



The SEC Adopts Amendments to Beneficial Ownership Reporting Requirements

A summary of changes to Schedule 13D/G reporting

October 13, 2023

On October 11, 2023, the U.S. Securities and Exchange Commission (the **SEC**) adopted its final rule (the **Final Rule**) amending certain beneficial ownership reporting requirements under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (the **Exchange Act**). The Final Rule primarily shortens filing deadlines, clarifies Schedule 13D disclosure requirements for cash-settled derivatives and establishes data formatting requirements for Schedules 13D and 13G. The adopting release also provides guidance regarding activity that may result in “group” status. Schedule 13D filers will need to comply with the Final Rule when it goes into effect 90 days after publication in the Federal Register (expected to be mid-to-late January 2024). Compliance with the revised Schedule 13G filing deadlines will be required beginning on September 30, 2024, while compliance with a new requirement for filing of Schedules 13D and 13G using the SEC’s structured, machine-readable data language will be required starting on December 18, 2024.

Background on Schedule 13 Reporting

Sections 13(d) and 13(g) of the Exchange Act and Regulation 13D-G adopted by the SEC thereunder require significant shareholders of public companies to provide the public markets with information about

changes in their beneficial ownership¹ of registered voting equity securities and any plans they may have to change or influence the control or management of the issuer.

¹ “Beneficial ownership” of a security means the possession, directly or indirectly, of either **voting power** (the power to vote or to direct the voting of a security) or **investment**

power (the power to dispose or to direct the disposition of a security) or both with respect to that security.

A person who acquires beneficial ownership of more than 5% of a class of registered voting equity securities must file a report with the SEC on Schedule 13D, which requires detailed disclosure of a wide range of information, including information as to the identity of the filing person and the purpose of the acquisition. A filer must amend its Schedule 13D promptly where there is a material change in the facts that have been disclosed, including a 1% or greater change in its ownership of the class of securities and any change in previously disclosed plans or intentions with respect to the control or management of the issuer. Investors that have acquired securities without the purpose or effect of changing or influencing control of the issuer and that satisfy certain other conditions may qualify to file a short form report on Schedule 13G instead of filing a Schedule 13D.

The SEC proposed the latest set of amendments to these rules and invited comments in March 2022,² and it re-opened the comment period in May 2023.³

Shortened Filing Deadlines

As described in the table below, under the Final Rule, shareholders who report on Schedule 13D will be required to file within **five business days** of their acquisition of more than 5% of a class of registered voting equity securities, and they must file amendments within **two business days** after a material change occurs. The day-count commences on the first business day after the date of the relevant acquisition or disposition. Under the existing rule, a shareholder is required to file an initial Schedule 13D within 10 calendar days after becoming a beneficial owner of more than 5% of the relevant class of securities, and to file amendments “promptly.”

An investor who qualifies to report on short-form Schedule 13G based on its status as a qualified institutional investor (**QII**) (as defined under Rule 13d-1) or an exempt investor (a holder of more than 5% of a class of equity securities at the end of a calendar year, but who has not made any “acquisition” subject to Section 13(d)), must file its

initial Schedule 13G within **45 days after the end of the calendar quarter** in which it became a beneficial owner of more than 5% of the class of securities. Currently, such investors have until 45 days after the end of the relevant calendar year to file. QIIs will be required to file amendments to a Schedule 13G within **five business days** after the end of the month in which their beneficial ownership first exceeds 10% (rather than the currently required 10 calendar days) or their beneficial ownership increased or decreased by 5%.

Under the Final Rule, an investor who qualifies to report on Schedule 13G based on its status as a passive investor (under Rule 13d-1(c)) must file its initial Schedule 13G within **five business days** (rather than 10 calendar days) of acquiring more than 5% beneficial ownership and must file amendments within **two business days** after its beneficial ownership exceeds 10% of the class (existing Rule 13d-2(d) requires “prompt” filing).

Amendments to a Schedule 13G will be required only if a “material change” occurs (rather than “any change”), but within **45 days after the end of the calendar quarter** in which the change occurred, rather than 45 days after the end of the calendar year as currently required.

In addition, under the Final Rule, if an investor becomes ineligible to report on Schedule 13G, it must file a Schedule 13D within **five business days** of the event that causes ineligibility. This period is currently 10 calendar days.

EDGAR Cut-Off and Data Formatting Requirements

The Final Rule effectively extends the deadline for electronically filing through the SEC’s EDGAR filing system from 5:30 p.m. to 10:00 p.m, Eastern Time, on any given business day.

The Final Rule will also require all disclosures, including quantitative disclosures, textual narratives, and identification checkboxes, on Schedules 13D and 13G to use the SEC’s approved XML-based language. Investors who have historically relied on

² Modernization of Beneficial Ownership Reporting, 87 Fed. Reg. 13846 (March 10, 2022).

³ Reopening of Comment Period for Modernization of Beneficial Ownership Reporting, 88 Fed. Reg. 28440 (May 4, 2023).

more basic platforms for filing reports on Schedule 13D/G may find that they are no longer adequate.

