

Statement

Statement on Final Rules Regarding Beneficial Ownership



Chair Gary Gensler

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Today, the Commission adopted final rules to shorten the deadlines by which beneficial owners of a company — those who own more than 5 percent of the company — must inform the public of their position. I am pleased to support this adoption because it updates these reporting requirements for modern markets, ensures investors receive material information in a timely way, and reduces information asymmetries.

Today's adoption updates rules that first went into effect more than 50 years ago. In 1968, in the wake of abuses in the 1960s in the mergers and acquisitions field, Congress passed an important law known as the Williams Act. While the legislation offered important investor protections regarding tender offers, it also included provisions requiring public disclosure from individuals with large positions—known as beneficial owners—in the process of accumulating shares in a company with the potential to change or influence control of the company.

Indeed, ahead of the law's passage, then-SEC Chair Manuel Cohen testified that such disclosure would be important. In his 1967 testimony prior to the law's passage, Chair Cohen said that the then-current law “does not give the public stockholders adequate information about the arrangements surrounding the acquisition or the purchaser's intentions with respect to the company.”^[1]

In 1970, Congress lowered the threshold for filing a beneficial ownership report from those who own more than 10 percent of a public company's equity securities to those who own more than 5 percent. Under current rules, beneficial owners who have control intent have 10 days to report their ownership (via Schedule 13D) after acquiring more than 5 percent of a public company's equity securities.

Congress also updated this disclosure regime in 1977 to ensure that significant owners without control intent also provided disclosure to the market (via Schedule 13G). Congress left those filing deadlines to the discretion of the Commission.

These were the rules in place when I first took a job on Wall Street working in a mergers and acquisitions department. For me, it seems just like yesterday. Needless to say, for many readers, that was a long time ago. What matters, though, is the reality today—and in today's fast-paced markets, it shouldn't take 10 days for the public to learn about an attempt to change or influence control of a public company. I say that particularly given the rapidity of current markets and technologies. Frankly, these deadlines from half a century ago feel antiquated.

That's why I'm glad that, in the wake of the 2008 financial crisis, Congress came back to the issue of Schedule 13D filings. Under the Dodd-Frank Act, Congress gave the SEC the authority to shorten the beneficial ownership reporting deadline.

Today's adoption makes use of that Dodd-Frank authority. At its core, today's adoption is about reducing overall information asymmetries in the market, promoting transparency, allowing better-informed decision-making by investors, and improving liquidity, by shortening the filing deadlines for Schedules 13D and 13G.

First, today's adoption shortens the initial filing deadlines for Schedule 13D from 10 calendar days to 5 business days. When someone acquires shares in a company with the intent to control that company, that can be market-moving information. Delayed disclosure can create information asymmetry. In an era of 24-hour media cycles and high-frequency trading, shortening this deadline brings Schedule 13D filings more into modern times.

Second, today's adoption shortens the initial filing deadlines for Schedule 13G. In particular, the final rules require qualified institutional investors and exempt investors to file their initial Schedule 13G filings after quarter-end rather than year-end. Further, the final rules require passive investors who are not qualified institutional investors to file their initial Schedule 13G filings within five business days rather than 10 days.

The amended deadlines—for Schedules 13D and 13G—reflect changes from the proposing release in response to public comment.

Additionally, in response to public feedback, we did not adopt two proposed changes to the regulatory text.

First, rather than the proposed changes to regulatory text, the Commission provided guidance to help clarify the circumstances under which two or more persons form a single "group" for the purposes of beneficial ownership reporting. This guidance is consistent with the Commission's proposed amendments, which were intended to clarify and affirm the applicable legal standards with respect to group formation.

Second, similarly, the Commission provided guidance to set forth the circumstances under which holding certain cash-settled derivatives count towards the 5 percent threshold for reporting.

Taken together, the final rules will benefit markets and the investing public.

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[1] See Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking & Currency, 90th Cong., 1st Sess. 123 (1967). See *also* Universal of Pennsylvania Law Review, “Section 13(d) and Disclosure of Corporate Equity Ownership” (1971), at 862, *available at* https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5834&context=penn_law_review.