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Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting

Last Update: July 9, 2026

These Corporation Finance Interpretations ("CFIs") comprise the Division's interpretations of Exchange Act Section 13(d), Section 13(g), and Regulation 13D-G, including Schedules 13D and 13G. The bracketed date following each of these beneficial ownership reporting CFIs is the latest date of publication or revision.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 101. Section 13(d)

Question 101.01

Question: A security holder owns over five percent of a class of an issuer's equity securities. The issuer's Form 10 registering this class of securities under Section 12(g) of the Exchange Act just became effective. If the security holder has not added any securities to its holdings since the effective date of the Form 10, should the security holder report its beneficial ownership on Schedule 13G pursuant to Rule 13d-1(d)?

Answer: Yes. The security holder must file a Schedule 13G pursuant to Rule 13d-1(d). Since the security holder has not "acquired" any securities of a class registered under Section 12 of the Exchange Act, the security holder is not required to file a Schedule 13D pursuant to Rule 13d-1(a), or under Section 13(d). The security holder must file the Schedule 13G within 45 days after the end of calendar quarter in which the class of securities was registered. Note that the security holder is not required to certify that the shares were acquired or are held in the ordinary course or without the purpose or the effect of changing or influencing the control of the issuer of the securities.

If the security holder acquires additional equity securities after the effective date of the Form 10, the security holder must report its entire holdings on Schedule 13D or evaluate whether it is eligible to rely on Rules 13d-1(b) or 13d-1(c) to continue to report on Schedule 13G if the most recent acquisition, when added to all other acquisitions of securities of the same class during the 12 months immediately preceding the date of the most recent acquisition, aggregates to more than two percent of the class of such securities. See Section 13(d)(6)(B) of the Exchange Act. This 12-month period will run back from the date of the acquisition to the time when the issuer was privately held if the acquisition occurs within 12 months after the effective date of the Form 10. If the security holder has acquired two percent or less during this period, the security holder simply may continue to rely on Rule 13d-1(d) and reflect the present acquisition in its Schedule 13G pursuant to Rule 13d-2(b). [July 11, 2025] [Comparison to prior version]

Question 101.02

Question: Should shares that an issuer repurchased to fund a stock option plan be included in the number of shares outstanding for purposes of Section 13(d) of the Exchange Act?

Answer: No. Shares that an issuer repurchased do not count as outstanding shares, even if the issuer did not retire the shares or account for them as treasury stock. Section 13(d)(4) of the Exchange Act excludes shares "held by or for the account of the issuer or a subsidiary of the issuer" from the class of outstanding shares. [Sep. 14, 2009]

Question 101.03

Question: A group comprised of a limited partnership and two general partners owned more than five percent of the outstanding equity securities of a non-public company and held the securities with the purpose or effect of influencing control of the issuer. The company subsequently registered the class securities under Section 12(g) of the Exchange Act, and the group filed beneficial ownership reports on Schedule 13G pursuant to Rule 13d-1(d). If the group later adds a new member that owns more than two percent of the same class of equity securities, would the group be required to report its holdings on Schedule 13D?

Answer: Yes. By adding a new member that beneficially owns more than two percent of the class of equity securities registered under Section 12, the group effectively acquired those securities. The group and all of its members would be required to report their holdings on Schedule 13D since they would not qualify for the exemption set forth under Section 13(d)(6)(B) of the Exchange Act, would no longer meet the requirements of Rule 13d-1(d) and would not be eligible to file a Schedule 13G pursuant to Rules 13d-1(b) and 13d-1(c). [Sep. 14, 2009]

Question 101.04

Question: If an investor owns more than five percent of the outstanding American Depositary Receipts, or ADRs, of an issuer, but those ADRs represent five percent or less of the outstanding class of Section 12 registered equity securities of the issuer that the ADRs represent, is the investor required to report its beneficial ownership of the ADRs on a Schedule 13D or Schedule 13G?

Answer: No. ADRs, which are exempt from registration under the Exchange Act pursuant to Exchange Act Rules 12a-8 and 12g3-2(c), are not considered a separate class of equity securities for purposes of calculating beneficial ownership of securities. See Section II.D.2., Exchange Act Release No. 29226 (May 23, 1991), which states that "[a] reporting obligation under Section 13(d) is determined by ownership of the class of deposited securities, including ownership of those securities through ADRs." [Sep. 14, 2009]

Question 101.05

Question: In a merger where security holders of the target company will receive consideration in the form of the acquiring company's Section 12 registered equity securities in a registered stock-for-stock exchange, may a target security holder that receives greater than five percent of the class in the share exchange rely upon Section 13(d)(6)(A) to avoid having to file a beneficial ownership report?

Answer: No. The target security holder must report beneficial ownership of those securities on Schedule 13D or, if eligible, on Schedule 13G under Rules 13d-1(b) or 13d-1(c). Section 13(d)(6)(A) provides an exemption from the application of Section 13(d) only in relation to those securities that an issuer acquires through a registered stock-for-stock exchange, such as in a merger where the shares of the target company will be merged out of existence. See, e.g., the *Tyler Corporation* (December 14, 1978) and *Allied Artist Industries, Inc.* (January 8, 1979) no-action letters. [Sep. 14, 2009]

Question 101.06

Question: A customer instructed its broker to purchase up to 4.9 percent of the outstanding class of Section 12 registered voting common stock of a company. The broker mistakenly purchased over five percent for the customer's account. The customer refused to pay for the excess shares and instructed the broker to sell all shares in excess of 4.9 percent. Is the customer required to file a Schedule 13D or 13G pursuant to Rule 13d-1?

