

## 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]