
Hughes Hubbard & Reed

Impending Effectiveness of New Schedule 13D and 13G Amendments

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

January 17, 2024 - This is a reminder that on October 10, 2023, the Securities and Exchange Commission (“SEC”) adopted amendments to modernize the rules governing beneficial ownership reporting under Section 13(d) and 13(g) of the Securities Exchange Act of 1934 (“Exchange Act”). Most significantly, the amendments impact both initial filing deadlines for Schedules 13D and 13G, along with amendments to those schedules.

Sections 13(d) and 13(g) of the Exchange Act require any person who directly or indirectly acquires or holds beneficial ownership of more than 5% of a covered class of equity securities of an issuer to publicly report this beneficial ownership on either a Schedule 13D or 13G. An investor with control intent must file Schedule 13D, while exempt investors and investors without a control intent (such as qualified institutional investors and passive investors) must file Schedule 13G. An exempt investor is a person holding beneficial ownership of more than 5% of a covered class, but who has not acquired beneficial ownership subject to Section 13(d). A qualified institutional investor is a broker or dealer registered under Section 14 of the Exchange act. A passive investor is a beneficial owner of more than 5% but less than 20% of a covered class who can certify under Item 10 of Schedule 13G that the subject securities were not acquired and are not held for the purpose of changing or influencing the control of the issuer and were not acquired in connection with or as a participant in any transaction having such purpose.

In light of recent technological advances and the evolution in financial markets, the SEC adopted the 2023 amendments to Regulations 13D and 13G to modernize the beneficial ownership reporting rules. The SEC has noted that since the enactment of these rules, technological advancements have made it easier for investors subject to these rules to collect relevant information more quickly and prepare required filings in a shorter timeframe. In enacting the amendments, the SEC attempted to balance the desire for more timely information reporting with the administrative burden on preparing accurate filings. The rules, as amended, require investors to more closely and efficiently monitor beneficial ownership to complete required filings sooner. The previous and new filing requirements for Schedule 13D are briefly compared in the table below.

Action	Previous Schedule 13D	New Schedule 13D
Initial Filing Deadline	Within ten days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G.	Within five business days after acquiring beneficial ownership of more than 5% or losing eligibility to file on Schedule 13G.
Amendment Triggering Event	Material change in the facts set forth in the previous Schedule 13D.	Same as previous Schedule 13D: Material change in the facts set forth in the previous Schedule 13D.
Amendment Filing Deadline	Promptly after the triggering event.	Within two business days after the triggering event.
Filing "Cut-Off" Time	5:30 p.m. Eastern Time.	10:00 p.m. Eastern Time.

The major changes between previous Schedule 13D and new Schedule 13D are the filing deadlines. Now, investors must file within five business days after acquiring beneficial ownership of more than 5%, whereas the prior timeline was ten calendar days. Further, previous Schedule 13D required "prompt" filing for an amendment, whereas new Schedule 13D has a two-business day timeline. This specification is intended to remove uncertainty as to the date filing is formally due, and to enhance consistency and uniformity in Schedule 13D amendment filings. Notably, the amendment triggering event that requires an amendment filing remains unchanged.

Passive Investors

Schedule 13G is a shorter version of Schedule 13D, with fewer reporting requirements, making the filing generally less burdensome. There are several continuing exemptions that permit a filer to file Schedule 13G instead of Schedule 13D, including passive investor, exempt investor and qualified institutional investor status. A passive investor may file a Schedule 13D if that person (1) has not acquired the securities with the purpose or effect of changing or influencing the control of the issuer; (2) is not a qualified institutional investor; and (3) is not, either directly or indirectly, a beneficial owner of 20% or more of the applicable class of securities. The previous and new filing requirements for Schedule 13G passive investors are compared in the table below.

Action	Previous Schedule 13G	New Schedule 13G
Initial Filing Deadline	Within ten days after acquiring beneficial ownership of more than 5%.	Within five business days after acquiring beneficial ownership of more than 5%.
Amendment Triggering Event	(i) Any change in the information previously reported on Schedule 13G; (ii) upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.	(i) Material change in the information previously reported on Schedule 13G; (ii) upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.
Amendment Filing Deadline	(i) Forty-five days after calendar year-end in which any change occurred; (ii) promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.	(i) Forty-five days after calendar quarter-end in which a material change occurred; (ii) two business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.

