



# SEC Update

September 12, 2024

*This is a commercial communication from Hogan Lovells. See note below.*

## Mandatory compliance nears for remaining Section 13 reporting requirements

The last two mandatory compliance dates under the SEC's amendments to Exchange Act Regulation 13D-G adopted in October 2023 are fast approaching. We discussed the amendments in our *SEC Update* available [here](#).

Beginning on September 30, 2024, filers that report their beneficial ownership of a covered class of equity security on Schedule 13G will be required to comply with accelerated filing deadlines for initial and amended filings.

Beginning on December 18, 2024, reporting persons will be required to file their Schedules 13D and 13G using a structured, machine-readable data language.

In its filing review process this year, the SEC's Division of Corporation Finance has been commenting on non-compliance with the shorter Schedule 13D reporting deadlines that became effective on February 5, 2024. Filers should expect the SEC staff to scrutinize the timeliness of Schedule 13G filings under the new deadlines for those schedules.

### Section 13 reporting requirements

The reporting requirements of Sections 13(d) and 13(g) of the Exchange Act and the SEC's Regulation 13D-G are intended to inform investors of significant accumulations of equity securities that may lead to a change in control of an issuer. Under these provisions, any person or group that beneficially owns more than 5% of a class of voting equity security registered under Exchange Act Section 12 must disclose such ownership and other specified information on a Schedule 13D disclosure statement or, if the filer is eligible, on a Schedule 13G disclosure statement. Regulation 13D-G also requires Schedule 13D and 13G filers to amend

their statements upon the occurrence of specified circumstances.

### Schedule 13G filing deadlines

The October 2023 rule amendments shorten the filing deadlines for initial and amended Schedule 13Gs filed by qualified institutional investors (QIIs), passive investors, and exempt investors eligible to report their beneficial ownership on Schedule 13G.

**Deadlines for initial filings.** Rules 13d-1(b), (c), and (d) under the Exchange Act prescribe the initial Schedule 13G filing deadlines that will apply beginning on September 30, 2024.

- *QIIs* will be required under Rule 13d-1(b) to file their initial Schedule 13G within 45 days after the end of any calendar quarter in which, as of the end of that quarter, their beneficial ownership of a covered class of securities exceeds 5%. However, if their beneficial ownership exceeds 10% of the class before the end of any calendar quarter, these investors will be required to file their initial Schedule 13G within five business days after the end of the first month in which their beneficial ownership crosses the 10% threshold, computed as of the last day of the month.
- *Passive investors* will be required under Rule 13d-1(c) to file their initial Schedule 13G within five business days after the date on which they acquired beneficial ownership of more than 5% of a covered class.
- *Exempt investors* will be required under Rule 13d-1(d) to file their initial Schedule 13G within 45 days after the end of a calendar quarter if, as of the end of that quarter, their beneficial ownership exceeds 5% of the covered class.

**Deadlines for amended filings.** Rules 13d-2(b), (c), and (d) under the Exchange Act set forth the deadlines for amendments to Schedule 13G filings that will apply beginning on September 30, 2024.

- *All Schedule 13G filers* will be required under Rule 13d-2(b) to file an amendment to their Schedule 13Gs within 45 days after the end of a calendar quarter if, as of the end of that quarter, there is any “material” change in the information previously disclosed in the statements, as discussed below.
- In addition, *QIIs* will be required under Rule 13d-2(c) to file an amendment to their Schedule 13Gs:
  - within five business days after the end of the first month in which their beneficial ownership exceeds 10% of a covered class, computed as of the last day of the month; and
  - thereafter, within five business days after the end of any month in which their beneficial ownership increases or decreases by more than 5% of the class, computed as of the last day of the month.
- In addition, *passive investors* will be required under Rule 13d-2(d) to file an amendment to their Schedule 13Gs:
  - within two business days after the date on which they acquired beneficial ownership of more than 10% of a covered class; and
  - thereafter, within two business days after the date on which they increase or decrease their beneficial ownership by more than 5% of the class.

