

DOWNLOAD PDF ADMISSIBILITY : DISPOSITIONS RELATING TO THE LEGAL AND BENEFICIAL OWNERSHIP OF THE INVESTMENT

Chapter 1 : The International Law of Investment Claims : Zachary Douglas :

The International Law of Investment Claims considers the distinct principles governing the prosecution of a claim in investment treaty arbitration. The principles are codified as 54 'rules' of general application on the juridical foundations of investment treaty arbitration, the jurisdiction of the tribunal, the admissibility of claims and the.

This Memorandum provides a summary of the more noteworthy CDIs. The CDIs can be viewed in their entirety at [http:](http://) However, if no amendment is filed at such time due to the absence of materiality, the holder will need to continue to monitor its amendment obligations under Rule 13d-2 a until an exit Schedule 13D is filed. In a particularly interesting interpretation, and one that can have implications to filers trading around record dates, the SEC indicated that when a security holder sells all of its shares after a voting record date for a shareholder meeting and thus transfers investment power over the securities but not voting power as to the meeting absent a specific agreement to do so the holder should not file its final amendment to Schedule 13D until the end of the shareholder meeting, because the security holder still retains voting power over the reported securities. Only after the shareholder meeting should the security holder file its final amendment. The information included in a Schedule 13D such as ownership percentages and trade history should be current through the date of filing and should not be limited to information that is current as of the trigger date of the filing. This interpretation clears up confusion as to the relevant information dates but can be burdensome for filers because of the need to have current information as of the time of filing. Switching from Schedule 13D to Schedule 13G. Officers and Directors Ineligible for Schedule 13G. In general, officers and directors are ineligible to file a Schedule 13G as passive investors pursuant to Rule 13d-1 c. If a filer discovers that it failed to file any required amendments to Schedule 13D or Schedule 13G, it should promptly file any such amendments. Multiple omissions to amend may be included in a single cumulative amendment. Investors are often faced with the burden of needing to report a significant number of trades in response to the day trading history required under Item 5 c of Schedule 13D. This is particularly burdensome in cases where broker-dealers execute trade orders in small increments and at multiple prices that may be as little as a fraction of a penny apart. The SEC made clear its position that a statement in Item 4 of Schedule 13D that a reporting person has no current plans to engage in any of the types of transactions enumerated in Item 4 a - j , but reserves the right to engage in such transactions in the future, will not exempt the reporting person from amending its Schedule 13D if in the future the reporting person forms a specific plan or proposal with respect to any such matters. There is no clear answer as to when exactly a plan or proposal is formed, but the SEC noted that the execution of a formal agreement or commencement of a transaction is not required in order for a plan or proposal to have been formed. Applicability of Proxy Rules. The SEC cautioned that a Schedule 13D filer must analyze its disclosure and attached exhibits to determine whether any disclosures or communications included in a filing reasonably constitute proxy soliciting material, in which case the reporting person will be required to comply with the proxy rules unless an exemption to these rules is available. Investors frequently struggle with determining which activities may be indicative of group formation. Beneficial Ownership Divesting Beneficial Ownership. The SEC clarified that a holder can divest itself of beneficial ownership by delegating voting and investment power to a third party, such as an investment advisor, so long as the security holder delegates all authority to vote and dispose of its securities to the third party and the security holder cannot rescind the voting or investment authority granted to such third party within 60 days. Reporting persons in any case should be mindful of, and give consideration to, any actions that could be viewed as designed to evade the reporting requirements of Section 13 d , which could violate Rule 13d-3 b. Due to the constant changes in the number of underlying securities, variable-rate convertible securities require the holder constantly to monitor the percentage of the underlying common shares which the security is convertible into to determine if the applicable filing and amendment triggers have been crossed. American Depositary Receipts, or ADRs, are not considered a separate class of equity securities for

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purposes of calculating beneficial ownership under Section 13 d. This case is currently on appeal to the U. Court of Appeals for the Second Circuit. To view all formatting for this article eg, tables, footnotes , please access the original [here](#).

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Chapter 2 : The international law of investment claims (Book,) [theinnatdunvilla.com]

Get this from a library! The international law of investment claims. [Zachary Douglas] -- The juridical foundations of investment treaty arbitration -- Applicable laws -- Taxonomy of preliminary issues relating to jurisdiction and admissibility in investment treaty arbitration -- Consent.

