WILMERHALE

Keeping Current with Form 8-K

A PRACTICAL GUIDE | DECEMBER 2024

About This Guide

We have prepared this Guide to assist public companies in understanding and complying with Form 8-K reporting requirements. This Guide describes Form 8-K primarily from the perspective of a U.S. operating company that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is not a shell company, a foreign private issuer, an asset-backed issuer, an investment company or a business development company.

In addition to summarizing the events that trigger a Form 8-K filing requirement and the disclosures that must be provided when such an event occurs, this Guide includes a number of practice tips that represent our understanding of the disclosure requirements and how they should generally be applied. The practice tips contained in this Guide must be considered in light of the specific facts and circumstances of each situation, interpretive guidance that the SEC staff from time to time provides and developments in practice that evolve over time.

Please keep in mind that this Guide is for general informational purposes only and does not represent our legal advice as to any particular set of facts; nor does this Guide represent any undertaking to keep recipients advised as to all relevant legal developments. You should contact your regular WilmerHale attorney to discuss the Form 8-K requirements applicable to specific factual situations.

* * *

Table of Contents

Introduction

Form 8-K requires public companies to make prompt disclosures about a large number of specified events. Although Form 8-K does not mandate current reporting of all material events, it goes a long way toward requiring public companies to keep the markets informed of material developments on a day-to-day basis.

Public companies need to ensure that they implement and maintain disclosure controls and procedures that will permit them to identify and analyze developments that could trigger a Form 8-K filing requirement. In addition, some of the Form 8-K disclosure requirements are triggered by a decision of the board of directors, so it is important to plan board actions with these requirements in mind.

This Guide provides a summary of both the substantive and procedural aspects of Form 8-K. The first section of this Guide discusses filing mechanics, including filing deadlines, cover page check boxes, exhibit requirements and certain other technical and related matters. The second section discusses each reportable event and includes practice tips for complying with the Form 8-K requirements and implementing effective controls and procedures. The last two sections of this Guide outline the impact of the Form 8-K requirements on controls and procedures and the liabilities and limited relief related to the requirements.

Filing Mechanics

Filing Deadlines

Except as described below, a Form 8-K must be filed within four business days after the occurrence of a reportable event. For purposes of counting, day one is the first business day after the day on which the reportable event occurs.

The following table indicates the day of the week on which Form 8-K filings will generally be due under the standard four-business-day deadline:

Date of Event	Due Date (assuming no Federal holidays)
Sunday	Thursday
Monday	Friday
Tuesday	Monday
Wednesday	Tuesday
Thursday	Wednesday
Friday	Thursday
Saturday	Thursday

Different deadlines may apply in the case of:

- **Item 1.05: Material cybersecurity incidents** — As discussed under "Reportable Events – Item 1.05," in two limited circumstances where: (i) disclosure poses a substantial risk to national security or public safety, or (ii) the data breach involves customer proprietary network information ("CPNI") that must be disclosed pursuant to certain rules of the Federal Communications Commission (the "FCC"), a longer reporting period may apply.

- **Item 2.02: Earnings announcements** — A company that wants to take advantage of the limited exemption relating to earnings calls that are "complementary" to an earnings press release must furnish a Form 8-K containing its earnings press release no later than when the call begins.

- **Item 2.03: Creation of a contingent obligation under certain off-balance sheet arrangements** — As discussed under "Reportable Events – Item 2.03," a longer reporting period may apply when neither the company nor any of its affiliates is a party to the transaction or agreement creating the contingent obligation arising under the off-balance sheet arrangement.

- **Item 2.05: Termination of employees as part of a plan to exit an activity** — As discussed under "Reportable Events – Item 2.05," a longer reporting period may apply.

- **Item 2.06: Material impairments identified in connection with preparation, review or audit of financial statements** — As discussed under "Reportable Events – Item 2.06," in most situations the event may instead be reportable in the next Form 10-K or Form 10-Q.

- **Item 5.02(c): The appointment of certain new officers** — As discussed under "Reportable Events – Item 5.02," in certain limited circumstances the company may delay the filing of a Form 8-K announcing the appointment of a new officer.

- **Item 5.04: Temporary suspension of trading under the company's employee benefit plans** — The required Form 8-K must be filed no later than the fourth business day after which the company receives the notice required by Section 101(i)(2)(E) of ERISA or, if such notice is not received by the company, on the same date on which the company transmits a timely notice to an affected officer or director as required by Regulation BTR.

- **Item 5.07(d): Company's decision regarding the frequency of future shareholder advisory votes on executive compensation** — As discussed under "Reportable Events – Item 5.07," a longer reporting period applies.

- **Item 5.08: Shareholder director nominations** — The required Form 8-K must be filed within four business days after the company determines the anticipated meeting date.

- **Items 7.01 or 8.01: Regulation FD disclosure** — If a Form 8-K is being filed or furnished to satisfy a company's obligations under Regulation FD, the 8-K must be submitted within the timeframes required by

Regulation FD (that is, no later than when intentional disclosure of material non-public information is made in a non-public forum or promptly after discovery of a non-intentional disclosure).

- **Item 8.01: Voluntary disclosures** — No deadline applies to matters that are voluntarily being reported on a Form 8-K by the company.

No extension of the Form 8-K due date is available. As discussed in the section of this Guide titled "Liabilities and Limited Relief," the SEC has provided some relief, including a limited safe harbor, for companies that fail to timely file a Form 8-K relating to certain reportable events.

The same filing deadlines apply regardless of whether a company is a large accelerated filer, an accelerated filer or a non-accelerated filer.

Use of Forms 10-Q or 10-K or Proxy Statement Instead of Form 8-K

If a Form 8-K triggering event occurs within four business days before the company's filing of a Form 10-Q or Form 10-K, the company is generally allowed to satisfy its Form 8-K reporting obligation by including the disclosure in Item 5 (Other Information) of Part II of its Form 10-Q or Item 9B (Other Information) of its Form 10-K, as the case may be. *(SEC CDI Question 101.01.)* The two exceptions are:

- Item 4.01 (Changes in Registrant's Certifying Accountant); and
- Item 4.02 (Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review).

In the cases of Items 4.01 and 4.02, a Form 8-K must be filed.

Forms 10-Q and 10-K cannot be used to report an amendment to a previously filed Form 8-K. Any amendment to a previously filed Form 8-K must be filed on Form 8-K/A.

Based on General Instruction B.3 to Form 8-K, regarding "previously reported" information, timely disclosure of information in a proxy statement can also satisfy the Form 8-K filing requirement (except, again, in the case of Items 4.01 and 4.02 of Form 8-K, which always require a Form 8-K).

EDGAR and Public Dissemination

All Form 8-Ks must be submitted via the SEC's EDGAR system, absent the availability of a hardship exemption under Regulation S-T. The company should keep in mind that documents submitted via EDGAR become publicly available within seconds of their acceptance, and that online services will send immediate email alerts to subscribers tracking the company. As with press releases, in many cases it will be preferable to submit the Form 8-K outside of regular stock market trading hours. In any event, the company's investor relations group should be kept informed as to the timing of any Form 8-Ks so that they are not caught off guard by investor calls.

While EDGAR submissions can be made from 6 a.m. to 10 p.m. Eastern time, Monday through Friday, except federal holidays, EDGAR submissions of Form 8-Ks must be commenced by 5:30 p.m. Eastern time in order to be considered filed on the date submitted. Submissions that are commenced after 5:30 p.m. Eastern time are considered to be filed on the next business day.

A company that has filed a late Form 8-K due to unexpected, exceptional technical difficulties can request that the SEC adjust the filing date pursuant to Rule 13(b) of Regulation S-T.

Stock Exchange Requirements

General Instruction E to Form 8-K requires that a copy of the Form 8-K report be filed with each exchange where the registrant's securities are listed. The term "exchange" as used in the instruction refers only to domestic exchanges and, accordingly, Form 8-K reports need to be furnished only to domestic exchanges. *(SEC CDI Question 101.03.)*

If a Form 8-K is filed with the SEC through EDGAR, then a company listed on the NYSE or Nasdaq is deemed to have satisfied its obligation to provide the exchange with copies of the report. Paper copies of a Form 8-K should only be sent to

the exchange if the Form 8-K is not filed via EDGAR.

The stock exchanges each have rules requiring that they be given advance notice of disclosures of material information, including disclosures made solely by means of Form 8-K. A company must follow the applicable rules of its exchange:

Exchange	Requirement
Nasdaq	Nasdaq Marketplace Rule 5250 and IM-5250-1, "Disclosure of Material Information"
NYSE	NYSE Listed Company Manual Section 202.06, "Procedure for Public Release of Information; Trading Halts"

The Filed vs. Furnished Distinction

In some circumstances, the SEC has provided that information "furnished" to it (rather than "filed" with it) will be relieved from some (but not all) liability provisions under the federal securities laws. In such cases, the information that is "furnished":

- is not subject to Section 18 of the Exchange Act, a liability provision that, historically, has not been used very often by private litigants because other liability provisions (in particular Section 10(b) of the Exchange Act) are generally easier for a plaintiff to successfully assert;
- is not automatically incorporated by reference into registration statements, and therefore will not be subject to the stricter liability standard that applies to registration statements; and
- is not subject to the list of practices relating to non-GAAP financial measures that are prohibited in SEC filings by Item 10(e) of Regulation S-K (although with respect to Item 2.02 of Form 8-K other portions of Item 10(e) do apply, as discussed in more detail under "Reportable Events – Item 2.02").

Information about most Form 8-K reportable events is not relieved from the liability and disclosure requirements described above. The only Form 8-K reportable events that may be "furnished" are:

- Item 2.02 (Results of Operations and Financial Condition); and
- Item 7.01 (Regulation FD Disclosure).

The SEC has clarified that if a report on Form 8-K contains disclosures under Item 2.02 or Item 7.01, whether or not the report contains disclosures regarding other items, all exhibits to that report relating to Item 2.02 or Item 7.01 will be deemed furnished and relieved from liability as described above unless the company specifies exhibits, or portions of exhibits, that are intended to be treated as filed. The company should continue to be careful about the language it uses to refer to the exhibits furnished under Item 2.02 and Item 7.01 so that it does not unintentionally cause an exhibit to be treated as filed when the liability relief described above would otherwise be available.

Even where the Form 8-K requirements allow information to be furnished, it may be advisable in certain situations to file this information so that it is automatically incorporated by reference into active registration statements.

Cover Page of Form 8-K

Using Form 8-K to Simultaneously Satisfy Filing Requirements Under Rule 425, 14a-12(b), 14d-2(b) or 13e-4(c)

When filing a Form 8-K to report an M&A-related agreement or in connection with a proxy solicitation or tender offer, the company should, when appropriate, check the box on the cover page of Form 8-K to indicate that the Form 8-K satisfies the company's filing obligations pursuant to:

- Rule 425 under the Securities Act of 1933, as amended (the "Securities Act"), regarding written communications related to business combination transactions;
- Rule 14a-12(b) under the Exchange Act, relating to soliciting materials;

- Rule 14d-2(b) under the Exchange Act, relating to pre-commencement communications in connection with a third-party tender offer; or

- Rule 13e-4(c) under the Exchange Act, relating to pre-commencement communications in connection with an issuer self-tender offer.

Checking the box on the cover page of Form 8-K will eliminate the need to make a separate filing under Rules 425, 14a-12(b), 14d-2(b) or 13e-4(c), so long as the Form 8-K includes the substantive information required by such other rules.

In order to be able to check one of these four boxes, the EDGAR system requires that the Form 8-K include disclosure under specified items, as summarized in the following chart *(EDGAR Filer Manual (Volume II) (September 2023 edition))*:

Form 8-K Item	Additional Filing Obligation		
	425	DEFA14A DFAN14A	SC TO-C
1.01	X	X	X
1.02	X	X	X
2.01	X		
5.01	X		X
8.01	X	X	X

Note that these four check boxes are not available when the Form 8-K only includes items that are furnished rather than filed.

When one of these check boxes is properly used, the EDGAR system will treat the Form 8-K as two separate submissions, each of which will be assigned its own accession number.

Cover Page Requirements

The cover page of a Form 8-K is required to include information regarding the company's securities that are listed on an exchange. The required information, which is presented in a specified tabular format, is the title of each class of securities registered under Section 12(b) of the Exchange Act (which can include debt securities), the trading symbol of each such security and the name of the exchange on which it is registered.

The Form 8-K's cover page also includes two check boxes relating to emerging growth companies ("EGCs"). The first check box requires the company to check the box if it is an EGC. The second check box requires an EGC to check the box if it has elected not to use the extended transition period for complying with new or revised financial accounting standards.

Regardless of whether or not a company is itself actually an EGC, the cover page including these two check boxes should be included in all Form 8-Ks.

Cover Page Tagging

Companies are required to tag each data field that appears on the Form 8-K cover page. Companies satisfy the requirement to submit a Cover Page Interactive Data File using an Inline XBRL Document Set with Exhibit 101 attachments. The Cover Page Interactive Data File is identified as Exhibit 104 in the exhibit list (under Item 9.01 of Form 8-K) and should cross reference the Interactive Data Files submitted as Exhibit 101 (e.g., "Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)").

If the Form 8-K does not contain any exhibits other than Exhibits 101 and 104, the company is not required to include Exhibits 101 and 104 on the exhibit list (under Item 9.01 of Form 8-K), but must still submit the required Cover Page Interactive Data File.

Refer to Interactive Data Files (Other Than for the Cover Page) below for other tagging requirements.

Reporting Under Multiple Items

In many instances, a single event will trigger reporting obligations under more than one Form 8-K item. For example:

- A company that hires a new CEO might need to report the grant of restricted stock under an unregistered inducement grant to the CEO under Item 3.02, the election of the CEO as a director under Item 5.02(d) and the

employment of a new principal officer under Item 5.02(c), as well as provide a description of the new CEO's employment agreement under Item 5.02(e).

- A company that acquires a privately held company in a merger structured as a private placement might need to report the entry into the merger agreement under Item 1.01, the agreement to assume material debt of the acquired company under Item 2.03 and the agreement to issue unregistered stock in the merger under Item 3.02. After the closing of the merger, the company might need to file another Form 8-K under Item 2.01 to report the closing of the acquisition and might also need to file financial statements under Item 9.01.

- A company undergoing a significant restructuring that involves the shutdown of some of its operating businesses might need to report the termination of a material definitive agreement under Item 1.02 and the recording of material charges under Item 2.05.

When an event triggers more than one Form 8-K item at the same time, a single Form 8-K should be filed that identifies by item number and caption all applicable items being satisfied. However, the Item 1.01 heading may be omitted in a Form 8-K that also includes disclosure under any other item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8-K. All the necessary disclosures can be provided in response to a single item, which can then be incorporated by reference into the other applicable items. When reporting under multiple items, care should be taken to ensure that all of the information required to be disclosed by each applicable item is provided.

Exhibit Requirements

In general, copies of the agreements or other documents underlying a reportable event do not need to be filed as exhibits to the Form 8-K. However, there are exceptions to this general rule:

- **Item 1.03 (Bankruptcy or Receivership)** calls for the filing as an exhibit of a plan of reorganization, arrangement or liquidation.

- **Item 2.01 (Completion of Acquisition or Disposition of Assets)** calls for the filing as an exhibit in certain circumstances of financial statements of businesses acquired, pro forma financial information and copies of the plan of acquisition or disposition.

- **Item 2.02 (Results of Operations and Financial Condition)** calls for the furnishing as an exhibit of the text of any public announcement or release disclosing material non-public information regarding the company's results of operations or financial condition for a completed quarterly or annual fiscal period.

- **Item 4.01 (Changes in Registrant's Certifying Accountant)** calls for the filing as an exhibit of correspondence from the company's auditors.

- **Item 4.02 (Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review)** calls for the filing as an exhibit of correspondence from the company's auditors.

- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers)** calls for the filing as an exhibit of correspondence from a director who has resigned, been removed or refused to stand for re-election because of a disagreement with the company.

- **Item 5.03 (Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year)** calls for the filing as an exhibit of the text of any amendment to the company's charter or bylaws.

The time period for filing financial statements required under Item 2.01 in connection with certain completed acquisitions is 71 calendar days after the date that the initial report on Form 8-K was required to be filed.

In situations where a definitive material agreement referenced in a Form 8-K is not required to be filed as an exhibit to the Form 8-K, the SEC nevertheless encourages companies to file the

definitive material agreement as an exhibit to the Form 8-K when feasible.

Filing a copy of an agreement as an exhibit to the Form 8-K does not eliminate the need to provide a brief description of the agreement in the body of the Form 8-K.

When exhibits are included, the Item 9.01 exhibit index should appear before the signature required in the Form 8-K.

Under Item 601(a)(5) of Regulation S-K, schedules and similar attachments to exhibits are not required to be filed provided (1) the omitted schedules and attachments do not contain information material to an investment or voting decision and (2) that the omitted information is not otherwise disclosed in the exhibit or in the underlying filing. Each exhibit must contain a list briefly identifying the contents of all omitted schedules and attachments, but the company is not required to prepare such a list if information identifying the omitted schedules and attachments is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. A company that omits schedules or other attachments is not required to include an express undertaking that it will provide a copy of the omitted materials to the SEC staff upon their request (as was required under a similar prior requirement that related only to M&A agreements filed under Item 601(b)(2)), but the company's obligation to actually provide such materials, if requested by the SEC staff, remains.

Titan Language

If an exhibit includes representations and warranties, the company should evaluate the significance of those representations and warranties and the possible need to make additional disclosure so that those representations and warranties do not convey to investors information that is materially false or misleading. Although the SEC staff has indicated that disclaimers without corrective disclosure will not insulate a company from liability, many companies nevertheless include a statement, often referred to as "Titan" language (named after the company involved in a 2005 SEC enforcement action relating to this issue), along the lines of the following:

"The Agreement has been attached as an exhibit to this report to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the parties to the Agreement or any of their respective affiliates. The representations, warranties and covenants contained in the Agreement were made only for the purposes of such Agreement and as of specified dates, were solely for the benefit of the parties to such Agreement and may be subject to limitations agreed upon by the contracting parties. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the Agreement instead of establishing these matters as facts and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Agreement. In addition, the assertions embodied in the representations and warranties contained in the Agreement are qualified by information in a confidential disclosure schedule that the parties have exchanged. Accordingly, investors should not rely on the representations, warranties and covenants contained in the Agreement or any descriptions thereof as characterizations of the actual state of facts or condition of either of the parties or any of their respective affiliates."

