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Quorum

Insights Into Corporate Governance, M&A and Securities Law

Quorum - August 2024

August 16, 2024

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Delaware Chancery Court Finds a ~27% Founding Stockholder Is Not a Controller

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On July 2, 2024, the Delaware Chancery Court in *Sciannella v. AstraZeneca* dismissed stockholder claims in connection with the $3 billion merger of Viela Bio and Horizon Therapeutics in 2021. The merger was approved by Viela's stockholders at a share price of $53.00 per share, a 52.8% premium over Viela's share price at the time. The plaintiff alleged that AstraZeneca, by virtue of its 26.72% ownership stake, de facto blocking rights over certain actions and contractual support arrangements with Viela, was a controlling stockholder of Viela, and that AstraZeneca breached its fiduciary duties to Viela and Viela's stockholders by "launching Viela into a rushed, single-bidder sale process" so that AstaZeneca could more easily complete the acquisition of a competitor to Viela.

The main question for the Chancery Court was whether AstraZeneca, as a 26.72% holder of Viela, had significant control over the company and therefore whether the merger should be subject to the more stringent entire fairness standard as opposed to the highly deferential business judgment rule. The Chancery Court analyzed multiple factors, including (1) the factual background and relationship of the parties, (2) the size of AstraZeneca's equity stake, (3) board composition, (4) AstraZeneca's de facto blocking rights and (5) other contractual arrangements between AstraZeneca and Viela.

AstraZeneca created Viela through a spin-off in 2018 and that AstraZeneca maintained a nearly 27% ownership position in Viela. AstraZeneca had appointed two directors to Viela's eight member board, although one of the two had resigned prior to merger talks with Horizon. The plaintiff stockholder alleged that Viela's other directors were susceptible to AstraZeneca's pressure, even if they were not appointed by AstraZeneca, because they were former members of AstraZeneca's management team or "executives or founders of investment funds that were early investors in AstraZeneca's spin-off of" Viela. Additionally, by virtue of Viela's organizational documents, which required a 75% stockholder vote for certain matters, AstraZeneca's 26.72% allowed it to veto certain actions, including: (i) removal of a director; and (ii) stockholder-proposed bylaw amendments that were not supported by the board. Since the spin-off, AstraZeneca provided certain services to Viela through support agreements, including clinical operations, laboratory services and overhead financial, procurement and other functions, which the plaintiff argued gave AstraZeneca "absolute" control over Viela's operations and were the "lifeblood of Viela's business."

The Chancery Court found that the "prior designation of two directors on an eight-member board— only one of whom remained at the time the Board approved the Merger" was not a persuasive allegation of control, noting that plaintiff failed to "plead facts that allow for a reasonable inference that AstraZeneca 'dominate[d] the corporate decision-making process.'" With respect to the other directors on the board, the court reminded the parties that the plaintiff must plead facts to show that such directors are "either beholden to [AstraZeneca] or so under its influence that [the director's] discretion is sterilized." Taking guidance from *Kahn v. M&F Worldwide Corp.*, the court agreed that allegations of "prior employment or business relationships, without more, are insufficient to show control" or to rebut the presumption of independence.

With respect to Viela's charter provisions, the Chancery Court highlighted the fact that, while AstraZeneca had technical blocking rights "over limited corporate actions", AstraZeneca never exercised these rights and, even if it had, the rights

"did not give AstraZeneca power to wield control over the Board or "operate[] the decision-making machinery of" Viela. The court also distinguished the bylaw amendment veto right from other potential blocking rights that may affect board action, noting that the control provision in the charter applied only if the board opposed the relevant bylaw amendment.

Lastly, although the support agreements gave AstraZeneca control over daily operations, the court ruled that the plaintiff did not plead that AstraZeneca "had the ability to dominate the Board's decision-making process as a result of the support agreements or operational dependence on AstraZeneca." Viela's prior SEC filings stated that Viela was "substantially reliant" on AstraZeneca. Despite the fact that the Chancery Court agreed that Viela was, at least in part, contractually dependent upon AstraZeneca, similar to its assessment of the blocking rights, the Chancery Court stressed that AstraZeneca never exercised the potential power that it arguably had. The court also distinguished the statements in Viela's SEC filings from prior decisions based on a public admission of control, stating that Viela's SEC disclosure was a "far cry" from [an] outright admission" and that Viela was not necessarily without other potential alternatives.

