

SEC Proposes Amendments Impacting Beneficial Ownership Reporting

On February 10, 2022, in a 3-1 vote, the U.S. Securities and Exchange Commission (SEC) proposed amendments to Schedules 13D and 13G that govern beneficial ownership reporting. SEC Chair Gary Gensler issued a statement regarding the proposed amendments, noting that he believed the changes would “reduce information asymmetries and promote transparency”

Below is a brief overview of some of the key changes under the proposed amendments.

FILING TIMELINE FOR SCHEDULE 13Ds ACCELERATED

The filing deadline for initial Schedule 13Ds would be accelerated to five days after an investor acquires beneficial ownership of more than 5 percent of a covered class of equity securities, rather than the current 10 day deadline.

The filing deadline for an amendment to a Schedule 13D as a result of a material change would be within one business day of such material change, rather than the current deadline of “promptly.”

FILING TIMELINE FOR SCHEDULE 13Gs ACCELERATED

The filing deadline for Schedule 13Gs, after an investor reaches the 5 percent beneficial ownership requirement, would be accelerated to (i) five business days after month-end for the month in which the beneficial ownership threshold was met, rather than the current deadline of 45 days after year-end for qualified institutional investors and exempt investors and (ii) five days rather than the current 10 day deadline for passive investors.

The filing deadline for an amendment to Schedule 13Gs due to a “material” change would be accelerated to five business days after month-end of such material change, rather than 45 days after year-end for “any” change.

CHANGES TO THE DEFINITION OF GROUP

The proposed amendments would expand the definition of “group” to include not only those with formal “agreements” to act in concert or as a group but also situations where (i) two or more people “act” like a group with concerted actions for the purpose of acquiring, holding, or disposing of securities; or (ii) in advance of filing a Schedule 13D, if one person informs a second person about non-public information regarding the filing with the intent of causing such person to acquire the securities and the person does acquire such securities based on this information.

To avoid “chilling communications” or “impeding engagement,” the proposed amendments would exclude from the definition of group certain actions taken by two or more people, including but not limited to: (i) communications or actions that do not have the purpose or effect of changing or influencing the control of a public company and are not made in connection with or as a participant in any transaction having such purpose or effect, and (ii) concerted actions that are not direct or indirect obligations.

EXPAND THE APPLICATION OF THE REGULATIONS TO CASH-SETTLED DERIVATIVES

The proposed amendments would “deem” holders of cash-settled derivatives (not including security-based swaps), with the purpose or effect of changing or influencing the control of a public company or in connection with or as a participant in any transaction having such purpose or effect, to be beneficial owners.



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Related Practice Areas

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COMMENT PERIOD

The comment period for the proposed amendments will end no earlier than April 11, 2022.