Titan language is most commonly seen in connection with Form 8-Ks reporting M&A agreements (generally under Items 1.01 or 2.01), but may also be appropriate for other documents being filed as exhibits. As noted above, however, use of a disclaimer may not insulate the company from claims or liability.

Exhibit Hyperlinking

All exhibits listed in the exhibit index of Form 8-K (other than those relating to the Cover Page Interactive Data File) must include an active hyperlink to such exhibit.

Interactive Data Files (Other Than for the Cover Page)

Companies required to file interactive data files under Regulation S-K Item 601(b)(101) need only file an interactive data file with a Form 8-K if the Form 8-K contains (1) disclosure of a material cybersecurity incident under Item 1.05, with the requirement to tag responsive disclosure commencing on December 18, 2024, or (2) audited annual financial statements that are a revised version of previously filed financial statements reflecting the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle. *(See Regulation S-K Item 601(b)(101) and SEC CDI Question 101.04.)* Companies are permitted to voluntarily submit interactive data files with other Form 8-Ks that include financial statements. Companies cannot, however, use Form 8-K to correct the initial failure to file an interactive data file on a separate form, such as a Form 10-K or Form 10-Q, and must instead file an amended version of the initial form. *(SEC CDI Question 101.05.)*

Refer to Cover Page Tagging above for a discussion of the requirement to tag the Form 8-K cover page.

PSLRA Safe Harbor

Whenever a Form 8-K includes forward-looking statements, the company should include in the Form 8-K appropriate safe harbor language under the Private Securities Litigation Reform Act of 1995.

Signature Requirements

Form 8-K is signed on behalf of the company by any authorized officer.

CEO and CFO Certifications

Form 8-K is not required to include the CEO and CFO certifications mandated by Section 302 or Section 906 of the Sarbanes-Oxley Act.

Even though Form 8-Ks are not themselves required to be certified, as discussed in the section of this Guide titled "Impact on Controls and Procedures," a company's disclosure controls and procedures must address the preparation and filing of Form 8-Ks, and therefore the CEO and CFO certifications included in Forms 10-K and 10-Q regarding effectiveness of disclosure controls and procedures must take into account the company's handling of Form 8-Ks.

Amendments

Several Form 8-K Items expressly contemplate a subsequent amendment of the original filing, including:

- **Item 1.05 (Material Cybersecurity Incidents)** contemplates amendment if any information required to be disclosed (i.e., material aspects of the nature, scope, and timing of the cybersecurity incident, or the material impact or reasonably likely material impact on the company) is not available or determined at the time of the initial filing.
- **Item 2.05 (Costs Associated with Exit or Disposal Activities)** contemplates amendment if certain estimates of expected costs cannot be determined at the time of the initial filing.
- **Item 2.06 (Material Impairments)** contemplates amendment if certain estimates of expected costs cannot be determined at the time of the initial filing.
- **Item 4.02 (Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review)** contemplates amendment to file a letter from the independent accounting firm if not included with the initial filing.
- **Item 5.02 (a) (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers)** contemplates amendment to file any letter received by the company from a departing director in response to the company's disclosures under Item 5.02(a).
- **Items 5.02 (c) and (d) (Departure of Directors or Certain Officers; Election of**

Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers) contemplate amendment if certain information about new officers or directors is not available at the time of the initial filing.

- **Item 5.07(b) (Submission of Matters to a Vote of Security Holders)** contemplates amendment to report final voting results if only preliminary results were reported at the time of the initial filing.

- **Item 5.07(d) (Submission of Matters to a Vote of Security Holders)** contemplates amendment to disclose the company's decision regarding the frequency of future shareholder advisory votes on executive compensation.

- **Item 9.01 (Financial Statements and Exhibits)** contemplates amendment to file required financial statements and pro forma information in connection with certain acquisitions.

Amendments to Form 8-K are filed under cover of a Form 8-K/A. As required by Exchange Act Rule 12b-15, each amendment should be sequentially numbered and should set forth the complete text of each item as amended. Amendments are signed on behalf of the company by any authorized officer.

It is often helpful to include an explanatory note explaining the purpose of the amendment, especially when the amendment is being submitted to correct an error in the original Form 8-K.

Reporting Cybersecurity Incidents When Item 1.05 Materiality Determination Occurs After Initial Form 8-K Disclosure About the Incident

If a company that previously reported a cybersecurity incident under Item 7.01 or Item 8.01 later determines that the cybersecurity incident is material, the company is required to file a new Form 8-K under Item 1.05 within four business days of making its materiality determination. While the new Form 8-K being filed under Item 1.05 may refer to the original voluntary Item 7.01 or Item 8.01 filing, the new Form 8-K must include all of the disclosures required by Item 1.05.

Reportable Events

The table on the next page lists all Form 8-K reportable events and indicates which reportable events have the benefit of the limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for failure to file certain of the required Form 8-K reports and other special relief, which are discussed in the section of this Guide titled "Liabilities and Limited Relief."

Although several of the reportable events only state that they are triggered by the specified event occurring in relation to the "registrant," the SEC staff has advised that companies should interpret all Form 8-K items as applying the triggering event to the company and its subsidiaries, other than items such as Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers) that clearly apply only at the registrant level. *(SEC CDI Question 101.02.)*

The remainder of this section reviews each reportable event that applies to most operating companies, with the review divided into three parts:

- **"An 8-K Is Required If"** — summarizes the events that trigger a Form 8-K requirement under each item, including key defined terms.

- **"Required Disclosure"** — summarizes the disclosure that must be included in Form 8-K under each item. In each case, the company should keep in mind that, in addition to providing all information specifically required by an item, Rule 12b-20 under the Exchange Act (as well as Section 10(b) of the Exchange Act and Rule 10b-5 thereunder) requires that each Form 8-K must also include all other material information, if any, that is necessary to make the required disclosure, in light of the circumstances under which it is made, not misleading.

- **"Practice Tips"** — includes suggestions for complying with the Form 8-K disclosure requirements and for implementing effective disclosure controls and procedures. See "Impact on Controls and Procedures" for more suggestions on implementing disclosure controls and procedures. Some of the practice tips are based on instructions contained in Form 8-K, some are based on the written interpretative guidance provided by the staff of the SEC's Division of Corporation Finance in Compliance and Disclosure Interpretations ("CDIs") and others represent our understanding of the disclosure requirements and how they should generally be applied. Unless otherwise indicated, the references to CDIs in this Guide are to the Exchange Act Form 8-K CDIs Last Update: March 22, 2022 (last checked October 25, 2023). The practice tips contained in this Guide must be considered in light of the specific facts and circumstances of each situation, any interpretive guidance the SEC provides and developments in practice that may evolve over time.

Form 8-K Item	§ 10(b)/Rule 10b-5 Safe Harbor Applies?	Impact on Form S-3 Eligibility?
Section 1 Registrant's Business and Operations		
Item 1.01 Entry into a Material Definitive Agreement	Yes	No
Item 1.02 Termination of a Material Definitive Agreement	Yes	No
Item 1.03 Bankruptcy or Receivership	No	Yes
Item 1.04 Mine Safety – Reporting of Shutdowns and Patterns of Violations*	No	No
Item 1.05 Material Cybersecurity Incidents	Yes	No
Section 2 Financial Information		
Item 2.01 Completion of Acquisition or Disposition of Assets	No	Yes
Item 2.02 Results of Operations and Financial Condition	No	No
Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant	Yes	No
Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement	Yes	No
Item 2.05 Costs Associated with Exit or Disposal Activities	Yes	No
Item 2.06 Material Impairments	Yes	No
Section 3 Securities and Trading Markets		
Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing	No	Yes
Item 3.02 Unregistered Sales of Equity Securities	No	Yes
Item 3.03 Material Modification to Rights of Security Holders	No	Yes
Section 4 Matters Related to Accountants and Financial Statements		
Item 4.01 Changes in Registrant's Certifying Accountant	No	Yes
Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review	Yes (only for a company determination) No (otherwise)	No (only for a company determination) Yes (otherwise)
Section 5 Corporate Governance and Management		
Item 5.01 Changes in Control of Registrant	No	Yes
Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers	No (Items 5.02(a)-(d) and (f)) Yes (Item 5.02(e) only)	Yes (Items 5.02 (a)-(d) and (f)) No (Item 5.02(e) only)
Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year	No	Yes

Form 8-K Item	§ 10(b)/Rule 10b-5 Safe Harbor Applies?	Impact on Form S-3 Eligibility?
Item 5.04 Temporary Suspension of Trading under Registrant's Employee Benefit Plans	No	Yes
Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics	No	Yes
Item 5.06 Change in Shell Company Status*	No	Yes
Item 5.07 Submission of Matters to a Vote of Security Holders	No	Yes
Item 5.08 Shareholder Director Nominations	No	Yes
Section 6 Asset-Backed Securities*		
Item 6.01 ABS Informational and Computational Material*	No	Yes
Item 6.02 Change of Servicer or Trustee*	No	Yes
Item 6.03 Change in Credit Enhancement or Other External Support*	Yes	Yes
Item 6.04 Failure to Make a Required Distribution*	No	Yes
Item 6.05 Securities Act Updating Disclosure*	No	Yes
Section 7 Regulation FD		
Item 7.01 Regulation FD Disclosure	No	No
Section 8 Other Events		
Item 8.01 Other Events	No	No
Section 9 Financial Statements and Exhibits		
Item 9.01 Financial Statements and Exhibits	No	Yes (if required to be filed)

*This Guide does not address these items.

Item 1.01
Entry into a Material Definitive Agreement

An 8-K Is Required If:

- The company has entered into a "material definitive agreement" that is "not made in the ordinary course of business"
- The company has entered into any amendment of a material definitive agreement not made in the ordinary course of business and such amendment is material to the company
- The company succeeds as a party to a material definitive agreement not made in the ordinary course of business, or an amendment to such an agreement that is material to the company, by assumption or assignment (other than in connection with a merger, acquisition or similar transaction)

A "material definitive agreement" means an agreement that provides for obligations that are material to and enforceable against the company, or rights that are material to the company and enforceable by the company against one or more other parties to the agreement, even if subject to conditions.

Pursuant to the instructions to this item, the determination of whether an agreement is "not made in the ordinary course of business" generally makes use of the Regulation S-K Item 601(b)(10) definition of a material contract, which is used to determine which agreements must be filed as exhibits to the company's periodic reports and registration statements.

However, compensatory plans, contracts and arrangements covering directors and executive officers under Item 601(b)(10)(iii)(A), and equity plans, contracts and arrangements adopted without stockholder approval as described in Item 601(b)(10)(iii)(B), are not considered "material definitive agreements" for purposes of Item 1.01, even though they fall within the definition of material contract for purposes of Regulation S-K Item 601(b)(10). While disclosure of compensatory plans, contracts or arrangements covering executive officers is not required under Item 1.01, such disclosure may be required under Item 5.02(e).

Applying the standards in Item 601(b)(10) of Regulation S-K, an agreement will be deemed to be "not made in the ordinary course of business" if, among other things:

- The company's business is substantially dependent on the agreement
- The agreement calls for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the company on a consolidated basis
- The agreement is a material lease of property
- A director or officer is a party to the agreement, other than compensatory arrangements and contracts involving a purchase or sale of current assets having a determinable market price at such market price

Required Disclosure:

- Date of agreement or amendment
- Identity of the parties to the agreement or amendment
- Brief description of any other material relationship between the company (or its affiliates) and any of the parties
- Brief description of the terms and conditions of the agreement or amendment that are material to the company

Practice Tips:

A. Practice Tips – Required Brief Summary:

1. An agreement or amendment that triggers this item must be summarized in the body of the Form 8-K even if it is filed as an exhibit to the Form 8-K. Incorporation by reference of the actual agreement or amendment does not satisfy the requirement to provide a brief description of the material terms and conditions of the agreement or amendment. *(SEC CDI Question 102.03.)*

2. While Item 1.01 requires a brief description of the agreement or amendment, the SEC staff has acknowledged that in some cases, the agreement or amendment may be so brief that it may make sense to disclose all of its terms in the body of the Form 8-K. *(SEC CDI Question 102.03.)*

3. If the company plans to redact any portion of the agreement or amendment that triggers this item because the company customarily and actually treats the redacted information as private or confidential and such information is not material, the company should identify the portions of the agreement that it plans to redact before filing the Form 8-K in order to avoid accidentally including that information as part of the required "brief description."

4. Where material, the brief description of terms and conditions required by this item would generally include each party's rights and obligations, the duration of the agreement, and the termination provisions.

5. Although the materiality of terms or conditions of a business combination agreement, such as a merger agreement, depends on the particular facts and circumstances, the following terms are often viewed as material and disclosed in the Form 8-K:

    - the amount and nature of consideration offered for the business combination (or the method, exchange ratio, or formula for determining the consideration);
    - any committed financing arrangements (e.g., PIPE investments), or the need for financing to close the business combination transaction, along with the material terms of such arrangements;
    - any material terms regarding the securities ownership or management structure of the combined or surviving company after the closing of the business combination transaction;
    - any material conditions to the closing of the transaction; and
    - the anticipated timeframes for filing any Securities Act registration statement, proxy or information statement, or tender offer materials, as well as for the closing of the business combination transaction.

    In addition, additional disclosure such as the following may be needed to make sure the disclosures aren't misleading:

    - if a material term of the agreement has not yet been determined by the parties, the Form 8-K should affirmatively state so; and
    - in the case where the registrant is the acquiror, the Form 8-K should briefly describe the nature of the target company's business, including, at a minimum, whether it has existing operations or has generated revenues, as well as any information disclosed by the target company in announcing the business combination transaction. *(SEC CDI Question 102.04.)*

6. If the company determines that a placement agency or underwriting agreement constitutes a material definitive agreement subject to filing under this item, the company is permitted to omit the identity of the underwriters from its Form 8-K in order to remain within the safe harbor from the definition of an "offer" included in Securities Act Rule 135c. *(SEC CDI Question 102.02.)*

B. Practice Tips – Exhibit Filing:

1. A copy of the actual agreement or amendment that triggers an Item 1.01 Form 8-K is not required to be filed as part of the Form 8-K. Instead, the agreement or amendment must be filed as an exhibit to the Form 10-K or Form 10-

Q covering the reporting period in which the agreement was executed or became effective. *(SEC CDI Question 202.01.)*

2. Although filing a copy of the agreement or amendment with the Form 8-K is not required and will not eliminate the requirement to include a "brief description" in the Form 8-K, in certain cases the company will find it advantageous to do so. Filing the actual agreement or amendment with the Form 8-K may reduce the risk of the company being second-guessed regarding the adequacy of its brief description.

3. Since the instructions to Form 8-K have been amended to allow companies to redact sensitive terms in a material definitive agreement without submitting a confidential treatment request, and since it should generally be feasible to prepare the agreement in proper EDGAR format within the required timeframe for filing an Item 1.01 Form 8-K, the SEC staff encourages companies to file any business combination agreement that is reported under Item 1.01 of Form 8-K as an exhibit to such Form 8-K. *(SEC CDI Question 102.05.)*

C. Practice Tips – Covered Agreements and Amendments:

1. This item applies to both written and unwritten material definitive agreements. In the case of an oral agreement, when the time comes to file the agreement as an exhibit (either with the Form 8-K or with a subsequent Form 10-Q or Form 10-K), the company must provide a written description of the oral agreement as the exhibit.

2. Disclosure of a material amendment may be required even if the underlying agreement has not been disclosed previously by the company (for example, because the amendment results in the agreement becoming material for the first time).

3. If a company enters into an immaterial amendment to a material definitive agreement, a Form 8-K will not be required under this item. However, the amendment, even though immaterial, will generally need to be filed as an exhibit to the Form 10-K or Form 10-Q covering the period in which the amendment was executed or became effective under Item 601(a)(4) of Regulation S-K.

4. An agreement is "definitive" for purposes of applying the definition of "material definitive agreement" even if it is subject to conditions. The company should assume that a Form 8-K filing will be required even for an agreement that is subject to significant conditions such as the receipt of board approval.

5. When an agreement that was not material at the time it was initially entered into subsequently becomes material (for example because of a change in business circumstances, but not because of an amendment to the agreement), a Form 8-K will not need to be filed under this item. However, such a material agreement must be filed as an exhibit to the Form 10-Q or Form 10-K that the company files for the reporting period in which the agreement became material. *(SEC CDI Question 102.01.)*

6. The company does not need to disclose under this item its entry into non-binding agreements, such as letters of intent. However, if a non-binding letter of intent contains some binding provisions, those provisions must be analyzed under the "material definitive agreement" definition. Binding provisions such as a confidentiality provision or a short exclusivity provision in an otherwise non-binding letter of intent relating to a potential M&A transaction will not generally be viewed as material and therefore would not trigger a Form 8-K requirement. However, more extensive binding provisions in an otherwise non-binding letter of intent (such as a termination fee) would, if material, trigger a Form 8-K filing obligation.

7. Entry by a subsidiary into a material definitive agreement not made in the ordinary course of business that is material to the company is reportable under this item. *(SEC CDI Question 101.02.)*

8. If a material definitive agreement (the termination of which would be material to the company) automatically renews unless one of the parties sends a non-renewal notice during a specified window of time, no new Form 8-K under Item 1.01 is required if the agreement automatically renews. *(SEC CDI Question 103.02.)*

D. Practice Tips – Other:

1. A company may omit the Item 1.01 heading in a Form 8-K that also discloses any other item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8-K. This does not extend to allowing a company to omit any other caption if the Item 1.01 caption is included.

2. The exclusion of compensatory arrangements from this item does not change the exhibit requirement for such arrangements for purposes of Form 10-Q or Form 10-K. As a result, a company remains obligated to file as an exhibit to its Form 10-Q or Form 10-K any plan, contract or arrangement covered by Item 601(b)(10)(iii) of Regulation S-K. As discussed above, a Form 8-K filing may also be required under Item 5.02(e).

Item 1.02
Termination of a Material Definitive Agreement

An 8-K Is Required If:

- A material definitive agreement not made in the ordinary course of business is terminated and such termination is material to the company

A Form 8-K is not required where the termination is due to expiration of the agreement on its stated termination date or as a result of all parties completing their obligations under the agreement.

"Material definitive agreement" has the same meaning as under Item 1.01.

