

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 232 and 240**

**[Release Nos. 33-11180; 34-97405; File No. S7-06-22]**

**RIN 3235-AM93**

**Reopening of Comment Period for Modernization of Beneficial Ownership Reporting**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is reopening the comment period for its proposal, *Modernization of Beneficial Ownership Reporting*, Release No. 33-11030, (Feb. 10, 2022) (“Proposing Release”). In the Proposing Release, the Commission proposed to amend certain rules that govern beneficial ownership reporting (“Proposed Amendments”). The Proposed Amendments would modernize the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G. The Proposed Amendments also would deem holders of certain cash-settled derivative securities as beneficial owners of the reference equity securities and clarify the disclosure requirements of Schedule 13D with respect to derivative securities. In addition, the Proposed Amendments would clarify and affirm the operation of the beneficial ownership reporting rules as applied to two or more persons that form a group under the Securities Exchange Act of 1934, and provide new exemptions to permit such persons to communicate and consult with each other, jointly engage issuers, and execute certain transactions without being subject to regulation as a group. Finally, the Proposed

Amendments would require that Schedules 13D and 13G be filed using a structured, machine-readable data language. The Commission is reopening the comment period to allow interested persons an opportunity to comment on the additional analysis and data contained in a staff memorandum that was added to the public comment file on April 28, 2023.

**DATES:** The comment period for the Proposing Release published March 10, 2022, at 87 FR 13846, is reopened. Comments should be received on or before June 27, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-06-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on the Commission's website (<https://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personal identifiable information in submissions; you should submit only

information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the our website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Panos, Senior Special Counsel, and Valian Afshar, Special Counsel, in the Office of Mergers and Acquisitions, Division of Corporation Finance, at (202) 551-3440, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** This release relates to the Commission’s Proposed Amendments to 17 CFR 240.13d-1 (“Rule 13d-1”), 17 CFR 240.13d-2 (“Rule 13d-2”), 17 CFR 240.13d-3 (“Rule 13d-3”), 17 CFR 240.13d-5 (“Rule 13d-5”), 17 CFR 240.13d-6 (“Rule 13d-6”) and 17 CFR 240.13d-101 (“Rule 13d-101”), under the Securities Exchange Act of 1934<sup>1</sup> (“Exchange Act”).<sup>2</sup> We also are proposing amendments to 17 CFR 232.13 (“Rule 13 of Regulation S-T”) and 17 CFR 232.201

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<sup>1</sup> 15 U.S.C. 78a *et seq.*

<sup>2</sup> Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a *et seq.* of the United States Code, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR part 240], in which these rules are published.

(“Rule 201 of Regulation S-T”) under 17 CFR part 232 (“Regulation S-T”).<sup>3</sup>

## I. BACKGROUND

As described more fully in the Proposing Release, the Commission proposed to amend certain rules to modernize the beneficial ownership reporting requirements.<sup>4</sup> The Proposed Amendments would, among other things:

1. Revise the Rule 13d-1(a) filing deadline for the initial Schedule 13D to five days after the date on which a person acquires more than 5% of a covered class of equity securities;<sup>5</sup> and amend Rules 13d-1(e), (f), and (g) to shorten the filing deadline for the initial Schedule 13D required to be filed by certain persons who forfeit their eligibility to report on Schedule 13G in lieu of Schedule 13D to five days after the event that causes the ineligibility;
2. Revise the filing deadline under Rule 13d-2(a) for amendments to Schedule 13D to one business day after the date on which a material change occurs;
3. Amend Rules 13d-1(b) and (d) to shorten the deadline for the initial Schedule 13G filing for Qualified Institutional Investors<sup>6</sup> and Exempt Investors to within five business days after the last day of the month in which beneficial ownership first exceeds 5% of a covered class; and amend the deadline in

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<sup>3</sup> Unless otherwise noted, when we refer to Regulation S-T, or any paragraph of the rules thereunder, we are referring to title 17, part 232 of the Code of Federal Regulations [17 CFR part 232], in which these rules are published.

<sup>4</sup> See *Modernization of Beneficial Ownership Reporting*, Release Nos. 33-11030; 34-94211 (Feb. 10, 2022) [87 FR 13846 (Mar. 10, 2022)].

<sup>5</sup> As used in this release, a “covered class” is a class of equity securities described in Section 13(d)(1) of the Exchange Act and Rule 13d-1(i) and generally means, with limited exception, a voting class of equity securities registered under Section 12 of the Exchange Act.

<sup>6</sup> Capitalized terms not defined in this release have the meaning set forth in the Proposing Release.

