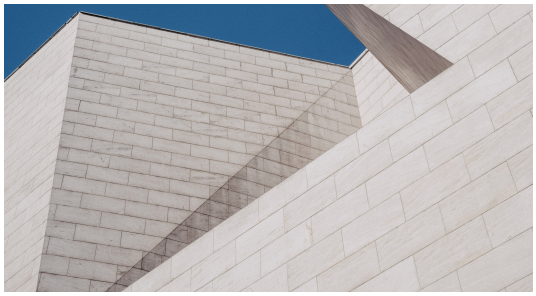
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SEC Proposes Allowing Optional Semiannual Reporting for Public Companies

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Proposed amendments focus on quarterly reporting, with little change to the FPI reporting regime

In a potential sea change to U.S. public company reporting, the U.S. Securities and Exchange Commission (the "SEC") has proposed allowing companies to elect to file semiannual reports on new Form 10-S instead of quarterly reports on Form 10-Q. New Form 10-S would require the same narrative disclosures and financial information as current Form 10-Q, but would cover a fiscal six-month period rather than a fiscal quarter.

The proposal would not change the foreign private issuer ("FPI") reporting regime, which does not impose Form 10-Q reporting on FPIs. The SEC has not yet issued a proposal in connection with last year's FPI eligibility concept release.

The public comment period on the semiannual reporting proposal will remain open until 60 days after it is published in the Federal Register.

Contents

Proposed semiannual reporting option 1
Proposed Form 10-S 2
Proposed changes to financial statement "staleness" rules 2
Request for comment 3

Proposed semiannual reporting option

The proposal would amend Rules 13a-13 and 15d-13 under the Securities Exchange Act of 1934 (the "Exchange Act") to allow reporting companies to choose between filing semiannual reports on new Form 10-S (a "semiannual filer") or quarterly reports on Form 10-Q as under the current system (a "quarterly filer"). Semiannual filers would be required to file one semiannual report and one annual report for each fiscal year, and quarterly filers would continue to file as under the current reporting system.

The SEC has proposed adding a check box to the cover page of Form 10-K as the sole means by which a reporting company would indicate annually whether it is selecting a semiannual interim reporting frequency (by checking the semiannual box) or quarterly reporting (by not checking the semiannual box). Newly public companies would make their initial election on the cover of the registration statement.

Under the proposal, the determination to report semiannually or quarterly would be made on an annual basis and may not be changed until the next Form 10-K annual report is filed. Companies would then be required to file interim reports based on the chosen frequency, beginning with the report for the first interim period (semiannual or quarterly) of the fiscal year in which the Form 10-K with the election was filed. Once a company has elected its interim reporting frequency, it would be committed to that reporting frequency for the remainder of that fiscal year.

The proposal does not include any substantive changes to the current regulatory requirements governing earnings releases or earnings guidance practices, but the SEC is seeking comment as to how the option for semiannual reporting would affect the voluntary practice of quarterly earnings guidance.

For NYSE- and Nasdaq-listed foreign private issuers, the reporting regime would remain unchanged, consisting primarily of an annual report on Form 20-F and a semiannual report (an interim balance sheet as of the end of the second fiscal quarter and a semiannual income statement that covers the first two fiscal quarters) on Form 6-K.

Proposed Form 10-S

Proposed Form 10-S would require the same information as currently required by Form 10-Q but for the covered six-month period instead of a quarter.

As proposed, the financial statements for the covered semiannual period would be required to be prepared in accordance with U.S. GAAP and reviewed by an auditor but not required to be audited. The financial information would also be required to be data tagged using Inline XBRL. Any non-GAAP financial measures presented in proposed Form 10-S would be subject to the current requirements of Regulation G and Item 10(e) of Regulation S-K.

The proposal would also apply to Form 10-S the current Form 10-Q disclosure and certification requirements for disclosure controls and procedures, as well as for internal control over financial reporting.

The proposed deadline for filing Form 10-S would be 40 days (for large accelerated filers and accelerated filers) or 45 days (for all other reporting companies) after the fiscal year's first semiannual period end, similar to the current Form 10-Q deadline.

For newly public companies, the first Form 10-S would be due the later of 45 days after effectiveness of the registration statement or the date the Form 10-S would otherwise have been due if they had already been reporting.

Proposed changes to financial statement "staleness" rules

The SEC has also proposed changes to the age of financial statement requirements in Regulation S-X to ensure that financial statements in registration statements filed by semiannual filers would not be considered "stale" under existing rules, which were built along a quarterly reporting framework, and to revise those age requirements for semiannual filers to fit with their reporting schedule.

