

[Securities Regulation Daily Wrap Up, PUBLIC COMPANY REPORTING AND DISCLOSURE—SEC seeks comment on quarterly reports, relationship to earnings releases and guidance, \(Dec. 18, 2018\)](#)

Securities Regulation Daily Wrap Up

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The Commission, perhaps stealing a bit of its own thunder, jump started by one day the busy open meeting agenda set for this week by issuing a request for public comment on quarterly reporting under the federal securities laws and on the relationship, if any, between such reports and earnings releases and earnings guidance issued by public companies. The request for comment follows an earlier public remark by President Trump about whether securities regulations should move to a semi-annual reporting framework. The commissioners had planned to mull issuing the request for comment on quarterly reporting at [tomorrow's open meeting](#), at which they will still address a diverse set of matters, including the PCAOB's budget and accounting support fee, several items dealing with security-based swaps, hedging disclosures by company executives and directors, and fund of funds arrangements (Request for Comment on Earnings Releases and Quarterly Reports, [Release No. 33-10588](#), December 18, 2018).

A history of short-termism and quarterly reporting. The immediate spark prompting the Commission's request for comment on quarterly reporting may have been President Trump's [tweet](#) on the topic. SEC Chairman Jay Clayton later issued a [statement](#) acknowledging the president's remark and noting that the SEC considers the nature of its reporting requirements on an ongoing basis, including the implementation of "a variety of regulatory changes that encourage long-term capital formation while preserving and, in many instances, enhancing key investor protections." Chairman Clayton again acknowledged the "ongoing debate" in a brief statement accompanying a [press release and Fact Sheet](#) on the request for comment. However, the underlying question of whether reporting frequency puts too much focus on public companies' short-term financials has existed since the early years of the Exchange Act and has its roots in a much longer debate over quarterly versus semi-annual reporting.

In the 1940s, the SEC adopted quarterly reporting for some financial items only to abandon that framework for a semi-annual reporting regime in the 1950s. It was not until the 1970s, following publication of the Wheat Report (See [SEC Historical Society website](#)), and with some exceptions for real estate investment trusts, that the SEC once again adopted a quarterly reporting regime (Form 10-Q) which, over time, has evolved to include the disclosure of additional information about companies. During the current quarterly reporting regime, Form 8-K has provided an outlet for certain company disclosures needed to be made more frequently than quarterly (i.e., four business days after an event), while voluntary quarterly earnings guidance has achieved increasing prominence. (See, e.g., the Wolters Kluwer publication Loss, Seligman, and Paredes, *Securities Regulation*, Section 6.B.1., n. 29.) (observing that quarterly reports were not required until 1946, twelve years after enactment of the Exchange Act, despite being mentioned in Exchange Act Section 13(a)(2)).

Moreover, as the request for comment notes, the European Union has vacillated between quarterly and semi annual reporting, adopting a semi-annual approach in its latest directive. The request for comment further observed that the EU has acknowledged the appeal of quarterly reports to market participants, while also noting the burden of such reports on smaller companies and the possibility that they may encourage a short-term focus by companies. In the U.K., which also eliminated quarterly reporting, the request for comment said one study showed that corporate investment was unchanged by whether a company issued quarterly or semi-annual reports, but analysts sometimes curbed coverage of companies that issued less frequent reports. By contrast,

the request for comment said that other countries, such as Canada, Hong Kong, and Japan, still have quarterly reporting regimes.

Request tees up questions. According to the request for comment, its purpose is two-fold: (1) get public comment on the "nature, timing, format and frequency" of reporting under federal securities laws; and (2) to better understand the relationship between required periodic reports and earnings releases (if a company issues them) furnished via Form 8-K. Other overarching questions include how to "simplify" the reporting process for investors, how to "maintain" or "enhance" investor protections afforded by periodic reports but also reduce burdens on companies, and to grasp how required reports, earnings releases, and earnings guidance, influence companies' short-term views.

Given the breadth of the request for comment, the Commission raises the prospect that it might need to coordinate with accounting standards providers and SROs to facilitate some of the amendments to periodic reports contemplated by the request. The SEC has previously sought comment on a number Regulation S-K issues that, at least partially, relate to the current request for comment. However, the Regulation S-K [concept release](#) did not address all of the issues covered by today's request (e.g., earnings releases).