Overall, the Chancery Court focused on the fact that the plaintiff's assertions in the case were "not nearly as formidable as…in other cases" and were not sufficient to successfully argue AstraZeneca was a controller of Viela.

The plaintiff also argued that even if AstraZeneca was not a controller of Viela, it exercised transaction-specific control and attempted to exert influence over the sale process, including through a January 8, 2021 letter that proposed a path to a "full separation of Viela from AstraZeneca." As with plaintiff's other claims, this was not a persuasive argument for the Chancery Court. Similar to its analysis on plaintiff's other arguments, the Chancery Court focused on the fact that AstraZeneca did not actually exert influence or exercise the power it allegedly had. Of note for the court, unrelated to the merger AstraZeneca could terminate the support agreements for convenience and had been in discussions with Viela on a separation since Viela's IPO.

Holding that AstraZeneca was not a controlling stockholder, the Chancery Court expressed the position held in *Corwin v. KKR Financial Holdings LLC*, that the business judgment rule would apply absent a showing that the company's stockholders "were interested, coerced, or not fully informed." The court determined that the merger disclosures were sufficient and therefore that stockholders were adequately informed. Among other items, although neither the January 8 letter nor earlier more optimistic projections that pre-dated the merger were disclosed to stockholders, such information was not material and its omission was not sufficient to plead that stockholder action was not fully informed.

The case highlights the Chancery Court's view that when determining whether a minority stockholder exercises control over a company, the totality of the circumstances should be analyzed. Although the court found AstraZeneca not to be a controller, its decision was heavily influenced by the absence of an actual show of power. Going forward, companies in a similar situation to Viela should be careful not to rely on ownership size alone, as smaller beneficial ownership has lead Delaware courts to find the presence of a controlling relationship, especially when combined with a more tangible exertion of influence in the boardroom.

It is also worth noting that, as evidenced in another recent Delaware case, even when entire fairness applies, effective disclosure can avoid an adverse judgment for defendant boards. In a recent case involving a "Multiplan Claim" (*i.e.*, a breach of fiduciary duties claim against directors, officers, or controllers of SPAC, alleging that such fiduciaries impaired the redemption rights of the SPAC equityholders), the Chancery Court found entire fairness to be the correct standard of review but still dismissed the matter at the pleading stage. In *In Re Hennessy Capital Acquisition Corp. IV Stockholder Litigation*, the SPAC sponsors and other defendants were interested in the transaction, in part because they held founder shares (a structure commonly employed in SPACs), and therefore the court held the plaintiff's claims should be reviewed under the lens of entire fairness. Nevertheless, the court noted that "pleading requirements exist even where entire

fairness applies," and that the plaintiff stockholder failed to plead "material facts that were known or knowable by the defendants" prior to the closing of the merger. The plaintiff stockholder brought litigation claiming that the SPAC directors and sponsors violated their fiduciary duty by failing to make adequate disclosures in the company's proxy statement related to the de-SPAC target's business plan. Specifically, the court stated that the plaintiff claimed a breach of fiduciary duty because the directors "tout[ed] an outdated business model that the target had decided to scrap." The court recognized that sufficient facts were pled to warrant entire fairness but that conflicts themselves are not a cause of action and poor performance is not indicative of a breach of fiduciary duty. The decision will likely reverse course on numerous potential copycat suits and shows that even if the Delaware courts determine that entire fairness is appropriate, it may not be a "game over" for defendants.

Delaware Supreme Court Provides Guidance on Advance Notice Bylaws


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On July 11, 2024, the Delaware Supreme Court clarified the proper standard of review for challenges to a board's adoption of advance notice bylaws during a proxy contest. The *Kellner v. AIM ImmunoTech Inc.* decision should inform how both issuers and stockholders evaluate advance notice bylaw amendments that may impact contested nominations and director elections.

The specific dispute arose from AIM ImmunoTech Inc.'s ("AIM") rejection of a stockholder's nomination notice of director candidates for election to AIM's board in 2023. AIM had been targeted by stockholder activists in 2022 as well, and, since that earlier contest, AIM had adopted advance notice bylaws that required detailed disclosures in any stockholder nomination notice, including detailed information regarding the nominating stockholder's relationships. AIM's incumbent board subsequently rejected a stockholder nomination notice as failing to comply with the new bylaws. Kellner, on behalf of the nominating stockholders, challenged the validity of the bylaws and the AIM board's rejection of the nomination notice.

