these persons to file a Form 5, unless (1) the company receives a written representation from the reporting person that no Form 5 is required (and maintains this representation for two years, making a copy available to the SEC upon request) or (2) the company otherwise knows that no Form 5 is required. This questionnaire may be used as a written representation that no Form 5 is due. Please note that this requirement applies to all persons who were Section 16 filers at any time during the most recent fiscal year, including former directors and/or executive officers who execute transactions in the Company’s equity securities within six months of an opposite-way transaction that occurred while that person was a director or executive officer, unless the transaction is otherwise exempt from Section 16(b). Accordingly, the Company may need to send this questionnaire to persons who are no longer directors or executive officers of the Company. Additionally, to the extent the Company desires to obtain written representations from Section 16 filers other than current or former directors or executive officers, an alternative form should be used.

This questionnaire contains some blanks where information, such as the date on which the company’s fiscal year ends, should be inserted. These blanks are prominently indicated; please modify the questionnaire accordingly. In addition, this questionnaire contains references to DRIPs and tax conditioned plans that should be deleted if these do not apply to a specific company.

We would be happy to assist in interpreting the Section 16 rules and preparing Forms 4 and 5. This questionnaire was designed to assist companies that prefer to collect and process this information directly. Please feel free to contact us if you have any questions concerning these matters.

Please note that this questionnaire supplements other questionnaires for use in connection with year-end reporting and disclosure matters for public companies. Additional separate questionnaires addressing the following matters are available in our Year-End Tool Kit to supplement this questionnaire:

1. information required with respect to directors, executive officers and control persons;
2. director and committee member independence requirements under SEC and stock exchange rules;
3. independence standards of Institutional Shareholder Services Inc. and the Council of Institutional Investors;
4. Iran Threat Reduction and Syria Human Rights Act matters;
5. Foreign Corrupt Practices Act matters; and
6. Rule 506(d) and Rule 506(e) “bad actor” events.

This document is provided with the understanding that it does not constitute the rendering of legal or other professional advice by Goodwin Procter LLP or its attorneys. This document (which is in Microsoft Word® format) may be saved and edited so that it can be modified for a specific company (for example, name of the company, name of the contact person, etc.). This document may also require other revisions to render it suitable for a specific company’s circumstances. In the event this document is substantively modified (for example, to shorten or simplify it), the preparer should verify that the questionnaire, as modified, will still gather the necessary information. This document is not a substitute for advice of qualified attorneys. We recommend that you consult with your regular Goodwin Procter LLP attorney prior to using this document.

NAME:

**[EDIT – Insert Company Name]**

**FORM 5 AND SECTION 16 REPORTING QUESTIONNAIRE
for Directors and Executive Officers**

IN CONNECTION WITH THE
PROXY STATEMENT FOR THE 2023 ANNUAL STOCKHOLDERS MEETING AND
FORM 10-K ANNUAL REPORT FOR FISCAL 2022

***IMPORTANT: REQUIRES PROMPT ATTENTION***

As a director or executive officer[[1]](#footnote-1) of **[EDIT – Insert Company Name]** (the “Company”), you are subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934. These rules may require you to file, within 45 days after the end of the Company’s most recently completed fiscal year (i.e., by **[EDIT–revise following date if the Company’s fiscal year end is not December 31, 2022]** February 14, 2023), an Annual Statement of Changes in Beneficial Ownership on Form 5 with the Securities and Exchange Commission (the “SEC”). Form 5 is used to report any transactions in the Company’s equity securities that you engaged in during the Company’s most recently completed fiscal year that were not previously reported on a Form 4, other than certain types of transactions that are exempt from reporting. These reporting requirements are summarized at the beginning of this questionnaire.

**[INSTRUCTION: revise this paragraph as necessary and attach copies of all Form 3 and/or Form 4 reports filed by the director or executive officer reporting transactions with trade dates during the Company’s most recently completed fiscal year]** For your convenience, the Company coordinates the filing of Forms 3, 4 and 5 on behalf of all executive officers and directors. Attached are copies of all Form 3 and Form 4 filings made on your behalf, if any, during the Company’s most recently completed fiscal year. Due to the complexity of the reporting requirements, if you are required to file a Form 5, the Company will (with your cooperation and unless you request otherwise) prepare and file the Form 5 on your behalf. The Form 5 must be filed electronically with the SEC’s EDGAR system not later than [**EDIT–revise following date if fiscal year end is not December 31, 2022]** February 14, 2023.

To assure timely filing of any reports that will be due, please complete this questionnaire, sign it and return it to **[EDIT – insert Company contact name]** as soon as possible, and in any event not later than [**EDIT–change year if necessary and insert date approximately 15-30 days after end of fiscal year]** \_\_\_\_\_\_\_\_ \_\_, 2023. Please contact **[EDIT – insert Company contact name]** at [**EDIT –insert Company contact telephone number]** if you have any questions. Failure to return this questionnaire may, among other things, result in disclosure of a delinquency in the Company’s proxy statement and/or Annual Report on Form 10 K.

Please note that in reporting your transactions in the Company’s equity securities, you should report all changes in your “beneficial ownership,” which generally includes (i) any shares you own directly or indirectly, (ii) any shares owned by members of your immediate family living in your household, (iii) any other shares in which you have the opportunity to profit from the trading of such shares, and (iv) any changes in your ownership of options and other derivative securities.

