



## Securities Law ADVISORY ■

**OCTOBER 26, 2023**

### The SEC Issues Final Rules Amending Sections 13(d) and 13(g) to Modernize Beneficial Ownership Reporting

On October 10, 2023, the U.S. Securities and Exchange Commission (SEC) adopted final amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, which were proposed over a year ago. The proposed rules generated extensive commentary. For further discussion of the proposed rule amendments, please see our previous advisory, "[The SEC Proposes Section 13\(d\) and 13\(g\) Rule Amendments to Modernize Beneficial Ownership Reporting](#)." The final rules are intended to modernize Schedule 13D and 13G filings by improving their operation and efficacy.

#### **Schedule 13D Filing Deadlines**

In a departure from the proposed rules, initial Schedule 13D filings must be made within *five business days* of when the investor acquires beneficial ownership of more than 5% of a covered class of equity securities or loses eligibility to continue to report on Schedule 13G.

The amendments also require Schedule 13D filers to file amended Schedule 13Ds within *two business days* after the occurrence of a material change.

#### **Schedule 13G Filing Deadlines**

##### ***Qualified institutional investors***

For qualified institutional investors (QIIs) and exempt investors, the final rules require an initial Schedule 13G filing within *45 calendar days of the end of the calendar quarter* in which the QII or exempt investor exceeds the 5% threshold.

If the QII acquires more than 10% initially, its Schedule 13G filing will be due within *five business days after the month-end*.

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If the QII later increases its ownership above 10% or fluctuates over 5% more than its initial beneficial ownership, it is then required to file an amended Schedule 13G within *five business days after month-end*.

### **Passive investors**

For passive investors, the final rules require an initial Schedule 13G filing within *five business days* of the date it acquires more than 5% of the covered class. Passive investors then must file an amendment within *two business days* if they acquire over 10% or later have an increase or decrease in their beneficial ownership that exceeds 5%.

For all other amendments to a Schedule 13G, the final rules require filers to file within *45 calendar days* from the calendar quarter-end in which a material change occurred.

### **Filing Cutoff Time Change**

The final rules extend the filing deadline for Schedules 13D and 13G made on the EDGAR system from *5:30 pm to 10 pm ET*.

### **Disclosure of Cash-Settled Derivative Securities**

The final rules clarify that cash-settled derivative securities, including total return swaps and other derivatives settled exclusively in cash, must be disclosed in Item 6 of Schedule 13D, including when the reporting person does not beneficially own the reference equity securities underlying the derivatives.

The SEC also provided guidance on when investors in cash-settled derivative securities are beneficial owners of the reference equity securities. The SEC said the investor in a cash-settled derivative security will beneficially own the reference equity security if the derivative security: (1) confers voting and/or investment power; (2) is used to divest beneficial ownership in an attempt to evade reporting requirements; or (3) grants a right to acquire an equity security.

### **Group Formation and Exemptions**

The SEC did not adopt the proposed amendments to Rule 13d-5 regarding "group" formation determinations. Rather, it provided guidance on Sections 13(d)(3) and 13(g)(3) and clarified that these statutes do not require an express agreement to create a "group." Depending on the circumstances, two or more individuals taking concerted actions for the purpose of acquiring, holding, or disposing of securities may form a group. Additionally, the SEC recognizes that when determining whether a group is formed, there must be at least an informal arrangement in furtherance of a common motive. Two people acting similarly is not conclusive on its own. Finally, the SEC provided guidance on group formation considerations relating to shareholder engagement activities.

## Structured Data Requirements

The amendments require all non-exhibit disclosures on Schedules 13D and 13G to be filed using a Schedule 13D/G-specific XML via EDGAR or a web-based application.

## Compliance Timeline

The adopted rules will become effective 90 days after publication in the *Federal Register*. Filers will have until September 30, 2024 to comply with the filing deadlines for Schedule 13G and until December 18, 2024 to comply with the structure data requirements for Schedules 13D and 13G.

	Current Schedule 13D	Proposed Amendments to Schedule 13D	Adopted Schedule 13D	Current Schedule 13G	Proposed Amendments to Schedule 13G	New Schedule 13G
<b>Initial Filing Deadline</b>	10 days after acquiring 5% or more or losing eligibility to file Schedule 13G.	5 days after acquiring 5% or more or losing eligibility to file Schedule 13G.	5 business days after acquiring ownership exceeding 5% or losing eligibility to file Schedule 13G.	QIIs – 45 days after the year when ownership was more than 5%.  Passive Investors – Within 10 days of acquiring ownership of more than 5%.	QIIs – 5 business days after the month when ownership exceeds 5%.  Passive Investors – 5 days after acquiring ownership of more than 5%.	QIIs & Exempt Investors – 45 days after calendar quarter-end when ownership exceeds 5%.  QIIs – 5 business days after month-end when ownership exceeds 10%.  Passive Investors – 5 business days after acquiring ownership of more than 5%.
<b>Amendment Triggering Event</b>	Material change in the facts reported on the previous Schedule 13D.	Material change in the facts reported on the previous Schedule 13D.	Material change in the facts set forth on the previous Schedule 13D.	Schedule 13G Filers – Material change in information reported on Schedule 13G.  QIIs – Exceeding 10% ownership or a 5% increase or decrease in ownership.	Schedule 13G Filers – Material change in information reported on Schedule 13G.  QIIs – Exceeding 10% ownership or a 5% increase or decrease in ownership.	Schedule 13G Filers – Material change in information reported on Schedule 13G.  QIIs & Passive Investors – Exceeding 10% ownership or a 5% increase or decrease in ownership.

	Current Schedule 13D	Proposed Amendments to Schedule 13D	Adopted Schedule 13D	Current Schedule 13G	Proposed Amendments to Schedule 13G	New Schedule 13G
<b>Amendment Filing Deadline</b>	No firm deadline, just "promptly."	1 business day after a triggering event.	2 business days after a triggering event.	<p>Schedule 13G Filers – 45 days after the year when the change occurred.</p> <p>QIIs – 10 days after the month when ownership exceeded 10% or a 5% increase or decrease in ownership.</p> <p>Passive Investors – Promptly after exceeding 10% ownership or a 5% increase or decrease in ownership.</p>	<p>Schedule 13G Filers – 5 business days after the month when the change occurred.</p> <p>QIIs – 5 days after exceeding 10% ownership or a 5% increase or decrease in ownership.</p> <p>Passive Investors – Promptly after exceeding 10% ownership or a 5% increase or decrease in ownership.</p>	<p>Schedule 13G Filers – 45 days after calendar quarter-end in which a material change occurred.</p> <p>QIIs – 5 business days after month-end in which beneficial ownership exceeds 10% or a 5% increase or decrease in beneficial ownership.</p> <p>Passive Investors – 2 business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.</p>
<b>"Cut-Off" Time</b>	5:30 p.m. ET	10 p.m. ET	10 p.m. ET	5:30 p.m. ET	10 p.m. ET	10 p.m. ET

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