

SEC Reporting & Compliance Alert

February 5, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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Reminders: Amended Beneficial Ownership Rules Effective; Upcoming Filing Deadlines

As we noted in our [October 13, 2023, client alert](#), the Securities and Exchange Commission (SEC) has adopted amendments to its beneficial ownership rules. Those amendments are effective as of February 5, 2024.

Under the new rules:

- Initial Schedule 13Ds will be due within five business days (instead of 10 calendar days).
- Schedule 13D amendments will be due within two business days (instead of “promptly”).
- Switching from a Schedule 13G to a Schedule 13D will be due within five business days after the trigger date (instead of 10 calendar days).
- The EDGAR filing cut-off time will be extended from 5:30 p.m. ET to 10 p.m. ET.

The new Schedule 13G filing deadlines do not begin until September 30, 2024.

Additionally, the SEC amended Schedule 13D to clarify that interests in all derivative securities relating to the applicable registered class, including cash-settled security-based swaps and other cash-settled derivatives, must be disclosed in Item 6 of Schedule 13D.

Some practitioners had previously argued that interests in such securities fell outside the scope of disclosure on Schedule 13D. This amendment confirms that such disclosure is required.

The new rules require Schedules 13D and 13G (other than exhibits) to be filed using a machine-readable, structured data format using an XML-based language in an effort to make it easier for investors and other market participants to access, compile and analyze the disclosure.

The SEC noted that this format would be similar to other XML-based structured data format used for Section 16 filings, Form 13F and Form D. The new format might impact the look of Schedules 13D and 13G filings and the amount of time it takes to prepare and file them. Compliance with the structured data requirements begins on December 18, 2024, though voluntary compliance began on December 18, 2023.

February 14, 2024, Filing Requirements

As a reminder, the following filings, if required, have a February 14, 2024, deadline.

Schedule 13G

- **Annual Schedule 13G amendments.** Under the current Schedule 13G rules, every Schedule 13G filing must be amended within 45 days after the end of the year reporting beneficial ownership as of December 31, 2023. Notwithstanding the above, no amendment is required if the only change in the information from the last Schedule 13G filed was a change in the beneficial ownership percentage due solely to a change in the number of shares outstanding.

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- **Initial Schedule 13Gs.** Certain persons who acquired beneficial ownership of more than 5% of the outstanding shares of an issuer in 2023 are required to file an initial Schedule 13G by February 14, 2024, reporting their beneficial ownership as of December 31, 2023. Below are the most common types of initial Schedule 13G filings that will be required this February. Note, however, that if the below did not beneficially own more than 5% at year-end, no initial Schedule 13G may be required.
 - **IPOs/SPAC IPOs.** In connection with an IPO, including SPAC IPOs, 5% beneficial owners at the time of the IPO registration may have been eligible to file their initial Schedule 13G 45 days after the end of the year (*i.e.*, by February 14, 2024). These filers often include sponsors and founders.
 - **Certain qualified institutional investors.** Certain qualified institutional investors (*e.g.*, banks, registered investment advisers, registered investment companies) may be eligible to file their initial Schedule 13G within 45 days after the end of the year (*i.e.*, by February 14, 2024) in which they crossed the 5% threshold.
 - **Other initial Schedule 13Gs.** There may be other scenarios that require an initial Schedule 13G filing by February 14, 2024. Example: If a shareholder was pushed over the 5% threshold due to a company buyback in 2023 or crossed the threshold in 2023 but at such time had acquired less than 2% of the outstanding shares in the prior 12-month period.

Form 13F

Form 13F is a quarterly report filed by institutional investment managers that have investment discretion over \$100 million in Section 13(f) securities (generally exchange-traded equity securities). Those subject to the rule must file their report within 45 days after the end of each calendar quarter. Form 13F can apply to not just registered investment advisers but also to individuals, public companies, charitable organizations and foreign entities.

The Form 13F reporting positions for the quarter ended December 31, 2023, is due by February 14, 2024.

For those that crossed the \$100 million threshold during calendar year 2023, their initial Form 13F will be for the quarter ended December 31, 2023, that is due by February 14, 2024.

Form 13H

Form 13H, the Large Trader Report, is a nonpublic filing made by a person that directly or indirectly trades in U.S. exchange-listed equity securities and standardized options by or through a registered broker that exceed certain thresholds. If a 13H filer, the form must be amended annually within 45 days after the end of the year (*i.e.*, by February 14, 2024), unless the annual amendment was filed with a Q4 2023 Amendment in January 2024 (if applicable).

Form 5

The Form 5 deadline for companies with a December 31 fiscal year end is February 14, 2024, if applicable. Forms 5 are typically used by insiders to report certain transactions eligible for delayed reporting on a Form 5 (instead of a Form 4) or to report transactions that should have been reported on a Form 4 in 2023 but were not. Forms 5 are not typically required, but companies should confirm.

EDGAR Codes

If one of the above SEC filings is being made for the first time, new EDGAR filing codes will be required. An application for EDGAR codes can take a few days. Please confirm whether any EDGAR codes are needed, so any applications for codes can be made in a timely manner.

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