

SEC SHORTENS FILING DEADLINES FOR SCHEDULES 13D & 13G AND OFFERS GUIDANCE

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INTRODUCTION

"A person must disclose interests in all derivative securities, including cash-settled derivative securities and other derivatives which are settled exclusively in cash, that use the issuer's equity security as a reference security."

On October 10 2023, the Securities and Exchange Commission ("SEC"), in an effort to modernize and meet the necessities of contemporary investors, adopted a number of proposed changes to the [rules governing beneficial ownership reporting](#) under Section 13(d) and 13(g) of the Securities Exchange Act of 1934 ("Exchange Act"), including amendments that shortened the deadlines for initial and amended filings. Additionally, the SEC provided guidance in lieu of adopting further proposed rules concerning cash-settled derivative securities and group formations.

"Frankly, these deadlines from half a century ago feel antiquated," said SEC Chair Gary Gensler in the [SEC press release](#). "In our fast-paced markets, it shouldn't take 10 days for the public to learn about an attempt to change or influence control of a public company."

KEY TAKEAWAYS

The new rules shortened the relevant filing deadlines, as follows:

Schedule 13D

- shorter initial filing deadlines from 10 calendar days to five business days after acquiring beneficial ownership of more than 5% of a class of registered shares; and
- amendments are required to be filed within two business days opposed to "promptly".

Schedule 13G

- for qualified institutional investors ("QIIs") and exempt investors (in which the investor beneficially owns more than 5% of the class of registered shares), the initial filing deadline is shortened from 45 days after the end of the calendar year to 45 days after the end of the calendar quarter;

- for QIIs, when their beneficial ownership exceeds 10% or increases or decreases by 5%, the amendments shortened the initial and amended filing obligations from 10 calendar days after month-end to five business days after month-end of the obligations being triggered;
- for passive investors, the initial filing deadline was shortened from 10 calendar days to five business days after acquiring beneficial ownership;
- for all filers, generally require that an amendment be filed 45 days after the calendar quarter-end in which a material change occurred. This is changed from 45 days after the calendar year-end in which any change occurred; and
- for passive investors, when their beneficial ownership exceeds 10% or increases or decreased by 5%, the amended filing deadline is shortened from “promptly” to two business days.

"The amendments become effective 90 days after publication in the Federal Register, except that (i) compliance with the revised Schedule 13G filing deadlines will be required beginning on September 30, 2024."

The SEC also clarified the disclosure requirements of Schedule 13D to expressly state that a person must disclose interests in all derivative securities, including cash-settled derivative securities and other derivatives which are settled exclusively in cash, that use the issuer's equity security as a reference security.

All information disclosed on Schedules 13D and 13G, other than exhibits, are required to be made with a structured, machine-readable data language.

“Cut-Off” times for filings for Schedules 13D and 13G have been extended from 5:30 p.m. to 10:00 p.m. Eastern time.

NEW SEC GUIDANCE ON CASH-SETTLED DERIVATIVE SECURITIES AND GROUP FORMATION

The SEC resolved to offer guidance on existing rules instead of adopting the proposed amendment for determining when a beneficial owner of a cash-settled derivative security may be the beneficial owner of the reference security. The SEC established that facts and circumstances that endorse beneficial ownership for the holder of cash-settled derivative security will be considered, and it will apply the framework from its [previous guidance regarding the applicability of Rule 13d-3 to Security-Based Swaps](#) to make the determination.

In addition, instead of adopting proposed amendments, the SEC provided guidance on the existing legal standard of group formations for the purpose of determining beneficial ownership. The SEC clarified that an express agreement is not the only factor considered when determining whether two or more persons are acting as a group. Whether a group has been formed depends on an examination of all pertinent facts and circumstances such as the “concerted actions by two or more persons for the purpose of acquiring, holding, or disposing of securities of an issuer,” according to the SEC’s press release.

EFFECTIVE DATES OF AMENDMENTS

The amendments become effective 90 days after publication in the Federal Register, except that (i) compliance with the revised Schedule 13G filing deadlines will be required beginning on September 30, 2024, and (ii) compliance with the structured data requirement for Schedules 13D and 13G will be required on Dec. 18, 2024.

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Summary of Changes in the Schedule 13D and Schedule 13G Filing Requirements (bold text emphasizes changes)

Issue	Current Schedule 13D	New Schedule 13D	Current Schedule 13G	New Schedule 13G
Initial Filing Deadline	Within 10 calendar 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>QIIs & Exempt Investors:</u> 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>QIIs:</u> 10 calendar days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b). <u>Passive Investors:</u> Within 10 calendar days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).	<u>QIIs & Exempt Investors:</u> 45 days after calendar quarter-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>QIIs:</u> Five business days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b). <u>Passive Investors:</u> Within five business 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 & 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> Material change in the information previously reported on Schedule 13G. Rule 13d-2(b). <u>QIIs & Passive Investors:</u> Same as current Schedule 13G: Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d-2(c) and (d).

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Issue	Current Schedule 13D	New Schedule 13D	Current Schedule 13G	New Schedule 13G
Amendment Filing Deadline	Promptly after the triggering event. Rule 13d-2(a).	Within two business days after the triggering event. Rule 13d-2(a).	<p><u>All Schedule 13G Filers</u>: 45 days after calendar year-end in which any change occurred. Rule 13d-2(b).</p> <p><u>QILs</u>: 10 calendar 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).</p> <p><u>Passive Investors</u>: Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).</p>	<p><u>All Schedule 13G Filers</u>: 45 days after calendar quarter-end in which a material change occurred. Rule 13d-2(b).</p> <p><u>QILs</u>: Five business days after month-end in which beneficial ownership exceeds 10% or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c).</p> <p><u>Passive Investors</u>: Two business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).</p>
Filing “Cut-Off” Time	5:30 p.m. Eastern time. Rule 13(a)(2) of Regulation S-T.	10 p.m. Eastern time. Rule 13(a)(4) of Regulation S-T.	<u>All Schedule 13G Filers</u> : 5:30 p.m. Eastern time. Rule 13(a)(2) of Regulation S-T.	<u>All Schedule 13G Filers</u> : 10 p.m. Eastern time. Rule 13(a)(4) of Regulation S-T.

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