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Securities Alert

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FAQ: Recent SEC Form 13F enforcement actions

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The SEC has intensified its focus on Form 13F filings. Here's how to comply with Form 13F reporting requirements.



What's the impact?

- Recent enforcement actions triggered by late filings serve as a reminder for investment managers to assess their holdings and transactions to determine reporting requirements.
- Delinquent filers incurred penalties of up to \$750,000.
- If you have not been filing Form 13F, take action now to determine whether it applies to you.

In light of recent SEC Form 13F enforcement actions, a number of industry participants have become aware of their obligation to file Form 13F with the SEC. Here, we respond to a number of frequently asked questions we have heard since the enforcement actions were announced.

What is Form 13F?

Form 13F is a quarterly report required under Exchange Act Section 13(f) and Rule 13f-1, intended to facilitate the collection and public dissemination of information concerning the securities

holdings of institutional investment managers, with a view to promoting investor confidence in the integrity of U.S. securities markets.

Who must file Form 13F?

Form 13F must be filed by “institutional investment managers” that exercise investment discretion over accounts holding \$100 million or more in “Section 13(f) securities” (generally, U.S. exchange-traded stocks; shares of closed-end investment companies; and shares of exchange-traded funds (ETFs); as well as certain convertible debt securities, equity options, and warrants). (The [official list of “Section 13\(f\) securities”](#) is published quarterly by the SEC). Under Exchange Act Section 13(f), in general, an institutional investment manager is (i) any person or entity that exercises investment discretion over the securities account of any other person or entity or (ii) any entity (but not a natural person) that invests in or buys and sells securities for its own account. The Form 13F filing obligation continues as long as an investment manager continues to exercise investment discretion over at least \$100 million in Section 13(f) securities.

How do you file Form 13F?

There are three parts to a Form13F filing: the Cover Page, the Summary Page, and the Information Table.

FORM13F COVER PAGE

The Cover Page identifies the investment manager making the report, as well as any affiliated investment managers whose holdings are included in the report.

FORM13F SUMMARY PAGE

The Summary Page sets forth the number of Section 13(f) securities reported in the Information Table and their market value, and requires identification of any other investment managers with whom the reporting manager shares investment discretion over any of the reported Section 13(f) securities. It also has a box to check if the investment manager is making a confidential treatment request regarding any of the information in the Information Table.

FORM 13F INFORMATION TABLE

The Information Table requires disclosure of: (a) the issuers’ names for all Section 13(f) securities reported; (b) the class of the securities reported (e.g. common stock, put/call option, convertible debenture); (c) the number of shares owned; (d) the market value of the each of the reported securities holdings as of the end of the relevant calendar quarter; and (e) whether the reporting manager has sole or shared investment discretion and voting authority over each reported security.

Does your Form 13F filing qualify for confidential treatment?

Form 13F is a public filing available to the general public immediately upon filing. The SEC has authority to prevent or delay public disclosure by granting confidential treatment to Form 13F information in accordance with the nine limited exemptions from public disclosure that are set forth in the Freedom of Information Act ("FOIA"). See [5 U.S.C. § 552](#). The substantive rationale for an investment manager's request for confidential treatment of information reported on Form 13F typically falls under FOIA Exemption 4, which protects "trade secrets and commercial or financial information ... [that is] privileged or confidential." See [5 U.S.C. § 552\(b\)\(4\)](#). Confidential treatment is often requested for an open-risk arbitrage investment position and, in certain limited circumstances, for an ongoing investment strategy such as a program of acquisition or disposition.

Filers initially may request confidential treatment for three months, six months, nine months, or one year (renewable upon filing a de novo request before the expiration date). Requests for confidential treatment should be limited to specific information contained in a Form 13F and to the time period necessary to carry out the manager's particular trading strategy. An application for confidential treatment must provide legal and factual support for a confidential treatment request and address all necessary factors, including:

- / If confidential treatment is requested for more than one holding of securities, the confidential treatment request must discuss each holding separately unless the manager can identify a class or classes of holdings where the nature of the factual circumstances and the legal analysis are substantially the same.
- / If a request for confidential treatment is based on a claim that the subject information is confidential, commercial, or financial information, the confidential treatment request must provide the following information, except that, if the subject information concerns security holdings that represent open-risk arbitrage positions and no previous requests for confidential treatment of those holdings have been made, the manager need provide only the information required in the last paragraph.
 - Describe the investment strategy being followed with respect to the relevant securities holdings, including the extent of any program of acquisition and disposition (note that the term "investment strategy" also includes activities such as block positioning).
 - Explain why public disclosure of the securities would, in fact, be likely to reveal the investment strategy; consider this matter in light of the specific reporting requirements of Form 13F (e.g., securities holdings are reported only quarterly and may be aggregated in many cases).
 - Demonstrate that such revelation of an investment strategy would be premature; indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; and address whether the existence of such a program may otherwise be known to the public.
 - Demonstrate that the information is customarily and actually kept private by the manager and that failure to grant the request for confidential treatment would be likely to cause harm to the

manager; show what use competitors could make of the information and how harm to the manager could ensue.

- State, and provide justification for, the period for which confidential treatment of the securities holdings is requested. The period specified may not exceed one (1) year from the date that the manager is required to file the Form 13F report with the SEC.
- For securities holdings that represent open-risk arbitrage positions, the request must include good faith representations that (i) the securities holding represents a risk arbitrage position open on the last day of the period for which the Form 13F report is filed; and (ii) the reporting manager has a reasonable belief as of the period end that it may not close the entire position on or before the date that the manager is required to file the Form 13F report with the SEC. If the manager makes these representations in writing at the time that the Form 13F is filed, the SEC will automatically accord the subject securities holdings confidential treatment for a period of up to one (1) year from the date that the manager is required to file the Form 13F report with the SEC.

