

**MISCONDUCT BY CORPORATE OFFICIAL**  
**(N.J.S.A. 2C:21-9b)**

Count \_\_\_\_\_ of the Indictment charges the defendant with the crime of Misconduct by a Corporate Official.

**(READ COUNT OF INDICTMENT)**

The statute reads in pertinent part as follows:

A Corporate Official is guilty of misconduct when, being a Director or Officer of a Corporation, he, with purpose to defraud:

- (a) Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law.

**(or)**

- (b) Sells, or agrees to sell or is directly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same.

In order for you to find the defendant guilty of the crime of Misconduct by a Corporate Official, the State must find beyond a reasonable doubt the following elements:

1. That the defendant was a Director or Officer of a Corporation,
2. That he/she with the purpose to defraud:

**[CHOOSE AS APPROPRIATE]**

- (a) [Issued], [participated in issuing] or [concurred in a vote to issue] (**Choose Appropriate**) any increase in its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law.

**(or)**

- (b) [Sold], or [agreed to sell], or [was directly interested in the sale of] (**Choose Appropriate**) any stock of such corporation, or in any agreement to sell the same.<sup>1</sup>

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<sup>1</sup> N.J.S.A. 2C:21-9(b)(2) incorporates a defense to this section; wherein, “unless at the time of such sale or agreement he is the actual owner of such share, provided that the foregoing shall not apply to a sale by or on behalf of an underwriter or dealer in connection with a bona fide public offering of shares of stock of such Corporation.”

**Misconduct by Corporate Official**  
**N.J.S.A. 2C:21-9b**

First, the State must prove beyond a reasonable doubt that the “Defendant” was a Director or Officer of (**Name the Corporation**).

“Corporation” is an entity having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or successor of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it.<sup>2</sup>

A Corporate Official or Corporate Officer is a person elected or appointed by the Board of Directors to manage the daily operations of a corporation, such as a CEO, president, secretary or treasurer.<sup>3</sup> The officers of a corporation shall consist of a president, a secretary, a treasurer, and if desired, a chairman of the Board, one or more vice-presidents, and such other officers that may be prescribed by the by-laws. Unless otherwise provided in the by-laws, the officers shall be elected by the board.<sup>4</sup>

A Director of a Corporation is one who manages, guides, or orders; a chief administrator;<sup>5</sup> a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing and exercising control over its officers.<sup>6</sup>

Second, the State must prove beyond a reasonable doubt that “Defendant” with purpose to defraud, [did issue], [participated in issuing], or [concurred in a vote to issue any] (**Choose Appropriate**) increase in its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of the law

(or)

[sold], or [agreed to sell], or [is directly interested in the sale of any share of] (**Choose Appropriate**) any stock of such corporation, or in any agreement to sell the same.

A person acts purposefully with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in the conduct of that nature or to cause such a result a person acts purposefully with respect to attended circumstances if he/she is aware of such circumstances or he/she believes or hopes that they exist.

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<sup>2</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(g).

<sup>3</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also “Director,” N.J.S.A. 14A:1-2.1(h).

<sup>4</sup> N.J.S.A. 14A:1-2.1(h).

<sup>5</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>6</sup> N.J.S.A. 14A:1-2.1(g).

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Purpose is a condition of the mind. It cannot be seen. It can only be determined by inference from the defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at a particular time and place and from all surrounding circumstances established by the evidence.

To "defraud" means to deprive a person of property or any interest, estate, or right by deceit or artifice, to cheat.<sup>7</sup>

A "vote" means the expression of one's preference or opinion in a meeting or election by ballot, show of hands, or other type of communication.<sup>8</sup>

"Capital Stock of Corporation" means the total shares of stock that a corporation may issue under its charter or articles of incorporation, including both common stock and preferred stock. Also termed "authorized stock," "authorized capital stock," "authorized stock issue," "authorized shares;" the total par value or stated value of this stock.<sup>9</sup>

"Stock" is the capital or principal fund raised by a corporation through subscribers' contributions or sale of shares; a proportional part of a corporation's capital represented by the number of equal units (shares) owned, granting the holder the right to participate in the company's general management and to share in its net profit or earnings.<sup>10</sup>

"Shares of Stock" means an allotted portion owned by, contributed by, or due to someone.<sup>11</sup> "Shares" means the units into which proprietary interest in a corporation are divided.<sup>12</sup>

If you find the State has proven all of the above elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged.

If, however, you find the State has failed to prove any of the elements of the crime beyond a reasonable doubt, you must then find the defendant not guilty.

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<sup>7</sup> Black's Law Dictionary (4<sup>th</sup> ed. 1968).

<sup>8</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(r).

<sup>9</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>10</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>11</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(m).

<sup>12</sup> N.J.S.A. 14A:1-2.1(m).

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If you have found that the State has proven all of the above elements beyond a reasonable doubt then you must now determine whether the benefit derived from this act is valued at \$75,000 or more, exceeds \$1,000 but is less than \$75,000 or the benefit derived is \$1,000 or less.