The Court of Chancery found that certain of the newly-adopted advance notice bylaws were invalid and that the bylaw amendments were not adopted on a "clear day" but ultimately sided with AIM in its rejection of the nomination notice. On appeal, the Delaware Supreme Court applied a different, two-step analysis to the challenged bylaws, first looking at whether the new bylaws are invalid on their face and then determining whether enforcement of the bylaws would be equitable in the context of the circumstances in which they were adopted, a test which itself involves two parts. Applying this analysis, the Delaware Supreme Court found just one of the advance notice bylaws facially invalid but that *all* of the challenged bylaw provisions were unenforceable under the second equitable analysis. The Delaware Supreme Court declined to provide Kellner any relief in connection with the rejected nomination notice, but the decision clarified the appropriate framework for assessing a challenge to the validity of advance notice bylaws in the context of an ongoing proxy contest. Specifically, the Delaware Supreme Court distinguished between the evaluation of a bylaw's general legal validity and, as applied in a particular controversy, a further equitable test, which separate analyses the Court of Chancery had conflated.

Facial Validity: Challenges to an advance notice bylaw's validity turn on "whether the bylaw is contrary to law or the certificate of incorporation and addresses a proper subject matter" rather than equitable concerns about the potential for such bylaw's misuse (which is a separate analysis, discussed below). In such analysis, bylaws are "presumed to be valid" and the burden is on the plaintiff to demonstrate that the challenged bylaw cannot be lawful under any circumstance.

The Delaware Supreme Court concluded that all but one of the challenged advance notice bylaw provisions were *facially* valid. The invalid bylaw pertained to a required disclosure regarding ownership by the nominating stockholder of AIM and its competitors, a "1,099-word single-sentence" with "thirteen discrete parts." This provision was "indecipherable," and, as unintelligible bylaws are invalid "under any circumstances," such bylaw was invalid. The other advance notice bylaws were found not inconsistent with Delaware's broad statutory authorization with respect to corporate bylaws or with AIM's certificate of incorporation.

Equitable Analysis: A separate question is whether the remaining advance notice bylaws were enforceable as a matter of equity in this particular circumstance. In line with Delaware caselaw involving challenges to corporate acts that affected

stockholder voting in contests for corporate control, the Delaware Supreme Court applied the enhanced scrutiny standard to the adoption of the advance notice bylaws, as articulated in *Coster v. UIP Companies, Inc.*: "If a board adopts, amends, or enforces advance notice bylaws during a proxy contest," then the action is subject to a two-part test:

1. The court should determine "whether the board faced a threat to an important corporate interest or to the achievement of a significant corporate benefit. The threat must be real and not pretextual, and the board's motivations must be proper and not selfish or disloyal" — meaning for the primary purpose of precluding a challenge to a board's control (bylaws that are so adopted are "inequitable and unenforceable").
2. If a real threat existed and the board was properly motivated in responding, the court should then consider "whether the board's response to the threat was reasonable in relation to the threat posed and was not preclusive or coercive to the stockholder franchise."

Applying this two-part test, the Delaware Supreme Court found that the AIM board's conduct failed the first prong of *Coster*'s enhanced scrutiny equitable review. The decision relied on the Court of Chancery's findings regarding the AIM board's motivations for adopting certain of the contested advance notice provisions — that the adoption suggested an intent to block the dissident, and that the provisions were akin to a tripwire and could be draconian in effect. "The unreasonable demands of most of the [newly adopted bylaws] show that the AIM board's motive was not to counter the threat of an uninformed vote." Therefore, the Delaware Supreme Court reasoned, the AIM board "amended its bylaws for an improper purpose, to thwart Kellner's proxy contest and maintain control" and therefore none of the newly adopted advance notice bylaws could be equitably enforced.

Despite this conclusion as to the unenforceability of the new bylaws (and separately that one was facially invalid), the Supreme Court failed to offer any relief to Kellner with respect to the AIM board's rejection of the nomination notice, principally on grounds that Kellner also engaged in improper conduct. Here, the decision relied on the "countervailing" findings of the Court of Chancery with respect to the plaintiff's and the nominee's "deceptive conduct" — specifically that "Kellner submitted false and misleading responses" in the nomination notice and, therefore, the Supreme Court determined that no further action was warranted.