Answer: Yes. The customer is "deemed" to have acquired beneficial ownership of greater than five percent of the class pursuant to Rule 13d-5(a) and, therefore, must file a Schedule 13D, or Schedule 13G in lieu thereof, under Section 13(d) of the Exchange Act and corresponding Rule 13d-1. The absence of an intent to acquire in excess of five percent is not a consideration with respect to the applicability of Section 13(d). [July 11, 2025] [Comparison to prior version]

Section 102. Section 13(g)

None

Regulation 13D-G

Section 103. Rule 13d-1 — Filing of Schedules 13D and 13G

Question 103.01

Question: If a security holder acquires more than 10 percent of a class of equity securities before the registration of that class under Section 12 of the Exchange Act, is it required to file a Schedule 13D when the issuer registers the class of securities under Section 12? If the security holder is not required to file a Schedule 13D, when must it file a Schedule 13G?

Answer: The security holder is not required to file a Schedule 13D upon registration of the class of securities under Section 12. See Section 13(d), which requires a filing of Schedule 13D only upon the "acquisition" of equity securities of a class registered under Section 12. However, the security holder must file a Schedule 13G pursuant to Rule 13d-1(d) within 45 days after the end of the calendar quarter in which the Exchange Act registration becomes effective. Note that the provisions of Rule 13d-1(b)(2), which require certain beneficial owners of greater than 10 percent of a class of equity securities registered under Section 12 to file a Schedule 13G within five business days after the end of a designated month, are limited to the institutional investors listed in Rule 13d-1(b)(1), and do not apply to beneficial owners that file a Schedule 13G pursuant to Rule 13d-1(d). [July 11, 2025] [Comparison to prior version]

Question 103.02

Question: A broker-dealer and several individuals form a limited partnership, with the broker-dealer as the sole general partner and the individuals as limited partners. The partnership itself is not one of the persons listed in Rule 13d-1(b)(1)(ii) as eligible to file ownership reports on Schedule 13G. Is the partnership eligible to report on Schedule 13G pursuant to Rule 13d-1(b) as a result of the general partner's qualification to use Schedule 13G pursuant to Rule 13d-1(b)?

Answer: No. In order to be eligible to use Schedule 13G pursuant to Rule 13d-1(b), the partnership, and not just the general partner, must be a person listed in Rule 13d-1(b)(l)(ii). The partnership's inability to file on Schedule 13G pursuant to Rule 13d-1(b) does not change as a result of the general partner's qualification to use Schedule 13G pursuant to Rule 13d-1(b). The partnership must file a Schedule 13D or otherwise meet the requirements to file a Schedule 13G pursuant to Rule 13d-1(c). [Sep. 14, 2009]

Question 103.03

Question: A security holder owned 5.1 percent of a bank's equity securities and filed the equivalent of a Schedule 13G with the Comptroller of the Currency. When the bank converted to a bank holding company, and after the class of the holding company's securities were registered under Section 12(g), the security holder received 5.1 percent of the holding company's stock in a one-for-one exchange. Is the security holder required to file a Schedule 13D because it received the holding company's securities after the class had been registered under Section 12?

Answer: No. The security holder is eligible to file on Schedule 13G, rather than Schedule 13D, because it acquired the bank's securities before the registration of the class of holding company securities under Section 12. See Rule 13d-1(d). The Schedule 13G is considered the security holder's initial filing with the Commission, not an amendment to the filings previously made with the Comptroller. [Sep. 14, 2009]

Question 103.04

Question: One of the requirements for eligibility to file a Schedule 13G pursuant to Rule 13d-1(c) is that a reporting person must not have "acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer." See Rule 13d-1(c)(1). Item 10 of Schedule 13G requires that reporting persons relying on Rule 13d-1(c) certify to this requirement. May an officer or director that beneficially owns more than five percent of a voting class of the issuer's equity securities registered under Section 12 of the Exchange Act rely on Rule 13d-1(c) to file on Schedule 13G?

Answer: The role of officers or directors will most likely eliminate their eligibility to file on Schedule 13G pursuant to Rule 13d-1(c). Notwithstanding any specific control intent, the fact that officers and directors have the ability to directly or indirectly influence the management and policies of an issuer will generally render officers and directors unable to certify to the requirements of Rule 13d-1(c)(1). See footnote 18 in the Brief of the Securities and Exchange Commission, Amicus Curiae in Edelson v. Ch'ien. [Sep. 14, 2009]

Question 103.05 **[withdrawn]**

Question 103.06

Question: A group comprised of three entities filed a Schedule 13G pursuant to Rules 13d-1(c) and 13d-1(k)(1). One of the group members transfers its securities (constituting six percent of the issuer's class of equity securities registered under Section 12 of the Exchange Act) to its parent as a dividend. The parent, a Schedule 13G filer with respect to these securities, has not acted as a group with the other group members for the purpose of acquiring, holding, voting or disposing of equity securities of the issuer. What beneficial ownership reports must the parent and the group file after the subsidiary transfers the securities to its parent?

Answer: The parent must file an amended Schedule 13G 45 days after the end of the calendar quarter in which the subsidiary transfers the securities if becoming the direct beneficial owner of the transferred securities constitutes a material change in the information the parent previously disclosed. See Rule 13d-2(b). Because the parent already was the indirect beneficial owner of the securities owned by the subsidiary before the transfer, the parent does not "acquire" the securities within the meaning of Section 13(d)(1) as a result of the transfer and, therefore, does not incur an obligation to file a Schedule 13D. The group is required to amend its Schedule 13G to reflect the reduction in the amount beneficially owned and the departure of the subsidiary from the group. [July 11, 2025] [Comparison to prior version]

Question 103.07

Question: Can a security holder that has reported its beneficial ownership on Schedule 13D switch to reporting on a Schedule 13G?