Group Formation

Under Sections 13(d)(3) and 13(g)(3) of the Exchange Act, parties acting as a “group” for the purpose of acquiring, holding or disposing of securities of an issuer are treated as a single “person” for purposes of Section 13(d). In the adopting release for the Final Rule, the SEC clarifies its view that the determination that two or more persons are acting as a group does not require an “agreement” between them and that, depending on the particular facts and circumstances, concerted actions by two or more persons for the purpose of acquiring, holding or disposing of registered voting equity securities of an issuer are sufficient to constitute the formation of a group. This guidance is consistent with the SEC’s long-held positions, including in administrative proceedings.⁴

The SEC had proposed, but did not adopt, an amendment that would have specified certain circumstances under which two or more persons could coordinate and consult with one another, and even engage with an issuer, without being deemed to represent a “group”.

The SEC had also proposed, but did not adopt, a rule expressly stating that if a person disclosed its intent to file a Schedule 13D to another person with the purpose of causing that other person to acquire securities (and such person did then in fact acquire), then those persons would be deemed to have formed a “group.” Despite the SEC’s decision

not to adopt this proposed rule change, the SEC made it clear that it would consider such actions to constitute formation of a group for 13D purposes under the current rules.

Derivatives: cash settlement, new disclosure

The Final Rule amends Item 6 of Schedule 13D to eliminate any doubt that a Schedule 13D filer must disclose any cash-settled options or security based swaps referencing a covered class of securities (unless originated by, or offered or sold by, the issuer).

The SEC had proposed, but did not adopt, an amendment that would have deemed holders of certain cash-settled derivative securities (other than security-based swaps) as beneficial owners of the referenced class of securities, even if they did not have the right to vote or dispose of the underlying shares. Instead, the the adopting release cites existing guidance regarding Rule 13d-3 to emphasize that an investor’s use of a cash-settled derivative security could potentially result in the person beneficially owning the underlying reference equity securities (e.g., because the transaction structure confers the right to vote or dispose shares, or is part of a plan or scheme to evade the reporting requirements). This clarification augments the SEC’s 2011 guidance regarding the applicability of Rule 13d-3 to security-based swaps.⁵

The SEC also did not adopt other proposed rules that would have allowed certain persons to transact in derivative securities in the ordinary course of business without the concern that they had formed a group.

⁴ [In the Matter of Jeffrey E. Eberwein, et al.](#), SEC Release No.34- 80038,—Administrative Proceedings (Feb. 14, 2017) (File No. 3-17847).

⁵ [Beneficial Ownership Reporting Requirements and Security-Based Swaps](#), 76 FR 34579, 34583 (June 14, 2011).

Issue	Existing Schedule 13D	New Schedule 13D	Existing Schedule 13G	New Schedule 13G
Initial Filing Deadline	Within 10 days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G. Rules 13d-1(a), (e), (f), and (g).	Within five business days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G. Rules 13d-1(a), (e), (f), and (g).	<u>QIIs & Exempt Investors</u> : 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>QIIs</u> : 10 days after month-end in which beneficial ownership exceeds 10%. Rule 13d1(b). <u>Passive Investors</u> : Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).	<u>QIIs & Exempt Investors</u> : 45 days after calendar quarter end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>QIIs</u> : Five business days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b). <u>Passive Investors</u> : Within five business days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).
Amendment Triggering Event	Material change in the facts set forth in the previous Schedule 13D. Rule 13d-2(a).	Same as current Schedule 13D: Material change in the facts set forth in the previous Schedule 13D. Rule 13d-2(a).	<u>All Schedule 13G Filers</u> : Any change in the information previously reported on Schedule 13G. Rule 13d-2(b). <u>QIIs & Passive Investors</u> : Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d2(c) and (d).	<u>All Schedule 13G Filers</u> : Material change in the information previously reported on Schedule 13G. Rule 13d-2(b). <u>QIIs & Passive Investors</u> : Same as current Schedule 13G: Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d2(c) and (d).
Amendment Filing Deadline	Promptly after the triggering event. Rule 13d-2(a).	Within two business days after the triggering event. Rule 13d-2(a).	<u>All Schedule 13G Filers</u> : 45 days after calendar year-end in which any change occurred. Rule 13d-2(b). <u>QIIs</u> : 10 days after month-end in which beneficial ownership exceeded 10% or there was, as of the month end, a 5% increase or decrease in beneficial ownership. Rule 13d2(c). <u>Passive Investors</u> : Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d2(d).	<u>All Schedule 13G Filers</u> : 45 days after calendar quarter-end in which a material change occurred. Rule 13d-2(b). <u>QIIs</u> : Five business days after month-end in which beneficial ownership exceeds 10% or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c). <u>Passive Investors</u> : Two business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d2(d).
Filing "Cut Off" Time (in Reg. S-T)	5:30 p.m. Eastern Time. Rule 13(a)(2).	10 p.m. Eastern Time. Rule 13(a)(4).	<u>All Schedule 13G Filers</u> : 5:30 p.m. Eastern Time. Rule 13(a)(2).	<u>All Schedule 13G Filers</u> : 10 p.m. Eastern Time. Rule 13(a)(4).

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