

SEC Proposes Rule Amendments for Beneficial Ownership Reporting

WRITTEN BY

Heather M. Ducat | David I. Meyers | Betty Linkenauger Segaar | Rachael M. Bushey | Jennifer L. Porter |
Monika G. Chawla | Daisy Flores

On February 10, the Securities and Exchange Commission (SEC) proposed [rule amendments](#) to modernize beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act. Under the current rules, beneficial owners of more than 5% of a company's equity securities have 10 days to report their ownership by filing a Schedule 13D or 13G. The proposed amendments would:

- accelerate the filing deadlines for initial and amended beneficial ownership reports on Schedule 13D to five days;
- generally shorten the filing deadlines for Schedule 13G;
- expand the application of Regulation 13D-G to certain cash-settled derivative securities;
- clarify the circumstances under which two or more persons have formed a "group" that would be subject to beneficial ownership reporting requirements; and
- require that Schedules 13D and 13G be filed using a structured, machine-readable data language.

The public comment period will remain open until April 11, 2022 (60 days after issuance by the SEC) or 30 days following publication of the proposal in the *Federal Register*.

The SEC intends for the proposed rule amendments to provide more timely information to shareholders and other market participants and to further enhance investor protection. The proposing release references the SEC's concerns that the current 10-day filing deadline allows activist investors to withhold market moving information, such as the accumulation of a significant equity stake, from other shareholders for a period of 10 days after crossing the 5% threshold. The filing of a Schedule 13D can have a material impact on a company's share price, and a delay in receiving this material information creates information asymmetries between the investors and other shareholders. A shortened filing deadline for Schedule 13D and 13G would enable shareholders to make more informed investment decisions in a timely manner and help other market participants to better evaluate securities. By expanding the scope of beneficial ownership to include certain holders of cash-settled derivative securities, the SEC is addressing concerns regarding large shareholders that use "hidden ownership" to avoid their reporting obligations.

If adopted, this would be the first major update to Schedules 13D and 13G filing rules since 1968. The ability to submit filings electronically through the EDGAR system and the use of modern information technology in today's financial markets mean filers need less time to compile necessary data for the preparation and transmittal of Schedules 13D and 13G.

Shortened Schedule 13D and 13G Filing Deadlines

The proposed amendments would accelerate the filing deadlines for initial and amended Schedule 13D and 13G beneficial ownership reports, with deadlines for the latter depending on the type of filer:

- For Schedule 13D filers, the proposed amendments would shorten the initial filing deadline from 10 days to five days and require that amendments be filed within one business day of any material change occurring;
- For certain Schedule 13G filers, such as qualified institutional investors and exempt investors, the proposed amendments would shorten the initial filing deadline from 45 days after year-end to five business days after the end of the month in which the investor beneficially owns more than 5% of the covered class of securities;
- For other Schedule 13G filers, such as passive investors, the proposed amendments would shorten the initial filing deadline from 10 days to five days;
- For all Schedule 13G filers, the proposed amendments would require that an amendment be filed five business days after the month in which a material change occurred, rather than 45 days after the year in which any change occurred; and
- For Schedule 13G filers exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership of a covered class of securities, the proposed amendments would require qualified institutional investors and passive investors to file an amendment within five days and one business day, respectively.

To ease administrative challenges resulting from these shortened deadlines, the proposed rules would extend the filing “cut-off” times for Schedules 13D and 13G from 5:30 p.m. to 10:00 p.m. ET. For deadlines falling on a Saturday, Sunday, or federal holiday, the deadline would be pushed to the next business day thereafter.

Beneficial Ownership of Cash-Settled Derivatives

The proposed amendments deem holders of certain cash-settled derivative securities as beneficial owners of the reference equity securities. A holder of a cash-settled derivative security would be deemed the beneficial owner of equity securities in the covered class referenced by the derivative security if such person holds the derivative security with the purpose or effect of changing or influencing the control of the issuer of such securities, or in connection with or as a participant in any transaction having such purpose or effect.

Also, the proposed amendments would revise Schedule 13D to clarify that a person is required to disclose interests in all derivative securities, including cash-settled derivative securities, that use the issuer's equity security as a reference security.

“Group” Formation and Exemptions

The proposed amendments further define the term “group” and clarify when two or more persons have formed a “group” under Regulation 13D-G and the Exchange Act. These “groups” would include, among other things, “tipper-tippee” relationships where one party shares information, such as a Schedule 13D filing being made and specifying that a group need not have an agreement to act as a “group” rather they just need to act together.

Additionally, the proposed amendments permit investors to communicate and consult with each other, engage with issuers, and execute transactions without regulation as a “group.” Particularly, these exemptions would permit institutional investor organizations to facilitate shareholder engagement not undertaken with the purpose or effect of changing or influencing control.

Structured Data Requirement

The proposed amendments would require that Schedules 13D and 13G be filed using a structured, machine-readable data language to help investors and markets access, compile, and analyze the information submitted on these schedules.

RELATED INDUSTRIES + PRACTICES

- [Corporate](#)