

SEC Requests Comments on Earnings Releases and Quarterly Reporting

December 19, 2018 – Governance & Compliance Insider
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The SEC issued a [request for comment](#) on the nature and timing of disclosures that reporting companies must provide in quarterly reports on Form 10-Q, including when the requirements overlap with earnings releases furnished on Form 8-K. Comments will be due within 90 days of publication of this request in the Federal register. Comments may be submitted through the SEC's Internet comment form on its website or to rule-comments@sec.gov, referencing File Number S7-26-18.

The Commission's request frames four broad issues for consideration (paraphrased below), with more specific questions listed under each issue:

- whether there are benefits to investors of having a separate quarterly report and earnings release, and reasons for variations and overlapping content between the two documents,
- the impact on investors when the earnings release is published before, after or concurrently with the quarterly report,
- whether earnings releases can be used to satisfy the core financial disclosure requirements of Form 10-Q, with the Form 10-Q supplementing or incorporating by reference the earnings release, and
- the merits of semi-annual vs quarterly interim reporting.

The SEC's request follows an August tweet by President Trump, announcing that he had asked the Commission to study the termination of quarterly reporting in favor of semi-annual reporting, and SEC Chair Jay Clayton's remarks in November that the matter was under consideration.

Observers are generally skeptical that the SEC will transition to less frequent reporting, given expectations of underwriters and investors and the current incorporation of periodic reports into registration statements. However, the Commission has expressed its interest in exploring ways to promote efficiency in periodic reporting by reducing unnecessary duplication in the information that public companies disclose. Furthermore, the SEC is seeking comment on how the existing system, alone or in combination with

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other factors, may foster an overly short-term focus by managers and other market participants.

In particular, the SEC is considering streamlining the Form 10-Q and providing issuers with the option to provide quarterly reporting information in earnings releases to satisfy the core disclosure requirements of Form 10-Q. In streamlining the Form 10-Q, the SEC has indicated that it may consider rescinding the Regulation S-X requirement that interim financial statements be reviewed by an auditor, US GAAP prescriptions on the form and content of interim financial statements, and Form 10-Q certifications by the CEO and CFO. This approach would be similar to streamlined reporting requirements for foreign private issuers, which file annual reports, but not quarterly reports, and then furnish current reports on Form 6-K to the extent that the issuer must disclose material information about changes in the business.

Would the Commission concurrently implement more stringent disclosure standards for earnings releases? These releases are currently "furnished" rather than "filed," meaning that they are not automatically incorporated by reference into registration statements or subject to liability under Sections 18 of the Securities Act of 1933, though they are still subject to anti-fraud provisions under Section 10(b) of the Securities Exchange Act of 1934.

A decision to streamline quarterly reports and emphasize earnings releases, if is part of a broader emphasis on more current reporting, would be on-trend with investors' general appetite for information on a closer to real-time basis, similar to their experience with news and other types of information communicated through social media and Internet channels. However, the importance and necessity of proper internal controls and disclosure controls, and the time required to perform those controls, will prevent real-time reporting without further technological advances.