

Schedule 13G – Preparing for the New Reporting Deadlines



By **Adam Tamzoke**
Associate | Corporate



By **Erica Hogan**
Partner | Corporate

On October 10, 2023, the U.S. Securities and Exchange Commission (“SEC”) adopted amendments to rules promulgated under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including changes to filing deadlines and other requirements which go into effect on September 30, 2024.

Under Regulation 13D, any person who acquires beneficial ownership of more than 5% of a class of equity securities of an issuer must file a Schedule 13D with the SEC. An investor may file a Schedule 13G, a shorter, more streamlined disclosure form, in lieu of a Schedule 13D, if they fit into one of the following three categories:

- *Exempt Investors.* “Exempt investors” are those who do beneficially own more than 5% of a class of securities of an issuer but who have not made an acquisition of securities that is subject to Section 13(d) of the Exchange Act. This includes investors who have not acquired 2% or more of the covered class of securities within a 12-month period, or who have acquired all of their securities prior to the issuer registering the subject securities under the Exchange Act.
- *Passive Investors.* “Passive investors” are those who own less than 20% of the class of securities and who have not acquired the securities with a “control” intent.^[1]
- *Qualified Institutional Investors (“QIIs”).* QIIs are institutional investors such as broker-dealers, banks, insurance companies, registered investment advisers, and others, who have acquired the securities “in the ordinary course of business” and not with “control” intent.^[2]

The new amendments to Regulation 13G have led to several changes, including shorter filing deadlines. Additionally, the cut-off time for Schedule 13G filings has been extended under the new amendments. The table below from the SEC’s adopting release for the new amendments summarizes the new disclosure deadlines:^[3]

Issue	Current Schedule 13G	New Schedule 13G
Initial Filing Deadline	<u>QIIs & Exempt Investors</u> : 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rule 13d-1(b) and (d).	<u>QIIs & Exempt Investors</u> : 45 days after calendar quarter-end in which beneficial ownership exceeds 5%. Rule 13d-1(b) and (d).
	<u>QIIs</u> : 10 days after month-end in which beneficial ownership exceeds	<u>QIIs</u> : Five business days after month-end

Issue	Current Schedule 13G	New Schedule 13G
	<p>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>in which beneficial ownership exceeds 10%. Rule 13d-1(b).</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	<p><u>All Schedule 13G Filers:</u> Any change in the information previously reported on Schedule 13G. Rule 13d-2(b).</p>	<p><u>All Schedule 13G Filers:</u> Material change in the information previously reported on Schedule 13G. Rule 13d-2(b).</p>
Amendment Filing Deadline	<p><u>QIIs & Passive Investors:</u> Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c) and (d).</p> <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 & Passive Investors:</u> Same as current Schedule 13G: Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c) and (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> 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>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> Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).</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	<p><u>All Schedule 13G Filers:</u> 5:30 p.m. Eastern Time. Rule 13(a)(2) of</p>	<p><u>All Schedule 13G Filers:</u> 10 p.m. Eastern</p>

Issue	Current Schedule 13G	New Schedule 13G
	Regulation S-T.	Time. Rule 13(a)(4) of Regulation S-T.

Additional changes under the new amendments to Regulation 13G include the requirement that all disclosures must be filed with XML-based structured data formatting. Compliance with XML data requirements will be required beginning December 18, 2024.

The amendments also provided additional guidance on the meaning of “group” for the purposes of determining reporting requirements of beneficial ownership and guidance on beneficial ownership of non-security-base swaps and cash-settled derivatives. Such additional guidance is beyond the scope of this article.

The impact of these amendments will vary across market participants. Generally, on the investor side, many internal policies will need to be revised, since procedures done on an annual basis will now need to be done quarterly. General counsels will need to ensure that they, or their delegees, are familiar with the new rules and corresponding accelerated deadlines. Additionally, portfolio managers and business teams should be alerted to the new filing requirements, which may make public disclosure of their trading positions occur sooner than was required in the past. Legal teams should begin discussions with their financial printers to determine who will do the required data tagging under the new rules. Furthermore, they will need to consider any additional timing requirements to allow sufficient time for data tagging. For public companies, information on their shareholder’s holdings may now be made public sooner than previously required. Investor relations and management teams at issuers should be made aware of the new deadlines so they can review the filings promptly and anticipate any questions if there are significant movements in their shareholder base.

[1] See 17 C.F.R. § 240.13d-1(c) (Such person “[h]as not acquired the securities with any purpose, or with the effect, of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect”).

[2] See 17 C.F.R. § 240.13d-1(b) (“Such person has acquired such securities in the ordinary course of business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect”).

[3] See Modernization of Beneficial Ownership Reporting, Exchange Act Release Nos. 33-11253; 34-98704, 88 FR 76896 (Oct. 10, 2023).