Loper Bright, Jarkesy, and Implications for the SEC


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"Chevron is overruled," Chief Justice Roberts wrote in *Loper Bright Enterprises v. Raimondo*, because "[t]he deference that Chevron requires of courts reviewing agency action cannot be squared with the [Administrative Procedure Act of 1946 (APA)]." The decision – described by Justice Gorsuch, concurring, as placing a "tombstone" on Chevron – was released the day after *SEC v. Jarkesy*, which prohibits the SEC from requiring the adjudication of fraud cases in which civil penalties are sought before Administrative Law Judges (ALJs). While *Loper Bright*'s rejection of Chevron is likely to have a significant impact across federal agencies, the SEC has already largely implemented the changes required by *Jarkesy*. Both decisions evidence the Court's trend toward limiting the regulatory power of agencies including by minimizing the role of agency expertise in the evaluation and enforcement of regulations.

The Court's decision in *Loper Bright*, specifically, may result in (1) increased litigation targeting SEC rules made pursuant to an APA regulatory rulemaking procedure where ambiguity can be found in the underlying statute, (2) the SEC taking a more conservative approach in its rulemaking and being more cautious when bringing enforcement actions, and (3) an amplification of the pressure on Congress to legislate with greater specificity the extent of the SEC's authority.

Loper Bright: The End of Ambiguity in Statutory Interpretation

Much of the discussion of *Loper Bright* has focused on its historic overturning of precedent, but the opinion is actually a rejection of the concept of ambiguity that underpinned *Chevron*. The first step in the now defunct *Chevron* two-step framework required courts – when considering challenges to an agency's interpretation of a statute – to evaluate whether the language of the statute was ambiguous. Where ambiguity was found, courts then had to defer to the agency's interpretation if it was "reasonable" and supported by agency expertise.

In *Loper Bright*, the Court expressly rejected the existence of ambiguity, holding that statutes "do—in fact, must—have a single, best meaning." And, as the majority emphasized, determinations about best meaning are "emphatically the province and duty" of the courts unconstrained by deference to any *permissible* interpretation advanced by an agency (citing *Marbury v. Madison* and referencing Article III). Further, to act in accordance with *Chevron* is to "def[y] the command of the APA that 'the reviewing court' – not the agency whose action it reviews – is to 'decide *all* relevant questions of law' and 'interpret . . . statutory provisions,'" (quoting §706 with emphasis added).

Previously, *Chevron* deference provided the SEC an advantage in litigation challenging the agency's statutory interpretations. This acted as a deterrent against would-be litigants. Without that advantage, challenges to SEC regulations are likely to be more frequent and have a higher likelihood of success, or (at the very least) will result in delaying the implementation of new rules. Additionally, uncertainty about the weight SEC expertise should be afforded by courts moving forward presents a greater opportunity for challenges to SEC regulations to succeed.

Uncertainty About the Future Value of Agency Expertise

Although the effect of *Loper Bright* is to replace *Chevron* deference with *de novo* review of questions of statutory interpretation, the opinion ostensibly preserves "*Skidmore* respect," under which courts may take into account the "body of

experience and informed judgment" (i.e. subject-matter expertise) of agencies for guidance in their decision-making.

However, the value courts should place on that expertise was left unclear. The majority only reaffirmed that agency expertise has the power to persuade, but lacks the power to control. Yet, as the dissent warned, "If the majority thinks that the same judges who argue today about where 'ambiguity' resides . . . are not going to argue tomorrow about what 'respect' requires, I fear it will be gravely disappointed."

While *Loper Bright* does not explicitly undercut the value courts may place on agency expertise, the dissent's prediction highlights a trend in this direction. In response, the SEC may move toward developing more robust records to support their reasoning (i.e., to bolster their case in the event of future litigation). This could result in the extension of the timeframe on the promulgation of new rules. The SEC may also become more cautious in bringing enforcement actions, particularly where those actions are rooted in tenuous interpretations of Congressional grants of authority.

Discretionary Grants of Authority to the SEC Are Not Affected

The dissent's prediction about waning respect for agency expertise aside, *Loper Bright* does nothing to limit Congress's power to confer discretionary authority on agencies or the ability of agencies to act pursuant to delegated authority. Per the opinion, where a statute grants power to an agency to exercise discretion, the role of the court under the APA is to recognize those delegations, determine the constitutional limit of them, and ensure an agency acts with "reasoned decisionmaking" within those limits. Thus, the SEC's ability to promulgate rules pursuant to statutes explicitly authorizing that type of action remains unaffected by this decision.