Although the Company assists directors and executive officers in the preparation and filing of Form 4 and Form 5 reports, the proper filing of these reports remains the responsibility of each executive officer and director, and the Company is not responsible for any liability arising from your transactions in the Company’s equity securities or the reporting of those transactions.

**FORM 5 AND SECTION 16 QUESTIONNAIRE**

**Part I: Background**

Under the SEC’s Section 16 rules, nearly all transactions in the Company’s equity securities (for example, purchases, sales and option exercises) must be reported on Form 4 within two business days after the trade date.

Limited types of transactions are eligible for deferred annual reporting, however, and other types of transactions are not required to be reported but should be reflected in the end-of-period balance shown on a Form 5 (or, alternatively, on a Form 4 filed before the date on which a Form 5 would be due). The discussion below summarizes how SEC Form 5 reporting requirements apply to any transactions of these types involving Company securities that you may have executed during the Company’s most recently completed fiscal year.

1. The following transactions are exempt from Form 4 reporting, but are required to be reported on Form 5 unless they have previously been reported voluntarily on a Form 4. These are referred to in this questionnaire as “**Form 5 Transactions**.”
* Exempt Transactions. The most common types of transactions that are exempt from Form 4 reporting include acquisitions of shares acquired as bona fide gifts or as an inheritance, or dispositions of shares in bona fide gift transactions.
* Small Acquisitions. Generally, any acquisition or series of acquisitions of equity securities in a six-month period during the Company’s most recently completed fiscal year that did not exceed $10,000 in market value in the aggregate. The deferred reporting available for “small acquisitions” does not apply to exercises of stock options or other acquisitions of securities from the Company or a Company-sponsored employee benefit plan.
1. The following types of transactions are not reportable on Form 5, but should be reflected in end-of-period holdings on the reporting individual’s Form 5 report. These are referred to in this questionnaire as “**Non-Reportable Transactions**.” The correct manner to reflect these holdings is to add them to the number of Company securities shown in column 5 of Form 5 and include a footnote indicating that “the number of shares shown includes [\_\_] shares acquired through the reporting individual’s participation in the Company’s [name of plan].”
* DRIPs. Any acquisition of securities through the reinvestment of dividends pursuant to a broad-based stockholder dividend reinvestment plan. This does not include purchases through optional cash payments.
* Tax Conditioned Plans. Any routine, periodic acquisitions made pursuant to a tax conditioned plan (for example, Section 401(k) plans and employee stock purchase plans, and certain other broad-based plans that meet the coverage and participation requirements of the Internal Revenue Code). *This does not include “discretionary transactions” (generally, transfers into or out of a Company stock account or volitional cash withdrawals or loans) covered by Rule 16b 3(b)(1).*

**Part II: Form 5 Information**

1. **(A)** Please review the holdings and/or transactions engaged in by you and reported on the attached Forms 3 and/or 4, if any, filed on your behalf by the Company with respect to transactions that occurred during the Company’s most recently completed fiscal year. Other than Non-Reportable Transactions and those holdings and/or transactions reported on the attached Forms 3 and/or 4, did you engage in any other transactions during the Company’s most recently completed fiscal year?

🞎 Yes 🞎 No

Note: If you checked “No,” please skip below to Part III. If you checked “Yes,” please answer questions **(B1)** and **(B2)** in the spaces provided below. Please attach additional sheets if necessary.

**(B1)** Form 5 Transactions. Please describe in the space below any Form 5 Transactions in the Company’s equity securities occurring on or after the beginning of the Company’s most recently completed fiscal year that have not been voluntarily reported on one of the attached Form 4 reports. Please specify the nature of the transaction, the date, the amount of securities involved and the price, if applicable.

**(B2)** Delinquent Transactions. Please describe in the space below any holdings of or transactions in the Company’s equity securities that were required to be reported to the SEC on Form 3 or Form 4 during the Company’s most recently completed fiscal year that have **not been previously reported**.

Note: If you answered “None” to both **(B1)** and **(B2)**, then “No” in **(A)** above should have been checked. Please review your responses.

Note: Please sign this questionnaire under Part IV below.

**Part III: “No Form 5 Filing Due” Statement**

If no Form 5 filing is due (that is, if you checked “No” in **(A)** above, or the answer to both of questions **(B1)** and **(B2)** in Part II above was “none”), your signature below confirms that you have reviewed (1) the requirements for filing Form 5 as set forth above, (2) all of your holdings and transactions in the Company’s equity securities during the Company’s most recently completed fiscal year and (3) all Form 3 and Form 4 filings made by you or on your behalf during that period. On the basis of this review, you represent that you are not required to file a Form 5 for the Company’s most recently completed fiscal year and agree that the Company may retain this questionnaire and provide it to the SEC upon request.

**Part IV: Signature**

Please sign and date this questionnaire below.

|  |  |
| --- | --- |
| Dated:  |   |
|  | Signature |
|  |   |
|  | Name: Please print or type |

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1. “Executive officer” for purposes of this questionnaire includes the Company’s president, principal financial officer, principal accounting officer (or, if there is no principal accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Officers of the Company’s parent(s) or subsidiaries should be treated as executive officers of the Company if they perform such policy-making functions for the Company. [↑](#footnote-ref-1)