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SEC Adopts Schedule 13D and 13G Reform



In early October, the SEC [adopted](#) amendments to Regulation 13D-G, shortening the filing deadlines for Schedules 13D and 13G and issuing guidance on other beneficial ownership issues. Here's the [295-page adopting release](#) – and here's the [fact sheet](#). For many of the rules adopted – and the guidance provided in the adopting release – the SEC found middle ground compared to what had been proposed.

Here are 7 things to know:

1. **Schedule 13D Deadlines** – The Schedule 13D initial filing deadline has been shortened from 10 calendar days to five business days (note the change between "calendar" and "business" days). Amendments now must be filed within **two** business days of any material change in previously reported information (rather than requiring amendments to be filed "promptly," as previously required).
2. **Schedule 13G Deadlines** – The deadlines for Schedule 13G filings are driven by whether a person files as a qualified institutional investor (QII) (under Rule 13d-1(b)), an exempt investor (under Rule 13d-1(d)) or a passive investor (under Rule 13d-1(c)).

a. Initial filing deadlines:

- For QII and exempt investor Schedule 13G filers, the initial filing deadline has been shortened from 45 days after the end of a calendar *year* (good ole Valentine's Day) to 45 days after the end of the calendar *quarter* in which an investor beneficially owns more than 5% of the covered class. For QII Schedule 13G filers, the initial filing deadline has also been shortened from 10 calendar days after the month-end in which beneficial ownership exceeds 10% to five business days after such date.

- For passive investor Schedule 13G filers, the initial filing deadline has been shortened from 10 calendar days to five business days after acquiring beneficial ownership of more than 5%.

b. Amendment filing deadlines:

- For all Schedule 13G filers, any amendments must be filed by 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. For QII Schedule 13G filers, any amendments must be filed five business days after the month-end in which beneficial ownership exceeds 10% or there is a 5% increase or decrease in beneficial ownership.

Overall, Schedule 13G filers will be making more filings than they have previously.

3. Change in Time of Day Deadline – To balance the challenge of these shortened deadlines, the SEC extended the filing cut-off times for Schedules 13D and 13G from 5:30 p.m. to 10:00 p.m. ET for the day a filing is due. This aligns Schedule 13D and 13G filing cut-off times with Section 16 and Rule 144 cut-off times.

4. Group Acquisitions – Acquisitions by group members are imputed to the group at any time after the group has been formed – except any intragroup securities transfers are excluded.

The adopting release also clarifies that Sections 13(d)(3) and 13(g)(3) of the Exchange Act don't require an express agreement for persons to be a "group" – and that, depending on the particular facts and circumstances, two or more persons taking *concerted actions* for the purpose of acquiring, holding (which includes voting) or disposing of securities may be sufficient to constitute group formation.

5. Derivative Securities – The adopting release clarifies that existing SEC guidance about how security-based swaps may confer beneficial ownership of the underlying reference securities also applies to other cash-settled derivative securities. Whether a cash-settled derivative security may confer beneficial ownership is a facts-and-circumstances analysis. The three situations where a cash-settled derivative might confer beneficial ownership are:

- the instrument confers exclusive or shared voting or investment power over the securities;
- the instrument is used with the purpose or effect of divesting or preventing the vesting of beneficial ownership as part of a scheme to evade reporting requirements; or
- the instrument provides the right to (1) acquire beneficial ownership of the equity security within 60 days or (2) acquire beneficial ownership with the purpose or effect of changing or influencing the control of the company or in connection with a transaction having such purpose or effect, regardless of when the right is exercisable.

In addition, Item 6 of Schedule 13D – which requires disclosure of any contracts, arrangements, understandings or relationships with respect to an issuer's securities – now explicitly requires disclosure of cash-settled security-based swaps and other derivatives that are settled exclusively in cash.

Disclosure is required even if the cash-settled security-based swaps may be excluded from a filer's beneficial ownership calculation.

6. iXBRL Required – Schedules 13D and 13G must be filed using a structured, machine-readable data language.

7. Compliance Dates – The new rules generally become effective 90 days after they are published in the *Federal Register*. However, compliance with the revised Schedule 13G filing deadlines will not be required before September 30, 2024. Compliance with the structured data requirement begins on December 18, 2024, but early compliance is welcome.

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