

INSIGHTS

SEC Modernizes Beneficial Ownership Reporting

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By: [William S. Anderson](#), [Troy L. Harder](#) and [Madison Rich](#)

On October 10, 2023, the Securities and Exchange Commission (the Commission) adopted amendments to modernize the rules governing beneficial ownership reporting. The amendments shorten the deadline for initial and amended Schedule 13D and 13G filings, clarify disclosure requirements for derivative securities and require that filings be made using a structured, machine-readable data language. The Commission also provided guidance regarding cash-settled derivative securities and the formation of a group.

Initial Filing Deadlines for Schedules 13D and 13G

The new deadline to file Schedule 13D is five business days after either (i) acquiring beneficial ownership of more than five percent of a class of voting equity securities or (ii) becoming ineligible to report on Schedule 13G. The deadline for such reporting was previously 10 days.

The new deadline to file Schedule 13G for (i) Qualified Institutional Investors (whose beneficial ownership does not exceed 10 percent of a class of voting equity securities) and (ii) Exempt Investors, is 45 days after the end of the calendar quarter in which beneficial ownership exceeds five percent. The deadline was previously 45 days after the end of the calendar year.

The new deadline to file Schedule 13G for Qualified Institutional Investors whose beneficial ownership exceeds 10 percent of a class of voting equity securities is five business days after the end of the month in which beneficial ownership exceeds 10 percent. The deadline was previously 10 days after the end of the month.

The new deadline to file Schedule 13G for Passive Investors is five business days after acquiring beneficial ownership of more than five percent of a class of voting equity securities. The deadline was previously 10 days.

Filing Deadlines for Amendments

Amendments to Schedule 13D must now be filed within two business days after a material change in facts occurs. The deadline was previously “promptly” after such event.

Amendments to Schedule 13G are now triggered by a material change in the information previously reported. The triggering event was previously any change in information previously reported. Amendments to Schedule 13G are now due 45 days after the end of the calendar quarter in which the material change occurred. The deadline was previously 45 days after the end of the calendar year.

Qualified Institutional Investors must now file an amendment to Schedule 13G five business days after the end of a month in which beneficial ownership (i) exceeds 10 percent or (ii) increases or decreases by five percent. The deadline was previously 10 days after the end of the month.

Passive Investors must now file an amendment to Schedule 13G within two business days after beneficial ownership (i) exceeds 10 percent or (ii) increases or decreases by five percent. The deadline was previously “promptly” after such events.

Filing “Cut-Off” Time

The new cut-off time for Schedule 13D and 13G filings was extended to 10:00 p.m. eastern time. The cut-off time was previously 5:30 p.m. eastern time.

Structured Data Requirement

Schedules 13D and 13G must be filed using structured, machine-readable data language, specifically XML-based language. This rule does not apply to exhibits.

Derivative Securities

The Commission amended Item 6 of Schedule 13D to clarify that derivative securities, including cash-settled derivative securities, must be disclosed.

The Commission also provided guidance for determining whether investors in cash-settled derivative securities are beneficial owners, noting that holding such a security may require reporting beneficial ownership if, looking at the relevant facts and circumstances, such security (i) confers voting and/or investment power, (ii) is used to divest beneficial ownership as a plan to evade reporting requirements, or (iii) grants a right to acquire equity securities.

Formation of Groups

The Commission provided guidance to clarify when a person has formed a group under the Exchange Act. A group is considered a person for the purpose of beneficial ownership, meaning any securities in the issuer that the group holds would be accounted for when determining whether the threshold for Schedule 13D or 13G reporting has been met. The Commission’s guidance reaffirmed that whether two or more people are acting in a group is not dependent solely on the presence of an express agreement, but by determining, using the relevant facts and circumstances, whether there were “concerted actions by two or more persons for the purpose of acquiring, holding or disposing of securities of an issuer.” In addition, the Commission recognized that in order to determine whether a group is formed, evidence must at least show an informal arrangement or coordination in furtherance of a common purpose, while two people merely taking similar actions would not be conclusive standing on its own.

Compliance Dates

The amendments will be effective 90 days after they are published in the Federal Register, and compliance with the new Schedule 13D filing deadlines will be required immediately upon the rules becoming effective. Compliance with the new Schedule 13G filing deadlines is required beginning September 30, 2024. Compliance with the new structured data requirement is required beginning December 18, 2024, although voluntary compliance may begin December

18, 2023. The Commission's final rule and guidance can be found [here](#).