Answer: Only a security holder who was initially eligible to report its beneficial ownership on a Schedule 13G and was later required to file a Schedule 13D may switch to reporting on a Schedule 13G. See Rule 13d-1(h), which states that any person who has filed a Schedule 13D may *again* report its beneficial ownership on Schedule 13G so long as the shares are no longer held with control intent. A security holder who intends

to switch to a Schedule 13G must meet the eligibility requirements of Rules 13d-1(b) or (c). In this case, the Schedule 13G may operate as an amendment of the Schedule 13D under Rule 13d-2(a). If the security holder was not originally eligible to file a Schedule 13G, instead files a Schedule 13D to report its beneficial ownership and later files a final amendment on Schedule 13D to report that its beneficial ownership of the class of securities fell to five percent or below, then the security holder may thereafter qualify to file a Schedule 13G if the security holder's beneficial ownership of the securities again increases to above five percent. [Sep. 14, 2009]

Question 103.08

Question: Does a security holder have an obligation to file a beneficial ownership report to reflect ownership of more than five percent of a Section 12 registered voting class of equity securities of an issuer that resulted solely from a change in the aggregate number of outstanding securities?

Answer: Yes, but since the security holder became the beneficial owner of more than five percent of the class of outstanding securities as a result of an involuntary change in circumstances rather than an acquisition of securities, the security holder may file a Schedule 13G pursuant to Rule 13d-1(d). This exception from the obligation to file a Schedule 13D is not available to persons who influence or control the change in the aggregate number of outstanding securities, including, but not limited to, officers and directors of the issuer. In contrast, if a security holder had filed a Schedule 13D before the change in the aggregate number of outstanding securities, then Rule 13d-2(a) would require the security holder to file an amendment to the Schedule 13D to reflect "any material increase or decrease in the percentage of the class beneficially owned." This amendment requirement arises irrespective of whether the Schedule 13D filer has taken any actions to cause the changes in reported ownership. Rule 13d-2(b), however, relieves Schedule 13G filers from having to file an amendment under the same circumstances. [Sep. 14, 2009]

Question 103.09

Question: A security holder of a parent company receives more than five percent of a Section 12 registered class of equity securities of the parent's subsidiary in a spin-off transaction. The spin-off was not conditioned upon the approval of the parent's security holders. Does the security holder have an obligation to file a beneficial ownership report to reflect its ownership of the subsidiary's equity securities?

Answer: Yes, but the security holder is eligible to file a Schedule 13G pursuant to Rule 13d-1(d) within 45 days after the end of the calendar quarter in which the spin-off occurred, since the receipt of securities in a spin-off transaction does not constitute an "acquisition" within the meaning of Section 13(d) and Rule 13d-1. This exception from the obligation to file a Schedule 13D is not available to persons who influence or control the parent's decision to spin-off the subsidiary, including, but not limited to, officers and directors of the parent. Instead, this exception only applies to those security holders that became beneficial owners as a result of an involuntary change in circumstances. [July 11, 2025] [Comparison to prior version]

Question 103.10

Question: Rule 13d-1(a) states that a Schedule 13D must be filed within five business days after the date of acquisition of more than five percent of a class of equity securities registered under Section 12 of the Exchange Act. Is the Schedule 13D due five business days after the trade date or the settlement date of a securities transaction that creates the reporting obligation?

Answer: The Schedule 13D beneficial ownership report must be filed within five business days after the trade date of the securities transaction. Although under contract law the date on which the ownership of the shares is transferred may be the settlement date, an investor may, at a minimum, exercise investment power over the securities that were acquired through the trade as of the trade date. For purposes of calculating the five business day time period, the first calendar day after the trade date counts as day number one. [July 11, 2025] [Comparison to prior version]

Question 103.11

Question: The Hart-Scott-Rodino ("HSR") Act provides an exemption from the HSR Act's notification and waiting period provisions if, among other things, the acquisition of securities was made "solely for the purpose of investment," with the acquiror having "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 15 U.S.C. 18a(c)(9); 16 C.F.R. 801.1(i)(1). Does the fact that a shareholder is disqualified from relying on this HSR Act exemption due to its efforts to influence management of the issuer on a particular topic, by itself, disqualify the shareholder from initially reporting, or continuing to report, beneficial ownership on Schedule 13G?

Answer: No. The inability to rely on the HSR Act exemption alone would not preclude a shareholder from filing on Schedule 13G in lieu of the Schedule 13D otherwise required. Instead, eligibility to report on Schedule 13G in reliance on Rule 13d-1(b) or Rule 13d-1(c) will depend, among other things, on whether the shareholder acquired or is holding the subject securities with the purpose or effect of changing or influencing control of the issuer. This determination is based upon all the relevant facts and circumstances and will be informed by the meaning of "control" as defined in Exchange Act Rule 12b-2. [Feb. 11, 2025] [Comparison to prior version]

Question 103.12

Question: Shareholders filing a Schedule 13G in reliance on Rule 13d-1(b) or Rule 13d-1(c) must certify that the subject securities were not acquired and are not held "for the purpose of or with the effect of changing or influencing the control of the issuer." Under what circumstances would a shareholder's engagement with an issuer's management on a particular topic cause the shareholder to hold the subject securities with a disqualifying "purpose or effect of changing or influencing control of the issuer" and, pursuant to Rule 13d-1(e), lose its eligibility to report on Schedule 13G?

Answer: The determination of whether a shareholder acquired or is holding the subject securities with a purpose or effect of "changing or influencing" control of the issuer is based on all the relevant facts and circumstances and will be informed by the meaning of "control" as defined in Exchange Act Rule 12b-2.

