

Yes, You Can Disclaim Beneficial Ownership in a Form 4 in Appropriate Circumstances

Unless you're a diehard Section 16 fan, you might not realize that reporting securities as "indirectly owned through others" is not a binding admission of beneficial ownership. That can be a tough concept to grasp. It doesn't seem real sometimes. Although not common, there certainly are situations where the extent of an insider's beneficial ownership isn't clear. In those cases of "genuine doubt," it may be appropriate to use a disclaimer of beneficial ownership in a Form 4. This type of thing pops up sometimes for entity affiliations. For example, an insider who is a general partner of a partnership that holds company securities. Then you have the spousal (and legal partner) and family trust situations. An insider typically must report securities held by members of the insider's immediate family sharing the insider's household, even though the insider in appropriate circumstances may be able to rebut the presumption of beneficial ownership for those holdings. For example, a gift of securities to an adult child living in the reporting person's household but who solely controls transactions in the shares. There also could be a situation where an insider reports securities indirectly held through an entity or trust in the aggregate - but only has a pecuniary interest in a portion of those securities. In that case, the insider can disclaim beneficial ownership for the amount in excess of the insider's pecuniary interest in the securities. It remains dubious how valuable a disclaimer is, but if you're "Section 16 savvy" enough to spot the issue, you might as well include one under the appropriate circumstances. Disclosure also may be useful in warding off any claims of short-swing matching liability under Section 16(b) from the plaintiff's bar.

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