



## Securities Client Alert

# The SEC Adopts Amendments to Beneficial Ownership Reporting

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October 11, 2023

On October 10, 2023, the SEC adopted [final rules](#) governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934. These sections, along with Regulations 13D and 13G, require an investor who beneficially owns more than 5% of a covered class of equity securities to publicly file either a Schedule 13D (investors with control intent) or a Schedule 13G (investors without a control intent).

### Schedule 13D Amendments

The amendments shorten the deadline for initial Schedule 13D filings from 10 days to 5 business days and require that amendments be filed within two business days.

The amendments also clarify that reporting persons must disclose interests in all derivative securities that use the issuer's equity security as a reference security (including cash-settled derivative securities) under Item 6 of Schedule 13D.

The Schedule 13 D amendments will be effective 90 days after publication in the Federal Register.

### Schedule 13G Amendments

For certain Schedule 13G filers (i.e., qualified institutional investors and exempt investors), the initial filing deadline has been shortened 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% of the covered class. For other Schedule 13G filers (i.e., passive investors), the initial filing deadline has been shortened from 10 days to 5 business days. In addition, for all Schedule 13G filers, amendments to Schedule 13G will generally be required to be filed within 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. The amendments also accelerate the Schedule 13G amendment obligations for qualified institutional investors and passive investors when their beneficial ownership exceeds 10% or increases or decreases by 5%.

The revised Schedule 13G deadlines will take effect on September 30, 2024.

### Amendments to Both Schedule 13D and 13G

Beginning on December 18, 2024, Schedule 13D and 13G filings (other than exhibits) will need to be made using a structured, machine-readable data language.

To ease the administrative burdens associated with the shortened deadlines, the amendments extend the

filing “cut-off” times in Regulation S-T for Schedules 13D and 13G filings from 5:30 p.m. to 10:00 p.m. Eastern time.

### **Commission Guidance**

The adopting release provides guidance on the formation of a group. That guidance clarifies 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.” To ease concerns of shareholders on their ability to communicate with each other or company management, the adopting release also include guidance that a group would not be deemed to be formed when two or more shareholders communicate with each other regarding “an issuer or its securities (including discussions that relate to improvement of the long-term performance of the issuer, changes in the issuer’s tactics, submissions or solicitations in support of a non-binding shareholder proposal, a joint engagement strategy (that is not control related), or a “vote no” campaign against individual directors in uncontested elections) without taking any other action.” More generally, the adopting release states that “an exchange of views and any other type of dialogue in oral or written form not involving an intent to engage in concerted actions or other agreement with respect to the acquisition, holding, or disposition of securities, standing alone, would not constitute an “act” undertaken for the purpose of “holding” securities of an issuer under Section 13(d)(3) or 13(g)(3).”

The adopting release also provides guidance on the applicability of existing Rule 13d-3 to cash-settled derivative securities (other than security-based swaps). Consistent with [prior guidance](#) from 2011, the adopting release discusses circumstances when the holder of non-security-based swap derivative securities settled exclusively in cash may have voting or investment power or otherwise could be deemed to be a beneficial owner.

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



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