Overall, the request for comment divides the many specific questions on periodic reporting into four categories: First, the Commission seeks comment on the informational content of quarterly reports. Here, the request for comment notes that Form 10-Q and earnings releases overlap in their content and that companies use varied approaches to presenting earnings releases. Some questions address the following (bullet points below are taken verbatim from the request for comment):

- Why do reporting companies choose to issue earnings releases, most typically quarterly?
- Do quarterly earnings releases provide benefits to investors, companies, or the marketplace separate and apart from the Form 10-Q report?
- How would the content of earning[s] releases change if they were required to be filed with the Commission and become subject to applicable liability provisions?
- Is the Form 10-Q or the earnings release the primary document upon which investors rely when a company provides both?
- Are there meaningful differences between the financial information typically provided in an earnings release and the financial information required by Form 10-Q?
- Does the fact that Form 10-Qs are filed as opposed to furnished, and include certifications, impact the extent to which investors rely on them?
- Does confusion arise from overlapping disclosures in the earnings release and Form 10-Q?
- Some have suggested that the practice of providing quarterly forward-looking earnings guidance creates an undue focus on short-term financial results and thereby negatively affects the ability of companies to focus on long-term results. Is this the case and, if so, are there changes we could make to our rules that would discourage this practice or address this concern?
- [S]hould we require that earnings guidance be filed with or furnished to the Commission?

Second, the request for comment addresses concerns about the timing of quarterly reports. Among the wider issues to be addressed in this set of questions is whether it matters that a company issues an earnings release before or concurrently with the filing of its Form 10-Q. The specific questions include:

- Why do some companies publish an earnings release before filing Form 10-Q while other companies publish an earnings report and file Form 10-Q on the same day or near the same time?
- Should the Commission take any action to address time lapses between an earnings release and Form 10-Q, and if so, what action?
- Are investors or other market participants disadvantaged at the time of the earnings call by not having access to the more detailed information contained in the Form 10-Q?
- Do the same disadvantages exist for the fourth quarter earnings release in comparison to the filing of Form 10-K?

- Does such involvement [i.e., auditor involvement] or the auditor review of the quarterly financial statements contribute to any delay between publication of an earnings release and the filing of a Form 10-Q?

Third, the Commission asks for comment on whether it should adopt an "option" under which an earnings release could meet Form 10-Q's "core financial disclosure requirements" (the "supplemental approach"). The questions mull substantive issues and logistical ones, such as incorporation by reference, the possible need for hyperlinks between Forms 10-Q and 8-K, and the applicability of XBRL requirements. Among the questions are the following:

- To what extent do companies take advantage of General Instructions D.1 and D.2 of Form 10-Q to satisfy the requirements of Form 10-Q? [the instructions deal with incorporation by reference]
- Should Commission rules, accounting standards, and auditing standards allow for the interim financial statements to be separated so that certain parts could be presented only in the earnings release to satisfy the Form 10-Q requirements under the Supplemental Approach or other suggested approach?
- Should information in an earnings release that is submitted on Form 8-K be allowed to satisfy the Form 10-Q requirements?
- If companies were permitted to omit from Form 10-Q information already contained in a Form 8-K earnings release, what specific information should they be allowed to omit?
- If we adopt the Supplemental Approach or other suggested approach, should we require the relevant Form 8-K to be filed rather than furnished?
- Would the Supplemental Approach or other suggested approach affect the quantity, quality, or nature of the disclosure being made to the public?

Fourth, the request for comment seeks input on the frequency of periodic reporting. One of the larger themes that emerges from the many questions is whether companies would benefit/suffer from opting to provide more/less frequent disclosures. This is a type of question that has arisen more recently in the context of emerging growth companies, which can make certain elections that may impact how investors perceive them. Yet another concern is whether a change in the frequency of periodic reporting could affect registration statements (material omissions) and shelf registrations (currency). This series of questions includes:

- What are the benefits and costs to investors, companies, and other market participants associated with the current reporting frequency model, which requires from domestic issuers quarterly reports on Form 10-Q, annual reports on Form 10-K, and current reports on Form 8-K?
- Should we move to a semi-annual reporting model for all or certain categories of reporting companies?
- What would the costs and benefits be to investors, companies, and other market participants of a semi-annual reporting model for all or certain categories of reporting companies?
- Would a change in reporting frequency affect the cost of capital to companies?
- How would a semi-annual reporting model affect the use of earnings releases?
- Should we allow for additional flexibility by permitting companies to select an approach to periodic reporting that best suits their needs and the needs of their investors?
- What are the downstream effects of changing the reporting frequency to investment companies, investment advisers, broker-dealers, data aggregators, and other users of the reports?
- Should an emerging growth company or smaller reporting company be permitted to elect a semi-annual reporting frequency?
- What are the accounting and auditing changes that would be necessary for a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model)?
- How would a move to either a mandatory or optional semi-annual reporting model affect the current rules of self-regulatory organizations and national securities exchanges? [i.e., would SROs' listing standards continue to require quarterly reporting]

Time frame for comments. The Commission did not indicate a specific time frame regarding whether or when it might act in response to public comments it receives on the request for comment. However, public comments

are expected to be submitted no later than 90 days after the request for comment is published in the *Federal Register*.

The release is [No. 33-10588](#).

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