Nolan , Skanthan Vivekananda April 27, I. The SEC has responded to the statutory mandate by proposing essentially to re-issue Exchange Act Rules 13d-3 and 16a-1, which set forth rules for determining beneficial ownership of equity securities, such that they would apply for purposes of determining beneficial ownership in transactions involving security-based swaps. This may have been done as an expedient to reduce the burden of rulemakings required by the Dodd-Frank Act. This alert discusses the Proposing Release and, in order to set it in context, discusses the scope of Exchange Act Rules 13d-3 and 16a-1 in general and the application of those rules to security-based swaps. Accordingly, at that time, the reporting requirements and profit disgorgement provisions of Section 13 and 16 of the Exchange Act no longer would apply to parties to such transactions. The Proposing Release is intended to address this issue to permit the SEC to issue such a rule prior to the statutory deadline of July 16, The SEC is proposing to re-adopt, without change, Rule 13d-3 a , b and d 1 and the relevant portions of Rule 16a-1 a 1 and a 2 so that they continue to apply to beneficial ownership determinations in connection with parties to security-based swaps. The SEC also stated in the Proposing Release that it believes this will remove any doubt that those rules will continue to apply to the determinations of beneficial ownership with respect to security-based swaps. This reporting requirement is intended to provide the public and the markets with the benefit of information regarding investors who accumulate influential or control positions in publicly traded companies. In addition, pursuant to Rule 13d-3 d 1 , a person will be deemed a beneficial owner if it has the right to acquire beneficial ownership of a security within 60 days. Oddly, this could mean that a person who contractually does not have voting or disposition rights could be deemed a beneficial owner. The section also requires Insiders publicly disclose their ownership of such securities and publicly disclose such ownership following any transaction resulting in a change in such ownership. Like Section 13 d and g , Section 16 a is intended to give the public and the markets the benefit of such information, but the focus here is on the holdings of Insiders of the company. Solely for purposes of determining if a person has 10 percent beneficial ownership and is therefore required to file Section 16 ownership reports, Rule 16a-1 a 1 provides that any person deemed a beneficial owner per Section 13 d shall be deemed to be a beneficial owner for purposes of Section 16 as well. In addition, it specifies the types of Insider transactions that would be subject to short-swing profit disgorgement per Section 16 b. A security-based swap would include a total return swap pursuant to which a swap dealer, in exchange for a premium, agrees to pay an investment fund payments corresponding to any dividends distributed on IBM common shares. Other types of swaps referencing single equity securities, or narrow indices of such securities, also would fall under the definition of security-based swap and be subject to regulation by the SEC. Rule 13d-3 a and Rule 16a-1 a 1 Equity derivatives sometimes give parties voting and disposition rights. For example, to the extent the aforementioned swap dealer actually holds the IBM stock that is the subject of the swap, it might agree to grant to the investment fund the right to direct any shareholder votes in respect of that stock. Prior to the effectiveness of the Dodd-Frank Act on July 16, , Rule 13d-3 and Rule 16a-1 will continue to apply to purchases and sales of security-based swaps for purposes of determining whether a party to such swap is a beneficial owner of the hedging shares subject to the beneficial ownership reporting requirements of Section 13 d and g. For example, Rule 13d-3 a provides that since the aforementioned investment fund can direct the swap dealer to exercise votes, it would be a beneficial owner. It would be required to file Section 13 d and g reports disclosing such ownership if it was deemed a beneficial owner of five percent or more of such shares, and it would be required to file Section 16 a disclosure reports if it was deemed to be a beneficial owner of more than ten percent of such shares. However, upon the effectiveness of the Dodd-Frank Act, Rule