Required Disclosure:

- Date of termination
- Identity of parties
- Brief description of any other material relationship between the company (or its affiliates) and any of the parties
- Brief description of the terms and conditions of the agreement that are material to the company
- Brief description of the material circumstances surrounding the termination
- Any material early termination penalties incurred by the company

Practice Tips:

1. A Form 8-K is required under this item regardless of whether it is the company or the other party to the agreement that is triggering the termination.

2. Instruction 1 to this item provides that no Form 8-K is required solely by reason of this item during negotiations or discussions regarding termination unless and until the agreement has been terminated. However, once notice of termination pursuant to the terms of the agreement has been received, a Form 8-K is required, even if the termination is not scheduled to occur for an extended period of time and notwithstanding any continuing efforts by the company to negotiate a continuation of the agreement. *(SEC CDI Question 103.01.)*

3. Although Instruction 2 to this item provides that no Form 8-K is required solely by reason of this item if the company believes in good faith that the agreement has not been terminated, the company cannot have such a good faith belief after the company receives a notice of termination pursuant to the terms of the agreement. Where the company believes a notice of termination is incorrect or invalid, depending on the circumstances, the proper course of action may likely be to file a Form 8-K and explain the basis for the company's belief that the purported notice of termination is incorrect or invalid.

4. When drafting new agreements, the company should pay extra attention to how termination and cure periods interact. The company should avoid situations where a "notice of termination" is used to start the running of a cure period, since receipt of a notice of termination triggers a Form 8-K requirement. Instead, the company should provide for a notice of breach, which, if not cured, would entitle the party to deliver a notice of termination after the expiration of the cure period.

5. If a material definitive agreement (the termination of which would be material to the company) automatically renews unless one of the parties sends a non-renewal notice during a specified window of time:

    - if one of the parties sends a notice of non-renewal, a Form 8-K is required under this item within four business days of such notice; but
    - if the agreement automatically renews, no new Form 8-K under Item 1.01 is required. *(SEC CDI Question 103.02.)*

6. If a material definitive agreement with a stated expiration date (the termination of which would be material to the company) provides that either party may renew the agreement by sending a renewal notice during a specified window of time, provided the other party does not affirmatively reject that notice:

    - if neither party sends a renewal notice (and the agreement, therefore, terminates on its stated expiration date), no Form 8-K would be required under this item; but

    - if one party sends a renewal notice which is not rejected, a Form 8-K would be required under Item 1.01 within four business days after the expiration of the period of time in which a rejection notice could have been given. *(SEC CDI Question 103.03.)*

7. Each year, the company should carefully review the list of material contracts included in its Form 10-K and delete those agreements that are no longer material. Since the Form 10-K exhibit list is one way by which the materiality of agreements will be assessed, keeping the Form 10-K list up to date will avoid situations where the company feels obligated to file a Form 8-K under this item with respect to an agreement that is listed in the most recent Form 10-K, but is no longer material.

8. Termination by a subsidiary of a material definitive agreement not made in the ordinary course of business that is material to the company is reportable under this item. *(SEC CDI Question 101.02.)*

9. Because Item 1.02 uses the same definition of "material definitive agreement" as set forth in Item 1.01, this item does not require a Form 8-K filing as a result of the termination of compensatory arrangements with officers or directors. Termination of a compensatory arrangement with certain officers may, however, trigger a Form 8-K filing requirement under Item 5.02(e).

Item 1.03
Bankruptcy or Receivership

An 8-K Is Required If:

- A receiver, fiscal agent or similar officer has been appointed for the company (or its parent) in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the company (or its parent), or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority
- An order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the company (or its parent)

Required Disclosure:

- For bankruptcy proceedings:
  - the name or other identification of the proceeding
  - the identity of the court or governmental authority
  - the date that jurisdiction was assumed
  - the identity of the receiver, fiscal agent or similar officer and the date of his or her appointment
- For a reorganization, arrangement or liquidation order:
  - the identity of the court or governmental authority
  - the date that the order confirming the plan was entered by the court or governmental authority
  - a summary of the material features of the plan and, pursuant to Item 9.01 (Financial Statements and Exhibits), a copy of the plan as confirmed
  - the number of shares or other units of the company (or its parent) issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers
  - information as to the assets and liabilities of the company (or its parent) as of the date that the order confirming the plan was entered, or a date as close thereto as practicable

Practice Tip:

1. The information as to the assets and liabilities of the company (or its parent) may be presented in the form in which it was furnished to the court or governmental authority.

Item 1.05
Material Cybersecurity Incidents*

An 8-K Is Required If:

- The company experiences a cybersecurity incident that is determined by the company to be material

"Cybersecurity incident" means an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a company's information systems that jeopardizes the confidentiality, integrity, or availability of a company's information systems or any information residing therein.

"Information systems" means electronic information resources, owned or used by the company, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the company's information to maintain or support the company's operations.

Potential for Delayed Disclosure:

A Form 8-K is not required to be filed within four business days, if:

- The United States Attorney General ("USAG") determines that the required disclosure poses a substantial risk to national security or public safety, and notifies the SEC of such determination in writing. If that notification is made, the company may delay providing the required disclosure for the time period specified by the USAG, up to 30 days. Disclosure may be delayed for up to an additional 30 days if the USAG determines that disclosure continues to pose a substantial risk to national security or public safety and notifies the SEC in writing. In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the USAG determines that disclosure continues to pose a substantial risk to national security (but not public safety) and notifies the SEC of such determination in writing. Beyond the final 60-day delay, if the USAG indicates that further delay is necessary, the SEC will consider additional requests for delay and may grant such relief through SEC exemptive order. Separately, note that Exchange Act Rule 0-6, which provides for the omission of information that has been classified by an appropriate department or agency of the Federal Government for the protection of the interest of national defense or foreign policy, remains available.

- The data breach involves CPNI that must be disclosed pursuant to certain rules of the FCC. Specifically, companies covered by 47 C.F.R. § 64.2011 are required to notify the United States Secret Service (the "USSS") and Federal Bureau of Investigation ("FBI") no later than seven business days after reasonable determination of a CPNI breach and to refrain from notifying customers or disclosing the breach publicly until seven business days after the USSS and FBI were notified. In light of the timelines established by FCC rules, Item 1.05 allows a delay in filing a Form 8-K up to seven days after the USSS and FBI are notified of a data breach involving CPNI, provided that written notification is given to the SEC by the date disclosure required by Item 1.05 was otherwise required to be made.

Required Disclosure:

- Material aspects of the nature, scope, and timing of the cybersecurity incident

- Material impact or reasonably likely material impact of the cybersecurity incident on the company, including its financial condition and results of operations

Whenever a company determines information required to be disclosed under Item 1.05 is not available or determined at the time of the required filing, the company must (i) include a statement to this effect in its Item 1.05 Form 8-K and (ii) within four business days after the company, without unreasonable delay, determines such information or such information becomes available, file an amendment to the initial Item 1.05 Form 8-K.

SEC Staff Statements and Comment Letters Addressing Item 1.05 Disclosure Requirements:

On May 21, 2024, Erik Gerding, Director of the SEC's Division of Corporation Finance, issued a statement regarding the disclosure of cybersecurity incidents on Form 8-K (the "May 2024 Statement"). In the May 2024 Statement, Director Gerding encourages companies that voluntarily choose to disclose a cybersecurity incident that has not been determined to be material, or for which no materiality determination has yet been made, to make that disclosure using a Form 8-K item other than Item 1.05 (Material Cybersecurity Incidents). For example, companies may voluntarily provide the disclosure under Item 7.01 (Regulation FD Disclosure) or Item 8.01 (Other Events).

The May 2024 Statement provides clarification for situations where an incident is disclosed voluntarily, for example under Item 8.01, but then later is determined to be material. In that circumstance, companies must file an Item 1.05 8-K within four business days of their materiality determination. While this Item 1.05 8-K may refer to the original Item 8.01 8-K, it must include all of the disclosures required by Item 1.05.

Director Gerding also issued a statement on June 20, 2024 offering clarification of the interplay between Item 1.05 and Regulation FD (the "June 2024 Statement"). The June 2024 Statement confirms that, subject to compliance with Regulation FD (when it is applicable), Item 1.05 does not prohibit a company from discussing a material cybersecurity incident with others, including providing information about an incident reported under Item 1.05 that goes beyond what was included in an Item 1.05 Form 8-K. Director Gerding specifically states that those other parties may include commercial counterparties, such as vendors and customers, as well as other companies that may be impacted by, or at risk from, the same incident or threat actor. The June 2024 Statement further details the ways in which companies can disclose information about a cybersecurity incident without violating Regulation FD, including, for example, when disclosures are to parties who are not subject to Regulation FD or have provided an assurance of confidentiality or have a duty of confidentiality.

Consistent with the May 2024 Statement, the SEC staff in several comment letters asked Item 1.05 filers who disclaimed materiality or otherwise failed to disclose material impacts to explain why they had filed under Item 1.05 and to disclose all actual or reasonably likely material impacts. The staff noted that companies should consider both quantitative and qualitative factors in determining material impacts, including impacts to vendor, customer, and business partner relationships, competitiveness and reputational harm.

Practice Tips:

1. Disclosure is required under Item 1.05 only if the company determines that the cybersecurity incident it experienced is material. Whether a cybersecurity incident is material is to be analyzed under the traditional securities law definition of materiality, considering both qualitative and quantitative factors. *See "Assessing the Materiality of a Cybersecurity Incident" below.*

2. A company's materiality determination must be made without unreasonable delay after discovery of the cybersecurity incident. (*Instruction 1 to Item 1.05.*) The adopting release includes examples of what would constitute "unreasonable delay," including when intentionally delaying a board or committee meeting on the materiality determination past the normal time it takes to convene its members, or revising policies and procedures to delay a determination by extending the company's incident severity assessment deadlines.

3. A company may voluntarily disclose a cybersecurity incident under Item 7.01 or Item 8.01 before determining the incident to be material. If the company subsequently determines the incident to be material, it must file a new Form 8-K under Item 1.05 within four business days of the materiality determination.

4. Reference in the definition of "cybersecurity incident" to a "series of related unauthorized occurrences" reflects the SEC's view that the term cybersecurity incident should be viewed broadly.

5. Because the definition of "information systems" covers electronic information resources "owned or used by the registrant," a company is required to disclose a cybersecurity incident suffered by a third-party service provider's system if that incident has a material impact on the company. Depending on the circumstances of a cybersecurity incident involving a third-party service provider, disclosures may be required by either or both of the service provider and its customer.

6. Notwithstanding the obligation to report on third-party systems that experience a cybersecurity incident that materially impacts a company, the SEC noted in the adopting release that companies need only disclose information made available to them, and are generally not required to conduct additional inquiries beyond their regular communications with third-party service providers and in accordance with the company's disclosure controls and procedures.

7. When providing disclosure, a company "need not disclose specific or technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the company's response or remediation of the incident." (*Instruction 4 to Item 1.05.*) However, the adopting release states that "some incidents may still necessitate, for example, discussion of data theft, asset loss, intellectual property loss, reputational damage, or business value loss."

8. While the materiality of a cybersecurity incident is being assessed, companies should consider whether trading windows should be closed.

9. The SEC staff's 2011 guidance ("2011 Staff Guidance") and the Commission's 2018 Interpretive Release ("2018 Interpretive Guidance") remain applicable and should be used to inform potential disclosure obligations relating to cybersecurity incidents that are not specifically addressed by Item 1.05 or the new annual cybersecurity disclosures called for by Item 106 of Regulation S-K (which was added at the same time as Item 1.05).

Assessing the Materiality of a Cybersecurity Incident

Disclosure of a cybersecurity incident is required under Item 1.05 of Form 8-K only if the company determines that the cybersecurity incident it experienced is "material." Whether a cybersecurity incident is "material" is to be analyzed under the traditional securities law definition of materiality, meaning an incident is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision, or if it would have "significantly altered the 'total mix' of information made available." Registrants must consider both qualitative and quantitative factors when assessing the materiality of a cybersecurity incident. Informed in part by commentary in the adopting release (some of which was highlighted again in Director Gerding's May 2024 Statement and SEC comment letters regarding Item 1.05 filings), as well as by our experience helping companies evaluate disclosure obligations under the 2011 Staff Guidance and 2018 Interpretive Guidance, below are some of the factors companies may generally want to consider when evaluating the materiality of a cybersecurity incident.

Quantitative Considerations	Qualitative Considerations	Considerations That Will Not be Relevant
– Reasonably expected percentage impact on revenue due to lost sales of products or services – Reasonably expected percentage impact on net income due to lost revenues, expenses associated with containing and remediating the incident (including, as applicable, any ransom payment) and other expected expenses (including responding to regulatory and legal proceedings and any voluntary actions to mitigate harm to affected individuals) – Reasonably expected percentage impact on total and current assets of expenses associated with the incident	– Relative importance of the systems affected by the incident to the registrant's operations (including how long those systems may be inoperable) - Duration of the incident, method of incident detection and readiness of the response to halt the incident – Ability to restore affected systems and the expected integrity of those systems once restored – Nature and scope/magnitude of the information that has been improperly accessed or exfiltrated – Effect of the incident on key systems or information that the registrant considers its "crown jewels" – Harm to the registrant's reputation and brand perception – Impact on the registrant's supply chain and operations, including likelihood of consequential harms resulting from delays or other effects of the incident – Impact on relationships with customers (both near-term and over time) – Impact on relationships with suppliers and other business partners (both near-term and over time) – Effect on the registrant's competitive position relative to its peers (both near-term and over time) – Likelihood of regulatory actions by various governmental authorities – Likelihood of private litigation from individuals whose information has been compromised	– Whether the affected system was owned or operated by the registrant or a third-party – Inability to determine the full extent of the incident – Ongoing nature of the registrant's internal investigation – Timing of sharing information about the incident with governmental authorities or others

Item 2.01
Completion of Acquisition or Disposition of Assets

An 8-K Is Required If:

- The company or any of its consolidated subsidiaries has completed the acquisition or disposition of a significant amount of assets, otherwise than in the ordinary course of business, or a significant amount of assets that constitute a real estate operation

An "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition. The term does not include the construction or development of property by or for the company or its subsidiaries or the acquisition of materials for such purpose.

A "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, assignment or hypothecation of assets, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition. An indefinite closing of a portion of the company's facilities, coupled with a write-down of its assets in excess of 10%, constitutes an "other disposition" that must be reported under this item. *(SEC CDI Question 205.04.)* The term "disposition" includes a requirement to deconsolidate a subsidiary. *(Section 2110.1 of the SEC Division of Corporation Finance's Financial Reporting Manual)*

The acquisition or disposition of securities is deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets.

Instruction 4 to Item 2.01 provides that an acquisition or disposition is deemed to involve a "significant amount of assets" if:

  - clause (i): the company's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded 10% of the total assets of the company and its consolidated subsidiaries; or

  - clause (ii): it involved a "business" that is "significant" as such terms are defined in Rule 11-01 of Regulation S-X.

When an acquisition or a disposition involves a "business" (not just assets), you determine whether an Item 2.01 8-K is required solely by applying the 20% significance tests referenced in clause (ii) to Instruction 4. The 10% tests contained in clause (i) to Instruction 4 are inapplicable to an acquisition or a disposition of a "business."

The acquisition of a "business" encompasses the acquisition of an interest in a business accounted for by the registrant under the equity method or, in lieu of the equity method, the fair value option.

While an Item 2.01 Form 8-K is not required until the acquisition has been completed, certain acquiree historical and pro forma financial statements may be required in connection with registration statements under the Securities Act for acquisitions that are probable but not yet completed; companies may voluntarily file these Item 9.01 exhibits on a Form 8-K prior to completion of the acquisition.

Required Disclosure:

- Date of completion of the transaction
- Brief description of the assets involved
- Identity of the person from whom the assets were acquired or to whom they were sold and the nature of any other material relationship between such person and the company or any of its affiliates, or any director or officer of the company, or any associate of any such director or officer
- Nature and amount of consideration given or received for the assets and, if any material

relationship between the parties is disclosed, the formula or principle followed in determining the amount of such consideration

- If the transaction being reported is an acquisition and if a material relationship exists between the company (or any of its affiliates) and the source of the funds used in the acquisition, the identity of the source of the funds unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank (as defined by Section 3(a)(6) of the Exchange Act), in which case the identity of such bank may be omitted in certain circumstances

- The following items are required to be filed as exhibits:

  – financial statements of businesses acquired as set out in Item 9.01 of Form 8-K;

  – pro forma financial information as set out in Item 9.01 of Form 8-K; and

  – copies of the plans of acquisition or disposition

Practice Tips:

1. Disclosure under this item is required only when a covered acquisition or disposition is consummated. Execution of an acquisition or disposition agreement is not reportable under Item 2.01, but may be reportable under Item 1.01. *(SEC CDI Question 205.01.)*

2. Not every material definitive agreement relating to an acquisition or disposition that is required to be filed under Item 1.01 will trigger a filing obligation under this item, because this item contains bright-line tests of significance that are not included in Item 1.01.

