

Modernization of Beneficial Ownership Reporting



The Securities and Exchange Commission adopted amendments to modernize the rules governing beneficial ownership reporting. The 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.

In addition, the adopting release provides guidance regarding:

- The application of the current beneficial ownership reporting rules to an investor's use of certain cash-settled derivative securities; and
- The application of the current legal standard found in Sections 13(d)(3) and 13(g)(3) of the Securities Exchange Act of 1934 to certain common types of shareholder engagement activities.

Background

Exchange Act Sections 13(d) and 13(g), along with Regulation 13D-G, require an investor who beneficially owns more than 5 percent of a covered class of equity securities to publicly file either a Schedule 13D or a Schedule 13G, as applicable. An investor with control intent files Schedule 13D, while Exempt Investors and investors without a control intent, such as Qualified Institutional Investors and Passive Investors, file Schedule 13G. The deadlines for filing the initial Schedule 13D and Schedule 13G have not been updated since 1968 and 1977, respectively. Changes in the financial markets and technology warrant a reassessment of these filing deadlines and other aspects of the beneficial ownership rules to meet the needs of today's investors and other market participants.

Schedule 13D and 13G Amendments

For Schedule 13D, the amendments shorten the initial filing deadline from 10 days to five business days and require that amendments be filed within two business days. For certain Schedule 13G filers (i.e., qualified institutional investors and exempt investors), the amendments shorten the initial filing deadline from 45 days after the end of a calendar year to 45 days after the end of the calendar quarter in which the investor beneficially owns more

than 5 percent of the covered class. For other Schedule 13G filers (i.e., passive investors), the amendments shorten the initial filing deadline from 10 days to five business days. In addition, for all Schedule 13G filers, the amendments generally require that an amendment be filed 45 days after the calendar quarter in which a material change occurred rather than 45 days after the calendar year in which any change occurred. Finally, the amendments accelerate the Schedule 13G amendment obligations for qualified institutional investors and passive investors when their beneficial ownership exceeds 10 percent or increases or decreases by 5 percent.

To ease filers' administrative burdens associated with these shortened deadlines, the amendments extend the filing "cut-off" times in Regulation S-T for Schedules 13D and 13G from 5:30 p.m. to 10:00 p.m. Eastern time.

To remove uncertainty as to the scope of Schedule 13D's disclosure requirements with respect to derivative securities, the amendments revise Item 6 of 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.

Additionally, to make it easier for investors and markets to access, compile, and analyze information disclosed on Schedules 13D and 13G, the amendments require that these filings use a structured, machine-readable data language. This requirement applies to all information disclosed on Schedules 13D and 13G (other than exhibits).

Commission Guidance

The adopting release provides guidance on the applicability of existing Rule 13d-3 to cash-settled derivative securities (other than security-based swaps). The guidance is similar to guidance the Commission previously provided in 2011 regarding the applicability of Rule 13d-3 to security-based swaps.

In addition, the adopting release provides guidance as to the application of the existing legal standard established in Exchange Act Sections 13(d)(3) and 13(g)(3) with respect to the formation of a group. That guidance is intended to clarify the Commission's view that the determination of whether two or more persons are acting as a group does not depend solely on the presence of an express agreement and that, depending on the 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. The adopting release also provides guidance on the application of the current legal standard found in Sections 13(d)(3) and 13(g)(3) to certain common types of shareholder engagement activities.

Additional Information:

The amendments will become effective 90 days after publication in the Federal Register. Compliance with the revised Schedule 13G filing deadlines will be required beginning on September 30, 2024. Compliance with the structured data requirement for Schedules 13D and 13G will be required on December 18, 2024.