

SEC Proposes Changes To Regulation 13D and 13G Beneficial Ownership Reporting

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The proposed rules would:

- Accelerate certain filing deadlines for Schedules 13D and 13G
- Expand the definition of “beneficial ownership” to capture cash-settled derivatives
- Alter the circumstances under which two or more persons have formed a “group” for beneficial ownership reporting purposes

Background

On February 10, 2022, the Securities and Exchange Commission (the SEC) released its long-awaited set of proposed rules (the Proposal)¹ which, if

adopted, would alter certain aspects of beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act of 1934, and Regulation 13D-G thereunder.

Proposed Changes

Below is a table that is included in the Proposal, supplemented with information from the authors of this Client Alert, which compares the general beneficial ownership reporting timelines as they currently exist to the proposed standards as set forth in the Proposal.

	Current 13D	Proposed 13D	Current 13G	Proposed 13G
Initial Filing Deadline	Within 10 days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G	Within five days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G	<p><u>Qualified Institutional Investors (QIIs)</u>: Within 45 calendar days after calendar year-end in which beneficial ownership exceeds 5%; if, prior to the end of the year, the QII beneficially owns more than 10% as of the last day of any month, initial 13G due within 10 calendar days after end of that month</p> <p><u>Exempt Investors</u>: Within 45 calendar days after calendar year-end in which beneficial ownership exceeds 5%</p> <p><u>Passive Investors</u>: Within 10 days after acquiring beneficial ownership of more than 5%</p>	<p><u>QIIs and Exempt Investors</u>: Five business days after month-end in which beneficial ownership exceeds 5%</p> <p><u>Passive Investors</u>: Within five days after acquiring beneficial ownership of more than 5%</p>
Amendment Triggering Event	<p>Material change in the facts set forth in the previous Schedule 13D</p> <p>1% increase/decrease in beneficial ownership deemed to be “material”</p>	No amendment proposed—material change in the facts set forth in the previous Schedule 13D	<p><u>All Schedule 13G Filers</u>: Any change in the information previously reported on Schedule 13G (no amendment is due if change results solely from change in the number of outstanding securities of the issuer)</p> <p><u>QIIs and Passive Investors</u>: Upon exceeding 10% beneficial ownership and a 5% increase or decrease in beneficial ownership thereafter</p>	<p><u>All Schedule 13G Filers</u>: Material change in the information previously reported on Schedule 13G (no amendment is due if change results solely from change in the number of outstanding securities of the issuer)</p> <p><u>QIIs and Passive Investors</u>: No amendment proposed—upon exceeding 10% beneficial ownership and a 5% increase or decrease in beneficial ownership thereafter</p>

¹ SEC Release Nos. 33-11030; 34-94211 “Modernization of Beneficial Ownership Reporting” (<https://www.sec.gov/rules/proposed/2022/33-11030.pdf>)

	Current 13D	Proposed 13D	Current 13G	Proposed 13G
Amendment Filing Deadline	Promptly after the triggering event "Promptly" generally interpreted to be between two and 10 calendar days	Within one business day after the triggering event	All Schedule 13G Filers: 45 days after calendar year-end in which any change occurred QIIs: 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 Passive Investors: Promptly after exceeding 10% beneficial ownership and a 5% increase or decrease in beneficial ownership thereafter "Promptly" generally interpreted to be between two and 10 calendar days	All Schedule 13G Filers: Five business days after month-end in which a material change occurred QIIs: Five days after exceeding 10% beneficial ownership and a 5% increase or decrease in beneficial ownership thereafter Passive Investors: One business day after exceeding 10% beneficial ownership and a 5% increase or decrease in beneficial ownership thereafter
Filing Deadline	5:30 p.m. ET	10 p.m. ET	5:30 p.m. ET	10 p.m. ET

Cash-Settled Derivative Securities

In addition to the above changes to filing deadlines, the Proposal would deem holders of certain cash-settled derivative securities to be beneficial owners of the reference equity securities if the derivative is held with the purpose or effect of changing or influencing the control of the issuer. For example, a holder of a cash-settled derivative security, other than a security-based swap, could be deemed the beneficial owner of the reference equity securities in the presence of influence/control intent.

In addition, the Proposal looks to amend Item 6 to Schedule 13D to require disclosure of all interests in derivative securities (including cash-settled derivative securities) that use the issuer's equity security as a reference security.

Formation of 'Group'

Finally, pursuant to the Proposal, a person who shares information about an upcoming Schedule 13D filing that such person will be required to make, to the extent this information is not yet public and communicated with the purpose of causing others to make purchases, and a person who subsequently purchases the issuer's securities based on this information will be deemed to have formed a "group" within the meaning of Section 13.

Next Steps

The authors of this Client Alert will continue to monitor the Proposal and any new developments related thereto. Please contact one of the listed authors of this Client Alert or your usual Lowenstein Sandler contact if you have any questions with respect to proposed rule changes or any other matters.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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