

February 14, 2022

Potential Implications of SEC's Proposed 13D-G Amendments

On February 10, 2022, the SEC proposed amended regulations related to its beneficial ownership reporting rules. If adopted, the amendments may have sweeping implications for shareholder activism and unsolicited takeovers, among other matters. Some potential implications of the proposed amendments include:

- **Shareholder Activism:** The SEC is proposing to shorten the deadline for initial Schedule 13D filings to five days and to include cash-settled derivative securities held with a control purpose in the beneficial ownership calculation. This change is likely to cause activists to cross the 5% threshold sooner and to limit the number of securities that an activist could acquire at lower, pre-disclosure prices. The filing deadline for amendments to Schedule 13D would also be changed from “promptly” to one business day after the date on which a material change occurs.
 - The SEC estimates a 5% increase in filings from the inclusion of cash-settled derivative securities held with a control purpose. The term “derivative securities” is very broad and could pick up instruments that investors would not expect to convey beneficial ownership.
 - The proposed amendments would also significantly increase the number of scenarios in which two or more persons are deemed to have formed a “group” for purposes of both Section 13(d) and Section 16 of the Exchange Act.
 - The proposed amendments will increase the number of persons subject to Section 16 of the Exchange Act, thereby increasing the number of holders subject to short-swing profit liability and short sale prohibitions.
- **Unsolicited M&A Activity:** The shorter reporting deadlines, substantially broadened definition of beneficial ownership and expansion of the “group” concept could impact certain M&A transactions by reducing an unsolicited acquirer’s ability to acquire exposure to a stock prior to alerting a target company. The proposed amendments may give companies with substantial takeover defenses added protection, including by effectively lowering poison pill thresholds since those thresholds are typically based on beneficial ownership levels as measured under the 13D rules.
- **Accelerated Filings by Passive Investors:** The proposed amendments would significantly accelerate position reporting by Qualified Institutional Investors.

Our full memo regarding these proposed amendments is available [here](#). The full text of the SEC Release is available [here](#).

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