



Interview: SEC Changes Would Let You Know More About Your Shareholders



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It has been more than 50 years since the Securities and Exchange Commission (SEC) adopted its beneficial ownership reporting rules, which require investors who buy more than a 5% stake in a company to disclose their holding and their intentions.

There have long been concerns that the rules needed to be updated to keep pace with current market practices and real-time information flows.

In February 2022, the commission announced several proposed amendments that attempt to address those perceived shortcomings.

The time frames for disclosures would be reduced, so that an investor who passes the 5% threshold would be required to disclose that fact within five calendar days instead of the current 10. Subsequent changes to the holding would have to be disclosed within one business day.

In addition, some cash-settled derivatives that allow the holder to vote shares would now be encompassed by the rule and count toward the threshold — securities not covered by the current rules.

Finally, amendments would alter the definition of when investors are acting together for the purposes of influencing or changing control, dropping the current rule's requirement that there be "an agreement." The change could force some activists, for instance, to aggregate their holdings for purposes of the disclosure thresholds, thus requiring them to reveal their holdings and intentions.

Do the proposed amendments go far enough to address information asymmetries in today's market environment? How will market participants react to the proposed amendments? **Brian Breheny**, head

“For the longest time, ... you needed an agreement among one or more shareholders to act together.... [The SEC] is proposing to remove the word ‘agreement,’ and they’ve changed it now to just say, ‘two or more persons are acting together,’ which leaves open what ultimately will be needed to try to prove that they’re acting together.”

– Skadden partner **Brian Breheny**

of Skadden’s SEC Reporting and Compliance practice and former chief of the SEC’s Office of Mergers and Acquisitions, discusses these questions with Skadden M&A partner **Ann Beth Stebbins**.

Authors

Brian V. Breheny, Ann Beth Stebbins

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One Manhattan West / New York, NY 10001 / 212.735.3000