Broadly, the proposed changes would:

- consolidate the existing "age of financial statements" regime in Rule 3-12 into a reorganized Rule 3-01;
- replace the current day-count tests with a model that ties updating requirements to what is, or would be, required in the issuer's most recent Form 10-K, 10-Q or new Form 10-S; and

- update other provisions in Regulation S-X to reflect an optional semiannual reporting framework.

If adopted as proposed, the changes would mean a move away from the longstanding “135-day rule” by replacing a pure day-count test with a framework that is anchored to Exchange Act reporting deadlines. Under the current rules, a registrant assesses whether its financial statements are “stale” by counting the number of days between the filing (or effectiveness of the registration statement / mailing of the proxy statement) date and the date of the most recent balance sheet. If that gap is 130 or 135 days or more (depending on filer status), the financial statements must be updated with more recent interim financial statements.

Under the proposed amendments to Rules 3-01(c)(2) and 8-08(b)(2), the day-count test would be removed. Instead, where audited financial statements for the most recently completed fiscal year are included in the filing, the registrant would be required to include interim financial statements:

- as of the end of the most recently completed fiscal quarter (for quarterly filers) or semiannual period (for semiannual filers); and
- for the year-to-date interim period then ended,

to the extent that such interim financial statements have been filed, or are required to be filed, on or before the filing date in a Form 10-Q or Form 10-S. A non-reporting company would apply this requirement as if it were subject to Exchange Act reporting.

For example, the Form 10-Q or proposed Form 10-S for a company that is a large accelerated filer or accelerated filer would be due 40 days after the end of the interim period (or 45 days for all other registrants). For a calendar year-end company with an interim period ending on June 30, the Form 10-Q or proposed Form 10-S would be due by August 10 for a large accelerated or accelerated filer (August 14 for all other registrants). Consequently, under the proposed amendments, a registration statement filed by a large accelerated or accelerated filer as late as August 9 (or August 13 for all other registrants) would not have to include financial statements for the interim period ended June 30.

Request for comment

The SEC is seeking public comment on its proposal, which could result in significant changes to the final version of the rules. The proposal asks specifically for comment in the following areas, potentially indicating areas of possible amendments:

- whether semiannual reporting should be mandatory rather than an option (i.e., not permitting quarterly reporting at all);
- whether the semiannual reporting option should be open to all reporting companies or limited to a subset of companies, such as emerging growth companies or smaller reporting companies;
- whether the filing deadline for semiannual reports on Form 10-S should be longer or shorter than proposed;

- whether investors would benefit from earlier notice of a company's intent to file semiannual reports instead of quarterly reports;
- whether newly public companies should have more flexibility for switching interim reporting frequency within a fiscal year;
- whether Form 10-S should require narrative or financial information that differs from what is required in Form 10-Q;
- whether the SEC should reduce Form 10-Q's reporting requirements rather than allow optional semiannual reporting;
- whether companies that currently issue quarterly earnings releases but elect to become semiannual filers will change their earnings release practices to either issue earnings releases semiannually, or cease issuing earnings releases;
- whether Item 2.02 of Form 8-K submissions should be "filed," rather than "furnished," for semiannual filers, to subject earnings releases to additional liability provisions;
- whether financial information in any first or third quarter earnings releases should be reviewed by an independent public accountant;
- whether underwriters' requests for independent public accountants to provide comfort letters in securities offerings would lead semiannual filers to continue to retain independent public accountants to conduct quarterly financial statement reviews; and
- the impact of optional semiannual reporting on company insider trading policies, such as longer trading blackout periods at the beginning of a semiannual period or towards the end of a semiannual period.

* * *

The SEC's proposal would put the United States more in line with many other jurisdictions, such as the UK and EU, which transitioned from quarterly to semiannual reporting in the 2010s.

If adopted as proposed, the option for semiannual reporting could mitigate any tightening of the FPI definition as explored in the FPI eligibility concept release. One of the key concerns for non-U.S. issuers listed in the United States is a mandatory move to quarterly reporting.

As noted in the proposal, however, many companies may still opt to file quarterly reports on Form 10-Q even when given the option of semiannual reporting, due to the expectations of investors and securities analysts, disclosure practices in a particular industry, contractual obligations, or other regulatory requirements. Some companies may also be concerned that semiannual reporting would increase the length of time that their directors or employees possess non-public information, resulting in longer closed trading windows.

We will continue to monitor developments in this area and welcome any queries you may have.

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