3. No information need be given as to:

   – any transaction between any person and any wholly owned subsidiary of such person;

   – any transaction between two or more wholly owned subsidiaries of any person; or

   – the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the company of such securities or by a wholly owned subsidiary of that company; however, this does not apply to the sale of a subsidiary's equity, because the subsidiary would not be wholly owned after the transaction is completed. *(SEC CDI Question 205.05.)*

4. The aggregate impact of acquired businesses are not required to be reported pursuant to this item unless they are related businesses or related real estate operations and are significant in the aggregate. *(Instruction 4 to Item 2.01.)*

5. The purchase by a reporting company of a minority stock interest in a business from an independent third party (which is accounted for under the cost method) would not require the filing of the financial statements of that business with any Form 8-K filed to report the transaction, so long as that minority position did not result in the reporting company's control of the assets. *(SEC CDI Question 205.02.)*

6. Where a wholly owned subsidiary that is itself a reporting company acquires a significant amount of assets from its parent, Instruction 1 to Item 2.01 of Form 8-K would require the subsidiary, but not the parent, to file the Form 8-K. *(SEC CDI Question 205.03.)*

7. Item 2.01 refers to acquisitions or dispositions by "the registrant or any of its majority-owned subsidiaries." Because this reference preceded adoption of the variable interest entity consolidation model, the SEC staff has taken the position that the intent of this reference is to require reporting of significant acquisitions and dispositions made by the registrant or its consolidated subsidiaries, regardless of whether the consolidated subsidiaries are voting interest entities or variable interest entities. *(Note to Section 2005.8 of the SEC Division of Corporation Finance's Financial Reporting Manual)*

8. The SEC staff takes the position that the age of financial statements in a Form 8-K should generally be determined by reference to the filing date of the Form 8-K initially reporting consummation of the acquisition. *(Sections 2045.13 and 2045.17 of the SEC Division of Corporation Finance's Financial Reporting Manual)*

Item 2.02
Results of Operations and Financial Condition

An 8-K Is Required If:

- A company, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the company's results of operations or financial condition for a completed quarterly or annual fiscal period

A Form 8-K is not required to be furnished to the SEC under this item in the case of disclosure of material non-public information that is disclosed orally, telephonically, by webcast, by broadcast or by similar means if:

  – the information is provided as part of a presentation that is complementary to, and initially occurs within 48 hours after, a related, written announcement or release that has been furnished on Form 8-K pursuant to this item prior to the presentation;

  – the presentation is broadly accessible to the public by dial-in conference call, by webcast, by broadcast or by similar means;

  – the financial and other statistical information contained in the presentation is provided on the company's website, together with any information that would be required under Regulation G; and

  – the presentation was announced by a widely disseminated press release, which included instructions as to when and how to access the presentation and the location on the company's website where the information would be available.

Required Disclosure:

- Date of the announcement or release
- Brief identification of the announcement or release
- Text of that announcement or release as an exhibit to the Form 8-K

Practice Tips:

1. If the Form 8-K being furnished pursuant to this item includes any non-GAAP financial measures, then the company must also comply with both:

   – Regulation G; and

   – some, but not all, of the stricter requirements of Item 10(e) of Regulation S-K, which applies whenever non-GAAP financial measures are included in an SEC filing.

   Under Regulation G, whenever a public company publicly discloses material information that includes a non-GAAP financial measure, that non-GAAP financial measure must be accompanied by:

   – a presentation of the most directly comparable GAAP financial measure;

   – a reconciliation, by schedule or other clearly understandable method, of the non-GAAP financial measure to the most directly comparable GAAP financial measure (this reconciliation must be quantitative for historic measures, but may be qualitative for forward-looking information if a quantitative reconciliation would not be available without an unreasonable effort); and

– such other information as is necessary to prevent the non-GAAP financial measure from being untrue or misleading.

In addition to the requirements of Regulation G, Item 10(e)(1)(i) of Regulation S-K requires a company using non-GAAP financial measures in any disclosure that is furnished to the SEC under this item of Form 8-K to provide:

– a presentation, with equal or greater prominence, of the most directly comparable GAAP financial measure;

– the same reconciliation required by Regulation G;

– an explanation of why the company's management believes the non-GAAP financial measure provides useful information to investors regarding the company's financial condition and results of operations; and

– to the extent material, a statement disclosing the additional purposes, if any, for which the company's management uses the non-GAAP financial measures.

The SEC staff has been very focused on compliance with the equal or greater prominence requirement.

2. This Form 8-K requirement is only triggered by the public disclosure of material non-public information regarding a completed fiscal year or quarter. Public disclosure of earnings guidance for fiscal periods that have not ended would not itself trigger the Form 8-K requirement. However, if that guidance is included in an announcement regarding a completed annual or quarterly period (for example, when Q2 guidance is included in an earnings release announcing Q1 results), then the guidance will be part of the document that must be furnished under Item 2.02.

3. If a company issues an earnings pre-announcement or warning prior to the end of the quarter, this item is not triggered. However, if the earnings pre-announcement or warning is issued after the end of the quarter, a Form 8-K would be required under this item. *(SEC CDI Question 106.06.)* A "preliminary" earnings release after quarter-end, even if it only contains estimates, will also trigger a Form 8-K under this item. *(SEC CDI Question 106.07.)*

4. The 48-hour safe harbor is construed literally and is not the equivalent of two business or calendar days. *(SEC CDI Question 206.01.)*

5. Be careful about the language used to refer to any exhibits furnished under this item so that the company does not unintentionally change the status of the exhibit from being furnished to being filed.

6. When preparing registration statements that incorporate by reference prior Exchange Act filings, be careful not to unintentionally incorporate by reference any Form 8-Ks that were furnished under this item.

7. Item 2.02 contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its website any material financial and other statistical information not previously disclosed and contained in the presentation, together with any information that would be required by Regulation G. This information must appear on the company's website at the time the oral presentation is made. Where the previously undisclosed information is disclosed unexpectedly in connection with the question-and-answer session that was part of that oral presentation, the information must be posted on the company's website promptly after it is disclosed. A webcast of the oral presentation is sufficient. *(SEC CDI Question 106.03.)* An audio file of the webcast is sufficient if investors can access the audio file and replay it through the company's website. Slides or a similar presentation posted on the website are also sufficient. *(SEC CDI Question 106.01.)*

8. Where a company is unable to furnish its earnings release on a Form 8-K before its conference call, the company must furnish an exhibit to a Form 8-K with the material, non-public information that was provided during the

call. A transcript of the portion of the conference call or slides or a similar presentation including such information is sufficient. *(SEC CDI Question 106.02.)*

9. The conditional exemption for the conference call is also available where the company files its earnings release as an exhibit to its Form 10-Q before the conference call takes place (rather than furnishing the earnings release on Form 8-K). *(SEC CDI Question 106.04.)*

Item 2.03

Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

An 8-K Is Required If:

- The company becomes obligated on a direct financial obligation that is material to the company
- The company becomes directly or contingently liable for an obligation that is material to the company arising out of an off-balance sheet arrangement

A "direct financial obligation" is any of the following: (1) a long-term debt obligation, (2) a finance lease obligation, (3) an operating lease obligation, or (4) a short-term debt obligation that arises other than in the ordinary course of business.

- A "long-term debt obligation" means a payment obligation under long-term borrowings referenced in FASB ASC paragraph 470-10-50-1 (Debt Topic) as may be modified or supplemented.
- A "finance lease obligation" means a payment obligation under a lease that would be classified as a finance lease pursuant to FASB ASC Topic 842, Leases, as may be modified or supplemented.
- An "operating lease obligation" means a payment obligation under a lease that would be classified as an operating lease pursuant to FASB ASC Topic 840, as may be modified or supplemented.
- A "short-term debt obligation" is a payment obligation under a borrowing arrangement that is scheduled to mature within one year, or, for a company that uses the operating cycle concept of working capital, within the company's operating cycle that is longer than one year.

An "off-balance sheet arrangement" means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(1) any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC paragraph 460-10-15-4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460-10-15-7, 460-10-25-1, and 460-10-30-1;

(2) a retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(3) any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, Derivatives and Hedging, pursuant to FASB ASC subparagraph 815-10-15-74(a), as may be modified or supplemented; or

(4) any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

Required Disclosure:

- Date company becomes obligated or liable

- Brief description of the transaction or agreement creating the obligation or arrangement
- For direct financial obligations:
  - amount of the obligation, including the terms of its payment, and, if applicable, a brief description of the material terms under which it may be accelerated or increased
  - nature of any recourse provisions that would enable the company to recover from third parties
- For off-balance sheet arrangements:
  - a brief description of the nature and amount of the obligation of the company under the arrangement, including the material terms under which it may become a direct obligation, if applicable, or may be accelerated or increased
  - nature of any recourse provisions that would enable the company to recover from third parties
  - maximum potential amount of future payments (undiscounted) that the company may be required to make (without reduction for any amounts that may possibly be recovered by the company under recourse or collateralization provisions in any guarantee agreement, transaction or arrangement)
- Brief description of the other terms and conditions of the transaction, agreement, obligation or arrangement that are material to the company

Practice Tips:

1. The company is not required to file a report under this item until it has entered into an agreement enforceable against it, whether or not subject to conditions, under which the direct financial obligation will arise or be created or issued. If there is no such agreement, the Form 8-K is due within four business days after the closing or settlement of the transaction or arrangement under which the direct financial obligation arises or is created.

2. The instructions to this item provide that if the company enters into a material facility, program or similar arrangement that creates or may give rise to direct financial obligations in connection with multiple transactions, then the company is required to file a Form 8-K under this item disclosing that it has entered into such facility, program or similar arrangement, even before it actually borrows any funds. As direct financial obligations arise or are created under the facility, program or similar arrangement, additional Form 8-Ks would be required to the extent the obligations are material to the company (including when a series of previously undisclosed individually immaterial obligations become material in the aggregate). As a result, the company will need to continuously monitor aggregate takedowns from its facilities.

3. The company should establish some upfront quantitative guideposts as to what a material amount of debt would be for purposes of triggering reporting obligations under this item. While quantitative rules of thumb are helpful in separating routine borrowings from material borrowings, the company must keep in mind that materiality is a facts and circumstances determination that must ultimately be assessed in a qualitative manner taking into account all relevant factors. (*See SEC CDI Question 107.02*, which discusses the required materiality determination in the context of a refinancing transaction.)

4. A Form 8-K is not required when the obligation is a security sold under an effective registration statement and the final prospectus contains all of the information required by this item.

5. The company must provide the disclosure required regarding off-balance sheet arrangements whether or not the company is also a party to the transaction or agreement creating the contingent obligation arising under the off-balance sheet arrangement. If neither the company nor any of its affiliates is also a party to the transaction or agreement creating the contingent obligation arising under the off-balance sheet arrangement, the four-business-day

period for reporting the event under this item begins on the earlier of (1) the fourth business day after the contingent obligation is created or arises and (2) the day on which an executive officer of the company becomes aware of the contingent obligation. The company is responsible for maintaining disclosure controls and procedures that are designed to ensure that it timely becomes aware of any such arrangements. *(SEC CDI Question 107.01.)*

6. If material to the company, this item is triggered by direct financial obligations or off-balance sheet arrangements entered into by the company's subsidiaries. *(SEC CDI Question 101.02.)*

7. When a credit agreement or other similar agreement is being reported under this item, and such agreement includes covenants or other provisions that limit the payment of dividends, consider the applicability of also reporting under Item 3.03 (Material Modifications to Rights of Security Holders).

Item 2.04

Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement

An 8-K Is Required If:

- A "triggering event" (such as an event of default, event of acceleration or similar event) causing the increase or acceleration of a direct financial obligation of the company occurs, and the consequences of the event are material to the company

- A "triggering event" (such as an event of default, event of acceleration or similar event) occurs causing the company's obligation under an off-balance sheet arrangement to increase or be accelerated or causing a contingent obligation of the company under an off-balance sheet arrangement to become a direct financial obligation, and the consequences of such event are material to the company

A "direct financial obligation" has the same definition as under Item 2.03, but also includes an obligation arising out of an off-balance sheet arrangement that is accrued under FASB ASC Section 450-20-25, *Contingencies—Loss Contingencies—Recognition*, as a probable loss contingency.

"Off-balance sheet arrangement" has the same definition as under Item 2.03.

Required Disclosure:

- Date of the triggering event

- Brief description of the underlying agreement, transaction or arrangement

- Brief description of the triggering event

- Amount of the direct financial obligation, or the amount and nature of the off-balance sheet obligation, in each case, as increased if applicable

- Terms of payment or acceleration that apply

- Any other material obligation of the company that may arise, increase, be accelerated or become a direct financial obligation as a result, directly or indirectly, of the triggering event

Practice Tips:

1. In assessing the materiality of a triggering event under this item, the company must also take into account any cross-default or cross-acceleration provisions that are affected by the triggering event.

2. No disclosure is required under this item unless and until a triggering event has occurred under the applicable agreement, transaction or arrangement, including the satisfaction of all conditions to such occurrence, except for the passage of time.

3. If the applicable agreement, transaction or arrangement requires that notice be given to the company in order for there to be a triggering event, then no disclosure is required under this item until such a notice has been given. *(SEC CDI Question 108.01.)* Once such a notice is received, the company can no longer claim to have a good faith belief that a triggering event has not occurred.

4. A notice of default is a triggering event notwithstanding that the matter is pending with an arbitrator. *(SEC CDI Question 208.02.)*

5. A voluntary redemption of convertible notes by a company is not a triggering event. *(SEC CDI Question 208.01.)*

6. The company should inventory all of its existing agreements, transactions and arrangements relating to direct financial obligations and off-balance sheet arrangements and make an initial determination as to which ones are material and the dollar amounts under each that would likely be considered to be material.

7. If material to the company, this item is triggered by a "triggering event" causing the increase or acceleration of direct financial obligations or off-balance sheet arrangements of a subsidiary of the company. *(SEC CDI Question 101.02.)*

Item 2.05
Costs Associated with Exit or Disposal Activities

An 8-K Is Required If:

- The company's board of directors, a board committee, or an authorized officer or officers (if board action is not required):
  - commits the company to an exit or disposal plan;
  - otherwise disposes of a long-lived asset; or
  - terminates employees under a plan of termination,

  in each case, under which material charges will be incurred under generally accepted accounting principles.

A "plan of termination" is defined in FASB ASC paragraph 420-10-25-4 (Exit or Disposal Cost Obligations Topic) (formerly FASB Statement of Financial Accounting Standards No. 146, Accounting for Costs Associated with Exit or Disposal Activities).

Required Disclosure:

- Date of commitment to course of action
- Description of course of action, including the facts and circumstances leading to the expected action
- Expected completion date
- An estimate of the total amount or range of amounts expected to be incurred in connection with the action, both in the aggregate and for each major type of cost
- An estimate of the amount or range of amounts of the charge that will result in future cash expenditures

If a required estimate cannot be made at the time of initial filing, the company must amend the Form 8-K within four business days after it makes such estimate.

Practice Tips:

1. While this item has been drafted to use terminology defined in the accounting literature, in common parlance the types of events captured by this item include "write-offs" and "restructurings."

2. The company is not obligated to disclose in its initial Form 8-K filing under this item an estimate of the amount or range of amounts expected to be incurred and/or estimate of the amount or range of amounts of the charges if it is unable to make a good faith estimate of such amount. However, since an inability to provide an estimate could trigger adverse investor reaction, the company will want to provide an estimate whenever possible and may wish to postpone committing to the course of action until such an estimate is available.

3. If the company's initial Form 8-K filing under this item did not include a required estimate, the company must amend its earlier Form 8-K filing to include the estimate within four business days after the company formulates its estimate.

4. If the company's initial Form 8-K filing under this item included an estimate of the amount of the charge, but that amount later changes, even though Form 8-K does not impose a duty to update the company's original filing, the company should consider filing an amendment to reflect its revised estimate, especially during the period prior to when the company files a Form 10-Q or Form 10-K that includes discussion of the new estimate.

5. For all reportable events that can be triggered by the action of either the board of directors, a board committee, or an authorized officer or officers (if board action is not required), procedures should be implemented so that it is clear when a particular plan of action has been committed to,

as opposed to when it is merely under active consideration. Care should be taken to ensure that the board or committee minutes or other relevant documentation accurately reflect when the commitment was made.

6. "Commitment" to a plan means reaching a final determination regarding a course of action.

7. The costs associated with an exit activity that must be reported under this item are not limited to the costs under ASC 420, Exit or Disposal Cost Obligations (SFAS 146). *(SEC CDI Question 109.01.)*

8. If, in connection with an exit activity, the company is terminating employees as part of a plan to exit an activity that is covered by ASC 420, Exit or Disposal Cost Obligations (SFAS 146), then the company is not required to disclose the commitment to the plan on Form 8-K until it has informed affected employees. *(SEC CDI Question 109.02.)*

9. The "plan of termination" need not fall within an "exit activity," as defined in ASC 420, Exit or Disposal Cost Obligations (SFAS 146), or otherwise constitute an "exit or disposal plan" (or part of one), to trigger an Item 2.05 Form 8-K filing requirement. *(SEC CDI Question 209.01.)* For example, a Form 8-K could be required under this item due to terminations under a plan for conducting layoffs where the underlying business is not substantially altered or eliminated.

Item 2.06
Material Impairments

An 8-K Is Required If:

- The company's board of directors, a board committee, or an authorized officer or officers (if board action is not required) concludes that a material charge for impairment to one or more of the company's assets is required under generally accepted accounting principles

Required Disclosure:

- Date of conclusion that a material charge is required
- Description of the impaired assets
- Facts and circumstances leading to the conclusion that the charge for impairment is required
- An estimate of the amount or range of amounts of the impairment charge
- An estimate of the amount or range of amounts of the impairment charge that will result in future cash expenditures

If a required estimate cannot be made at the time of initial filing, the company must amend the Form 8-K within four business days after it makes such estimate.

Practice Tips:

1. The terminology used in this item is based on ASC 360-10, Impairment and Disposal of Long-Lived Assets.

2. The types of impairments reportable under this item include, among others, impairments of securities or goodwill.

3. No 8-K filing is required under this item if:

   – the impairment conclusion is made in connection with, or at a time that coincides with (but is not in connection with), the preparation, review or audit of financial statements required to be included in the company's next periodic report;

   – the report is timely filed; and

   – such impairment conclusion is disclosed in the report *(Instruction to Item 2.06; SEC CDI Question 110.01)*.

4. Similar to Item 2.05, a company is not obligated to disclose an estimate of the amount of charges in its initial Form 8-K filing under this item if it is unable to make a good faith estimate of such amount. Within four business days after the company formulates an estimate, the company must amend its earlier Form 8-K filing to include the estimate. Since an inability to provide an estimate or range could trigger adverse investor reaction, the company should provide an estimate whenever possible.

5. Procedures should be implemented so that it is clear when there has been a conclusion that an impairment charge must be taken, as opposed to when it is merely under active consideration.

6. When the assets impaired are significant, consider the applicability of also reporting under Item 2.01 (Completion of Acquisition or Disposition of Assets).

7. As part of its interpretive guidance following adoption of the Tax Cuts and Jobs Act of 2017, the SEC staff indicated that re-measurement of a deferred tax asset to reflect the impact of a change in tax rule or tax law is not an impairment under ASC Topic 740. *(SEC CDI Question 110.02)*.

