

CLIENT ALERT

October 2023

SEC Accelerates Timeline for Schedule 13G and Schedule 13D Filings

By [Michael Campoli](#) and [Nigel Frank](#)

On October 10, 2023, the Securities and Exchange Commission (“SEC”) adopted amendments to the beneficial ownership reporting rules under Sections 13(d) and 13(g) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The amendments will, among other things, significantly accelerate the timeline for original Schedule 13D and Schedule 13G filings and any amendments thereto.

Under existing rules, an individual or “group” that has acquired beneficial ownership of more than 5% of a class of voting equity securities that is registered under the Exchange Act must report such beneficial ownership by filing a Schedule 13D with the SEC. A filer may instead file with the SEC a short form beneficial ownership statement on Schedule 13G if such filer meets certain eligibility requirements, such as if such filer is a Passive Investor¹, an Exempt Investor² or Qualified Institutional Investor³.

The new rules that will apply to filings of both Schedule 13D and Schedule 13G are set forth below. Also set forth below, for context, are the old rules relating to Schedule 13D and 13G filings.

Changes Regarding Schedule 13D filings

- **New Rule for Initial Filings:** All Schedule 13D filers will have to file an initial Schedule 13D **within five (5) business days**⁴ after either acquiring beneficial ownership of more than 5% of a class of voting equity securities registered under the Exchange Act or losing eligibility to file on Schedule 13G.
 - **Old Rule:** Previously, the deadline for filing an initial Schedule 13D was **ten (10) calendar days** after crossing the 5% threshold or losing eligibility to file on Schedule 13G.

¹ Passive Investor refers to stockholders beneficially owning more than 5% of a class of securities registered under the Exchange Act who can certify that the securities were: (1) not acquired or held for the purpose of, and do not have the effect of, changing or influencing the control of the issuer of those securities and (2) not acquired in connection with or as a participant in any transaction having the purpose or effect of changing or influencing the control of the issuer of those securities.

² Exempt Investors generally include persons that acquired all (or substantially all) of their covered securities prior to the issuer going public (i.e., registering the subject securities under the Exchange Act, whether in connection with an initial public offering, spin-off or other transaction) and persons that acquire no more than 2% of a class of covered securities within a 12-month period.

³ A Qualified Institutional Investor is a stockholder who has: (1) acquired securities in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer; (2) promptly notified any other person (or group) on whose behalf it holds securities exceeding 5% of the class of voting equity securities of any acquisition or transaction on behalf of that other person that might be reportable by the latter under Section 13(d); (3) fallen into one of 11 enumerated categories such as a “broker or dealer” (registered under Section 15 of the Exchange Act), “bank” (as defined by the Exchange Act), an “insurance company” (as defined by the Exchange Act), an “investment company” (registered with the SEC under the Investment Company Act of 1940) or such similar financial institutions.

⁴ The term business day in this context means any day other than a Saturday, Sunday, or Federal holiday, from 12:00 a.m. to 11:59 p.m. Eastern time.

- **New Rule for Amendments:** Filers will be required to file an amended Schedule 13D to disclose material changes **within two (2) business days of the applicable change.**
 - **Old Rule:** Previously, amendments to Schedule 13D were required to be filed **“promptly”** following the applicable change.

Changes Regarding Schedule 13G Filings

- **New Rule:** “Qualified Institutional Investors” and “Exempt Investors” will have to file an initial Schedule 13G no later than **45 calendar days after the calendar quarter** in which they beneficially own more than 5% of a class of voting equity securities registered under the Exchange Act.
 - **Old Rule:** Previously, such investors would have until **45 calendar days after the end of a calendar year** in which they exceeded the 5% threshold to file an initial Schedule 13G.
- **New Rule:** “Qualified Institutional Investors” will have to file an amended Schedule 13G **within five (5) business days after the end of the month** in which such filer’s beneficial ownership exceeds 10% as of the last day of such month.
 - **Old Rule:** Previously, such investors would have until **ten (10) calendar days after the end of the month** in which they exceeded the 10% threshold to file an amended Schedule 13G.
- **New Rule:** All Schedule 13G filers must file a Schedule 13G amendment to disclose **material changes** no later than **45 calendar days after each calendar quarter.**
 - **Old Rule:** Previously, filers only had to file a Schedule 13G amendment within **45 calendar days after the end of any calendar year** to report **“any”** changes to beneficial ownership, with limited exceptions. Thus, the new rules will radically increase the number of Schedule 13G amendments that active traders will need to file each year.
- **New Rule:** Passive investors will have an initial filing deadline of **five (5) business days after the date** on which the 5% beneficial ownership threshold is crossed.
 - **Old Rule:** Passive investors previously had **ten (10) calendar days after the applicable threshold** was crossed to file an initial Schedule 13G.
- **New Rule:** Passive Investors will have to file a Schedule 13G amendment **within two (2) business days** of acquiring more than 10% of a class of voting equity securities registered under the Exchange Act. Qualified Institutional Investors will have to file a Schedule 13G amendment **within five (5) business days after the end of the month** in which they cross the 10% threshold.
 - **Old Rule:** Such investors previously had to file such a Schedule 13G amendment **“promptly”** after the applicable threshold was crossed.

Rule Clarifications

In the SEC’s release adopting the new rules, the SEC also provided clarification on various rules concerning group formation and cash-settled derivatives. Such clarifications include the following:

- Group formation does not solely depend on the presence of an express agreement; concerted actions and informal agreements are sufficient. The determination is based on existing concepts, such as informal arrangements or coordination with the common purpose of acquiring, holding or disposing of the securities of a particular issuer.
- Shareholder engagement activities that merely involve engaging in discussions and exchanging views, without more, will not result in the formation of a group.

- A holder of a cash-settled derivative will be deemed to beneficially own the reference equity securities based on existing notions of beneficial ownership under Exchange Act Rule 13d-3.
- Persons already required to report beneficial ownership on Schedule 13D must also disclose any interests in derivative securities.

Filing Issues and XML Files

The SEC further provided guidance on XML files and filing cut-off deadlines. Such guidance is as follows:

- To facilitate compliance with the accelerated filing deadlines, the EDGAR filing cut-off deadlines for Schedules 13D and 13G filings will be extended from 5:30 p.m. Eastern Time to 10:00 p.m. Eastern Time.
- Starting December 18, 2024, all filers must comply with a new XML structured data requirement for Schedule 13D and 13G filings, with the exception of exhibits.

Compliance Deadlines

Compliance with the revised Schedule 13G filing deadlines will be required beginning on September 30, 2024.

Compliance with the structured data requirement for Schedules 13D and 13G will be required on December 18, 2024.

Compliance with the other rule amendments will be required upon the effective date of the Final Rules, which shall be 90 days after publication in the Federal Register. Early, voluntary compliance with the structured data requirements is permitted starting December 18, 2023 and is highly encouraged.

To discuss this or any other related topic, please reach out to your Pryor Cashman contact.