The natural result of this is likely to be greater pressure on Congress by the SEC, regulated entities, and the courts. The SEC may increase its efforts to lobby Congress for additional and/or clearer grants of statutory authority. Both regulated entities and the courts – seeking greater certainty in the regulatory environment – are likely to push for legislative clarity about the legitimacy of existing and newly proposed SEC regulations.

A New Opportunity to Challenge SEC Regulations

The greatest impact likely to result from *Loper Bright* is an increase in both the volume and success rate of challenges to SEC actions. By stripping away the deference previously afforded to agency statutory interpretations and signaling a decreased respect for agency expertise, the Court has opened a new avenue for litigants to challenge SEC regulations.

The Limited Impact of *Jarkesy*

Conversely, *Jarkesy* is unlikely to have a significant practical effect. Under the limited holding in *Jarkesy*, the Court ruled that the Seventh Amendment entitles defendants facing securities fraud charges to a jury trial when the SEC is seeking civil penalties. Ongoing challenges to SEC administrative proceedings over the past several years have already caused the SEC to largely abandon the use of ALJs in these types of cases. Notably, since the June 2018 Supreme Court decision, *Lucia v. SEC* (which invalidated the staff-appointments of the then sitting SEC ALJs), the SEC has filed the vast majority of fraud cases seeking civil penalties in federal courts. Although *Jarkesy* merely solidifies the SEC's existing trend toward the use of federal (as opposed to in-house) courts for securities fraud cases, like *Loper Bright*, it acts to remove agency expertise (here, in the form of ALJs) from the regulatory equation.

Minimizing the Role of Agency Expertise

Taken together, *Loper Bright* and *Jarkesy* are two (of many) recent examples of the Court limiting the authority of federal agencies based on concerns about constitutional and statutory overreach. Because *Loper Bright* overruled *Chevron*

(effectively eliminating the requirement that courts defer to "reasonable" agency decisions) but maintained *Skidmore*, there remains significant uncertainty about the role of agency expertise for courts moving forward. However, *Jarkesy*'s elimination of the use of ALJs in certain enforcement actions suggests a trend toward the elimination of agency expertise from the administration of agency regulations.

The Delaware General Assembly Approves Amendments to the DGCL – Effective August 1, 2024

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On June 20, 2024, the Delaware General Assembly passed legislation to amend certain provisions of the Delaware General Corporation Law ("DGCL") in order to address recent decisions of Delaware's Court of Chancery and bring existing law surrounding stockholder and merger agreements in line with current market practice. Governor John Carney signed the legislation into law on July 17, 2024, and the amendments became effective on August 1, 2024.

The amendments were adopted in substantially the same form as proposed, as discussed in further detail in an earlier Cadwalader Quorum article here. However, the Delaware General Assembly revised the final amendments in part to clarify (1) that the new Subsection 122(18), which explicitly authorizes a corporation to enter into contractual arrangements with its stockholders, does not permit the adoption of contracts that conflict with the corporation's certificate of incorporation or Delaware law and (2) that the framework available under new Section 147, permitting the board to ratify agreements required to be filed with the Delaware Secretary of State, is not the exclusive means to ratify such an agreement.

Additionally, the published synopsis of the amendments clarifies that the new Section 268 ? which provides that a merger agreement need not include provisions relating to the surviving corporation's certificate of incorporation in order to be considered in "substantially final form" and that the disclosure schedules are not deemed part of the merger agreement ? does not alter the fiduciary duties of directors or officers with respect to the delegation or exercise of authority to approve such documents or to inform the directors of the material provisions of such documents.

Schedule 13G – Preparing for the New Reporting Deadlines


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On October 10, 2023, the U.S. Securities and Exchange Commission ("SEC") adopted amendments to rules promulgated under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including changes to filing deadlines and other requirements which go into effect on September 30, 2024.