Item 3.01

Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

An 8-K Is Required If:

- The company receives notice from the national securities exchange (e.g., NYSE or Nasdaq) that maintains the principal listing for any class of the company's common equity that: (1) the company or such class of the company's securities do not satisfy a continued listing rule or standard; (2) the exchange has submitted an application to the SEC to delist such class of the company's securities; or (3) the exchange has taken all necessary steps to delist the company's security (Item 3.01(a))
- The company has notified the national securities exchange that maintains the principal listing for any class of the company's common equity that the company is aware of any material noncompliance with a continued listing rule or standard (Item 3.01(b))
- The national securities exchange, in lieu of suspending trading in or delisting such class of the company's securities, issues a public reprimand letter or similar communication indicating that the company has violated a rule or standard of the exchange or association (Item 3.01(c))
- The company's board of directors, a board committee, or an authorized officer or officers (if board action is not required) has taken definitive action to cause the listing of a class of its common equity to be withdrawn from the national securities exchange that maintains the principal listing for such class of securities, including by reason of a transfer of the listing or quotation to another securities exchange (Item 3.01(d))

Required Disclosure:

- Date of notice or action
- Rule or standard in question that the company fails, or has failed, to satisfy
- In the case of a company that receives a notice of the type under Item 3.01(a) or provides a notice of the type under Item 3.01(b), any action or response that, at the time of filing, the company has determined to take in response to the notice or regarding its noncompliance
- In the case of a company that is the subject of a public reprimand letter or similar communication under Item 3.01(c), the date and a summary of the contents of the letter or communication

Practice Tips:

1. Disclosure is required even if the company has the benefit of a grace period or similar extension period during which it may cure the deficiency that triggers disclosure.
2. In most cases of involuntary delisting, two Form 8-Ks will be required: the first to report the company's initial receipt of a notice of noncompliance and the second to report the ultimate delisting of the company's securities.
3. Subsequent notices or other communications regarding noncompliance with the same continued listing rule or standard covered by the initial notice that triggers a filing obligation under this item do not require additional Form 8-K filings.
4. Although not required, a company that files a Form 8-K under this item and then comes back into compliance may want to amend its Form 8-K (or file a new Form 8-K under Item 8.01) to reflect that fact.

5. The company should develop an internal early warning system to identify and track potential listing issues such as falling below the applicable minimum bid price for even one day.

6. This item does not apply to companies that are exclusively traded in the over-the-counter market. In addition, no Form 8-K is required under this item if an OTC company applies to list its common stock on an exchange, or upon the approval of the application. (*SEC CDI Question 211.01.)*

7. The company is not required to file as an exhibit to its Form 8-K a copy of the actual notice of noncompliance that it receives from the exchange.

8. Where the rules require the company to disclose in its Form 8-K any action or response that, at the time of filing, the company has determined to take in response to the notice or regarding its noncompliance, the company should affirmatively disclaim any intention to update its Form 8-K for purposes of disclosing any action or response that the company decides to take after the filing of its initial Form 8-K under this item. Of course, if any such material facts do arise, the company should carefully evaluate whether additional disclosure is required or prudent.

9. Definitive action taken by a company for purposes of Item 3.01(d) may include the adoption of a resolution by the board of directors (or a board committee) to delist the securities.

10. NYSE-listed companies are required to provide an annual written affirmation regarding their compliance with the NYSE's corporate governance rules and to provide interim written affirmations whenever certain changes relating to board compensation or corporate governance occur. The routine submission of these affirmations will not trigger a Form 8-K reporting obligation. However, where an affirmation indicates any noncompliance (and the company checks the box on the NYSE affirmation to indicate noncompliance), consideration must be given as to whether the noncompliance is material, in which case it would trigger a disclosure obligation under Item 3.01(b).

11. Likewise, under Nasdaq Marketplace Rule 5625, a company must provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with Nasdaq's corporate governance rules. In such cases, consideration must be given as to whether the noncompliance is material, in which case it would trigger a disclosure obligation under Item 3.01(b).

12. No Form 8-K is required under Item 3.01(a) where the delisting is due to certain routine and noncontroversial events such as the redemption of an entire class of securities.

Item 3.02
Unregistered Sales of Equity Securities

An 8-K Is Required If:

- The company sells equity securities in a transaction not registered under the Securities Act

No Form 8-K is required if the equity securities sold in the aggregate since the company's last report filed under this item or last periodic report, whichever is more recent, constitute less than 1% of the company's outstanding securities of that class (or less than 5% for a smaller reporting company).

Required Disclosure:

- The information in paragraphs (a) and (c) through (e) of Item 701 of Regulation S-K regarding the company's sale of equity securities in a transaction that is not registered under the Securities Act. Specifically, the company must disclose:
  - Date of sale and title and amount of securities sold
  - For securities sold for cash, the aggregate offering price and aggregate underwriting discounts and commissions
  - For securities sold other than for cash, the nature of the transaction and the nature and aggregate amount of consideration received by the company
  - Exemption from Securities Act registration claimed by the company and the facts relied upon to make the exemption available
  - Where the securities sold are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, the terms of conversion or exercise of the securities sold

Practice Tips:

1. The term "equity securities" includes debt instruments that are convertible into common stock and options that are exercisable for common stock.

2. If a grant of stock options pursuant to an employee stock option plan does not constitute a "sale" or "offer to sell" under Section 2(a)(3) of the Securities Act, the grant need not be reported. The trigger for reporting would be when the option is exercised (if the option exercise is not then covered by a Form S-8 and the applicable reporting threshold is exceeded). *(SEC CDI Question 112.01.)*

3. If a company sells, in an unregistered transaction, any shares of a class of equity securities that is not currently outstanding, the reporting threshold would be exceeded and a Form 8-K would be required under this item. *(SEC CDI Question 112.02.)*

4. The company is not required to disclose information under this item until it enters into an agreement enforceable against it under which the equity securities are to be sold *(SEC CDI Question 212.01)*, or if no agreement exists, after the closing or settlement of the transaction or arrangement under which the equity securities are sold.

5. If a wholly owned subsidiary that is a reporting company receives an additional equity investment from its parent and the reporting threshold is exceeded, the wholly owned subsidiary must file a Form 8-K to report the additional equity investment, regardless of whether the wholly owned subsidiary meets the conditions for the filing of abbreviated periodic reports under General Instruction H of Form 10-Q and General Instruction I of Form 10-K. *(SEC CDI Question 212.02.)*

6. In determining whether the applicable 1% (5% for smaller reporting companies) reporting threshold has been surpassed, the number of outstanding securities consists only of shares actually outstanding and is not determined on a fully diluted basis.

7. A Form 8-K filing requirement is triggered upon an unregistered sale of warrants, options or convertible notes if the reporting threshold is exceeded. The company must disclose the terms of the exercise of the warrants or the options or the conversion of the convertible notes. If the Form 8-K also discloses the maximum amount of the underlying securities that may be issued through the exercise of the warrants or the options or the conversion of the convertible notes, then a subsequent Form 8-K filing requirement is not triggered upon the exercise of the warrants or the options or the conversion of the notes. (*SEC CDI Question 212.03.)*

8. The company should put in place a system for keeping a running count of all unregistered sales of securities so that it will know when such sales, in the aggregate, have triggered an 8-K reportable event under this item. The most likely sources of unregistered sales are:

   - sales of securities in Rule 144A, PIPE and other private placement capital-raising transactions;

   - conversion of convertible notes into common stock in reliance on Section 3(a)(9) of the Securities Act;

   - inducement grants (such as restricted stock) awarded outside a stockholder-approved plan and for which a stand-alone Form S-8 has not been filed, in connection with the initial employment of new executives and employees; and

   - sales in private-placement M&A transactions.

9. Disclosure about unregistered sales of equity securities is required by Part II, Item 2(a) of Form 10-Q to the extent not previously reported on a Form 8-K, or by Part II, Item 5(a) of Form 10-K to the extent not previously reported on a Form 8-K or Form 10-Q. Accordingly, any sales of unregistered equity securities that do not exceed the reporting threshold of this item will continue to be reported on Form 10-K or Form 10-Q.

10. The Form 10-K and Form 10-Q reporting requirements also require disclosure of the information required by Item 701(b) of Regulation S-K, regarding the principal underwriters, if any, and (for non-public offerings) the name of persons or identity of class of persons to whom securities were sold. Therefore, unless the company voluntarily includes this information in its Form 8-K, this information will need to be reported in the applicable Form 10-K or Form 10-Q. The company may not want to include this information in its Form 8-K if the offering is not yet completed because, for example, disclosure of the identity of the underwriters would go beyond the safe harbor from the definition of an "offer" included in Securities Act Rule 135c.

Item 3.03
Material Modifications to Rights of Security Holders

An 8-K Is Required If:

- The constituent instruments (such as the charter or, in the case of debentures, the indenture) defining the rights of holders of a class of registered securities have been materially modified
- The rights of any class of registered securities have been materially limited or qualified by the issuance or modification of another class of securities by the company

Required Disclosure:

- Date of modification or issuance
- Title of class of securities involved
- Brief description of general effect of modification or issuance

Practice Tips:

1. Working capital restrictions and other limitations upon the payment of dividends are examples of limitations on the rights of common stock that must be reported under this item.

2. The triggering event related to a shareholder rights plan under this item occurs upon the issuance of the dividend of a preferred share purchase right. *(SEC CDI Question 213.01.)* However, the company must file an Item 1.01 Form 8-K when it enters into the shareholder rights plan if the plan constitutes a material definitive agreement not made in the ordinary course of business. Also, the filing of the certificate of designation triggers an Item 5.03 Form 8-K because it is an amendment of the company's charter.

Item 4.01
Changes in Registrant's Certifying Accountant

An 8-K Is Required If:

- An independent accountant who was previously engaged as the principal accountant to audit the company's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed
- A new independent accountant has been engaged as either the principal accountant to audit the company's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary

Required Disclosure:

- For departure of accountant:
  - Whether the former accountant resigned, declined to stand for re-election or was dismissed (using one of those three terms) and the date thereof
  - The other information required by Item 304(a)(1) of Regulation S-K, including:
    - Whether the former accountant's audit reports for either of the past two years contained an adverse opinion, disclaimer of opinion or qualification
    - Whether the decision to change accountants was recommended or approved by the audit committee or, if the company has no audit committee, the board
    - Whether there have been any disagreements with the former accountant or certain other reportable events during the company's two most recent fiscal years and any subsequent interim period through the date of termination (and if so, provide certain information about such disagreements or events)
  - Compliance with Item 304(a)(3) of Regulation S-K, including:
    - Providing the former accountant with a copy of disclosures
    - Requesting the former accountant to provide a letter indicating whether it agrees with the company's disclosures
    - Filing the former accountant's letter as an exhibit
- For engagement of accountant:
  - Identify the newly engaged accountant and the date of engagement
  - The other information required by Item 304(a)(2) of Regulation S-K regarding prior consultations with the newly engaged accountant

Practice Tips:

1. If the termination of one accountant and the engagement of a new accountant do not occur at the same time, then two Form 8-Ks will be required — one reporting the termination and the other reporting the engagement.
2. If the company engages a new accountant for its next fiscal year while the predecessor accountant is still completing the audit of the current year, a termination of the predecessor accountant is deemed to occur and should be reported as part of the Form 8-K reporting the engagement of the new accountant.
3. If a company amends its Item 4.01 Form 8-K disclosures for any reason, it must file as an

exhibit an updated letter from the auditor addressing the revised disclosures. (*Section 4510.3 of SEC Division of Corporation Finance's Financial Reporting Manual*)

4. If a predecessor auditor refuses to furnish a letter stating whether it agrees with the company's statements in its Item 4.01 Form 8-K, the company should indicate that fact in the Item 4.01 Form 8-K or by amendment to the original Form 8-K. *(SEC CDI Question 214.01 and Section 4520.2 of SEC Division of Corporation Finance's Financial Reporting Manual)*

5. Form 8-K must be used to report events covered by this item, even if the event happens to occur within four business days before the company's filing of a Form 10-Q or Form 10-K. *(SEC CDI Question 101.01 and SEC CDI Question 214.02.)*

6. The company must use one of the three terms specified in Item 304 of Regulation S-K: "resigned," "declined to stand for re-election" or "dismissed." Use of any other terminology, such as "replaced," "ended" or "will no longer serve as," typically results in receipt of an SEC comment requesting that the disclosure be amended to use one of the three items specified in S-K Item 304. *(Section 4510.2 of SEC Division of Corporation Finance's Financial Reporting Manual)*

7. If a principal accountant resigns, declines to stand for re-election or is dismissed because its registration with the PCAOB has been revoked, the company should disclose this fact when filing the Item 4.01 Form 8-K. *(SEC CDI Question 114.01.)*

8. If a company engages a new principal accountant that is related to the former principal accountant (e.g., the firms are affiliates or are member firms of the same network), but the new principal accountant is a separate legal entity and is separately registered with the PCAOB, the company must still file an Item 4.01 Form 8-K to report the change in certifying accountant. *(SEC CDI Question 114.02.)*

9. If a company's principal accountant enters into a business combination with another accounting firm, the company must evaluate how the business combination is structured and the facts and circumstances to determine whether to file an Item 4.01 Form 8-K to report a change in certifying accountant. *(SEC CDI Question 114.03.)*

10. An acquisition accounted for as a reverse acquisition will always result in a change in accountants, unless the same accountant reported on the most recent financial statements of both the registrant and the accounting acquirer. An Item 4.01 Form 8-K should be filed within four business days of the change in accountants (typically, the date the transaction is consummated). The accountant that will no longer be associated with the registrant's financial statements is the predecessor accountant. If a decision has not been made as to which accountant will continue as the successor accountant as of the date of filing the Item 2.01 Form 8-K reporting the completion of the transaction, an Item 4.01 Form 8-K must be filed within four business days of the date the decision is made. *(Section 4520.3 of SEC Division of Corporation Finance's Financial Reporting Manual)*

Item 4.02

Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

An 8-K Is Required If:

- Company Determination — The company's board of directors, a board committee, or an authorized officer or officers (if board action is not required) concludes that any of the company's previously issued financial statements, covering one or more years or interim periods, should no longer be relied upon because of an error in such financial statements as addressed in ASC Topic 250, Accounting Changes and Error Corrections (Item 4.02(a))

- Accountant Determination — The company is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements (Item 4.02(b))

Required Disclosure:

- Date of conclusion or accountant notification

- Identification of affected financial statements

- Brief description of the facts underlying the conclusion (to the extent known to the company at the time of filing) or of information provided by the accountant

- Statement of whether the audit committee, or the board of directors in the absence of an audit committee, or an authorized officer or officers, discussed with the company's independent accountant the subject matter giving rise to the conclusion or notice

- Written notice received from the accountant as Exhibit 7 in the case of an Accountant Determination

In the case of an Accountant Determination under Item 4.02(b), the company also must provide the independent accountant with a copy of the disclosures it is making under this item no later than the same day it files the disclosures with the SEC, and must request the independent accountant furnish to the company as promptly as possible a letter addressed to the SEC stating whether the accountant agrees with the statements made by the company and, if not, stating the disagreements. The company must then amend its previously filed Form 8-K by filing the independent accountant's letter as an exhibit within two business days of the company's receipt of the letter.

Practice Tips:

1. A copy of any proposed disclosure should be provided to the accountant in advance of filing, so that the accountant's input can be received, considered and implemented, as appropriate, prior to initial filing of the Form 8-K. In addition, it is generally preferable, if possible, to include the accountant's letter as to its agreement or disagreement with the company's disclosure in the initial Form 8-K filing.

2. Form 8-K must be used to report events covered by this item, even if the event happens to occur within four business days before the company's filing of a Form 10-Q or Form 10-K. *(SEC CDI Question 101.01 and SEC CDI Question 215.01.)*

3. If the company has reported under Item 4.02(a) the company's determination that reliance should not be placed on previously issued financial statements because of an error, the company does not need to file a second Form 8-K under Item 4.02(b) to report that its auditor has also

concluded that future reliance should not be placed on its audit report, unless the auditor's conclusion relates to an error or matter that is different from that which triggered the company's filing under Item 4.02(a). *(SEC CDI Question 115.01.)*

4. The Item 4.02 requirement to file a Form 8-K if a company concludes that any previously issued financial statements should no longer be relied upon because of an error in such financial statements does not apply to pro forma financial information. If an error is detected in pro forma financial information, an amendment to the form containing such information may be required to correct the error. *(SEC CDI Question 115.02.)*

5. If a company discovers a material error in an interactive data file, but there is no error in the company's financial statements themselves, Item 4.02 does not require a Form 8-K. The company should promptly file an amendment to the original form to correct the interactive data file. If the company wishes, it may also file an Item 7.01 or Item 8.01 Form 8-K to indicate that the erroneous interactive data file should no longer be relied upon. *(SEC CDI Question 115.03.)*

6. Once an Item 4.02 Form 8-K has been filed, the company must carefully evaluate whether it can continue to sell securities under existing registration statements (including Form S-8s). The answer for a particular company is dependent in significant part on that company's facts and circumstances, so the company should consult with its contacts at WilmerHale on this issue if it files an Item 4.02 Form 8-K.

7. Section 4600 of SEC Division of Corporation Finance's Financial Reporting Manual summarizes the SEC's guidance and should be reviewed in addition to the CDIs.

Item 5.01
Changes in Control of Registrant

An 8-K Is Required If:

- To the knowledge of the board, a board committee, or an authorized officer or officers of the company, a change in control of the company has occurred
- There is an arrangement known to the company that may result in a change in control

Required Disclosure:

- Where a change in control has occurred
  - Identity of person who acquired control
  - Identity of person from whom control was assumed
  - Date and description of the transaction that resulted in the change in control
  - Basis of control (including percentage of the voting securities of the company owned by the acquiring person following the change in control)
  - Amount of consideration used by acquiring person
  - Source of funds used by acquiring person (subject to certain exceptions)
  - Any arrangements or understandings among members of both the former and new control groups with respect to election of directors or other matters
- Where there is an arrangement that may result in a change in control, a description of the arrangements known to the company as required by Item 403(c) of Regulation S-K, including any pledge of securities of the company or its parent(s)

Practice Tips:

1. The obligation to disclose the source of the acquiring person's funds is subject to an exception in the case of certain loans made by banks in the ordinary course of business.
2. In describing any arrangement in accordance with Item 403(c) of Regulation S-K, a company is not required to describe ordinary default provisions contained in its charter, trust indentures or other governing instruments relating to its securities.