Rule 13d-1(c), which permits Passive Investors to file an initial Schedule 13G in lieu of Schedule 13D within 10 days after acquiring beneficial ownership of more than 5% of a covered class, to five days after the date of such an acquisition;

4. Revise the filing deadline for amendments to Schedule 13G in Rule 13d-2(b) to five business days after the end of the month in which a reportable change occurs;<sup>7</sup> and amend Rule 13d-2(c) to shorten the filing deadline for Schedule 13G amendments filed pursuant to that provision to five days after the date on which beneficial ownership first exceeds 10% of a covered class, and thereafter upon any deviation by more than 5% of the covered class, with these requirements applying if the thresholds were crossed at any time during a month;<sup>8</sup>
5. Add new paragraph (e) to Rule 13d-3 to deem holders of certain cash-settled derivative securities as beneficial owners of the reference covered class and amend Item 6 to Schedule 13D to remove any implication that a person is not required to disclose interests in all derivative securities that use a covered class as a reference security;
6. Amend Rule 13d-5 to align the text of that rule, as applicable to two or more persons who act as a group, with the statutory language in Sections 13(d)(3)

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<sup>7</sup> The Proposed Amendments also would revise Rule 13d-2(b) to require that an amendment to a Schedule 13G be filed only if a “material change” occurs instead of an amendment obligation arising for Schedule 13G filers upon the occurrence of “any change” in the facts previously reported regardless of the materiality of such change.

<sup>8</sup> The Proposed Amendments also would revise the Rule 13d-2(d) filing deadline for Schedule 13G amendments filed pursuant to that provision from a “promptly” standard to one business day after the date on which beneficial ownership exceeds 10% of a covered class, and thereafter upon any deviation by more than 5% of the covered class.

and (g)(3) of the Exchange Act and add a new provision in Rule 13d-5 that would affirm that if a person, in advance of filing a Schedule 13D, discloses to any other person that such filing will be made with the purpose of causing that other person to acquire securities in the covered class for which the Schedule 13D will be filed and such other person acquires securities in the covered class, then those persons are deemed to have formed a group within the meaning of Section 13(d)(3);

7. Add new Rule 13d-6(c), which would set forth the circumstances under which two or more persons may communicate and consult with one another and engage with an issuer without concern that they will be subject to regulation as a group with respect to the issuer's equity securities;<sup>9</sup> and
8. Require that Schedules 13D and 13G be filed using a structured, machine-readable data language.<sup>10</sup>

## **II. REOPENING OF COMMENT PERIOD**

Since the publication of the Proposing Release, the staff of the Division of Economic and Risk Analysis has prepared a memorandum that provides supplemental

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<sup>9</sup> The Proposed Amendments also would add new Rule 13d-6(d) to set forth the circumstances under which two or more persons may enter into an agreement governing a derivative security in the ordinary course of business without concern that they will become subject to regulation as a group with respect to the derivative's reference equity securities.

<sup>10</sup> The Proposed Amendments also would: (1) revise Rule 13(a) of Regulation S-T to permit Schedules 13D and 13G, and any amendments thereto, that are submitted by direct transmission on or before 10 p.m. eastern time on a given business day to be deemed to have been filed on the same business day to provide additional time for beneficial owners to prepare and submit their Schedule 13D or Schedule 13G filings; and (2) amend Rule 201(a) of Regulation S-T to make the temporary hardship exemption set forth in that rule—which applies to unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing—unavailable to Schedules 13D and 13G filings.

data and analysis related to certain economic effects of the Proposed Amendments.<sup>11</sup>

We believe that the information presented in the memorandum has the potential to be informative for purposes of further evaluating the Proposed Amendments. We are, therefore, reopening the comment period to permit interested parties to comment on the staff memorandum, which has been included in the comment file. We encourage any interested person to submit comments, including comments on the data or methodology used in the analysis contained in the memorandum and on how this analysis should inform our consideration of the benefits and costs of the Proposed Amendments. If any commenters who have already submitted a comment letter wish to provide supplemental or updated comments, we encourage them to do so. Comments are of particular assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

Dated: April 28, 2023.

By the Commission.

**Vanessa A. Countryman,**

*Secretary.*

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<sup>11</sup> Memorandum of the Staff of the Division of Economic and Risk Analysis, *Supplemental data and analysis on certain economic effects of proposed amendments regarding the reporting of beneficial ownership* (Apr. 28, 2023), available at <https://www.sec.gov/comments/s7-06-22/s70622.htm>.