**Calculating filing deadlines.** For purposes of calculating filing deadlines, the rules define a “business day” to mean any day other than Saturday, Sunday, or a federal holiday, from 12:00 a.m. to 11:59 p.m. Eastern Time.

Schedule 13G filings submitted to the SEC by direct submission via EDGAR on or before 10:00 p.m. Eastern Time on a business day will be deemed to have been filed on the same business day.

**Materiality determinations for Schedule 13G amendments.** In amending Rule 13d-2(b), the SEC replaced the term “any” change with the term “material” change to define the type of change in information previously reported in a Schedule 13G that will trigger the rule’s amendment obligation. The SEC underscores in its release that the express

reference to material change is intended to codify the agency’s view that there is a “materiality standard inherent” in the rule provisions governing Schedule 13G filings, based on the fact that “any disclosure” in a Schedule 13G filing, “in light of the infrequency of the reports and comparatively minimal statements required to be made, is effectively material.”

The SEC follows this sweeping observation with confirmation that materiality determinations in the Schedule 13G context, as in other contexts under its rules, should be governed by the definition of “material” articulated by the federal courts and contained in Exchange Act Rule 12b-2. Rule 12b-2 says that information relating to a company is material if there is a substantial likelihood that a reasonable investor would attach importance to the information in deciding whether to buy or sell the company’s securities. The SEC emphasizes that this is the same materiality standard that triggers amendments to Schedule 13D filings, so that both Rule 13d-2(a) (governing Schedule 13D amendment obligations) and Rule 13d-2(b) (governing Schedule 13G amendment obligations) “will now share the same materiality standard for determining when an amendment is due.”

The SEC did not adopt the recommendation of some commenters to approve a safe harbor that would have carved out from the material-change standard specified *de minimis* changes in beneficial ownership. The SEC instead indicates that the principle set forth in Rule 13d-2(a), stating that the acquisition or disposition of beneficial ownership equal to 1% or more of a covered class will be deemed “material” for Schedule 13D amendments, “is equally instructive for purposes of determining what changes” in beneficial ownership are material for Schedule 13G amendments. Reliance on this standard, however, must be qualified by the long-standing direction in Rule 13d-2(b) that a Schedule 13G amendment (unlike a Schedule 13D amendment) is not triggered by a change in beneficial ownership “if the change results solely from a change in the aggregate number of securities outstanding” (such as a reduction in outstanding shares resulting from the company’s share repurchase activity).

**Mandatory compliance with revised filing deadlines.** Beginning on September 30, 2024, Schedule 13G filers will be required to comply with the revised deadlines for initial and amended filings.

Of a particular note, a filer will have to amend its Schedule 13G more quickly under revised Rule 13d-2(b) to disclose a material change to information filed in the previous report. Instead of being able to defer reporting year following the change, in accordance with the former rules, the filer now will be required to report a material change within 45 days after the calendar quarter in which it occurred. The filer also will have to monitor changes in its beneficial ownership of investments on a more frequent basis to comply with the revised deadlines.

Some new filing deadlines, if triggered, might have to be calculated by reference to the first mandatory compliance date (September 30, 2024). For example, a reporting person will be required under Rule 13d-2(b) to file an amendment to its Schedule 13G within 45 days after September 30, 2024 if there has been a material change in previously reported information as of the end of the day on September 30.

### **SEC staff review of Section 13 filings.**

The SEC adopted amendments to Regulation 13D-G at a time of continuing SEC staff vigilance in monitoring the timeliness and content of Section 13 filings. The Division of Corporation Finance this year has been commenting on Schedules 13D and 13G as part of its filing review process, while the Division of Enforcement has been conducting targeted and “sweep” investigations into Section 13 filing practices and recommending charges for alleged rule violations.

Ten years ago this month, the SEC announced wide-ranging enforcement actions directed at violations of reporting requirements under Sections 13(d) and 13(g), as well as under Exchange Act Section 16. As discussed in the **SEC Update** we issued at the time, the actions represented an abandonment by the SEC of its former approach of charging insider reporting violations under these provisions only when they relate to fraud or other major violations of the securities laws.