Under Regulation 13D, any person who acquires beneficial ownership of more than 5% of a class of equity securities of an issuer must file a Schedule 13D with the SEC. An investor may file a Schedule 13G, a shorter, more streamlined disclosure form, in lieu of a Schedule 13D, if they fit into one of the following three categories:

- *Exempt Investors*. "Exempt investors" are those who do beneficially own more than 5% of a class of securities of an issuer but who have not made an acquisition of securities that is subject to Section 13(d) of the Exchange Act. This includes investors who have not acquired 2% or more of the covered class of securities within a 12-month period, or who have acquired all of their securities prior to the issuer registering the subject securities under the Exchange Act.
- *Passive Investors*. "Passive investors" are those who own less than 20% of the class of securities and who have not acquired the securities with a "control" intent.[1]
- *Qualified Institutional Investors ("QIIs")*. QIIs are institutional investors such as broker-dealers, banks, insurance companies, registered investment advisers, and others, who have acquired the securities "in the ordinary course of business" and not with "control" intent.[2]

The new amendments to Regulation 13G have led to several changes, including shorter filing deadlines. Additionally, the cut-off time for Schedule 13G filings has been extended under the new amendments. The table below from the SEC's adopting release for the new amendments summarizes the new disclosure deadlines:[3]

Issue	Current Schedule 13G	New Schedule 13G
Initial Filing Deadline	QIIs & Exempt Investors: 45 days after calendar year-end in which beneficial ownership exceeds 5%. Rule 13d-1(b) and (d).	QIIs & Exempt Investors: 45 days after calendar quarter-end in which beneficial ownership exceeds 5%. Rule 13d-1(b) and (d).
	QIIs: 10 days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b).	QIIs: Five business days after month-end in which beneficial ownership exceeds 10%. Rule 13d-1(b).

Issue	Current Schedule 13G	New Schedule 13G
	Passive Investors: Within 10 days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).	Passive Investors: Within five business days after acquiring beneficial ownership of more than 5%. Rule 13d-1(c).
Amendment Triggering Event	All Schedule 13G Filers: Any change in the information previously reported on Schedule 13G. Rule 13d-2(b).	All Schedule 13G Filers: Material change in the information previously reported on Schedule 13G. Rule 13d-2(b).
	QIIs & Passive Investors: Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c) and (d).	QIIs & Passive Investors: Same as current Schedule 13G: Upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c) and (d).
Amendment Filing Deadline	All Schedule 13G Filers: 45 days after calendar year-end in which any change occurred. Rule 13d-2(b).	All Schedule 13G Filers: 45 days after calendar quarter-end in which a material change occurred. Rule 13d-2(b).
	QIIs: 10 days after month-end in which beneficial ownership exceeded 10% or there was, as of the month-end, a 5% increase or decrease in beneficial ownership. Rule 13d-2(c).	QIIs: Five business days after month-end in which beneficial ownership exceeds 10% or a 5% increase or decrease in beneficial ownership. Rule 13d-2(c).
	Passive Investors: Promptly after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).	Passive Investors: Two business days after exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership. Rule 13d-2(d).
Filing "Cut-Off" Time	All Schedule 13G Filers: 5:30 p.m. Eastern Time. Rule 13(a)(2) of Regulation S-T.	All Schedule 13G Filers: 10 p.m. Eastern Time. Rule 13(a)(4) of Regulation S-T.

Additional changes under the new amendments to Regulation 13G include the requirement that all disclosures must be filed with XML-based structured data formatting. Compliance with XML data requirements will be required beginning December 18, 2024.

The amendments also provided additional guidance on the meaning of "group" for the purposes of determining reporting requirements of beneficial ownership and guidance on beneficial ownership of non-security-base swaps and cash-settled derivatives. Such additional guidance is beyond the scope of this article.

The impact of these amendments will vary across market participants. Generally, on the investor side, many internal policies will need to be revised, since procedures done on an annual basis will now need to be done quarterly. General counsels will need to ensure that they, or their delegees, are familiar with the new rules and corresponding accelerated deadlines. Additionally, portfolio managers and business teams should be alerted to the new filing requirements, which may make public disclosure of their trading positions occur sooner than was required in the past. Legal teams should begin discussions with their financial printers to determine who will do the required data tagging under the new rules. Furthermore, they will need to consider any additional timing requirements to allow sufficient time for data tagging. For public companies, information on their shareholder's holdings may now be made public sooner than previously required. Investor relations and management teams at issuers should be made aware of the new deadlines so they can review the filings promptly and anticipate any questions if there are significant movements in their shareholder base.

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[1] *See* 17 C.F.R. § 240.13d-1(c) (Such person "[h]as not acquired the securities with any purpose, or with the effect, of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect").

[2] *See* 17 C.F.R. § 240.13d-1(b) ("Such person has acquired such securities in the ordinary course of business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect").

[3] *See* Modernization of Beneficial Ownership Reporting, Exchange Act Release Nos. 33-11253; 34-98704, 88 FR 76896 (Oct. 10, 2023).