The subject matter of the shareholder's engagement with the issuer's management may be dispositive in making this determination. For example, Schedule 13G would be unavailable if a shareholder engages with the issuer's management to specifically call for the sale of the issuer or a significant amount of the issuer's assets, the restructuring of the issuer, or the election of director nominees other than the issuer's nominees.

In addition to the subject matter of the engagement, the context in which the engagement occurs is also highly relevant in determining whether the shareholder is holding the subject securities with a disqualifying purpose or effect of "influencing" control of the issuer. Generally, a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. A shareholder who goes beyond such a discussion, however, and exerts pressure on management to implement specific measures or changes to a policy may be "influencing" control over the issuer. For example, Schedule 13G may be unavailable to a shareholder who:

- recommends that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditions its support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation; or
- discusses with management its voting policy on a particular topic and how the issuer fails to meet the shareholder's expectations on such topic, and, to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with the shareholder's expectations. [Feb. 11, 2025]

Section 104. Rule 13d-2 — Filing of Amendments to Schedules 13D or 13G

Question 104.01

Question: When a Schedule 13D or 13G reporting person sells the subject securities short, does the reporting person's beneficial ownership change?

Answer: No. Short sales normally will not change a reporting person's Rule 13d-3 beneficial ownership since such sales do not change the amount of shares over which the person has "voting or investment power." However, short sales may trigger a requirement to amend the Schedule 13D pursuant to Rule 13d-2 unless all applicable changes in the facts previously set forth in the reporting person's Schedule 13D are not material. For example, the short sale may represent a change in the source of funds (Item 3), a possible shift in purpose (Item 4) (particularly to the extent that a plan or proposal to dispose of securities of the issuer was not disclosed previously), a "transaction" in the subject security (Item 5), as well as a contract, arrangement, understanding, or relationship with respect to securities of the issuer (Item 6) or require that an exhibit be filed (Item 7). The same analysis applies to a pledge of the securities in a secured transaction or the writing of call options. [July 11, 2025] [Comparison to prior version]

Question 104.02

Question: Are all Schedule 13G filers required to file an amendment to the Schedule within 45 days after the end of the calendar quarter to report any material changes in the information previously disclosed, or is this obligation limited to institutional investors who file on Schedule 13G pursuant to Rule 13d-1(b)?

Answer: All Schedule 13G filers must file an amendment to report any material changes in the information previously disclosed. The Schedule 13G does not need to be amended if there has been no material change to the information disclosed in the Schedule or if the only change is to the percentage of securities beneficially owned by the filing person resulting solely from a change in the aggregate number of the issuer's securities outstanding. See Rule 13d-2(b). [July 11, 2025] [Comparison to prior version]

Question 104.03

Question: What steps should a security holder take if it failed to file required amendments to a Schedule 13D in a timely manner?

Answer: Rule 13d-2(a) requires that a security holder amend its Schedule 13D within two business days after the date of "any material change ... in the facts set forth in the Schedule 13D." If a security holder has failed to timely file any required Schedule 13D amendments, the security holder should immediately amend its Schedule 13D to disclose the required information. If the security holder failed to file multiple amendments to the Schedule 13D when required, it may disclose that information by filing multiple amendments or filing one combined amendment. Regardless of the approach taken, the security holder must ensure that the filings contain the information that it should have disclosed in each required amendment, including the dates and details of each event that necessitated a required amendment. Any of these steps taken by the security holder in these situations will not necessarily affect the determination of liability under the federal securities laws for the failure to timely file a required amendment to a Schedule 13D. [July 11, 2025] [Comparison to prior version]

Question 104.04

Question: A security holder owns variable-rate convertible notes. The number of common shares into which the notes are convertible within the next 60 days varies daily with the price of the underlying common stock. Does the holder of the convertible notes have the obligation to amend the Schedule 13D pursuant to Rule 13d-2(a) whenever a change in the conversion rate results in a one percent or more change in beneficial ownership of the underlying common shares?

Answer: Yes. Under Rule 13d-3(d), the right to acquire additional securities through changes in the amount of securities deemed beneficially owned based on a conversion rate is viewed in the same manner as the initial receipt of the right to acquire securities upon conversion that first triggered a filing obligation under Rule 13d-1(a). [July 11, 2025] [Comparison to prior version]

Question 104.05

Question: Does a security holder reporting beneficial ownership on Schedule 13D have an obligation to file a final amendment to disclose that its beneficial ownership of the class of securities fell to five percent or less, even though the disposition amounted to less than one percent of the class?

Answer: The security holder must file an amendment to Schedule 13D to the extent the decline in beneficial ownership to five percent or less constitutes a material change within the meaning of Rule 13d-2(a) and/or to reflect any other material changes to the information previously reported, including Items 4, 5(a)-(c) and 6 of Schedule 13D. It is important to note that the security holder's obligation to amend the Schedule 13D to report material changes to the information previously reported will continue until it files a final amendment disclosing the date on which it ceased to be the beneficial owner of more than five percent of the class of securities pursuant to Item 5(e) of Schedule 13D. [Sep. 14, 2009]

Question 104.06

Question: Are individual security holders that separately report on Schedule 13D required to amend their Schedules 13D when they later form a group together under Section 13(d)(3) of the Exchange Act?

Answer: Yes. The security holders are required to amend their Schedules 13D because becoming a member of a group constitutes a material change under Rule 13d-2(a). The security holders may file separate amendments to their individual Schedules 13D, which would also satisfy the group's reporting obligation pursuant to Rule 13d-1(k)(2). Alternatively, they may file a joint Schedule 13D under Rule 13d-1(k)(1). The joint filing would constitute an initial Schedule 13D by the newly-formed group, but the group is required to file the Schedule 13D within two business days under Rule 13d-2(a) rather than within five business days of the group's formation since the report is intended to amend the three previously filed individual Schedules 13D. [July 11, 2025] [Comparison to prior version]

Question 104.07

Question: If a security holder reporting on Schedule 13D sells all of its shares after a voting record date but before the date of the shareholder meeting and retains the right to vote the shares through the meeting date, when should it file a final amendment on Schedule 13D to report that it is no longer a beneficial owner of more than five percent of the class of securities?