The SEC indicated in 2014 that, if reporting violations are flagrant, it will target the offenders for enforcement on a stand-alone basis without regard to other possible wrongdoing. Since then, the SEC more aggressively has charged stand-alone reporting violations by reporting persons who were not repeated late filers or who otherwise did not display an egregious disregard for their reporting obligations. The SEC has highlighted that ownership reports filed under Section 13, as well as those filed under Section 16, provide investors in a company’s securities

with an opportunity to evaluate whether the holdings and transactions disclosed in the filings could be indicative of the company’s prospects.

Since the shortened filing deadlines for Schedule 13D filings became effective on February 5, 2024, the staff of the Office of Mergers & Acquisitions within the Division of Corporation Finance has commented to filers on their failure to file those schedules on a timely basis. The filing delinquencies addressed in the comment letters published to date have primarily related to initial Schedule 13D filings, including those required upon the filing person’s ineligibility to report on Schedule 13G. Schedule 13G filers should expect the staff to expand its Section 13 monitoring activity to encompass compliance with the revised Schedule 13G filing deadlines.

### **Structured data requirement for Schedule 13D and 13G filings**

Beginning on December 18, 2024, filings on Schedule 13G, as well as those on Schedule 13D, will have to be submitted in an XML (Extensible Markup Language)-based language. As encouraged by the SEC, some Section 13 reporting persons already have been voluntarily filing their statements using this structured data language.

Most reporting persons currently file their Schedules 13D and 13G electronically on the SEC’s EDGAR system in HTML or ASCII format, each of which is an unstructured data language and therefore not machine-readable. Following expiration on December 18 of a phase-in period for the new format, reporting persons will be required to make their filings using an XML-based language specific to Schedules 13D and 13G (13D/G-specific XML). This machine-readable format will make it easier for computers to process, and for investors to analyze, information in the filings.

Filers will be required to use 13D/G-specific XML for all information on Schedules 13D and 13G other than exhibits, including quantitative disclosures, textual narratives, and identification checkboxes.

As is the case with other EDGAR XML filings, reporting persons will have the option to submit filings directly to EDGAR in 13D/G-specific XML or to use a web-based reporting application developed by the SEC that will generate the schedule in 13D/G-specific XML in connection with submission of the filing to EDGAR.



Early in 2024, the SEC staff updated its EDGAR XBRL Guide, which is posted to the SEC's website, to include a technical specification that provides the basis for creating submission types for Schedule 13D and 13G XML submissions. The Guide directs filers to use this specification to generate an XML submission that can be successfully parsed by the EDGAR system.

Financial printers and other third-party data information specialists have developed systems to assist filers, as well as issuers supporting their insiders with Section 13 compliance, in meeting this structured data requirement that will become effective in just over two months.

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## Contributors



### Alan L. Dye (co-editor)

Partner, Washington, D.C.

T +1 202 637 5737

alan.dye@hoganlovells.com



### Richard Parrino (co-editor)

Partner, Washington, D.C.

T +1 202 637 5530

richard.parrino@hoganlovells.com



### Kevin K. Greenslade

Partner, Northern Virginia

T +1 703 610 6189

kevin.greenslade@hoganlovells.com



### Evan Koster

Partner, New York

T +1 212 918 8260

evan.koster@hoganlovells.com



### Weston Gaines

Counsel, Washington, D.C.

