

BUSINESS AND TRANSACTIONS

INFORMATION MEMO

OCTOBER 23, 2023

Changing with the Times: SEC Adopts Modernization Changes to Schedule 13D and Schedule 13G Beneficial Ownership Reporting

On Oct. 18, 2023, the U.S. Securities and Exchange Commission (SEC) adopted amendments to the rules governing the reporting of beneficial ownership of securities under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (Exchange Act). Sections 13(d) and 13(g) of the Exchange Act require any person or group of persons who, directly or indirectly, acquire or hold beneficial ownership of more than 5% of a covered class of equity securities of an issuer to publicly report their beneficial ownership on a Schedule 13D or 13G. The SEC looked to modernize the Schedule 13D and 13G disclosure requirements, as there have been no major updates regarding the schedules since 1968.

A person or group of persons that acquires beneficial ownership of more than 5% of a covered class of equity securities must generally report using Schedule 13D, however, a short-form statement on Schedule 13G is available for investors who: (1) do not have intent to control the organization (Passive Investors); (2) are not subject to Schedule 13D (Exempt Investors); or (3) obtain securities in the ordinary course of business and qualify to report using Schedule 13G under Rule 13d-1(b) (Qualified Institutional Investors or QIIs). With this implementation, the SEC aims to modernize rules, avoid lack of information, create ease of data storage and access and speed up the availability of beneficial owner reports to the public and investors.

The Changes to Schedule 13D and 13G

Most notably, the final rules:

- shorten the initial Schedule 13D filing deadline from 10 to five business days;
- generally shorten the Schedule 13G filing deadlines for beneficial owner reports based on filer type;
- change the Schedule 13D amendment filing deadline to two business days;
- extend the filing time for Schedules 13D and 13G to 10:00 p.m. ET, aligning the cut-off time for Section 13 filings with the cut-off for filings made under Section 16 of the Exchange Act and Rule 144; and
- require Schedules 13D and 13G be filed in a machine-readable format, similar to the one used for Section 16 filings on Forms 3, 4 and 5.

The SEC did not adopt proposed rules regarding disclosure of cash-settled derivative securities and group formation, however, it has issued clarifying guidance on these topics.

The changes of the Schedules 13D and 13G are summarized in the table provided by the SEC Below:

Changes to Schedules 13D and 13G				
Issue	Current Schedule 13D	New Schedule 13D	Current Schedule 13G	New Schedule 13G
Initial Filing Deadline	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 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).	<p><u>QIIs & Exempt Investors:</u> 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d).</p> <p><u>QIIs:</u> 10 days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b).</p> <p><u>Passive Investors:</u> Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).</p>	<p><u>QIIs & Exempt Investors:</u> 45 days after calendar quarter-end in which beneficial ownership exceeds 5%. Rules 13d-1(b) and (d).</p> <p><u>QIIs:</u> Five business days after month-end in which beneficial ownership exceeds 10%. Rules 13d-1(b) and (d).</p> <p><u>Passive Investors:</u> Within five business days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).</p>
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).	<p><u>All Schedule 13G Filers:</u> Any change in the information previously reported on Schedule 13G. Rule 13d-2(b).</p> <p><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).</p>	<p><u>All Schedule 13G Filers:</u> Material change in the information previously reported on Schedule 13G. Rule 13d-2(b).</p> <p><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).</p>
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>QIIs:</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).</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>QIIs:</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. ET. Rule 13(a)(2) of Regulation S-T.	10:00 p.m. ET. Rule 13(a)(4) of Regulation S-T.	<u>All Schedule 13G Filers:</u> 5:30 p.m. ET. Rule 13(a)(2) of Regulation S-T.	<u>All Schedule 13G Filers:</u> 10:00 p.m. ET. Rule 13(a)(4) of Regulation S-T.
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Meaning of a “Group”

The SEC did not adopt proposed rule changes for determining when two or more investors act as a group for the purposes of acquiring, holding or disposing of securities, as the SEC clarified that their intent was not to change the definition. The intent by the SEC was to solidify its current stance that two or more persons can be acting as a group with or without an express agreement, and that a group can be implied through actions that rise to the level of group formation intent. The SEC chose to use a question-and-answer format to provide guidance on this matter.

Acquisition of Additional Securities by Group Members

Amendments were adopted that state that any additional equity acquired after the time of express or implied formation of a group, will be deemed to be acquired by the group.

Cash-Settled Derivative Securities

The new rules further address cash-settled derivative securities, which generally are only applicable for Schedule 13D in limited circumstances. The prior rule required Schedule 13D filers to disclose in Item 6 of such schedule any contracts, arrangements, understandings or relationships with respect to any securities of the issuer and included a non-exhaustive list of types of disclosable contracts. The final rule revised Item 6 of Schedule 13D to explicitly require disclosure of cash-settled security-based swaps and other derivatives settled exclusively in cash.

The SEC did not adopt a proposed amendment that would have treated a holder of a cash-settled derivative security as the beneficial owner of the equity securities in the covered class referenced by the cash-settled derivative security in certain circumstances. Instead, the SEC issued clarifying guidance on the applicability of existing Rule 13d-3 to cash-settled derivative securities, similar to prior SEC guidance on security-based swaps and provided a framework for analyzing whether holders of cash-settled derivative securities may be considered a beneficial owner of the reference class of securities.

Relevant Dates

These amendments become effective and compliance will be required 90 days after publication of the SEC adopting release in the Federal Register, subject to two exceptions. Revised Schedule 13G deadline compliance is required beginning Sept. 30, 2024. Compliance with the structured data filing for Schedules 13D and 13G is required beginning Dec. 18, 2024.

Conclusion

Navigating the new SEC amendments to Schedule 13D and 13G can be difficult, but it is crucial for businesses, personal investors, and institutional investors to understand the changes in the rules

to comply. These amendments are part of a trend by the federal government to increase beneficial owner transparency, while allowing quicker access to information to investors and the public.

If you have any questions about any of the information contained in this memo, please contact [Michael Donlon](#), any attorney in Bond's [business and transactions practice](#) or the Bond attorney with whom you are regularly in contact.

**Special thanks to Associate Trainee David Burgio for his assistance in the preparation of this memo. David is not yet admitted to practice law.*

