

SEC Update: Shortened Securities Ownership Reporting Deadlines

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On October 10, 2023, the Securities and Exchange Commission (SEC) announced the adoption of final amendments governing beneficial-ownership reporting. Specifically, the new amendments:

- shorten the deadlines for initial and amended Schedule 13D and 13G filings;
- clarify the Schedule 13D disclosure requirements with respect to derivative securities; and
- require that Schedule 13D and 13G filings be made using a structured, machine-readable data language.

Under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (Exchange Act), investors who beneficially own more than 5% of the equity securities of a reporting company must file either a Schedule 13D or a Schedule 13G with the SEC.^[1] Schedule 13D is the default beneficial ownership reporting form for most investors, including those with a control purpose in acquiring the equity securities, while investors without control intent (qualified institutional investors and passive investors) file a Schedule 13G.

CHANGE	DESCRIPTION
Shortened Filing Deadlines	<p>For Schedule 13D, the initial filing deadline changed from ten (10) calendar days to five (5) business days and any amendments would be required to be made within two (2) business days.</p> <p>For certain Schedule 13G filers (i.e., qualified institutional investors and exempt investors), the initial filing deadline changed from forty-five (45) calendar days after the end of the calendar year in which the investor became a five percent (5%) holder to forty-five (45) calendar days after the end of the calendar quarter in which the investor beneficially owns more than 5% of a covered class of equity securities. Other Schedule 13G filers (including passive investors) now have their filing deadline shortened from</p>

ten (10) days to five (5) days. All Schedule 13G filers would be required to file any amendments within forty-five (45) days after the end of the calendar quarter in which a material change occurred, instead of the current forty-five (45) days after the end of the calendar year.

Certain Schedule 13G filers (including qualified institutional investors and passive investors) are now subject to an acceleration of amendment obligations when beneficial ownership exceeds ten percent (10%) or increases or decreases by five percent (5%).

In recognition of these accelerated filing deadlines, the SEC extended the cutoff times for Schedule 13D and Schedule 13G filings from 5:30 p.m. Eastern Time to 10:00 p.m. Eastern Time.

Derivative Securities

While the SEC did not adopt the proposed amendment to Rule 13d-3 deeming certain holders of cash-settled derivative securities to be beneficial owners, the Commission did provide guidance and clarity on the existing Rule's applicability to cash-settled derivative securities. Much like cases with persons holding cash-settled security-based swaps, Rule 13d-3 may be applied to holders of non-security-based swap cash-settled derivatives.^[2]

Group Formation and Related Exemptions

The SEC guidance clarifies that the legal standard in Exchange Act Sections 13(d)(3) and 13(g)(3) with respect to formation of a group does not depend solely on the presence of an express agreement. Instead, depending on particular facts and circumstances, concerted actions by two or more persons for the purpose of acquiring, holding, or disposing of securities of an issuer are sufficient to constitute the formation of a group.

XML-Based Formatting

Under the new amendments, Schedule 13D and Schedule 13G must be filed using a structured, machine-readable data language. Exhibits to Schedules 13D and 13G would be permitted to remain unstructured.

When viewed in light of recent SEC compliance action against beneficial-owner and insider-filing violations, the new amendments signal a renewed effort by the Commission to increase transparency and reduce information asymmetries with respect to beneficial ownership reporting.

Capital Markets Watch will continue to monitor developments in this area and will provide our readers with updates.

^[1] 17 C.F.R. § 240.13d-1.

^[2] Modernization of Beneficial Ownership Reporting; Securities and Exchange Commission (Release Nos. 33-11253 and 34-98704; File no. S7-06-22); page 114.

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