

May 1, 2023

SEC Reopens Comment Period for Beneficial Ownership Reporting Rule Amendments

Staff Memo Presents Additional Data and Analysis in Support of Shortened Filing Deadlines

The [SEC announced on April 28, 2023](#) that it will reopen the comment period for proposed amendments to Regulation 13D-G and Regulation S-T to, among other things, shorten the filing deadlines for beneficial ownership reports on Schedule 13D from 10 to five calendar days.¹ The comment period will remain open until the later of 30 days after the date of publication in the Federal Register or June 27, 2023.²

The announcement was accompanied by a [memo](#) from the staff of the Division of Economic and Risk Analysis (the “Staff”) presenting a quantitative analysis of existing Schedule 13D filing practices that is intended to support the proposed shorter five-day filing deadlines for these beneficial ownership reports.³

Among other things, the memo addresses potential impacts that shorter Schedule 13D filing deadlines may have on shareholder activism by analyzing a subset of Schedule 13D filings from calendar years 2011 to 2021 that the Staff believes are more likely to represent activist campaigns. Reviewing this group’s filing patterns, the Staff found that a majority of these filers completed acquiring all or most of their reportable stake within five days of crossing the reporting threshold. This suggests, the Staff argues, a smaller group of activist filers are likely to be meaningfully impacted by the proposed five-day filing deadline.

The memo also analyzes the potential harms under the current 10-day filing deadline to selling shareholders other than the filer. Reviewing data on sales between five and 10 days after the trigger date for a Schedule 13D filing, the Staff argues that information asymmetries—*i.e.*, a sale by a third party to a buyer who is aware that a Schedule 13D will soon be filed—may enable opportunistic traders to capture outsized returns.

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The SEC specifically requests comments on the data and methodology used by the Staff and how the memo should inform the SEC's cost-benefit analysis. Supplemental or updated comments are encouraged.

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ENDNOTES

- ¹ SEC, Proposed Rule: Modernization of Beneficial Ownership Reporting, February 10, 2022, *available at* <https://www.sec.gov/rules/proposed/2022/33-11030.pdf>. For a discussion of the proposed amendments, see our Client Memorandum: "SEC Proposes Rule Amendments Related to Beneficial Ownership Reporting" (February 14, 2022), *available at* https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/sc-publication-sec-proposes-changes-to-beneficial-ownership-reporting.pdf.
- ² SEC, Proposed Rule: Reopening of Comment Period for Modernization of Beneficial Ownership Reporting, April 28, 2023, *available at* <https://www.sec.gov/rules/proposed/2023/33-11180.pdf>.
- ³ SEC, Division of Economic and Risk Analysis, Memorandum Regarding Supplemental Data and Analysis on Certain Economic Effects of Proposed Amendments Regarding the Reporting of Beneficial Ownership, April 28, 2023, *available at* <https://www.sec.gov/comments/s7-06-22/s70622-20165251-334474.pdf>.

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