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13d-3 a would cease to apply to such beneficial ownership determinations. The SEC is proposing that it continue to apply. Retaining the existing treatment of such swaps is, according to the SEC, necessary to achieve the purposes of Section 13â€”requiring disclosure of ownership by persons who have the ability to change or influence control of the issuer. For the same reasons and to assure that Section 16 continues to reach all persons who may have access to inside information, the SEC also is proposing to re-adopt without change Rule 16a-1 a 1. Rule 13d-3 d Where an equity swap does not give the long counterparty voting or disposition power, but does provide it with an option to acquire the underlying shares for example, by terminating and physically settling the transaction , Rule 13d-3 d currently provides that the fund was a beneficial owner since it could acquire beneficial ownership as defined in Rule 13d-3 a i. If the five percent or ten percent ownership thresholds were met, the fund would need to file Section 13 or Section 16 reports, as applicable. As above, upon the effectiveness of the Dodd-Frank Act, Rule 13d-3 d no longer would apply to beneficial ownership determinations in such a transaction and, in light of this, the SEC is proposing that the rule continue to apply. Rule 13d-3 b Even in the absence of a contractual provision giving the long counterparty control over hedging shares, it could be deemed to have beneficial ownership under the existing rules, but the analysis would be more dependent on facts and circumstances. For example, where the long party has the ability to influence shareholder votes or dispositions and the transaction is structured to evade the reporting requirements of Section 13, the long counterparty could be deemed a beneficial owner per the operation of Rule 13d-3 b. In such cases it may be difficult to find beneficial ownership without resorting to a creative argument. Rule 16a-1 a 2 Last, consider the situation where the long counterparty is already deemed to be an Insider and subsequently enters into an equity swap that gives it the option to physically settle and purchase the IBM shares. To the extent the long counterparty exercises this option and then sells the shares for a profit within a six-month period, any profits earned would be subject to disgorgement per the operation of Section 16 b. Per Rule 16a-1 a 2 , the fund would be a beneficial owner subject to Section 16 b since it had a pecuniary interest i. It also would need to report such transactions in its Section 16 a reports. With respect to Rule 16a-1 a 2 , the SEC is proposing to re-adopt the portion of the text preceding subparagraph ii , which addresses who is a beneficial owner for purposes of the types of security holdings required to be reported per Section 16 and the types of insider transactions subject to short-swing profit disgorgement. Conclusion New Section 13 o of the Exchange Act is intended to increase the transparency of the derivatives market by ensuring that the SEC reviews the existing reporting regime as it applies to security-based swaps. However, it seems that the SEC views the regulatory status quo as adequately addressing such reporting requirements. In those cases where the transfer of beneficial ownership has been easy to discern under the rules in effect prior to enactment of the Dodd-Frank Act it will still be easy to determine beneficial ownership. However, the Proposing Release does not appear to provide much clarity with respect to the harder cases, such as that presented in the CSX case, where it is not immediately apparent that the security-based swap vests beneficial ownership of the underlying in the long counterparty. Thus, while the Proposing Release may avoid the risk of beneficial ownership requirements becoming inapplicable to security-based swaps, the proposed rules do not appear to do much to change the basis on which beneficial ownership analyses have been conducted. Furthermore, a person who acquires any such power or right enumerated above with the purpose or effect of changing or influencing control of the issuer of a security will be deemed to be a beneficial owner of such security immediately upon acquisition of such power or right. See Exchange Act Rule 13d-3 d 1. See Rule 16a-1 a 1 of the Exchange Act. TCI had entered into cash-settled total return swaps giving it the economic benefits and burdens of CSX stock. It was not contractually granted any right to direct votes or dispositions. In addition, while each of the various swaps dealers had acquired a portion of the CSX shares that were the subject of the transactions to hedge their exposures, they were not under any obligation to do so. However, the court found that while there were no contractual rights, TCI did have the ability to influence votes and dispositions. Moreover, the court sidestepped the contractual issues by finding that the total return swap was a device intended to mask beneficial ownership of the reference stock. The court found that TCI was a beneficial owner per Rule 13d-3 b

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because TCI had, at least in major part, structured its investments as total return swaps for the purpose of preventing the vesting of beneficial ownership of CSX shares in TCI and as part of a plan or scheme to evade the reporting requirements of Section 13 d. The court found revealing that the chief financial officer of the fund had told its board that one of the reasons for using swaps is the ability to purchase without disclosure to the market or the company. For our alert on the CSX case, please click [here](#).

Chapter 3 : Register of ultimate beneficial owners of legal entities established in the Czech Republic

Douglas identifies four broad classes of such claims: (i) contractual choice of forum; (ii) shareholder claims; (iii) dispositions related to the legal and beneficial ownership of the investment; and (iv) the effect of a denial of benefits clause in the IIA. 41 As will be seen, investor corruption can also be considered a question of admissibility.

Chapter 4 : Analysis of new SEC interpretations of Exchange Act Sections 13(d) and 13(g) - Lexology

beneficial ownership information under the ownership prong, in the case of pooled investment vehicles whose operators or advisers are not 2 The Rule represents a departure from current FinCEN rules, under which financial institutions.

Chapter 5 : 10 - United Kingdom Model BIT (, with amendments) - University Publishing Online

case of joint legal ownership, so that the enquiry related to the size of the beneficial share, not its acquisition, it is submitted that it is highly doubtful that the decision has any value in removing resulting T as a method of establishing an interest in the family home in cases of sole legal ownership.

Chapter 6 : 17 CFR d-3 - Determination of beneficial owner. | US Law | LII / Legal Information Institute

The International Law of Investment Claims considers the distinct principles governing the prosecution of a claim in investment treaty arbitration. The principles are codified as 54 'rules' of general application on the juridical foundations of investment treaty arbitration, the jurisdiction of the tribunal, the admissibility of claims and the laws applicable to different aspects of the.

Chapter 7 : Wildy & Sons Ltd " The World's Legal Bookshop Search Results for isbn: "

(a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct.