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January 9, 2024

VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

Re: Amendments to Rules Governing Beneficial Ownership Reporting

The Securities Exchange Commission (the “SEC”) adopted amendments to the rules governing beneficial ownership reporting on Schedules 13D and 13G (the “Amendments”) under Section 13 of the Securities Exchange Act of 1934, as amended (the “1934 Act”) that change the timing for investors to file Schedules 13D and 13G. The Amendments generally become effective on February 5, 2024, but the changes relating to filing Schedules 13G do not become effective until September 30, 2024. In the [adopting release for the Amendments](#) (the “Adopting Release”), the SEC also issued interpretive guidance regarding when investors will be deemed to beneficially own reference securities used in cash settled derivative instruments and when investors will be deemed to be acting as a group for purposes of beneficial ownership reporting on Schedules 13D and 13G.

Changes to Schedule 13D and 13G Filing Requirements. An investor who acquires beneficial ownership of more than 5% of the outstanding shares of a class of securities registered under the 1934 Act generally must file a report on Schedule 13D or 13G regarding its ownership of those securities. The Amendments make substantial changes to the timing requirements for filing Schedules 13D and 13G and modify reporting requirements.

1. Schedule 13D Filing Requirements.

(a) Initial Filing. The Amendments change the deadline for filing an initial Schedule 13D.

<u>Event Requiring Initial Filing</u>	<u>Old Deadline</u>	<u>New Deadline</u>
Investor acquires beneficial ownership of more than 5% of an issuer’s outstanding securities	10 calendar days after trigger event	5 business days after trigger event
Investor loses eligibility to file Schedule 13G	10 calendar days after trigger event	5 business days after trigger event

(b) Amendments. The Amendments do not change the events that require an investor to amend a Schedule 13D, but they change the deadline for filing the amendment.

<u>Event Requiring Amendment Filing</u>	<u>Old Deadline</u>	<u>New Deadline</u>
A material change in the facts set forth in the previous Schedule 13D	Promptly after the trigger event	2 business days after the trigger event

(c) Reporting of Derivative Contracts on Schedule 13D. The Amendments modify Item 6 of Schedule 13D to require filers to disclose derivative contracts, arrangements, understandings and relationships that use the issuer’s securities as a reference, including security based swaps and other derivatives that are settled exclusively in cash.

(d) Compliance Deadline. Investors must comply with the new Schedule 13D filing requirements beginning on February 5, 2024.

2. Schedule 13G Filing Requirements.

(a) Initial Filing. Schedule 13G is available for investors who have not acquired the securities with the purpose or 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, and for certain other investors who are exempt from the requirement to file a Schedule 13D. The Amendments do not change the events that require an investor to file a Schedule 13G, but they change the deadline for filing an initial Schedule 13G. Investors who are eligible to file a Schedule 13G are subject to different initial filing requirements, depending on whether they are qualified institutional investors under Rule 13d-1(b) (“QIIs”),¹ passive investors under Rule 13d-1(c) (“Passive Investors”)² or exempt investors filing pursuant Rule 13d-1(d) (“Exempt Investors”).³

<u>Event Requiring Initial Filing</u>	<u>Old Deadline</u>	<u>New Deadline</u>
QII’s or Exempt Investor’s beneficial ownership exceeds 5%	45 calendar days after end of calendar <u>year</u> in which the trigger event occurs	45 calendar days after end of calendar <u>quarter</u> in which the trigger event occurs
QII’s beneficial ownership exceeds 10%	10 calendar days after end of month in which the trigger event occurs	5 business days after end of month in which the trigger event occurs
Passive Investor acquires beneficial ownership of more than 5%	10 calendar days after the trigger event	5 business days after the trigger event

¹ QIIs are institutions identified in Rule 13d-1(b)(1), including investment advisers registered with the SEC or a state and registered investment companies, who acquire the securities in the ordinary course of business.

² Passive Investors are investors who meet the passive investment intent requirement of Rule 13d-1(b)(1) but do not otherwise qualify for Rule 13d-1(b).

³ The 1934 Act exempts certain investors from the requirement to file a Schedule 13D, and Rule 13d-1(d) requires them to file a Schedule 13G instead.

(b) Amendments. The Amendments change the frequency and content of regular amendments to Schedule 13G. Under the current rules, an investor must amend a previously filed Schedule 13G within 45 days of the end of a calendar year to report any change in the information reported in the Schedule 13G. Under the Amendments, an investor must report any material change in the information reported in previously filed Schedule 13G within 45 days of the end of the calendar quarter in which the change occurred.