T +1 202 637 5846

weston.gaines@hoganlovells.com

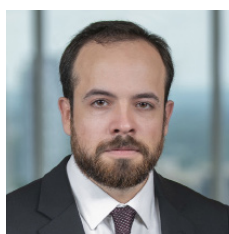


### Gibby Wagner

Senior Associate, Philadelphia

T +1 267 675 4693

gibby.wagner@hoganlovells.com



### Spencer Leroux

Associate, Northern Virginia

T +1 703 610 6127

spencer.leroux@hoganlovells.com

## Additional contacts

**Steven J. Abrams**

Partner, Philadelphia  
T +1 267 675 4671  
steve.abrams@hoganlovells.com

**Richard Aftanas**

Partner, New York  
T +1 212 918 3267  
richard.aftanas@hoganlovells.com

**Tifarah Roberts Allen**

Partner, Washington, D.C.  
T +1 202 637 5427  
tifarah.allen@hoganlovells.com

**John B. Beckman**

Partner, Washington, D.C.  
T +1 202 637 5464  
john.beckman@hoganlovells.com

**Jessica A. Bisignano**

Partner, Philadelphia  
T +1 267 675 4643  
jessica.bisignano@hoganlovells.com

**David W. Bonser**

Partner, Washington, D.C.  
T +1 202 637 5868  
david.bonser@hoganlovells.com

**Rupa Briggs**

Partner, New York  
T +1 212 918 3024  
rupa.briggs@hoganlovells.com

**Glenn C. Campbell**

Partner, Baltimore, Washington, D.C.  
T +1 410 659 2709 (Baltimore)  
T +1 202 637 5622 (Washington, D.C.)  
glenn.campbell@hoganlovells.com

**John P. Duke**

Partner, Philadelphia, New York  
T +1 267 675 4616 (Philadelphia)  
T +1 212 918 5616 (New York)  
john.duke@hoganlovells.com

**Allen Hicks**

Partner, Washington, D.C.  
T +1 202 637 6420  
allen.hicks@hoganlovells.com

**Paul Hilton**

Senior Counsel, Denver, New York  
T +1 303 454 2414 (Denver)  
T +1 212 918 3514 (New York)  
paul.hilton@hoganlovells.com

**Eve N. Howard**

Senior Counsel, Washington, D.C.  
T +1 202 637 5627  
eve.howard@hoganlovells.com

**William I. Intner**

Partner, Baltimore  
T +1 410 659 2778  
william.intner@hoganlovells.com

**Bob Juelke**

Partner, Philadelphia  
T +1 267 675 4615  
bob.juelke@hoganlovells.com

**Jonathan Lewis**

Partner, São Paulo  
T +55 11 3074 3619  
jonathan.lewis@hoganlovells.com

**Paul D. Manca**

Partner, Washington, D.C.  
T +1 202 637 5821  
paul.manca@hoganlovells.com

**Michael E. McTiernan**

Partner, Washington, D.C.  
T +1 202 637 5684  
michael.mctiernan@hoganlovells.com

**Stephen M. Nicolai**

Partner, Philadelphia  
T +1 267 675 4642  
stephen.nicolai@hoganlovells.com

**Brian C. O'Fahey**

Partner, Washington, D.C.  
T +1 202 637 6541  
brian.ofahey@hoganlovells.com

**Leslie (Les) B. Reese, III**

Partner, Washington, D.C.  
T +1 202 637 5542  
leslie.reese@hoganlovells.com

**Richard Schaberg**

Partner, Washington, D.C., New York  
T +1 202 637 5671 (Washington, D.C.)  
T +1 212 918 3000 (New York)  
richard.schaberg@hoganlovells.com

**Michael J. Silver**

Senior Counsel, New York, Baltimore  
T +1 212 918 8235 (New York)  
T +1 410 659 2741 (Baltimore)  
michael.silver@hoganlovells.com

**Andrew S. Zahn**

Partner, Washington, D.C.  
T +1 202 637 3658  
andrew.zahn@hoganlovells.com

**Elizabeth (Liz) L. Banks**

Counsel, Washington, D.C.  
T +1 202 637 2523  
elizabeth.banks@hoganlovells.com

**Val Delp**

Counsel, Philadelphia  
T +1 267 675 4649  
val.delp@hoganlovells.com

**Meredith Hines**

Counsel, New York  
T +1 212 918 3729  
meredith.hines@hoganlovells.com

**J. Nicholas Hoover**

Counsel, Baltimore  
T +1 410 659 2790  
nick.hoover@hoganlovells.com

**Catalina Parkinson**

Counsel, Washington, D.C.  
T +1 202 637 5767  
catalina.parkinson@hoganlovells.com

Alicante  
Amsterdam  
Baltimore  
Beijing  
Berlin\*\*  
Birmingham  
Boston  
Brussels  
Budapest\*  
Colorado Springs  
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Washington, D.C.

\*Our associated offices

\*\*Legal Services Center

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