Item 5.02

Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

An 8-K Is Required If:

- Departure of Director Due to a Disagreement — A director has resigned or refuses to stand for re-election since the date of the last annual meeting of shareholders because of a disagreement with the company, known to an executive officer of the company, on any matter relating to the company's operations, policies or practices, or if a director has been removed for cause from the board of directors (Item 5.02(a))

- Departure of Director Other Than Due to a Disagreement; Departure of Principal Officer or Named Executive Officer — A principal officer or named executive officer retires, resigns or is terminated from that position; or one of the company's directors retires, resigns, is removed or refuses to stand for re-election under circumstances that do not require the company to provide disclosure under Item 5.02(a) (Item 5.02(b))

- Appointment of Principal Officer — The company appoints a new principal officer (Item 5.02(c))

- Election of Director — The company elects a new director to the board, except by a vote of security holders at an annual or special meeting (Item 5.02(d))

- Compensatory Arrangements with Certain Officers — The company (i) enters into, adopts or otherwise commences a material compensatory plan, contract or arrangement (whether or not written) covering the principal executive officer, the principal financial officer or any other named executive officer; (ii) materially modifies such a plan, contract or arrangement; or (iii) makes, or materially modifies, a material grant or award to any such person under such a plan, contract or arrangement. (Item 5.02(e))

- Executive Compensation Determinations Made After Publication of Summary Compensation Table — If the company makes a payment, grant, award or decision or there is another occurrence as a result of which salary or bonus amounts for a named executive officer that were omitted from the Summary Compensation Table in a previous filing (because they were not then calculable) become calculable in whole or part. (Item 5.02(f))

  – Item 5.02(f) applies when a company relies on Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K to omit salary and bonus information for one of its named executive officers in its most recent Summary Compensation Table filed with the SEC because it was not calculable at the time

"Principal officer" means the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions. For purposes of this definition, it does not matter whether or not the company considers the principal officer to be an "executive officer" under Exchange Act Rule 3b-7. *(SEC CDI Question 117.06.)*

"Named executive officer" refers to those executive officers for whom executive compensation disclosure was required in the company's most recent proxy statement or Form 10-K (Instruction 4 to Item 5.02).

For foreign private issuers that satisfy the Item 401 of Regulation S-K disclosure requirement by providing compensation disclosure in accordance with Item 401(a)(1), "named executive officer" refers to those executive officers for whom executive compensation disclosure was required in the company's most recent filing pursuant to Item 6.B or 6.E.2 of Form 20-F (Instruction 4 to Item 5.02). *(SEC CDI Question 217.09.)*

Required Disclosure:

- For departure of directors covered by Item 5.02(a):
  - Date of the director's resignation, refusal to stand for re-election or removal
  - Positions held by the director on any board committee at the time of resignation, refusal to stand for re-election or removal
  - Brief description of the circumstances representing the disagreement that the company believes, in whole or in part, caused the director's resignation, refusal to stand for re-election or removal

  The company must file a copy of any written correspondence provided by the director about the circumstances of his or her resignation, refusal to stand for re-election or removal as an exhibit to the Form 8-K, regardless of whether the director requests that the company make such filing. The company must provide the director with a copy of the disclosures under this item no later than the day that the company files the disclosures with the SEC. The company must also provide the director with the opportunity to furnish a letter addressed to the company as promptly as possible stating whether he or she agrees with the company's disclosures in response to this item and, if not, stating the disagreements. Finally, the company must file any letter it receives from the director as an exhibit by amendment to the previously filed Form 8-K within two business days after receipt by the company.

- For departure of principal officers or named executive officers, or departure of directors not covered by Item 5.02(a):
  - Fact that the event occurred
  - Date of event
  - Effective date of event *(SEC CDI Question 117.01.)*
  - In the case of a refusal to stand for re-election, date of election in question *(SEC CDI Question 117.01.)*

- For appointment of principal officer:
  - Officer's name and position
  - Date of appointment
  - Biographical information as required by Item 401(b) of Regulation S-K, all family relationships as required by Item 401(d) of Regulation S-K, the officer's business experience as required by Item 401(e) of Regulation S-K and information regarding related person transactions with the company as required by Item 404(a) of Regulation S-K
  - A brief description of (i) any material plan, contract or arrangement (whether or not written) to which the covered officer is a party or in which he or she participates that is entered into or materially amended in connection with his/her appointment and (ii) any grant or award to the officer, or modification thereto, under any such plan, contract or arrangement in connection with such appointment (or, if such information is not determined or is unavailable at the time of initial filing, include a statement to that effect in the initial filing and then file an amendment within four business days after the information is determined or becomes available)

- For election of directors:
  - New director's name
  - Date of election

- Brief description of any arrangement or understanding under which the new director was selected

- Any board committees to which the new director has been or is expected to be named (or, if such information is not determined or is unavailable at the time of initial filing, include a statement to that effect in the initial filing and then file an amendment within four business days after the information is determined or becomes available)

- Information regarding related person transactions with the company as required by Item 404(a) of Regulation S-K (or, if such information is not determined or is unavailable at the time of initial filing, include a statement to that effect in the initial filing and then file an amendment within four business days after the information is determined or becomes available)

- A brief description of (i) any material plan, contract or arrangement (whether or not written) to which the covered director is a party or in which he or she participates that is entered into or materially amended in connection with the election and (ii) any grant or award to the director, or modification thereto, under any such plan, contract or arrangement in connection with such election

- For adoption or amendment of material compensatory plan, contract, arrangement or award:

  - A brief description of the terms and conditions of the plan, contract or arrangement and the amounts payable to the officer thereunder

- For later executive compensation determinations:

  - The name of the named executive officer

  - The salary and bonus information that was omitted from the Summary Compensation Table

  - A new total compensation figure for the named executive officer, using the new salary and bonus information to recalculate the information that was previously provided with respect to the named executive officer in the Summary Compensation Table

  - If the named executive officer for whom information was not previously available is the principal executive officer and the company is required to provide pay ratio disclosure under Regulation S-K Item 402(u), then include the pay ratio disclosure required by Regulation S-K Item 402(u).

Practice Tips:

A. Practice Tips – Changes in Directors and Officers:

1. To the extent certain information required by Items 5.02(c) and (d) is not determined or is unavailable at the time of the required Form 8-K filing, a company must include a statement to this effect in the filing and then must file an amendment to the Form 8-K containing the information within four business days after the information is determined or becomes available.

2. The obligation to report under Item 5.02(b), other than in the corporate governance policy situations addressed below in Practice Tip 3, is triggered by notice of a decision to resign, retire or refuse to stand for re-election provided by a director, principal officer or named executive officer whether or not the notice is written and without regard to whether the resignation, retirement or refusal to stand for re-election is conditional or subject to acceptance. No Form 8-K is required under Item 5.02(b) of discussions or considerations regarding possible resignation, retirement or refusal to stand for re-election. Whether communications represent non-reportable discussions or consideration, on one hand, or a reportable notice of a decision, on the other hand, is a facts and circumstances determination. Companies are required to have appropriate disclosure controls and procedures for determining when a reportable notice has

been communicated to the company. *(SEC CDI Question 117.01.)*

3. If a company has a corporate governance policy that requires a director to tender his or her resignation from the board of directors upon the occurrence of an event (such as reaching mandatory retirement age, changing jobs or failing to receive a majority of votes cast in an election of directors), the company must file a Form 8-K under Item 5.02(b) within four business days of the board's decision to accept the director's tender of resignation. If the board does not accept the director's tender of resignation (and thus, the director remains on the board), the company should consider informing shareholders as to whether and to what extent corporate governance policies are being followed and enforced. *(SEC CDI Question 117.15.)*

4. If the company must notify a named executive officer of the termination of his or her employment a specified number of days prior to the date on which the named executive officer's employment would end, an Item 5.02(b) Form 8-K filing requirement is triggered on the date the company notifies the named executive officer of his or her termination, not on the effective date of the named executive officer's termination. *(SEC CDI Question 217.05.)*

5. Disclosure on Form 8-K is not triggered just because the named executive is no longer required to be included in the Summary Compensation Table as a result of the executive officer's level of total compensation. *(SEC CDI Question 117.02.)*

6. The board's decision not to nominate a director for re-election when his or her term expires does not trigger a Form 8-K reporting obligation under this item. However, a Form 8-K would be required if, in response, the affected director resigns. *(SEC CDI Question 117.04.)*

7. A director's notice to the company that he or she refuses to stand for re-election requires a Form 8-K under this item, whether or not that notice is in response to an offer by the company to re-nominate the director. *(SEC CDI Question 117.04.)*

8. When a director who is designated by a company's majority shareholder gives notice that he or she will resign if the majority shareholder sells its entire holdings of company stock, this notice triggers an obligation to file an Item 5.02(b) Form 8-K, which should state clearly the nature of the contingency and the extent to which the resigning director can control the occurrence of the contingency. *(SEC CDI Question 217.03.)*

9. When a director resigns or refuses to stand for re-election, the company must carefully consider whether the event is reportable under Item 5.02(a) or (b). In May 2007, the SEC brought an enforcement action against Hewlett-Packard Company for reporting under 5.02(b), instead of under 5.02(a), a director's resignation with HP regarding the handling of an internal investigation. The SEC took the view that a disagreement with the process chosen by the chair and other board members to address the director's alleged violation of HP's policy regarding unauthorized public disclosures and the board's related decision to ask the director to resign was a disagreement on matters "related to the registrant's operations, policies or practices" that is reportable under Item 5.02(a). *(In the Matter of Hewlett-Packard Company, Release 34-55801 (May 23, 2007) and (SEC CDI Question 217.01.))*

10. A Form 8-K under Item 5.02(b) reporting the "termination" of a principal officer or a named executive officer is required where the principal officer or named executive officer has his or her duties and responsibilities removed or reassigned to others, even if the person remains employed or the person's title remains the same. *(SEC CDI Question 117.03.)*

11. When a principal officer temporarily turns his or her duties over to another person, a company must file a Form 8-K under Item 5.02(b) to report that the original principal officer has temporarily stepped down and under Item 5.02(c) to report that the replacement principal officer has been appointed. If the original principal officer returns to the position, then the company must file a Form 8-K under Item 5.02(b) to report the departure of the temporary principal officer and under Item 5.02(c) to report the "re-appointment" of the original principal officer. *(SEC CDI Question 217.02.)*

A potentially troublesome issue is how a temporary surrender of duties will trigger the filing of a Form 8-K. Disclosure is likely triggered by a turning over of power, such as an extended leave or reassignment that is akin to leaving and being replaced, but should not be triggered by a mere vacation.

12. The death of a director or executive officer is not a triggering event under Item 5.02(b) of Form 8-K. *(SEC CDI Question 217.04.)*

13. If the company appoints a new principal officer and the company intends to make a public announcement about the new officer by press release (or by any other means than just Form 8-K), the instructions to Item 5.02(c) provide the company with flexibility to delay the due date of the Form 8-K under this item until the day on which the other public announcement is made. *(SEC CDI Question 117.05.)* However, the retirement, resignation or termination of the old principal officer triggers an Item 5.02(b) Form 8-K filing requirement and the company may not delay this filing until the filing of the Item 5.02(c) Form 8-K. *(SEC CDI Question 217.06.)* The company may postpone any related reporting required under 5.02(d) (reporting that the officer was simultaneously appointed to the company's board of directors) and any related reporting required under 5.02(e). *(SEC CDI Question 117.05.)* In some circumstances, this may give the company greater flexibility in transitioning in a new principal officer (for example, by giving the company added time to make internal introductions and announcements before publicly announcing the new officer). However, since no similar relief is available with respect to the required announcement of the departure of a principal officer, in practice there may not be many situations in which the company delays the Form 8-K beyond its regular due date on the fourth business day after the event. Also, no relief is available with respect to the Form 3 that must be filed under Exchange Act Section 16 within 10 days of when someone becomes an executive officer.

14. The date of the director's election to the board triggers the reporting requirement under Item 5.02(d), even if the director's term will begin on a later date. The Form 8-K should disclose the date on which the director's term begins. *(SEC CDI Question 117.07.)*

15. Where the director's appointment to the board and committee assignment were disclosed under Item 5.02(d) of Form 8-K and the director is later assigned to a different committee, no new Form 8-K or amendment to the Item 5.02(d) Form 8-K is required by Instruction 2 to Item 5.02, provided that the change in committee assignment was not contemplated at the time of the director's initial election to the board and appointment to the committee. *(SEC CDI Question 217.07.)* Similarly, if the director is not assigned to a committee when he or she is initially elected to the board and later assignment to a committee is not planned or contemplated at that time, there should not be a reporting requirement if the director is assigned to a committee in the future.

16. Unlike Item 5.02(e), which is limited to material compensatory arrangements, Items 5.02(c) and (d) require disclosure of any material plan, contract or arrangement entered into or materially amended, in connection with the appointment, and *any* grant or award (regardless of the company's assessment of materiality) made to a principal officer or a director, or modified, under any such plan, contract or arrangement in connection with the appointment.

17. Companies reporting the election of a new director should consider voluntarily adding disclosure about the director's independence.

B. Practice Tips – Compensatory Arrangements:

1. Items 5.02(c), (d) and (e) require a brief description of both written and unwritten material plans, contracts or arrangements with the covered executive officer or director. The brief description of the plan, contract or arrangement does not need to comply with the more detailed disclosure requirements of Item 402 of Regulation S-K.

2. For purposes of Items 5.02(c), (d) and (e), the company must make a determination as to what constitutes a material plan, contract or agreement

with the covered executive officer or director. This materiality standard may permit the company to omit the reporting under Item 5.02(c) or (d), or omit the filing of an Item 5.02(e) Form 8-K, with respect to a plan, contract or arrangement that is covered by Item 601(b)(10)(iii) of Regulation S-K. However, the company remains obligated to file any plan, contract or arrangement that falls under Item 601(b)(10)(iii) of Regulation S-K as an exhibit to its next Form 10-Q or Form 10-K even if such plan, contract or arrangement is determined not to be material for purposes of Item 5.02. (Refer also to Practice Tip A.16 above regarding grants or awards made in connection with an event reportable under Item 5.02(c) or 5.02(d)).

3. Disclosure under Item 5.02(e) is required whether or not the specified event is in connection with events otherwise triggering disclosure under Items 5.02(a)-(d) or (f).

4. Grants or awards (or modifications thereto) made pursuant to a plan, contract or arrangement (whether involving cash or equity) that are materially consistent with the previously disclosed terms of such plan, contract or arrangement, need not be disclosed under Item 5.02(e), provided the grant, award or modification is disclosed when Item 402 of Regulation S-K requires such disclosure (generally the next proxy statement) *(Instruction 2 to 8-K Item 5.02(e))*. In light of this instruction, it should not be necessary to have forms of various equity award agreements on file prior to grant in order to avoid having to report on Form 8-K equity grants that are materially consistent with relevant prior disclosure. Forms of various equity award agreements (such as option agreements) will generally still be required under the exhibit rules. Therefore, companies should generally still have on file forms of equity award agreements that indicate:

   - the term of the equity awards;
   - the termination provisions (including how long the equity award remains exercisable or vests following voluntary termination, death, disability, retirement and termination for cause);
   - any change-in-control provisions; and
   - any material forfeiture or repurchase provisions.

   The company should also consider whether any vesting provisions currently included in filed forms of equity award agreements are consistent with the company's current granting practices and reflect the various alternative types of vesting provisions that the company may from time to time use.

5. In the context of a material cash bonus plan, if prior Form 8-K disclosure indicates the potential performance criteria upon which awards may be based, there is no need to file a Form 8-K when the actual targets are set. *(SEC CDI Question 117.10.)*

6. When the material payout under a cash bonus plan is materially consistent with the previously disclosed terms of the plan, no Form 8-K would be required. However, if the company exercised discretion to pay the bonus even though the specified performance criteria were not satisfied, a Form 8-K would be required, even if the plan provided for the exercise of such discretion. *(SEC CDI Question 117.11.)*

7. When reporting an annual non-equity incentive plan award, the company is not required to disclose the target levels with respect to specific quantitative or qualitative performance-related factors, or factors or criteria involving confidential trade secrets or commercial or business information, the disclosure of which would result in competitive harm for the company. (*SEC CDI Question 117.12*.) The standards set forth in Instruction 3 to Regulation S-K Item 402(b) and Instruction 2 to Regulation S-K Item 402(e)(1) are likely to be relevant to a determination of whether specific performance targets can be omitted from the Form 8-K.

8. If a previously disclosed employment agreement provides that the principal executive officer is entitled to receive a cash bonus in an amount determined by the compensation committee in its discretion, an Item 5.02(e) Form 8-K would not be required when the committee makes an ad hoc determination of the bonus amount. Disclosure regarding material information about the bonus should be included in the company's CD&A and related disclosures under Regulation S-K Item

402. *(SEC CDI Question 117.13.)* A similar analysis should apply with respect to base salary and to situations where eligibility for discretionary bonus or salary changes is reflected somewhere other than in an employment agreement and is disclosed.

9. When a company's board adopts a new compensatory plan subject to stockholder approval, the obligation to file a Form 8-K under Item 5.02(e) is triggered on the date of stockholder approval of the plan, not on the date of board action. *(SEC CDI Question 117.08 and SEC CDI Question 117.09.)*

10. Plans, contracts and arrangements that do not discriminate, in scope, terms or operation, in favor of executive officers and directors and that are available generally to all salaried employees (for example, a Section 423-qualified employee stock purchase plan) typically do not need to be disclosed.

11. See also Practice Tips A.1-3 & B.1-2 under Item 1.01 regarding the decision to file the plan, contract or arrangement as an exhibit to the Form 8-K rather than as an exhibit to the next Form 10-Q or Form 10-K.

12. A company's internal procedures need to be adequate to ensure that the information required by Item 5.02(f) is known to those responsible for Form 8-K filings. Because the information called for in this item will generally be something of an afterthought to the proxy statement and could be just a simple payroll calculation once facts become known, it may be difficult for a company to ensure that the information is handled properly. Also, Item 5.02(f) requires disclosure when there is a payment, grant or decision or other occurrence, which means that the triggering date could be difficult to ascertain absent strong internal procedures.

