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by Anna Monteiro

STEPPING CLOSER TO A SEC DECISION ON 13D/G

On 22 June, the SEC's Investor Advisory Committee (IAC) held a public meeting (13D/G ~3:09 mark) which included a discussion on the proposed amendments to the 13D/G filings. We're all familiar with these regulations and the proposed amendments which came about in 2022 so I will not bore you with those details.

Having only one abstention vote (Nancy Lemond 2016), the IAC voted unanimously to recommend the following changes to the SEC:

1. **13D/G Deadline:** shorten the time required to make required filings to five (5) business days instead of calendar days as currently proposed by the SEC.
2. **QII and Exempt Investors:** Shorten the initial schedule 13G Filing deadline to 45 days after the quarter (versus the proposed 5 business days after the month) from the current 45 days after the year in which the 5% threshold is crossed. In their remarks, this change would be consistent with the filing deadline of the 13F form.
3. **Cash-Settled Derivatives**: Better align the proposed Rule 13d-3 with the requirements of the proposed Rule 10B-1. As currently proposed, treating investors with cash-settled derivatives as beneficial owners with reporting obligations under Reg 13D/G, the proposed rule conflicts with the proposed 10B-1.
4. **Rule 10B-1 Reporting**: Change reporting thresholds for security-based swaps over equity securities to be based on percentages rather than a fixed dollar amount; align timeline with any Schedule 13D reporting requirements for cash-settled derivatives. Further to this, the IAC added, " while we do not recommend a specific percentage of the issuer's outstanding shares (or economic equivalent) at which SBS positions should be reported, we believe that the reporting threshold should be better aligned with the reporting requirements of the Schedule 13D, so that the ownership threshold of the Schedule 13D would not be rendered irrelevant in many cases. In addition, we believe that the reporting threshold should be based on net positions, to account for hedging strategies that reduce overall risk exposure.
5. **Rule 13d-5**: the **IAC did not make any recommendation** to the proposed amendment to Rule 13d-5 because of a lack of consensus on the effects of the proposed definition of a "group" and how that would impact shareholder communications. The IAC did, however, agree with the SEC's description of existing case law on the definition of "group". The IAC would support the inclusion of a description in any final rulemaking regarding Schedule 13D to highlight to market participants the scope of such case law when considering the applicability of the "group" rules.

This provides great insight to how the SEC might move forward with the proposed amendments, and I think it is safe to say that we are one step closer to seeing the end to end of year filings for the 13G and the beginning of robust reporting cycles for the 13D and 13G. Full draft recommendations reviewed in the meeting can be found here.

Unfortunately, we are still in the dark on SEC file S7-08-22, release number 34-94313 which proposes institutional investment managers to report short selling activity. So, watch this space!

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