The SEC declined to specify what would constitute a material change for this purpose. While Rule 13d-2(a), which requires amendments to report material changes in a Schedule 13D, states that the “acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed ‘material,’” the Amendments do not include similar language with respect to the requirement to report material changes in a Schedule 13G. However, the SEC stated in the Adopting Release that this language was “equally instructive for purposes of determining what changes are material” for purposes of amendments to Schedule 13G.

The Amendments also change the deadlines for filing all amendments to Schedule 13G.

<u>Event Requiring Amendment Filing</u>	<u>Old Deadline</u>	<u>New Deadline</u>
Any material change in the information previously reported in a Schedule 13G	45 days after the end of the calendar <u>year</u> in which any change occurred	45 days after the end of the calendar <u>quarter</u> in which any material change occurred
QII’s beneficial ownership exceeds 10% or increases or decreases by 5% or more thereafter	10 calendar days after the end of the month in which the trigger event occurs	5 business days after the end of the month in which the trigger event occurs
Passive Investor’s beneficial ownership exceeds 10% or increases or decreases by 5% or more thereafter	Promptly after the trigger event occurs	2 business days after the trigger event occurs

(c) Compliance Deadline. Investors must comply with the new Schedule 13G filing requirements beginning on September 30, 2024. For example, investors will be required to amend their Schedule 13G filings to report any material changes within 45 days after September 30, 2024.

3. Extended Filing Hours. Commencing on February 5, 2024, the cut-off time for submitting a Schedule 13D or 13G will be extended from 5:30 pm Eastern Time to 10:00 pm Eastern Time.

4. Structured Data Requirement. The Amendments replace the current HTML and ASCII filing requirements for Schedules 13D and 13G with a requirement that they be filed using a structured, machine readable XML format. Accordingly, investors will not be able to file using HTML formats after this change becomes effective. Investors are not required to change to the new

format until December 18, 2024, but investors may voluntarily comply with the new format before that date.

Guidance Regarding Beneficial Ownership of Cash-Settled Derivatives. When the SEC proposed the Amendments, it also proposed to amend Rule 13d-3 to clarify when a holder of a cash-settled derivative security would be deemed to beneficially own the reference security. The SEC determined not to adopt that amendment, but instead issued guidance regarding the issue. Under this guidance, which is based on the SEC's guidance regarding [beneficial ownership reporting of security-based swaps](#), the holder of a cash-settled derivative security may be deemed to beneficially own the reference security if (1) the derivative security provides the holder, directly or indirectly, with exclusive or shared voting or investment power over the reference security through a contractual term or otherwise, (2) the holder acquired the derivative security with the purpose or effect of divesting the holder of beneficial ownership of the reference covered class or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section 13(d) or 13(g) of the 1934 Act or (3) the derivative security gives the holder a right to acquire beneficial ownership of the reference security within 60 days (or the right to acquire beneficial ownership of the reference security at any time with the purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect).

Guidance Regarding Formation of a Group for Purposes of Section 13(d). When the SEC proposed the Amendments, it also proposed to amend Rule 13d-5 to clarify when a group may be formed. The SEC determined not to adopt those amendments, but instead issued additional guidance on when a group may be formed. The Adopting Release reiterates the SEC's view that the existence of a group depends on an analysis of all relevant facts and circumstances (not solely on the presence or absence of an express agreement). The Adopting Release also clarifies that the following activities (taken alone and without any other action) would not be sufficient to constitute a group:

- Two or more shareholders communicating with each other regarding an issuer or its securities;
- Two or more shareholders engaging in discussions with management;
- Shareholders jointly making recommendations to an issuer's board in the context of a discussion that does not involve an attempt to convince the board to take specific actions through a change in the existing board membership or to bind the board to take action;
- Shareholders jointly submitting a non-binding proposal to an issuer pursuant to 1934 Act Rule 14a-8;
- A conversation, email, phone contact or meeting between a shareholder and an activist investor that is seeking support for its proposals, without more, such as consenting or committing to a course of action; or
- An announcement or communication by a shareholder of the shareholder's intention to vote in favor of an unaffiliated activist investor's director nominees.

However, the SEC indicated that a group would be formed if an investor that is or will be required to file a Schedule 13D intentionally communicates to other market participants that such filing will be made with the purpose of causing such persons to make purchases of the covered class, and one or more of those other participants makes purchases following the communication.

Whether two or more investors are acting as a group remains a factual determination and is subject to significant uncertainty. While this guidance provides additional clarity regarding when investors may be acting as a group, we recommend that you contact us before engaging in any of the foregoing activities.

Please contact one of the Shartsis Friese attorneys in the [Investment Funds & Advisers Group](#) if you have any questions about your obligations with respect to filing Schedules 13D or 13G under the Amendments or if you require assistance in preparing any filings.

SHARTSIS FRIESE LLP