13. Changes to compensatory arrangements for non-employee directors are outside the scope of Item 1.01 and Item 5.02(e), and therefore generally will not trigger a Form 8-K. Note, however, that there is a requirement to describe director compensation under Item 5.02(d) when a director is elected to the board other than at a shareholder meeting. Item 5.02(d)(5) requires a brief description of the newly appointed director's compensatory arrangements, even if they are consistent with the previously disclosed standard arrangements for the other non-employee directors. In lieu of describing the arrangements (but not material amendments or grants or awards or modifications thereto), the company may cross-reference the description of the arrangements from the Regulation S-K Item 402 disclosure in the company's most recent Form 10-K or proxy statement. *(SEC CDI Question 117.16.)*

14. A termination of an executive compensation plan should be disclosed under Item 5.02(e) if it constitutes a material amendment or modification of the plan. *(SEC CDI Question 117.14.)*

15. The automatic renewal of a named executive officer's employment agreement does not trigger an Item 5.02(e) Form 8-K filing requirement. *(SEC CDI Question 217.08.)*

Item 5.03
Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

An 8-K Is Required If:

- Amendments — The company amends its charter or bylaws and the proposed amendment was not disclosed in a previously filed proxy statement or information statement

- Change in Fiscal Year — The company determines to change the fiscal year from that used in its most recent filing with the SEC by means other than (i) a submission to a vote of security holders or (ii) an amendment to its charter or bylaws

Required Disclosure:

- For amendments:
  - Effective date of amendment
  - Description of the provision adopted or changed by amendment
  - Description of previous provision, if applicable
- For changes in fiscal year
  - Date of such determination
  - Date of the new fiscal year-end
  - Form (e.g., Form 10-Q or Form 10-K) on which the report covering the transition period will be filed

Practice Tips:

1. The most common changes to a charter that are effected without prior disclosure in a proxy or information statement are corporate name changes and the designation of preferred stock by a company with authorized blank check preferred stock. Many companies designate preferred stock in connection with the adoption of a shareholder rights plan or a private placement of preferred stock.

2. A company is required to file only the text of the amended provision of its charter or bylaws with the Form 8-K, but must file the complete document, as amended, with its next periodic report (i.e., Form 10-Q or Form 10-K). A company may choose to file the entire amended text redlined to show the new amendments. *(SEC Reg. S-K CDI Question 246.01.)*

3. This item only applies to companies with a class of equity securities registered under Section 12 of the Exchange Act.

4. A Form 8-K is not required to be filed under this item to report a restatement of a company's charter that merely consolidates previous amendments without effecting any substantive change. The company should, however, file the restated charter with its next periodic report for ease of reference by investors. *(SEC CDI Question 118.01.)*

5. A Form 8-K filed in connection with an acquisition accounted for as a reverse acquisition should disclose under Item 5.03 of the Form 8-K any intended change in fiscal year from the fiscal year-end used by the registrant prior to the acquisition.

Item 5.04
Temporary Suspension of Trading under Registrant's Employee Benefit Plans

An 8-K Is Required If:

- The company receives the notice required by Section 101(i)(2)(E) of the Employment Retirement Income Security Act of 1974 (relating to a temporary suspension of trading under an employer benefit plan) or, if such notice is not received by the company, the company transmits a timely notice to an affected officer or director within the time period prescribed by Regulation BTR
- The company transmits a timely updated notice to an affected officer or director, as required by the time period under Regulation BTR

Required Disclosure:

- No later than the fourth business day after which the company receives the notice or on the same date by which the company transmits notice to an affected officer or director:
  - The reason or reasons for the blackout period
  - A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period
  - A description of the class of equity securities subject to the blackout period
  - The length of the blackout period by reference to:
    - The actual or expected beginning date and ending date of the blackout period
    - The calendar week (i.e., a seven-day period beginning on Sunday and ending on Saturday) during which the blackout period is expected to begin and the calendar week during which the blackout period is expected to end, provided that the notice to directors and executive officers describes how, during such week or weeks, a director or executive officer may obtain, without charge, information as to whether the blackout period has begun or ended; and provided further that the notice to the SEC describes how, during the blackout period and for a period of two years after the ending date of the blackout period, a security holder or other interested person may obtain, without charge, the actual beginning and ending dates of the blackout period
  - The name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or in the absence of such a designation, the company's human resources director or person performing equivalent functions
- When the company transmits a timely updated notice of any change to the beginning or ending dates of the blackout period, the reasons for the change in the date or dates and an identification of all material changes in the information contained in the prior notice

Practice Tips:

1. It is customary to provide the required information by filing a copy of the notice given to the officers and directors as an exhibit.
2. A Form 8-K is not required to report notice of any time period that constitutes a blackout period for purposes of the notice requirements under ERISA, but that does not constitute a "blackout period" under Section 306(c) of the Sarbanes-Oxley Act and Regulation BTR. *(SEC CDI Question 119.01.)*

Item 5.05

Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

An 8-K Is Required If:

- There is any amendment to a provision of the company's code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer, or controller or persons performing similar functions and that relates to any element of the code of ethics as defined in Item 406(b) of Regulation S-K

- The company has granted a waiver, including an implicit waiver, from a provision of the code of ethics to the principal executive officer, principal financial officer, principal accounting officer, or controller or persons performing similar functions and the waiver relates to any element of the code of ethics definition set forth in Item 406(b) of Regulation S-K

"Waiver" means the approval by the company of a material departure from a provision of the code of ethics.

"Implicit waiver" means the company's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer.

"Code of ethics," as defined in Item 406(b) of Regulation S-K, means written standards that are reasonably designed to deter wrongdoing and to promote:

  - honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

  - full, fair, accurate, timely and understandable disclosure in reports and documents that a company files with, or submits to, the SEC and in other public communications made by the company;

  - compliance with applicable governmental laws, rules and regulations;

  - the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

  - accountability for adherence to the code.

Required Disclosure:

- Brief description of date and nature of any amendment

- Brief description of nature and date of waiver and person to whom a waiver was granted

Practice Tips:

1. The company does not need to file a Form 8-K under this item if it discloses the required information on its internet website within four business days and it disclosed in its most recent Form 10-K its internet address and its intention to provide disclosure of amendments and waivers by website posting. Information posted on the website must remain posted for at least 12 months and must be retained for at least five years.

2. The company must also review the requirements of the stock exchange where its securities are listed regarding disclosure of amendments and waivers of a code of conduct since these requirements vary from the SEC's rule.

   - Nasdaq Rule 5610 (and related IM-5610) requires public disclosure within four business days of any waiver of the code of conduct (as required and defined by Nasdaq) for any director or executive officer. A Nasdaq FAQ provides that waivers for ongoing matters or matters extending beyond one year must be

disclosed at least annually *(Nasdaq FAQ ID Number 100)*.

– Section 303A.10 of the NYSE Listed Company Manual requires public disclosure within four business days of any waiver of the code of business conduct and ethics (as required and defined by NYSE rules) for any director or executive officer.

Item 5.07
Submission of Matters to a Vote of Security Holders

An 8-K Is Required If:

- A matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise

Required Disclosure:

- Date of the meeting and whether it was an annual or special meeting
- A description of each election or other matter voted upon at the meeting
- The number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each matter, including a separate tabulation with respect to each nominee for office. With respect to a say-on-frequency vote, the number of votes cast for each of one year, two years and three years, and the number of abstentions
- A description of the terms of any settlement terminating a solicitation opposing director election or removal, including the cost or anticipated cost to the company
- The company's decision following a say-on-frequency vote as to how frequently the company will hold future advisory votes on executive compensation

If no meeting of security holders was held, the Form 8-K need not provide the date of the meeting or whether it was an annual or special meeting. Instead, corresponding information with respect to the submission of the matter to a vote must be provided. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter is deemed to be a submission of the matter to a vote under this item.

If final voting results are not promptly available, the company must disclose the preliminary voting results. The company must then amend the Form 8-K to disclose the final voting results within four business days after the final voting results are known.

Disclosure of the company's decision regarding frequency of future advisory votes on executive compensation is due no later than 150 days after the meeting at which shareholders held a say-on-frequency advisory vote, but in no event later than 60 calendar days prior to the company's deadline for submitting Rule 14a-8 shareholder proposals.

Practice Tips:

1. The triggering event for this item occurs on the date the shareholder meeting ends. Day one of the four-business-day filing period is the day after the date on which the meeting ends. *(SEC CDI Question 121A.01.)* See "Filing Mechanics."

2. The obligation to report the number of shareholder votes cast for, against or withheld on a matter applies with respect to any matter submitted to a vote of security holders, not just to matters voted on at a meeting that involves the election of directors. *(SEC CDI Question 121A.02.)*

3. Companies are not required to disclose the number of broker non-votes with respect to the advisory vote on the frequency of shareholder advisory votes on executive compensation. If a company believes this information would be useful for investors, however, it may disclose this information in an Item 5.07 Form 8-K. *(SEC CDI Question 121A.03.)* It is common practice to disclose the number of broker non-votes on each matter.

4. To the extent a company is concerned that disclosure of preliminary voting results could be

confusing to investors, it may include additional disclosure that puts the preliminary voting results in context.

5. Instruction 3 to this item provides that if a company does not solicit proxies and has previously filed a report disclosing the names of the members of its board, and the board is re-elected in its entirety, the company may simply make a statement to that effect, rather than re-stating the name of each director and the voting results.

6. If a company has previously given security holders proxy soliciting material containing a description of the terms of a settlement terminating a solicitation (including costs or anticipated costs), it may make the required disclosure under this item by reference to the previous disclosure.

7. Instruction 5 to this item allows a wholly owned subsidiary of a reporting company to omit this item in certain circumstances if the parent has made all required Exchange Act filings and the subsidiary has not experienced a material default during the preceding 36 calendar months and any subsequent period of days.

8. Pursuant to General Instruction B.3, regarding "previously reported" information, a company may report Item 5.07 Form 8-K information in a periodic report that is filed on or before the date that an Item 5.07 Form 8-K would otherwise be due. If a company reports its annual meeting voting results in a Form 10-Q or Form 10-K, it may file a new Item 5.07 Form 8-K, rather than an amended Form 10-Q or Form 10-K, to report its decision as to how frequently it will include a shareholder advisory vote on executive compensation in its proxy materials. However, if the company reports its annual meeting voting results in an Item 5.07 Form 8-K and also intends to report its frequency decision in a Form 8-K, then, as required by Item 5.07, that Form 8-K must be filed as an amendment to the Item 5.07 Form 8-K — using submission type 8-K/A — and not as a new Form 8-K. *(SEC CDI Question 121A.04.)*

9. If shareholders approved a compensatory plan at the meeting, consider the applicability of also reporting under Item 5.02(e) (Compensatory Arrangements of Certain Officers).

Item 5.08
Shareholder Director Nominations

An 8-K Is Required If:

- A company did not hold an annual meeting the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's meeting and the company is required to include shareholder director nominees in the company's proxy materials pursuant to applicable state or foreign law or the company's governing documents

Required Disclosure:

- Within four business days after the company determines the anticipated meeting date, the company must disclose the date by which a nominating shareholder or shareholder group must submit the Schedule 14N required pursuant to Rule 14a-18

Practice Tips:

1. Item 5.08 was adopted in connection with the SEC's proxy access rules. The first sentence of Item 5.08(a) appears to be inoperative, because it implements Rule 14a-11, which was vacated. However, the second sentence of Item 5.08(a) remains relevant, because it refers to Rule 14a-18, which remains in effect. Rule 14a-18 applies to a company that is required, by state or foreign law or the company's governing documents, to include shareholder director nominees in its proxy materials.

2. Rule 14a-18 provides that the deadline for submitting notice on Schedule 14N of shareholder nominees to be included in a company's proxy materials is either the date specified in the company's advance notice bylaw or, if none, no later than 120 calendar days before the anniversary of the date that the company mailed its proxy materials for the prior year's annual meeting, unless the company either did not hold an annual meeting in the prior year or the date of the meeting has changed by more than 30 calendar days from the prior year, in which case the nominating shareholder or nominating shareholder group must submit the notice on Schedule 14N a reasonable time before the company mails its proxy materials, as specified by the company in an Item 5.08 Form 8-K.

3. The Item 5.08 four-business-day deadline appears in the last sentence of General Instruction B.1.

Item 7.01
Regulation FD Disclosure

This item applies when the company wants to use Form 8-K to satisfy its obligations under Regulation FD and it desires to have the Form 8-K be deemed to be furnished rather than filed. The deadline under this item is determined by the requirements of Regulation FD. See "Filing Mechanics – Filing Deadlines" and "Filing Mechanics – The Filed vs. Furnished Distinction" for more information.

Item 8.01
Other Events

This item is used when the company voluntarily wants to disclose any event that it deems of importance to security holders and with respect to which information is not otherwise required by Form 8-K. Since this use of Form 8-K is voluntary, there is no filing deadline.

In addition, this item applies when the company wants to use Form 8-K to satisfy its obligations under Regulation FD and it desires to have the Form 8-K be deemed to be filed rather than furnished. The filing deadline in this case is determined by the requirements of Regulation FD.

See "Filing Mechanics – Filing Deadlines" and "Filing Mechanics – The Filed vs. Furnished Distinction" for more information.

Item 9.01
Financial Statements and Exhibits

This item is used to file financial statements and pro forma financial information for transactions required to be described by Item 2.01. See "Reportable Items – Item 2.01" for more information.

This item is also used to furnish or file other required exhibits. See "Filing Mechanics – Exhibit Requirements" for more information.

If required financial statements or pro forma financial information is not included in the initial Form 8-K, but will be provided by amendment, the initial Form 8-K must state when the required information will be filed.

The automatic 71-day extension of time in Item 9.01 of Form 8-K is available only with respect to acquisitions, not dispositions. *(SEC CDI Question 129.01.)*

With respect to a disposition that must be reported under Item 2.01 (i.e., an asset disposition or a business disposition that exceeds 10% or 20% significance, respectively), pro forma financial statements reflecting the disposition are required to be filed within four business days of the disposition.

Impact on Controls and Procedures

Public companies are required to maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

A company's obligations with respect to disclosure controls and procedures encompasses information required to be disclosed on Form 8-K.

In light of the ongoing nature of a company's Form 8-K reporting obligations, in contrast to the periodic nature of Form 10-K and 10-Q reporting, the processes used to ensure that Forms 10-K and 10-Q are accurate and complete are not likely to be sufficient for timely identifying Form 8-K reportable events. Accordingly, the company's disclosure controls and procedures must be designed to ensure timely reporting of the 8-K reportable events. We recommend the following in connection with the company's establishment and periodic evaluations of its disclosure controls and procedures relating to Form 8-K:

1. **Identify Who Is Most Likely to First Become Aware of Each Triggering Event.** The company's Disclosure Committee should review each type of 8-K reportable event and identify the persons in the company who are most likely to first become aware of each event. For example:

    - A life sciences company engaged solely in clinical and preclinical trials may identify its CEO, CFO, chief scientist and head of business development as the people in its organization most likely to be aware of new agreements that might need to be reported under Item 1.01.

    - A manufacturing company with international operations may identify its CFO, controller, treasurer, divisional financial heads, divisional presidents, head of procurement and head of sales as the people in its organization most likely to be aware of new agreements that might need to be reported under Item 1.01.

    - A technology dependent organization may identify its CIO (chief information officer) or CISO (chief information security officer) as the person in its organization most likely to first be aware of a cybersecurity incident that might need to be reported under Item 1.05.

    Once the Disclosure Committee identifies the relevant people for each item, it should educate them about the 8-K reporting requirements and the process for communicating information about events that might trigger a Form 8-K requirement to the persons within the company responsible for preparing and filing Form 8-Ks. It would also be appropriate to periodically educate an even larger group of employees in order to raise the organization's overall awareness of the company's Form 8-K reporting obligations.

2. **Educate the Board About 8-K Triggering Events.** When considering who in the organization is most likely to first become aware of various reportable events, do not forget about the board of directors. The company's directors should be aware, in advance, whether actions they authorize will trigger a Form 8-K filing requirement. For some reportable events, such as the election of new directors, decisions about impairment charges and entry into new compensation arrangements with named executive officers, one of the first persons likely to become aware of the occurrence of a reportable event is the chair of the board or the chair of the audit, compensation or nominating committee. Since boards often meet in executive session without members of management present and key board committees no longer include members of management, it is important for the

directors with primary responsibility for setting board and committee agendas to consider how they will timely communicate matters to management and to the persons within the company responsible for preparing and filing Form 8-Ks.

3. **Pay Special Attention to Resignations and Other Officer and Director Changes.** Timely identifying when a Form 8-K is required to report the departure of an executive officer or director has proven to be a significant challenge because the line between non-reportable "discussions and considerations" and reportable "notice" of resignation is often unclear. Since Items 5.02(a) and 5.02(b) of Form 8-K are not covered by the safe harbor, the consequence of a late filing can be drastic. Accordingly, it is important that appropriate controls and procedures be put in place with respect to these items. Some possibilities include:

    - periodic education of, and reminders to, directors and officers regarding the events that trigger a Form 8-K, and

    - a board policy or bylaw that all directors must provide directly to the corporate secretary written notice of a decision to resign or refuse to stand for re-election.

4. **Have an Effective Disclosure Committee.** Because decisions as to whether an 8-K reportable event has occurred need to be made frequently and in a short timeframe, the company should review the membership and operating practices of its Disclosure Committee with a goal of ensuring that the committee consists of members who:

    - will be able to respond in a timely manner to disclosure questions that come up between regularly scheduled meetings of the Disclosure Committee, and

    - have the knowledge and understanding of the company and applicable securities law to be able to quickly analyze materiality questions.

    Companies that have a large number of members on their Disclosure Committee may want to consider identifying a subcommittee of those members to play the primary role in analyzing Form 8-K disclosure questions.

5. **Make Sure Multiple People Learn About the Occurrence of a Triggering Event.** In light of the short timeframes for identifying and analyzing Form 8-K reportable events and preparing the Form 8-K, the company should have processes that will result in multiple members of the Disclosure Committee being made aware of events that may need to be reported on a Form 8-K. A process that results in news only flowing to a single member of the Disclosure Committee might result in loss of critical time if that person is temporarily unavailable for any reason.

6. **Consider in Advance What Would Be Material.** Since several of the reportable events contain a materiality standard, the Disclosure Committee should develop rules of thumb to be used in helping identify potentially material events. For example, Item 2.03 requires a Form 8-K filing when a company incurs direct financial obligations that are material to the company. The company should establish some upfront quantitative guideposts as to what would be a material amount of debt. While quantitative rules of thumb are helpful in separating routine borrowings from material borrowings, the company should keep in mind that materiality is a facts and circumstances determination that must ultimately be assessed in a qualitative manner, taking into account all relevant factors. The Disclosure Committee should regularly reassess any rules of thumb that the company establishes in order to confirm their continued validity in light of changing business circumstances.

