

## **SEC Proposed Rule Amendments to Modernize Beneficial Ownership Reporting**

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Earlier this year, the SEC [proposed rule amendments](#) to modernize beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities and Exchange Act of 1934 (“Exchange Act”). These sections, along with Regulation 13D-G, mandate that investors who own greater than 5% of a covered class of equity securities publicly report their beneficial ownership by filing either a Schedule 13D or 13G. This proposal represents the most significant alterations to the rules governing beneficial ownership reporting since their adoption. The proposed amendments aim to improve market transparency and information quality, accelerate information dissemination, and respond to technological advancements.

Specifically, the proposed amendments would:

- Accelerate the initial and amendment filing deadlines for Schedules 13D and 13G and extend the filing cut-off times from 5:30 p.m. to 10:00 p.m. Eastern time;
- Expand Regulation 13D-G’s application to certain cash-settled derivative securities by deeming the holders of these securities to be “beneficial owners” of their derivative holding’s reference securities;
- Clarify the circumstances in which two or more persons attain a “group” status and, thus, become subject to group beneficial ownership reporting requirements; and
- Mandate that Schedule 13D and 13G filings conform to a structured, machine readable data language.

### **Filing Deadlines**

Generally, the proposed amendments shorten the filing deadlines for Schedules 13D and 13G. To alleviate the administrative challenges posed by these stricter deadlines, the amendments also propose an extension of the filing deadline from 5:30 p.m. to 10:00 p.m. Eastern time.

The table below, provided within the [SEC’s Proposed Rule Release](#), details the proposed changes.

	Schedule 13D		Schedule 13G	
	Current	Proposed	Current	Proposed
<b>Initial Filing Deadline</b>	Within 10 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 <b>five days</b> 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>Qualified Institutional Investors (QIIs) &amp; Exempt Investors:</u> 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>Passive Investors:</u> Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).	<u>QIIs &amp; Exempt Investors:</u> <b>Five business days after month-end</b> in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d). <u>Passive Investors:</u> Within <b>five days</b> after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).
<b>Amendment Triggering Event</b>	Material change in the facts set forth in the previous Schedule 13D. Rule 13d-2(a).  The Proposed Rule release defines a “material change” as a change to any previously filed Schedule 13G disclosure. Rule 13d-2(a) also defines a “material change” as the acquisition or disposition of 1% or more of beneficial ownership securities. While not explicitly provided, this definition most likely applies to Schedule 13G filings.	<b>No amendment proposed</b> – 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 &amp; 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> <b>Material change</b> in the information previously reported on Schedule 13G. Rule 13d-2(b). <u>QIIs &amp; Passive Investors:</u> <b>No amendment proposed</b> – upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rules 13d-2(c) and (d).

	Schedule 13D		Schedule 13G	
	Current	Proposed	Current	Proposed
<b>Amendment Filing Deadline</b>	Promptly after the triggering event. Rule 13d-2(a).	Within <b>one business day</b> after the triggering event. Rule 13d-2(a).	<u>All Schedule 13G Filers</u> : 45 days after calendar year-end in which any change occurred. Rule 13d-2(b). <u>QILs</u> : 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. Rule 13d-2(c). <u>Passive Investors</u> : Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).	<u>All Schedule 13G Filers</u> : <b>Five business days after month-end</b> in which a <b>material change</b> occurred. Rule 13d-2(b). <u>QILs</u> : <b>Five days</b> after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c). <u>Passive Investors</u> : <b>One business day</b> after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).
<b>Filing "Cut-Off" Time</b>	5:30 p.m. Eastern time. Rule 13(a)(2) of Regulation S-T.	<b>10:00 p.m. Eastern time.</b> 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> : <b>10:00 p.m. Eastern time.</b> Rule 13(a)(4) of Regulation S-T.

### **Derivative Securities**

Under the proposed amendments, a holder of a cash-settled derivative security, excluding a security-based swap, constitutes a beneficial owner of the reference equity securities if the holder's position (1) intentionally or effectively changes or influences the control of the reference security's issuer or (2) relates to any transaction having such purpose or effect. To calculate an investor's beneficial ownership of reference securities, investors must follow the larger of two "delta"<sup>1</sup> based formulas provided under amended Rule 13d-3 and perform certain calculations daily. While the proposed

<sup>1</sup> When calculating a derivative security holder's beneficial ownership, "delta" refers to the ratio of the derivative security's change in value and the reference equity security's change in value.

beneficial ownership definition would not cover security-based swaps, the Commission proposed an amendment to Item 6 of Schedule 13D, which would require reporting interests in all derivative securities using an issuer's equity security as a reference security.

### **Group Formation**

The proposed amendments clarify the circumstances in which two or more persons attain "group" status and, thus, must comply with the group beneficial reporting requirements. In broadening the definition of "group," the Commission proposed that a group can be formed through agreement or concerted actions demonstrated by circumstantial evidence. For example, "tipper-tippee"<sup>2</sup> relationships would constitute a "group" subject to aggregate reporting requirements under the amended rules.

However, the amendments also provide new exemptions for circumstances that will not trigger "group" reporting status, including discussions among shareholders or with an issuer, so long as they are not obligated to act, and derivative security agreements. These exemptions only exist if the discussions or agreements do not (1) intentionally or effectively alter or influence the control of the relevant class of equity securities' issuer or (2) relate to any transaction having such purpose or effect.

### **Section 16**

Section 16 of the Exchange Act currently incorporates Section 13(d)'s definition of beneficial ownership, which the SEC's amendments propose to alter. Thus, if the Commission adopts the proposed amendments, investors would also be required to apply the revised definition when calculating their beneficial ownership under Section 16.

### **Form of Filings**

Under the proposed amendments, all information disclosed on Schedule 13D and 13G filings must conform to structured, machine readable data language. This proposed change aims to improve investors' ability to access, compile, and analyze Schedule 13D and 13G information.

### **Comments**

The comment period has expired. While many groups supported this proposal, numerous investor groups strongly resisted many aspects of the proposal, including the expanded definition of the group concept, the cash-settled derivatives provisions, and the accelerated filing deadlines. It will be interesting to see where the SEC comes down on these issues. Submitted comments may be viewed on [the SEC's website](#).

For questions regarding the SEC's proposed amendments to beneficial ownership reporting, please contact your GableGotwals attorney or a member of our [Corporate & Securities Group](#).



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<sup>2</sup> A "tipper-tippee" relationship exists where one individual discloses non-public information concerning a future Schedule 13D filing to another individual who then purchases an issuer's securities based on the information disclosed.