Answer: The security holder should not file the final amendment on Schedule 13D until the end of the shareholder meeting. While the security holder must file an amendment to the Schedule 13D under Rule 13d-2(a) after the sale to disclose the disposition of greater than one percent of the outstanding shares, it should not file a final amendment upon the sale of all of its shares because its voting power is not extinguished until the conclusion of the meeting. [July 11, 2025] [Comparison to prior version]

Section 105. Rule 13d-3 — Determination of Beneficial Ownership

Question 105.01

Question: A pledgee of securities was not required to file a beneficial ownership report on Schedule 13D or Schedule 13G before default by the obligor because the pledgee lacked the power either to vote or to dispose of the pledged securities and was not otherwise deemed to be a beneficial owner by application of Rules 13d-3(d)(3)(i)-(iii). Upon default by the pledgor, should the pledgee immediately examine whether it is required to file a beneficial ownership report or may it wait until it takes all formal steps necessary to declare a default?

Answer: After a default by the pledgor has occurred, the pledgee should re-examine the pledge agreement to determine whether the pledgee has been granted voting power or investment power irrespective of whether it has taken all formal steps necessary to declare a default or perfect its rights. To the extent that, upon default, the pledge agreement grants the pledgee voting or investment power over greater than five

percent of the class of outstanding securities, the pledgee will be deemed to have acquired beneficial ownership of the pledged securities on the date of default and must report its beneficial ownership on a Schedule 13D within five business days after that date or, if eligible, a Schedule 13G within the requisite time frame. [July 11, 2025] [Comparison to prior version]

Question 105.02

Question: An investor receives a right to acquire more than five percent of an issuer's voting class of equity securities registered under Section 12 of the Exchange Act without the purpose or effect of changing or influencing control of the issuer. The right is exercisable within 60 days and conditioned upon the effectiveness of a related registration statement. Must the investor report beneficial ownership of the underlying securities?

Answer: The investor is not required to file a beneficial ownership report on Schedule 13D or Schedule 13G until the contingency to acquiring the underlying securities is removed and the right becomes exercisable by the investor within 60 days from that date. Under Rule 13d-3(d)(1), an investor is not deemed to be a beneficial owner of the underlying equity securities when satisfaction of conditions to an investor's right to acquire the securities, such as the effectiveness of a registration statement, remains outside the investor's control. [Sep. 14, 2009]

Question 105.03

Question: If a security holder owns convertible preferred securities that are convertible into greater than five percent of a class of equity securities registered under Section 12 of the Exchange Act, is the security holder obligated to file a beneficial ownership report even though the conversion terms of the preferred securities expressly provide that the security holder may not convert the preferred securities if doing so would cause it to own more than five percent of the issuer's outstanding underlying equity securities?

Answer: Depending on the conversion terms, it is possible that the security holder would not be obligated to file a beneficial ownership report. Rule 13d-3(d)(1)(i) states that a security holder is deemed to beneficially own any underlying securities that the security holder has the right to acquire within sixty days, including the right to acquire through conversion. Conversion provisions that limit the ownership of a class of securities must be binding and valid (*e.g.*, provisions that are non-waivable, enforceable, established in the issuer's governing instruments, applicable to affiliates and assigns, etc.) to effectively eliminate the right of the holder of the convertible securities to acquire the underlying shares and, thereby, relieve the holder of a beneficial ownership report filing obligation. [For a further discussion of the factors that may indicate that a conversion cap is binding and valid, see Brief of the Securities and Exchange Commission, Amicus Curiae in Levy v. Southbrook International Investments, Ltd.] [Sep. 14, 2009]

Question 105.04

Question: A security holder that owns greater than five percent of a voting class of equity securities registered under Section 12 of the Exchange Act has delegated all authority to vote and dispose of its stock to an investment advisor. Must the security holder still continue to report beneficial ownership of the shares?

Answer: Yes, assuming the security holder retains the right under the contract to rescind the authority granted to the investment advisor and regain investment or voting power over the shares within 60 days. See Rule 13d-3(d)(1) and Example 11 in Exchange Act Release No. 13291 (February 24, 1977). [Sep. 14, 2009]

Question 105.05

Question: A husband and wife share the same household. One spouse beneficially owns more than five percent of a voting class of equity securities registered under Section 12 of the Exchange Act. Is the other spouse deemed the beneficial owner of the same securities under Rule 13d-3(a) by virtue of their marital relationship alone?

Answer: No. For purposes of Regulation 13D-G, an analysis of the facts and circumstances is necessary in determining whether a husband, wife or child beneficially owns shares held by another family member sharing the same household. The relationship between family members should be analyzed to determine whether a family member directly or indirectly either has or shares voting and/or dispositive power over the shares held by any other family member living in the same household. [Sep. 14, 2009]

Question 105.06

Question: Certain shareholders have entered into a voting agreement under which each shareholder agrees to vote the shares of a voting class of equity securities registered under Section 12 that it beneficially owns in favor of the director candidates nominated by one or more of the other parties to the voting agreement. Under Section 13(d)(3), the shareholders have formed a group given that they have agreed to act together for the purpose of voting the equity securities of the issuer. Under what circumstances is the beneficial ownership of a party to the voting agreement attributed to one or more other parties to the agreement?

