



ALERTS

Changes Coming In 2023 For Form 13F Content And Confidential Treatment Requests

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Highlights

The SEC has adopted various changes to the content and presentation of Form 13F

Section 13(f) confidential treatment requests now must be filed electronically rather than in paper format

These changes will take effect in early 2023

The SEC has adopted amended rules concerning Section 13(f) of the Securities Exchange Act of 1934 and its companion Form 13F [1]. The amendments are largely in line with those proposed by the SEC in late 2021.

The amendments make various changes to the content and presentation of the information an investment manager must report on Form 13F. The amendments also introduce a new electronic filing requirement for Section 13(f) confidential treatment requests, which managers traditionally have filed with the SEC in paper format. [This blackline shows the amendments'](#) effect on Form 13F and its instructions.

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Section 13(f) of the Exchange Act requires quarterly holdings reports on Form 13F on the part of institutional investment managers who exercise investment discretion over accounts holding listed U.S. equity securities with an aggregate market value of at least \$100 million [2]. Form 13F requires the manager to disclose its holdings of such “13(f) securities” as of the last day of each quarter. Form 13F is a public document filed via EDGAR and is due within 45 days after the quarter-end.

The Form 13F instructions provide procedures under which a manager in certain cases may ask the SEC to grant confidential treatment for one or more securities holdings that otherwise would have to be disclosed in the manager’s public Form 13F.

Amendments to Form 13F Content and Related Instructions

The SEC’s amendments make modest updating changes to the content and presentation of Form 13F. These changes primarily include: (i) revising the Special Instructions to Form 13F to require each filing manager to disclose its CRD number and SEC file number, if any [3]; (ii) modifying the Form 13F Information Table to allow (but not require) managers to disclose a reported security’s FIGI in addition to its CUSIP number [4]; and (iii) altering the Form 13F rounding convention by requiring all dollar values in the Information Table to be rounded to the nearest dollar instead of the nearest \$1,000 [5]. The amendments also make various streamlining edits to the Form 13F instructions, including the removal of duplicative definitions.

Electronic Filing of Section 13(f) Confidential Treatment Requests

Rule 24b-2 under the Exchange Act and the Instructions for Confidential Treatment Requests contained in Form 13F permit eligible managers to seek confidential treatment for certain quarter-end securities holdings that normally would be subject to public disclosure on Form 13F. To make a confidential treatment request, the manager: omits the holdings in question from its public Form 13F; files with the SEC a confidential version of Form 13F that identifies only those holdings; and submits to the SEC an accompanying request letter that explains in respect of each holding the basis on which confidential treatment is sought and the length of the requested confidentiality period.[6]

Historically, the Instructions for Confidential Treatment Requests have required both the confidential Form 13F and the accompanying request letter to be filed with the SEC in paper format by physical delivery (e.g., overnight courier). In the adopting release, the SEC expressed concern that this approach has come to entail a “time-consuming, manual receipt and distribution process within the Commission” that sometimes engenders “undue procedural delay.”

The amendments eliminate the traditional paper filing requirement by providing that a manager seeking confidential treatment henceforth must file its confidential Form 13F and accompanying request letter with the SEC electronically via EDGAR. That filing will be a confidential submission distinct from the manager’s public Form 13F. The new requirement for electronic filings is reflected in revisions to the Instructions

for Confidential Treatment Requests, as well as in new Rule 24b-2(i) under the Exchange Act and amended Rule 101(d) of Regulation S-T. The EDGAR Filer Manual will specify the filing format for electronic confidential treatment requests. [7]

Compliance Dates

The content-related amendments to Form 13F will become effective on Jan. 3, 2023. This means they will apply beginning with the Form 13F that a manager files in respect of the fourth quarter of 2022, which is due by Feb. 14, 2023.

Managers are required to comply with the electronic confidential treatment request rules beginning on Feb. 28, 2023. [8] This means the first Form 13F in respect of which a confidential treatment request must be filed via EDGAR is the one relating to the first quarter of 2023. Managers that are in the habit of making Section 13(f) confidential treatment requests (including hedge fund managers who seek confidentiality for open risk arbitrage positions) should review and update their procedures accordingly. Managers that use third-party service providers to file confidential treatment requests similarly should ensure that those parties are familiar with the new rules.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Scott Budlong at 646-746-2036 or sbudlong@btlaw.com.

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¹ “Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F,” SEC Release No. 34-95148 (June 23, 2022); 87 FR 38943 (June 30, 2022).

² Section 13(f)(6)(A) of the Exchange Act defines “institutional investment manager” to include (i) an entity that invests in or buys and sells securities for its own account and (ii) an entity or a natural person that exercises investment discretion with respect to the account of any other entity or natural person. Institutional investment managers therefore may include hedge fund managers, endowment fund managers, etc.

³ See amended Special Instruction 4.

⁴ See amended Special Instruction 11(b)(iii) and column 3 of the Form 13F Information Table. FIGI is an open-source, non-proprietary data standard for the identification of financial instruments across asset

classes, including all securities of the type required to be reported on Form 13F. According to the SEC, “FIGI allows users to link various identifiers for the same security to each other, which includes mapping the FIGI of a security to its corresponding CUSIP number.”

⁵ See amended Special Instruction 8 and column 4 of the Form 13F Information Table.

⁶ A manager that files a confidential treatment request eventually must amend the public Form 13F from which the relevant securities holdings were omitted. If the SEC grants the confidential treatment request, the amendment must be filed within six business days of expiration of the permitted confidentiality period. If the SEC denies the request, the amendment must be filed within six business days of the notification of denial. See paragraph 4 of the amended Instructions for Confidential Treatment Requests.

⁷ See new Rule 101(a)(1)(xxii) of Regulation S-T.

⁸ The rule amendments introducing the electronic filing requirement became effective on Aug. 29, 2022. However, the adopting release provides a six-month transition period before compliance becomes mandatory. A manager is free to make a confidential treatment request electronically prior to the mandatory compliance date.