What are the Form 13F filing deadlines?

A Form 13F filing obligation is triggered when an investment manager meets the \$100 million threshold on the last trading day of any month. Once the threshold is crossed, a Form 13F must be filed (a) within forty-five (45) days after the end of the calendar year during which the threshold was crossed, and (b) thereafter, within forty-five (45) days after the end of each subsequent calendar quarter. The filing deadlines for the remainder of 2024 and for 2025 are:

/ 3Q 2024 (September)–November 14, 2024

/ 4Q 2024 (December)–February 14, 2025

/ 1Q 2025 (March)–May 15, 2025

/ 2Q 2025 (June)–August 14, 2025

/ 3Q 2025 (September)–November 14, 2025

/ 4Q 2025 (December)–February 17, 2026

Are there any other related filings to consider?

Yes. In November 2022, the SEC adopted Rule 14Ad-1, requiring all investment managers who are required to file Form 13F to also file reports on Form N-PX to report their proxy voting on say-on-pay matters. Form N-PX is a report that has been filed since 2003 by registered investment companies to report their proxy voting on a wide range of matters. Under Rule 14Ad-1, investment managers who do not advise registered investment companies but have voting discretion over Section 13(f) securities are required to file a modified Form N-PX annually to report their proxy votes on say-on-pay matters (including votes to approve golden-parachute compensation in connection with a merger or acquisition). The first Form N-PX under Rule 14Ad-1

was due on August 31, 2024, and covered proxy votes taken during the period from July 1, 2023, through June 30, 2024.

There may be additional filings to consider in addition to Form 13F and Form N-PX.

What should you do if you have not been filing Form 13F but you think you should have been?

In most cases, the recent enforcement actions appear to have been triggered by investment managers' late filings of Form 13F, although the SEC has intensified its general focus on Form 13F filings, including launching sweep exams to ensure compliance. In the sweep exams, the SEC has required investment advisers to submit information about their policies and procedures related to Form 13F and supporting documents for any Form 13F filings made, as well as explanations for any filings the advisers failed to make.

Penalties ranging from \$30,000 to \$750,000 were assessed against the delinquent filers (although several investment managers were charged not only with failure to file Form 13F but also failure to file other reports, such as Form 13H, Schedules 13G and 13D, and Forms 3, 4, and 5). No financial penalties were assessed against three of the delinquent filers who self-reported their delinquency to the SEC before filing their Forms 13F.

If you have not been filing Form 13F but believe that Exchange Act Section 13(f) and Rule 13f-1 apply to you, we recommend the following actions:

IMPLEMENT A FORM 13F INTERNAL POLICY

Promptly adopt a Form 13F internal policy to continue to assess your Form 13F filing obligations, maintain records regarding your Section 13(f) securities holdings and your proxy voting on say-on-pay matters, and make timely Form 13F and Form N-PX filings from now on. The internal policy should include: (a) an annual review of the policy and any new SEC requirements; (b) an annual training program for anyone within your organization involved in processes related to, or regarding, Rule 13(f)-1, Form 13F, and the internal policy; (c) periodic testing of the process and controls related to Form 13F filing; and (d) an annual senior officer approval of the policy.

PREPARE PAST-DUE FILINGS

Prepare to file all past-due Forms 13F as soon as possible after completing the implementation of a Form 13F policy. This includes all Form 13F filings that have been due since Form 13F became applicable to you, as well as any past-due Form N-PX and Form 13H filings.

CONSIDER MAKING A CONFIDENTIAL TREATMENT REQUEST

Determine whether confidential treatment should be requested with respect to any information disclosed in any of the Form 13F filings and, if so, prepare a confidential treatment request. If a confidential treatment request will be made with respect to any of the filings, it must be submitted simultaneously with the filing. In light of the SEC's guidance on confidential treatment, it is unlikely that any information disclosed in Form 13F for any periods before 2024 will be granted confidential treatment, but you should consider whether disclosure of any information regarding your Section 13(f) securities holdings for recent periods will create strategic or competitive disadvantages.

SELF-REPORT TO THE SEC

Through a separate letter to the SEC sent immediately before filing your first delinquent Form 13F, notify the SEC Staff that you: (1) recently became aware of the Rule 13(f)-1 requirements and describe how such awareness developed; (2) have engaged legal counsel to assist with self-correcting measures; (3) intend to make all late filings immediately as part of those self-correcting measures; and (4) have implemented an internal Form 13F policy with a description of the policy. The recent enforcement actions make it clear that the SEC is trying to reward delinquent filers for self-reporting their failure to make required Form 13F submissions, while punishing those that attempt to catch up on delinquent filings without proactively flagging the issue for the SEC.

What are some additional SEC resources I can consult about Form 13F Filing?

- / [SEC Form 13F FAQ](#)
- / [SEC Form 13F Filing Instructions](#) (exp. September 30, 2025)
- / [SEC Enforcement Action Against an Investment Manager that Failed to Filed Forms 13F from 2016 Through 2022](#) (order issued September 2023)
- / [SEC Charges 11 Institutional Investment Managers with Failing to Report Certain Securities Holdings](#) (press release issued September 2024)
- / [SEC Levies More Than \\$3.8 Million in Penalties in Sweep of Late Beneficial Ownership and Insider Transaction Reports](#) (press release issued September 2024)

As the SEC ramps up enforcement actions related to Form 13F filing obligations, investment managers must assess their holdings against the SEC's reporting thresholds. Nixon Peabody's securities lawyers regularly guide investment managers through compliance and reporting obligations, and we can help firms comply with the filing regulations, implement internal policies regarding filing practices, and, if delinquencies are uncovered, self-report to minimize the risk of penalties.

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