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For the SEC, It's Groundhog's Day

Flashback: April 2022, the SEC had just closed their comment period for SEC file S7-06-22, release numbers 33-11030; 34-94211 titled the Modernization of Beneficial Ownership Reporting. Then a short while later, reopened the comment period before officially closing it in June of 2022.

And if it feels like February 2nd (Groundhog's Day) you're not alone because on April 28th the SEC once again reopened the comment period for their proposed changes to 13D and 13G reporting. Providing supplemental data and analysis, the SEC has reopened the comment period until the end of June 2023. Can we honestly say we are surprised?

So, what's in the new information? The analysis focuses less on filings as a result of corporate action based share activity and non-corporate action based share activity. The SEC data shows that corporate action based filers "would not significantly impact the activities of these filers, although adjusting to an accelerated deadline could somewhat increase their compliance costs under the proposed amendments." Alternatively, focusing on share accumulation through non-corporate action activity "suggests that there is greater potential for improvement in allocative efficiency and a reduction in information asymmetry under a shortened deadline with respect to these non-corporate-action filings." The SEC also acknowledge that "these filers may be more likely to be impacted under the proposed amendments than those associated with corporate action filings…and any open-market accumulation of shares…may become more costly under the proposed amendments."

Looking at the 13D filers, again, non-corporation-action related filers, "shortening the filing deadline as proposed therefore likely would not impact such accumulation patterns, even if these filers currently file the Schedule 13D after the proposed deadline." This statement supports the SEC tightening the deadline would not impact share accumulation patterns.

In trying to assess the reduction in potential harms that would result from a shortened deadline the SEC positions itself in supporting the shortened deadline in this statement, "the aggregate estimate of potential harms that could be avoided by shortening the filing deadline to five calendar days if no filers abandon campaigns…is about $93 million per year…Alternatively, if we assume that filers accumulating 25 percent or more of their stake after day five completely abandon such campaigns, the aggregate estimate of potential harms that could be avoided would be about $66 million per year."

While this may show which way the SEC is leaning, my only question is why didn't they present this data and analysis when they issued the proposed rules? ■