

Modernization of Beneficial Ownership Reporting

Regulation Overview and Rule Amendments

Rule Overview

On October 10, 2023 the SEC adopted amendments to Regulation 13D-G and Regulation S-T to modernize the rules governing beneficial ownership reporting. These regulations require investors who beneficially own more than 5 percent of a covered class of equity securities to publicly file either a Schedule 13D or 13G. The amendments (i) shorten the deadlines for initial and amended Schedule 13D and 13G filings, (ii) require that Schedule 13D and 13G filings be made using a structured, machine-readable data language, and (iii) clarify the Schedule 13D disclosure requirements with respect to derivative securities. In addition, the rule provides guidance regarding certain common types of shareholder engagement activities.

Whether to File a Schedule 13D or 13G

Investors with control intent will file a **Schedule 13D**, whereas Exempt Investors and investors without a control intent, such as Qualified Institutional Investors and Passive Investors will file a **Schedule 13G**. These 3 investor types that will file the Schedule 13G are defined as follows:

Exempt Investors	Beneficial owners >5% of a covered class who have not made an acquisition of beneficial ownership subject to Section 13(d). (e.g., Exempt Investors include persons who acquire all securities prior to the issuer registering the securities under the Exchange Act, or who acquire no more than 2% of a covered class within a 12-month period)
Passive Investors	Beneficial owners >5% but <20% of a covered class where the subject securities were not acquired/held (directly or in connection with another transaction) to change or influence the control of the securities issuer.
Qualified Institutional Investors (“QIIs”)	Investors meeting the definition of “QII” (e.g., broker/ dealers, banks, investment companies, etc.) and acquired the securities in the covered class in the ordinary course of business and not acquired/held to change or influence the control of the securities issuer.

Other Amendments to Regulation 13D-G and Regulation S-T

- Amended Item 6 of Schedule 13D to remove any ambiguity regarding the scope of disclosure obligations for derivative securities. The rule clarifies that a person is required to disclose interests in all derivative securities (including cash-settled derivative securities) that use the issuer’s equity security as a reference security. This will not count toward beneficial ownership threshold determination that triggers filing a Schedule 13D, but will require disclosure of derivative positions once the trigger has been crossed.
- Filings to use a structured, machine-readable, XML-based language.
- Guidance provided for determining whether a group is formed. Two or more persons acting as a group does not depend solely on the presence of an express agreement and that concerted actions by two or more persons to acquire, hold, or dispose securities of an issuer are sufficient to constitute the formation of a group.

Schedule 13D Amendments

The following table summarizes the changes to Schedule 13D:

	PREVIOUS RULE	NEW RULE
Initial Filing Deadline	Within 10 calendar days after acquiring beneficial ownership of more than 5% or losing 13G eligibility.	Within 5 business days after acquiring beneficial ownership of more than 5% or losing 13G eligibility.
Triggering Event for Amendments	Material change in the facts set forth in the previous Schedule 13D, including acquisitions or dispositions of 1% of the class of securities.	<i>Same as previous rule</i>
Filing Deadline for Amendments	Promptly after the triggering event.	Within 2 business days after the triggering event.

- In addition, the new rule also extends the filing “cut-off” times for Schedule 13D from 5:30 p.m. to 10:00 p.m. Eastern time.

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Schedule 13G Changes and Compliance Dates

Schedule 13G Amendments

The following table summarizes the changes to Schedule 13G which covers updates to filing deadlines and triggering events for Amendments:

	PASSIVE INVESTORS		EXEMPT INVESTORS		QUALIFIED INSTITUTIONAL INVESTORS	
	PRIOR RULE	NEW RULE	PRIOR RULE	NEW RULE	PRIOR RULE	NEW RULE
Initial Filing Deadline	Within 10 calendar days after acquiring beneficial ownership of more than 5%	Within 5 business days after acquiring beneficial ownership of more than 5%	45 calendar days after calendar year-end in which beneficial ownership exceeds 5%	45 calendar days after calendar quarter-end in which beneficial ownership exceeds 5%	- 45 calendar days after calendar year-end in which beneficial ownership exceeds 5% - 10 calendar days after month-end in which beneficial ownership exceeds 10%.	- 45 calendar days after calendar quarter-end in which beneficial ownership exceeds 5% - 5 business days after month-end in which beneficial ownership exceeds 10%.
Triggering Event for Amendments	- Any change in the information previously reported on Schedule 13G; - Upon exceeding 10% beneficial ownership; - 5% increase/ decrease in beneficial ownership	- A material change in the information previously reported on Schedule 13G; - Upon exceeding 10% beneficial ownership; - 5% increase/ decrease in beneficial ownership	Any change in the information previously reported on Schedule 13G	A material change in the information previously reported on Schedule 13G	- Any change in the information previously reported on Schedule 13G; - Upon exceeding 10% beneficial ownership; - 5% increase/ decrease in beneficial ownership	- A material change in the information previously reported on Schedule 13G; - Upon exceeding 10% beneficial ownership; - 5% increase/ decrease in beneficial ownership
Filing Deadline for Amendments	- 45 calendar days after calendar year-end in which any change occurred - Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.	- 45 calendar days after calendar quarter-end in which a material change occurred - 2 business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.	45 calendar days after calendar year-end in which any change occurred	45 calendar days after calendar quarter-end in which a material change occurred	- 45 calendar days after calendar year-end in which any change occurred - 5 calendar days after month-end in which beneficial ownership exceeded 10% or there was a 5% increase/ decrease in beneficial ownership in the month.	- 45 calendar days after calendar quarter-end in which a material change occurred - 5 business days after month-end in which beneficial ownership exceeds 10% or a 5% increase/ decrease in beneficial ownership.

➤ In addition, the new rule also extends the filing “cut-off” times for Schedule 13G from 5:30 p.m. to 10:00 p.m. Eastern time.

Compliance Dates

- Compliance with the revised Schedule 13G filing deadlines will be required on September 30, 2024.
- Compliance with the structured data requirement for Schedules 13D and 13G will be required on December 18, 2024.

Beneficial Ownership Reporting

Botsford Team Contacts



For additional information about this Regulatory brief or Botsford Associates Financial Services Regulatory Practice, and how we can help you, please contact:

Jon Block
Managing Partner
Financial Services
NYC: 917.647.3434 / TOR: 416.915.0438
jblock@botsford.com

Andrew Moreira
Managing Director - Consulting
Financial Services
NYC: 917.722.0939 / TOR: 647.361.4404
amoreira@botsford.com

Gordon Wong
Managing Director - Advisory
Financial Services
NYC: 917.722.1200 ext 319 / TOR: 437.253.4933
gwong@botsford.com