Answer: The formation of a group under Section 13(d)(3), without more, does not result in the attribution of beneficial ownership to each group member of the securities beneficially owned by other members. Under Section 13(d)(3) of the Exchange Act, this group is treated as a new "person" for purposes of Section 13(d)(1) and is deemed to have acquired, due to the agreement among its members and corresponding operation of Rule 13d-5(b), beneficial ownership of the shares beneficially owned by its members. (Note that the analysis is different for Section 16 purposes. See Section II.B.3 of Exchange Act Release No. 28869 (February 8, 1991).)

In order for one party to the voting agreement to be treated as having or sharing beneficial ownership of securities held by any other party to the voting agreement, evidence beyond formation of the group under Section 13(d)(3) would need to exist. For example, if a party to the voting agreement has the right to designate one or more director nominees for whom the other parties have agreed to vote, the party with that designation right becomes a beneficial owner of the securities beneficially owned by the other parties under Rule 13d-3(a) if the agreement gives that person the power to direct the voting of the other parties' securities. Similarly, if a voting agreement confers the power to vote securities pursuant to a bona fide irrevocable proxy, the person to whom voting power has been granted becomes a beneficial owner of the securities under Rule 13d-3. See Example 7 in Exchange Act Release No. 13291 (February 24, 1977). Conversely, parties that do not have or share the power to vote or direct the vote of other parties' shares would not beneficially own such shares solely as a result of entering into the voting agreement. Note, however, that a contract, arrangement, understanding or relationship concerning voting or investment power among parties to the agreement, other than the voting agreement itself, may result in a party to the voting agreement having or sharing beneficial ownership of securities held by other parties to the voting agreement under Rule 13d-3. [July 11, 2025] [Comparison to prior version]

Question 105.07

Question: An exchange-traded fund ("ETF") does not disclose on each trading day the identities and quantities of its portfolio securities. To maintain confidentiality of this information, authorized participants ("APs") effect creation and redemption transactions through a confidential brokerage account ("Confidential Account") with an agent ("AP Representative") for the benefit of the AP. Although the AP will not know the identities and quantities of the ETF's portfolio securities, the AP will have some control over the timing of when the ETF's portfolio securities will be purchased and sold on its behalf by the AP Representative through its ability to place creation and redemption orders with the ETF. Can the AP rely on informational barriers to calculate and report its Exchange Act Rule 13d-3 beneficial ownership of the ETF's portfolio securities that are acquired on its behalf in a Confidential Account on a disaggregated basis from other accounts of the AP?

Answer: Yes, as long as the arrangement is consistent with the Commission's guidance set forth in Release No. 34-39538 (Jan. 12, 1998), including the following conditions:

- the agreements governing the Confidential Account contain confidentiality provisions that operate as an effective informational barrier between the AP and the AP Representative and other persons with knowledge of the composition of the ETF's portfolio;
- the AP, AP Representative, and the ETF's custodian are unaffiliated entities that do not share officers, directors, or employees with investment discretion over the Confidential Account and their respective directors, officers, and employees do not participate in common compensation pools; and

- the AP obtains an annual, independent assessment of the operation of the policies and procedures established to prevent the flow of information related to the Confidential Account. [Oct. 7, 2022]

Question 105.08

Question: In connection with a standard total return equity swap that settles exclusively in cash, only refers to a class of equity securities (as described in Rule 13d-1(i)(1)) for purposes of identifying a reference security, and otherwise does not confer any voting or investment power with respect to — or any right to acquire — such class (a "TRS"), would the purchaser of the TRS be deemed to acquire beneficial ownership (as determined under Section 13(d) and Rule 13d-3), of the reference securities, including any equity securities the counterparty may hold for hedging purposes, solely as a result of entering into the TRS?

Answer: No. A person who simply enters into a TRS, as defined above, does not acquire beneficial ownership of the reference securities, including any equity securities the counterparty may hold to hedge its risk. In addition, entry into a TRS, absent any arrangement that confers such power or rights outside of the terms of the TRS, is not, by itself, evidence of a plan or scheme to evade the Section 13(d) or 13(g) beneficial ownership reporting obligations as described in Rule 13d-3(b). [July 9, 2026]

Question 105.09

Question: Under what circumstances would a person who enters into a TRS (as defined in CFI 105.08) be "deemed" a beneficial owner of the reference securities, including any equity securities held by a counterparty to hedge its risk, pursuant to Rule 13d-3(b)?

Answer: A person may be "deemed" a beneficial owner of equity securities pursuant to Rule 13d-3(b) if the person uses an arrangement with the purpose or effect of preventing the vesting of beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section 13(d) or 13(g). Given that a standard TRS confers no voting or investment power or right to acquire the reference securities, the TRS would need to be directly or indirectly used in connection with an "arrangement" to prevent the vesting of beneficial ownership by the purchaser of the TRS in order to be part of a plan or scheme to evade reporting obligations. For example, if a person uses a TRS as a means to direct the counterparty how to vote any equity securities used in the counterparty's hedge or to pre-arrange the acquisition of such securities, the person may be deemed a beneficial owner under Rule 13d-3(b). Entry into a TRS solely for economic exposure to the reference security, without more, does not prevent the vesting of, or create a false appearance regarding, beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section 13(d) or 13(g) for purposes of Rule 13d-3(b). [July 9, 2026]

Question 105.10

Question: What mental state, if any, is contemplated by the term "plan or scheme to evade" as used in Rule 13d-3(b) and, in particular, with respect to entry into a TRS (as defined in CFI 105.08)?