Action	Previous Schedule 13G	New Schedule 13G
Filing "Cut-Off" Time	5:30 p.m. Eastern Time.	10:00 p.m. Eastern Time.

Exempt Investors

Exempt investors are persons holding beneficial ownership of more than five percent of a covered class but who have not made an acquisition of beneficial ownership subject to Section 13(d) of the Exchange Act. Exempt investors generally include persons that acquired all (or substantially all) of their covered securities prior to the issuer going public and persons that acquire no more than 2% of a class of covered securities within a 12-month period. The previous and new filing requirements for Schedule 13G exempt investors are compared in the table below.

Action	Previous Schedule 13G	New Schedule 13G
Initial Filing Deadline	Forty-five days after calendar year-end in which beneficial ownership exceeds 5%.	Forty-five days after calendar quarter-end in which beneficial ownership exceeds 5%.
Amendment Triggering Event	Any change in the information previously reported on Schedule 13G.	Material change in the information previously reported on Schedule 13G.
Amendment Filing Deadline	Forty-five days after calendar year-end in which any change occurred.	Forty-five days after calendar quarter-end in which a material change occurred.
Filing "Cut-Off" Time	5:30 p.m. Eastern Time.	10:00 p.m. Eastern Time.

Qualified Institutional Investor

A person is a qualified institutional investor if the person (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 on whose behalf it holds securities exceeding 5% of the class of equity securities of any acquisition or transaction on behalf of that other person that might be reportable by that person under Section 13(d); and (3) is an institutional investor. The previous and new filing requirements for Schedule 13G qualified institutional investors are compared in the table below.

Action	Previous Schedule 13G	New Schedule 13G
Initial Filing Deadline	(i) Forty-five days after calendar year-end in which beneficial ownership exceeds 5%; (ii) ten days after month-end in which beneficial ownership exceeds 10%.	(i) Forty-five days after calendar quarter-end in which beneficial ownership exceeds 5%; (ii) five business days after month-end in which beneficial ownership exceeds 10%.
Amendment Triggering Event	(i) Any change in the information previously reported on Schedule 13G; (ii) upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.	(i) Material change in the information previously reported on Schedule 13G; (ii) upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership.

Action	Previous Schedule 13G	New Schedule 13G
Amendment Filing Deadline	(i) Forty-five days after calendar year-end in which any change occurred; (ii) ten 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.	(i) Forty-five days after calendar quarter-end in which a material change occurred; (ii) five business days after month-end in which beneficial ownership exceeds 10% or a 5% increase or decrease in beneficial ownership.
Filing "Cut-Off" Time	5:30 p.m. Eastern Time.	10:00 p.m. Eastern Time.

The Final Rules amended the SEC's EDGAR Filer Manual to require that Schedules 13D and 13G, including quantitative and text content, as well as checkboxes, be filed using an XML-based language, except that exhibits are not covered by this filing requirement. A reporting person may still submit filings directly to EDGAR in applicable XML or use an SEC-designed web-based application to create the Schedule in such XML for inclusion on EDGAR. The purpose of this change is to make it easier for investors and other market participants to access and use information that is disclosed on Schedules 13D and 13G.

The Final Rules were adopted by the SEC on October 10, 2023, were published in the Federal Register on November 7, 2023, and will become effective 90 days following such publication, on February 5, 2024, except that compliance with the new Schedule 13G filing deadlines is not required until September 30, 2024, and compliance with the XML filing requirement is not required until December 18, 2024.

Ultimately, the effect of these amendments to Regulation 13D and 13G is to require investors to be mindful of their transactions, as a transaction may trigger an accelerated filing requirement, whether it be an amendment or entirely new Schedule 13D or 13G filing. Investors who are or may be subject to Regulation 13D and /or 13G should evaluate their processes and procedures to ensure they are ready to comply with the accelerated filing deadlines.

Related People



Gary J. Simon



Olivia Rose

Related Areas of Focus

Corporate

Securities & Capital Markets