

SEC Adopts Final Rules Amending and Modernizing Beneficial Ownership Reporting Requirements

WRITTEN BY

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On October 10, the Securities and Exchange Commission (SEC) adopted, by a bipartisan 4-1 margin, the [final rules](#) to amend and modernize the regulations governing beneficial ownership reporting under Sections 13D and 13G of the Securities Exchange Act of 1934, as amended (Exchange Act). The final rules will become effective 90 days after publication in the Federal Register. Compliance with the revised Schedule 13G filing deadlines will be required beginning September 30, 2024.

The final rules:

- Shorten the deadline for initial Schedule 13D filings from 10 days to five business days;
- Require that Schedule 13D amendments be filed within two business days;
- Generally, shorten the filing deadlines for Schedule 13G beneficial ownership reports (based on the type of filer); and
- Require that Schedule 13D and 13G filings be made using a structured, machine-readable data language.

Additionally, the adopting release clarifies:

- The application of the current beneficial ownership reporting rules to certain cash-settled derivative securities; and
- The application of the current legal standard to determine what is meant by “act as a group.”

This is the first major update to Schedules 13D and 13G filing rules since 1968. SEC Chair Gary Gensler [stated](#) that the amendments would ensure investors receive material information in a timely way, and reduce information asymmetries.

Shortened Schedules 13D and 13G Filing Deadlines

The final rules would make several changes to the timing of filing considerations for Schedules 13D and 13G. The following table from the final rule release summarizes the changes:

Issue	Current Schedule 13D	New Schedule 13D	Current 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>Qualified Institutional Investors (QIIs)</u> ^[1] and <u>Exempt Investors</u> ^[2] : 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 13d-1(b). <u>Passive Investors</u> ^[3] : Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).	<u>QIIs and Exempt Investors</u> : 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rule 13d-1(b). <u>QIIs</u> : Five business days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b). <u>Passive Investors</u> : Within 10 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 and Passive Investors</u> : Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d-2(c) and (d).	<u>All Schedule 13G Filers</u> : Any change in the information previously reported on Schedule 13G. Rule 13d-2(b). <u>QIIs and Passive Investors</u> : Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d-2(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 13d-2(c). <u>Passive Investors</u> : Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).	<u>All Schedule 13G Filers</u> : 45 days after calendar year-end in which any change occurred. Rule 13d-2(b). <u>QIIs</u> : Five business 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 13d-2(c). <u>Passive Investors</u> : Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).

Clarifications on “Group” Rules

The SEC declined to adopt the [proposed rule changes](#) for determining when two or more persons were acting as a group for purposes of acquiring, holding, or disposing of securities. The SEC noted that many comments it received concerning this item were wary that the proposal would eliminate the requirement of an “agreement” among group members and introduce overly broad standards, among other concerns.

The SEC stated that its intent was not to change what it means to “act as a group” for purposes of Sections 13(d) and 13(g)(3), but rather to codify the SEC’s view that the determination of whether two or more persons are acting as a group does not depend solely on an express agreement, and that concerted actions may be enough to constitute group formation. Therefore, rather than attempting to codify its position, the SEC instead chose to provide guidance, through a series of questions and answers to determine when a group is formed for purposes of Sections 13(d) and 13(g)(3), relating to certain common types of shareholder engagement activities. This guidance attempts to clarify that shareholder engagement activities that merely involve engaging in discussions and exchanging views will not result in the formation of a “group.”

The proposed rules would have adopted certain amendments to Rule 13d-5 in light of the proposed rule changes for determining when persons were acting as a group. Since the SEC declined to adopt the rules codifying its views on determining a group, the proposed Rule 13d-5 amendments were deemed unnecessary.

Disclosure Required for Derivative Securities on Schedule 13D

In addition, the final rules revise Item 6 of Schedule 13D to clarify that a person already required to report beneficial ownership on Schedule 13D must also disclose any interests in derivative securities. Item 6 of Schedule 13D, which requires disclosure of any contracts, arrangements, understandings, or relationships relating to an issuer’s securities, was amended to expressly state that derivative contracts, arrangements, understandings, and relationships with respect to an issuer’s securities, including cash-settled security based swaps (SBS) and other derivatives, which are settled exclusively in cash, would need to be disclosed in order to comply with Section 13(d)(1) and Rule 13d-1(a).

The SEC also proposed an amendment to Rule 13d-3 to deem certain holders of cash-settled derivative securities as beneficial owners of the reference covered class, but the final rule declined to adopt those amendments. Instead, the SEC used the final rule release to provide guidance to help issuers determine the applicability of Rule 13d-3 to cash-settled derivative securities. While recognizing that non-SBS derivative securities settled exclusively in cash generally are designed to represent only an economic interest, the SEC’s guidance sets forth certain circumstances where the interests could create a beneficial ownership interest.

Structured Data Requirement

The final rules require that all information disclosed on Schedules 13D and 13G (other than exhibits) be filed using a structured, machine-readable data language to help investors and markets access, compile, and analyze the

information submitted on these schedules, beginning on December 18, 2024. The SEC stated that it welcomes early compliance with the structured data requirement, and filers may voluntarily begin to comply with the structured data requirement beginning December 18, 2023.

[1] The institutional investors qualified to report on Schedule 13G, in lieu of Schedule 13D and in reliance upon Rule 13d-1(b), include a broker or dealer registered under Section 15 of the Exchange Act, a bank as defined in Section 3(a)(6) of the Exchange Act, an insurance company as defined in Section 3(a)(19) of the Exchange Act, an investment company registered under Section 8 of the Investment Company Act of 1940, a person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, a parent holding company or control person (if certain conditions are met), an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974, a savings association as defined in Section 3(b) of the Federal Deposit Insurance Act, a church plan that is excluded from the definition of an investment company under Section 3(c)(14) of the Investment Company Act of 1940, non-U.S. institutions that are the functional equivalent of any of the institutions listed in Rules 13d-1(b)(1)(ii)(A) through (I), so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution, and related holding companies and groups (collectively, Qualified Institutional Investors or QIIs). In addition, under Rule 13d-1(b), in order to qualify to report on Schedule 13G in lieu of Schedule 13D, a QII must have acquired securities in the covered class in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect.

[2] Persons holding beneficial ownership of more than 5% of a covered class, but who have not made an acquisition of beneficial ownership subject to Section 13(d) (Exempt Investors). For example, persons who acquire all of their securities prior to the issuer registering the subject securities under the Exchange Act are not subject to Section 13(d). In addition, persons who acquire no more than 2% of a covered class within a 12-month period are exempt from Section 13(d) by Section 13(d)(6)(B). In both cases, however, those persons are subject to Section 13(g).

[3] Beneficial owners of more than 5% but less than 20% of a covered class who can certify under Item 10 of Schedule 13G that the subject securities were not acquired and are not held for the purpose or effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect (Passive Investors). Passive Investors are ineligible to report beneficial ownership pursuant to Rules 13d-1(b) or (d) but are eligible to report beneficial ownership on Schedule 13G in reliance upon Rule 13d-1(c).

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