Answer: The mental state contemplated by the words "plan or scheme to evade" is generally the intent to enter into an arrangement that creates a false appearance or an illusion contrary to the actual facts. See Letter from Brian V. Breheny, Deputy Dir., Div. of Corp. Fin., SEC, to Hon. Lewis A. Kaplan, U.S. Dist. Judge, S.D.N.Y. (June 4, 2008), in CSX Corp. v. Children's Inv. Fund Mgmt, L.L.P., et al., No. 08-Civ. 2764. Therefore, with respect to a TRS, the relevant inquiry under Rule 13d-3(b) would focus on whether the person knew or was reckless in not knowing that use of the TRS would create a false appearance or illusion that the person's interest is economic alone. For example, entry into a TRS for the purpose or effect of indirectly acquiring the power to vote or a future right to acquire the reference equity security may be viewed as part of a "plan or scheme to evade" as that term is used in Rule 13d-3(b). [July 9, 2026]

Section 106. Rule 13d-4 — Disclaimer of Beneficial Ownership

None

Section 107. Rule 13d-5 — Acquisition of Securities

Question 107.01

Question: An investment advisor represents several major shareholders of an issuer that is contemplating a rights offering. The major shareholders beneficially own, in the aggregate, more than five percent of the issuer's Section 12 registered voting class of equity securities and retained the investment advisor to persuade the issuer to revise or drop the offer. Would such an arrangement result in the formation of a group under Section 13(d)(3) by the major shareholders that engaged the investment advisor?

Answer: Yes, the major shareholders have formed a group under Section 13(d)(3) because they acted as a group for the common purpose or goal of holding their securities. The major shareholders' joint decision to retain an investment advisor in a collective attempt to gain influence over a management decision with respect to a rights offering accordingly requires that the security holdings of the major shareholders be aggregated and reported on a Schedule 13D. A shareholder will cease to be a member of the group when it no longer acts as a group with the other group members for the purpose of holding the equity securities of the issuer. [July 11, 2025] [Comparison to prior version]

Section 108. Rule 13d-6 — Exemption of Certain Acquisitions

Question 108.01

Question: Can a security holder that reports beneficial ownership on Schedule 13D rely on Rule 13d-6, which exempts acquisitions of securities by beneficial owners upon exercise of subscription rights from the reporting requirements of Section 13(d), to avoid amending its previously filed Schedule 13D when it acquires securities upon exercise of subscription rights?

Answer: No, because Rule 13d-6 only relates to the initial obligation to file a Schedule 13D. While a security holder previously exempt from filing on Schedule 13D is not subject to the beneficial ownership filing requirement solely by virtue of the exercise of subscription rights, a security holder that has previously filed a Schedule 13D is required to file an amendment pursuant to Rule 13d-2(a) to disclose any material change in the information previously filed with the Commission, including subsequent material acquisitions upon exercise of subscription rights. [Sep. 14, 2009]

Section 110. Schedule 13D

Question 110.01

Question: Is a Schedule 13D reporting person required to file an amended Schedule 13D if it acquires warrants from an issuer that are not exercisable for six months?

Answer: Yes. Although an amendment to the Schedule 13D is not required for purposes of reflecting a material change in the amount of securities beneficially owned (since the warrants are not exercisable within 60 days), an amendment is required to amend the Item 4(a) (plans to acquire additional securities) and Item 6 (contracts) disclosures and to file the warrant agreement as an exhibit pursuant to Item 7 of Schedule 13D. [Sep. 14, 2009]

Question 110.02

Question: Should a beneficial owner include specific quantitative disclosures, such as the dollar amount of any penalty or the duration of any

injunction ordered or bar imposed on the beneficial owner, in its summary of the terms of any judgment, decree or final order covered by Item 2(e) of Schedule 13D?

Answer: Yes, the summary of the terms of any judgment, decree or final order under Item 2(e) of Schedule 13D must include such specific quantitative disclosure. [Sep. 14, 2009]

Question 110.03

Question: Do the references to "securities of the issuer" in Items 4(a) and 6 of Schedule 13D include all securities of the issuer, such as debt securities?

Answer: Yes, the references to "securities of the issuer" in Items 4(a) and 6 of Schedule 13D include all of the issuer's securities, whether or not the securities are a class of equity, have voting rights or are registered or to be registered under Section 12 of the Exchange Act. For example, a reporting person who has formulated any plans or proposals or entered into any agreements involving the acquisition of debt securities of the issuer will be required to amend its Schedule 13D Item 4 and 6 disclosures to the extent material. [July 11, 2025] [Comparison to prior version]

Question 110.04

Question: When a Schedule 13D reporting person enters into a contingent contract with an unaffiliated third party for the sale of enough shares that would cause the third party to hold over five percent of a class of equity securities registered under Section 12 when the sale occurs, is the third party required to file a beneficial ownership report? Is the Schedule 13D reporting person required to amend its Schedule 13D upon execution of the contract?

Answer: The third party does not acquire beneficial ownership until it has a right to acquire the shares within 60 days; accordingly, the third party has no beneficial ownership reporting obligation until the material contingencies over which it has no control are waived or satisfied. If all material contingencies are within the third party's control either to waive or satisfy, then the third party has a beneficial ownership reporting obligation upon execution of the contract. In addition, as a result of the execution of the contract, the person already reporting on Schedule 13D must amend its Schedule 13D to disclose any material changes to its Item 4 and Item 6 disclosures. [July 11, 2025] [Comparison to prior version]

Question 110.05

Question: Should the disclosure in an initial or amended Schedule 13D be provided as of the date of the event that triggered the requirement to file the Schedule 13D or the date that the Schedule 13D is filed?

Answer: The disclosure in an initial or amended Schedule 13D should be current through the date that the beneficial owner files the report. For example, the reporting person should reflect its ownership totals on the cover page of the Schedule 13D as of the date it files the report. Similarly, the reporting person should disclose pursuant to Item 5(c) of Schedule 13D any transactions in the class of securities that were effected within the 60 days before the date on which the filing is made rather than 60 days before the event date. [Sep. 14, 2009]

Question 110.06

Question: A security holder owns six percent of a public company's common stock and files beneficial ownership reports on Schedule 13D. In response to Item 4 of Schedule 13D, the security holder states that it has no current plans to engage in any of the kinds of transactions enumerated in Item 4(a)-(j), but reserves the right to engage in such a transaction in the future. The security holder later determines to take the subject company private and engages an investment bank that formulates terms for the contemplated transaction. The security holder has not yet approached management of the target company or taken other steps to commence the transaction. Does the security holder have an obligation to amend its Schedule 13D? If so, when is the amendment requirement triggered?

Answer: Yes, the security holder is required to amend its Schedule 13D to disclose the material change to the information appearing in Item 4 because it has formed a plan that would or could result in delisting or deregistration of the subject securities and its existing Item 4 disclosure is no longer accurate. A plan or proposal, as those terms are used in Item 4, is not deemed to exist only upon execution of a formal agreement or commencement of a tender offer, solicitation or similar transaction. Generic disclosure reserving the right to engage in any of the kinds of transactions enumerated in Item 4(a)-(j) must be amended when the security holder has formulated a specific intention with respect to a disclosable matter. [July 11, 2025] [Comparison to prior version]

Question 110.07

Question: May a Schedule 13D filer include commentary in Items 4 or 6, or attach an exhibit to Schedule 13D that opposes management, its initiatives and/or a pending transaction in an effort to influence security holder voting related to such matters without also considering the application of Regulation 14A to the communications?

Answer: No. The Schedule 13D filer must analyze its item disclosure and attached exhibits to determine whether any disclosures or communications reasonably constitute soliciting material. Beneficial ownership reporting was not intended to create an additional exception to the application of Regulation 14A. To the extent the Schedule 13D disclosure constitutes soliciting material under Rule 14a-1(l), the Schedule 13D filer would need to be eligible to rely upon an exception from the proxy rules to make public, written statements in opposition to a management proposal without contemporaneously filing pursuant to Rule 14a-12. If no exception is available, the Schedule 13D disclosure would then need to be filed under cover of Schedule 14A pursuant to Rule 14a-12. Note, however, that only persons who have an intention to file and disseminate a proxy statement are permitted under Rule 14a-12 to engage in soliciting activities before furnishing security holders with a proxy statement. [Sep. 14, 2009]

Question 110.08

Question: Item 5(c) of Schedule 13D requires a reporting person to describe any transactions in the class of securities reported on that were effected within the past 60 days, including the date of the transaction, the amount of securities involved, and the price per share or unit. Since broker-dealers may execute trade orders in small increments and at multiple prices that may be as little as a fraction of a penny apart and provide their clients with average, instead of per share or per unit, prices, are there circumstances under which a Section 13(d) reporting person may aggregate purchase or sale transactions executed by a broker-dealer on the same day to fulfill its disclosure obligation under Item 5(c)?

Answer: Yes. A reporting person under Section 13(d) who, through a trade order executed by a broker-dealer, effects multiple open market purchase or sale transactions on the same day at different prices may disclose in the aggregate all purchase or sale transactions that occur within a one dollar price range on the basis of the weighted average purchase or sale price for those transactions. The reporting person must then: (1) specify, in a footnote or otherwise, the range of prices for each such one-dollar aggregate disclosure; and (2) undertake to provide upon request by the staff full information regarding the number of shares purchased or sold at each separate price. [Sep. 14, 2009]

Question 110.09

Question: An entity (e.g., a limited partnership) is formed for the purpose of raising funds to acquire securities of a specific issuer and engage in an activism campaign at such issuer. Prospective investors in the entity are informed in advance of the specific purpose for which their funds will be used, including the identity of the targeted issuer. If the entity is required to report beneficial ownership of the issuer's securities on a Schedule 13D, would the identities of the investors in the entity have to be disclosed in the Schedule 13D?

Answer: Yes. Item 3 of Schedule 13D states that if any part of the purchase price is represented by funds "obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction" by which the funds were obtained and the names of the parties to such transaction must be disclosed in the Schedule 13D filing. Accordingly, the identities of the investors in an entity formed for the purpose of acquiring securities of a specific issuer and engaging in an activism campaign at that issuer must be disclosed. [July 9, 2026]

Question 110.10

Question: When a Schedule 13D reporting person is a general or limited partnership and not a natural person, does Instruction C to Schedule 13D operate to limit the information required to be disclosed in response to Items 2-6 of Schedule 13D to information about the persons or entities set forth in Instruction C?

Answer: No. Instruction C to Schedule 13D lists the persons and entities *in addition* to the reporting person as to which the information required by Items 2-6 must be provided when the reporting person is not a natural person. It is not intended to limit or substitute the information required by Items 2-6 as to the reporting person itself. See CNW Corp. v. Japonica Partners, L.P., 874 F.2d 193, 200 (3d Cir. 1989) (finding that Instruction C to Schedule 13D "stipulate[s] the entities and persons, in addition to the filer, *with respect to whom* the information required by each item must be supplied when the filer is not a natural person.")

For example, if the Schedule 13D reporting person is a limited partnership, information required by Items 2-6 of Schedule 13D must be provided for the reporting person and, pursuant to Instruction C, for each general partner and any partner that functions as a general partner, and each person controlling such partner. If any of the foregoing are corporations, information required by Items 2-6 of Schedule 13D must also be provided for each executive officer and director of such corporation, each person controlling such corporation, and each executive officer and director of any corporation or other person ultimately in control of such corporation. [July 9, 2026]

Section 111. Schedule 13G

None

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