7. **Track All Unregistered Sales of Securities.** The company should establish a process for tracking all unregistered sales of equity securities on a continuous basis.

8. **Review Policy Regarding Authorized Signatories.** The company should periodically review its policy regarding authorized signatories for material contracts. The company may also want to adopt formal policies requiring legal department review of potentially material contracts prior to signing.

9. **Carefully Prepare Minutes.** The minutes of board and committee meetings should be carefully prepared so they clearly distinguish between discussions about possible actions (such as restructurings) and the taking of definitive action committing the company to a course of action (such as the adoption of a restructuring plan).

10. **Update 10-K and 10-Q Processes.** The company's process for collecting data needed to complete Forms 10-K and 10-Q should encompass the Form 8-K reportable events. As discussed in the next section, "Liabilities and Limited Relief," the safe harbor provided with respect to certain of the reportable events is only available until the next periodic report is due. Therefore, it is important in the course of preparing Forms 10-Q and 10-K for the company to:

    - determine whether the company failed to identify any Form 8-K reportable events during the past quarter, and

    - reassess any close materiality determinations during the quarter that served as a basis for not reporting an event on Form 8-K.

    If the company discovers that reportable events did occur during the quarter but were not properly reported on Form 8-K, in addition to reporting the event as part of the next Form 10-K or Form 10-Q, the company must consider whether this discovery suggests an ineffectiveness of the company's disclosure controls and procedures that must be redressed or reported in connection with the next Form 10-K or Form 10-Q.

11. **Update Cybersecurity Controls and Procedures.** In light of the obligation under Item 1.05 of Form 8-K to disclose material cybersecurity incidents and the availability of Item 7.01 or Item 8.01 to voluntarily disclose cybersecurity incidents before an incident has been determined to be material, the company should: evaluate its incident response plan or other cyber oversight policies and practices to assess the impact of the Item 1.05 disclosure requirements (including the timeframe for such disclosure following a materiality determination); make changes to its disclosure controls and procedures as appropriate (including creating a framework for assessing the materiality of cybersecurity incidents); and, conform its documentation to reflect the company's updated practices and control environment. In implementing these steps, the company should keep in mind that timely Form 8-K disclosure will hinge on effective communications among many potential stakeholders, including technology teams, external reporting groups, legal teams, management, consultants, and auditors.

12. **Document Your Disclosure Controls and Procedures.** After implementing whatever process changes are deemed appropriate, the company should update its documentation regarding disclosure controls and procedures in order to conform its documentation to the company's current practice.

Liabilities and Limited Relief

General Antifraud Rules Apply

The company is subject to Section 10(b) of the Exchange Act and Rule 10b-5 liability for material misstatements or omissions in a Form 8-K.

The SEC has explicitly and repeatedly reminded companies that, pursuant to Rule 12b-20 under the Exchange Act, any disclosure made in a Form 8-K must include all material information that is necessary to make the required disclosure, in light of the circumstances under which it is made, not misleading.

Limited Safe Harbor for Section 10(b) and Rule 10b-5 Liability

Exchange Act Rules 13a-11 and 15d-11 provide a limited safe harbor from public and private claims under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for a failure to file timely a Form 8-K for certain items that may require management to assess quickly the materiality of an event or determine whether a disclosure obligation has been triggered. Those items are listed in the table on the right.

The safe harbor only applies to a failure to file a report on Form 8-K. Material misstatements or omissions in a Form 8-K will continue to be subject to Section 10(b) and Rule 10b-5. In addition, the safe harbor will not provide protection from Section 10(b) and Rule 10b-5 liability that may arise from a company's failure to satisfy a separate disclosure obligation and will not provide protection from liability under Section 13(a) or 15(d) of the Exchange Act. Accordingly, the SEC has the ability to enforce the Form 8-K filing requirements even with respect to the items covered by the safe harbor.

Items to Which the Limited Safe Harbor Applies

Item No.	Subject Matter
1.01	Entry into a Material Definitive Agreement
1.02	Termination of a Material Definitive Agreement
1.05	Material Cybersecurity Incidents
2.03	Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant
2.04	Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement
2.05	Costs Associated with Exit or Disposal Activities
2.06	Material Impairments
4.02(a) (limited to the situation where a company makes the determination and does not receive a notice from its accountant)	Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review
5.02(e)	Compensatory Arrangements of Certain Officers
6.03	Change in Credit Enhancement or Other External Support (for ABS issuers)

The safe harbor extends only until the due date of the company's periodic report for the relevant period in which the Form 8-K was not timely filed. For example, if an event occurs that required the filing of a Form 8-K during a particular quarter, but the company fails to make the required timely disclosure on Form 8-K, the company must provide the disclosure required by the relevant Form 8-K item in its Form 10-Q filed for the quarter during

which that event occurred. Failure to make such disclosure in the periodic report will subject a company to potential liability under Section 10(b) and Rule 10b-5, in addition to the potential liability under Section 13(a) or 15(d) of the Exchange Act.

Eligibility to Use Form S-3 and to Rely on Rule 144

In general, a company's failure to timely file a Form 8-K results in a loss of Form S-3 eligibility for the succeeding 12 months. However, the failure to timely file Form 8-K reports pursuant to the following items does not cause the loss of Form S-3 eligibility: 1.01, 1.02, 1.04, 1.05, 2.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e). A company must, however, be current in its Form 8-K filings at the actual time of a Form S-3 filing.

In very limited circumstances, the SEC staff will grant a waiver allowing the company to retain Form S-3 eligibility. The SEC staff will consider whether to grant a waiver in light of all the relevant circumstances. However, the longer the delay between the triggering event and the late Form 8-K filing, the more difficult it is for the staff to grant a waiver. When granted, waivers are communicated orally. The company should consult with its contacts at WilmerHale on this issue.

Because an Item 2.02 8-K is furnished, not filed, the late submission of an Item 2.02 Form 8-K does not affect a company's eligibility to use Form S-3. *(SEC CDI Question 106.05.)*

Rule 144 under the Securities Act provides that a company does not need to have filed all required Form 8-K reports during the 12 months preceding a sale of securities pursuant to Rule 144 to satisfy the rule's "current public information" condition. However, the seller's Form 144 includes the representation that the seller "does not know of any material adverse information in regard to the current and prospective operations of the Issuer of the securities to be sold which has not been publicly disclosed."

Filing Liability

Notwithstanding the limited safe harbor provided under the Form 8-K rules, the company should not lose sight of the fact that the SEC retains the ability to enforce the Form 8-K filing requirements under Sections 13(a) and 15(d) of the Exchange Act and that a company's disclosure controls and procedures must encompass Form 8-K.

APPENDIX A:
FORM 8-K

The version of Form 8-K that follows was downloaded on December 13, 2024 from the SEC's website sec.gov at https://www.sec.gov/files/form8-k.pdf.

OMB APPROVAL	
OMB Number:	3235-0060
Expires:	November 30, 2027
Estimated average burden hours per response	8.41

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) _____

_____

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

_____

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code _____

_____

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

[ ] Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

[ ] Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

[ ] Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

[ ] Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

SEC 873 (07-24) Potential persons who are to respond to the collection of information contained in this Form are not required to respond unless the Form displays a currently valid OMB control number.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 8-K.

1. Form 8-K shall be used for current reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a-11 or Rule 15d-11 and for reports of nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101).

2. Form 8-K may be used by a registrant to satisfy its filing obligations pursuant to Rule 425 under the Securities Act, regarding written communications related to business combination transactions, or Rules 14a-12(b) or Rule 14d-2(b) under the Exchange Act, relating to soliciting materials and pre-commencement communications pursuant to tender offers, respectively, provided that the Form 8-K filing satisfies all the substantive requirements of those rules (other than the Rule 425(c) requirement to include certain specified information in any prospectus filed pursuant to such rule). Such filing is also deemed to be filed pursuant to any rule for which the box is checked. A registrant is not required to check the box in connection with Rule 14a-12(b) or Rule 14d-2(b) if the communication is filed pursuant to Rule 425. Communications filed pursuant to Rule 425 are deemed filed under the other applicable sections. See Note 2 to Rule 425, Rule 14a-12(b) and Instruction 2 to Rule 14d-2(b)(2).

B. Events to be Reported and Time for Filing of Reports.

1. A report on this Form is required to be filed or furnished, as applicable, upon the occurrence of any one or more of the events specified in the items in Sections 1–6 and 9 of this Form. Unless otherwise specified, a report is to be filed or furnished within four business days after occurrence of the event. If the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the four business day period shall begin to run on, and include, the first business day thereafter. A registrant either furnishing a report on this Form under Item 7.01 (Regulation FD Disclosure) or electing to file a report on this Form under Item 8.01 (Other Events) solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing, as applicable, in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)), including the deadline for furnishing or filing such report. A report pursuant to Item 5.08 is to be filed within four business days after the registrant determines the anticipated meeting date. A report pursuant to Item 1.05 is to be filed within four business days after the registrant determines that it has experienced a material cybersecurity incident.

2. The information in a report furnished pursuant to Item 2.02 (Results of Operations and Financial Condition) or Item 7.01 (Regulation FD Disclosure) shall not be deemed to be "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. If a report on Form 8-K contains disclosures under Item 2.02 or Item 7.01, whether or not the report contains disclosures regarding other items, all exhibits to such report relating to Item 2.02 or Item 7.01 will be deemed furnished, and not filed, unless the registrant specifies, under Item 9.01 (Financial Statements and Exhibits), which exhibits, or portions of exhibits, are intended to be deemed filed rather than furnished pursuant to this instruction.

3. If the registrant previously has reported substantially the same information as required by this Form, the registrant need not make an additional report of the information on this Form. To the extent that an item calls for disclosure of developments concerning a previously reported event or transaction, any information required in the new report or amendment about the previously reported event or transaction may be provided by incorporation by reference to the previously filed report. The term previously reported is defined in Rule 12b-2 (17 CFR 240.12b-2).

4. Copies of agreements, amendments or other documents or instruments required to be filed pursuant to Form 8-K are not required to be filed or furnished as exhibits to the Form 8-K unless specifically required to be filed or furnished by the applicable Item. This instruction does not affect the requirement to otherwise file such agreements, amendments or other documents or instruments, including as exhibits to registration statements and periodic reports pursuant to the requirements of Item 601 of Regulation S-K.

5. When considering current reporting on this Form, particularly of other events of material importance pursuant to Item 7.01 (Regulation FD Disclosure) and Item 8.01(Other Events), registrants should have due regard for the accuracy, completeness and currency of the information in registration statements filed under the Securities Act which incorporate by reference information in reports filed pursuant to the Exchange Act, including reports on this Form.

6. A registrant's report under Item 7.01 (Regulation FD Disclosure) or Item 8.01 (Other Events) will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

7. If a registrant's report or exhibit to such report relates to a de-SPAC transaction (as defined in Item 1601(a) of Regulation S-K (17 CFR 229.1601(a)) and includes projections that relate to the performance of the special purpose acquisition company or the target company, the report or exhibit, as applicable, must include the information required by paragraphs (a) and (b) of Item 1609 of Regulation S-K (17 CFR 229.1609(a), (b)).

C. Application of General Rules and Regulations.

1. The General Rules and Regulations under the Act (17 CFR Part 240) contain certain general requirements which are applicable to reports on any Form. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

2. Particular attention is directed to Regulation 12B (17 CFR 240.12b-1 et seq.) which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. See also Regulations 13A (17 CFR 240.13a-1 et seq.) and 15D (17 CFR 240.15d-1 et seq.).

D. Preparation of Report.

This Form is not to be used as a blank Form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). To the extent that Item 1.01 and one or more other items of the Form are applicable, registrants need not provide the number and caption of Item 1.01 so long as the substantive disclosure required by Item 1.01 is disclosed in the report and the number and caption of the other applicable item(s) are provided. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

E. Signature and Filing of Report.

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed, with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

F. Incorporation by Reference.

If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a press release or other document or statement containing information meeting some or all of the requirements of this Form, the information called for may be incorporated by reference to such published document or statement, in answer or partial answer to any item or items of this Form, provided copies thereof are filed as an exhibit to the report on this Form.

G. Use of this Form by Asset-Backed Issuers.

The following applies to registrants that are asset-backed issuers. Terms used in this General Instruction G. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

1. *Reportable Events That May Be Omitted.*

The registrant need not file a report on this Form upon the occurrence of any one or more of the events specified in the following:

(a) Item 1.05, Cybersecurity Incidents;

(b) Item 2.01, Completion of Acquisition or Disposition of Assets;

(c) Item 2.02, Results of Operations and Financial Condition;

(d) Item 2.03, Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant;

(e) Item 2.05, Costs Associated with Exit or Disposal Activities;

(f) Item 2.06, Material Impairments;

(g) Item 3.01, Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing;

(h) Item 3.02, Unregistered Sales of Equity Securities;

(i) Item 4.01, Changes in Registrant's Certifying Accountant;

(j) Item 4.02, Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review;

(k) Item 5.01, Changes in Control of Registrant;

(l) Item 5.02, Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers;

(m) Item 5.04, Temporary Suspension of Trading Under Registrant's Employee Benefit Plans; and

(n) Item 5.05, Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

2. *Additional Disclosure for the Form 8-K Cover Page.*

Immediately after the name of the issuing entity on the cover page of the Form 8-K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

3. Signatures.

The Form 8-K must be signed by the depositor. In the alternative, the Form 8-K may be signed on behalf of the issuing entity by a duly authorized representative of the servicer. If multiple servicers are involved in servicing the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

INFORMATION TO BE INCLUDED IN THE REPORT

Section 1 - Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

(a) If the registrant has entered into a material definitive agreement not made in the ordinary course of business of the registrant, or into any amendment of such agreement that is material to the registrant, disclose the following information:

(1) the date on which the agreement was entered into or amended, the identity of the parties to the agreement or amendment and a brief description of any material relationship between the registrant or its affiliates and any of the parties, other than in respect of the material definitive agreement or amendment; and

(2) a brief description of the terms and conditions of the agreement or amendment that are material to the registrant.

(b) For purposes of this Item 1.01, a material definitive agreement means an agreement that provides for obligations that are material to and enforceable against the registrant, or rights that are material to the registrant and enforceable by the registrant against one or more other parties to the agreement, in each case whether or not subject to conditions.

Instructions.

1. Any material definitive agreement of the registrant not made in the ordinary course of the registrant's business must be disclosed under this Item 1.01. An agreement is deemed to be not made in the ordinary course of a registrant's business even if the agreement is such as ordinarily accompanies the kind of business conducted by the registrant if it involves the subject matter identified in Item 601(b)(10)(ii)(A) - (D) of Regulation S-K (17 CFR 229.601(b)(10)(ii)(A) - (D)). An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) need not be disclosed under this Item.

2. A registrant must provide disclosure under this Item 1.01 if the registrant succeeds as a party to the agreement or amendment to the agreement by assumption or assignment (other than in connection with a merger or acquisition or similar transaction).

3. With respect to asset-backed securities, as defined in Item 1101 of Regulation AB (17 CFR 229.1101), disclosure is required under this Item 1.01 regarding the entry into or an amendment to a definitive agreement that is material to the asset-backed securities transaction, even if the registrant is not a party to such agreement (e.g., a servicing agreement with a servicer contemplated by Item 1108(a)(3) of Regulation AB (17 CFR 229.1108(a)(3)).

4. To the extent a material definitive agreement is filed as an exhibit under this Item 1.01, schedules (or similar attachments) to the exhibits are not required to be filed unless they contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of

omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

5. To the extent a material definitive agreement is filed as an exhibit under this Item 1.01, the registrant may redact information from the exhibit if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (e.g., disclosure of bank account numbers, social security numbers, home addresses and similar information).

6. To the extent a material definitive agreement is filed as an exhibit under this Item 1.01, the registrant may redact specific provisions or terms of the exhibit if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material, provided that the registrant intends to incorporate by reference this filing into its future periodic reports or registration statements, as applicable, in satisfaction of Item 601(b)(10) of Regulation S-K. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit.

If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses.

The registrant may request confidential treatment of the supplemental material submitted under this instruction pursuant to Rule 83 (§ 200.83) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rules 418 or 12b-4 (§ 230.418 or § 240.12b-4).

Item 1.02 Termination of a Material Definitive Agreement.

(a) If a material definitive agreement which was not made in the ordinary course of business of the registrant and to which the registrant is a party is terminated otherwise than by expiration of the agreement on its stated termination date, or as a result of all parties completing their obligations under such agreement, and such termination of the agreement is material to the registrant, disclose the following information:

(1) the date of the termination of the material definitive agreement, the identity of the parties to the agreement and a brief description of any material relationship between the registrant or its affiliates and any of the parties other than in respect of the material definitive agreement;

(2) a brief description of the terms and conditions of the agreement that are material to the registrant;

(3) a brief description of the material circumstances surrounding the termination; and

(4) any material early termination penalties incurred by the registrant.

(b) For purposes of this Item 1.02, the term material definitive agreement shall have the same meaning as set forth in Item 1.01(b).

Instructions.

1. No disclosure is required solely by reason of this Item 1.02 during negotiations or discussions regarding termination of a material definitive agreement unless and until the agreement has been terminated.

2. No disclosure is required solely by reason of this Item 1.02 if the registrant believes in good faith that the material definitive agreement has not been terminated, unless the registrant has received a notice of termination pursuant to the terms of agreement.

3. With respect to asset-backed securities, as defined in Item 1101 of Regulation AB (17 CFR 229.1101), disclosure is required under this Item 1.02 regarding the termination of a definitive agreement that is material to the asset-backed securities transaction (otherwise than by expiration of the agreement on its stated termination date or as a result of all parties completing their obligations under such agreement), even if the registrant is not a party to such agreement (e.g., a servicing agreement with a servicer contemplated by Item 1108(a)(3) of Regulation AB (17 CFR 229.1108(a)(3)).

Item 1.03 Bankruptcy or Receivership.

(a) If a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority, disclose the following information:

(1) the name or other identification of the proceeding;

(2) the identity of the court or governmental authority;

(3) the date that jurisdiction was assumed; and

(4) the identity of the receiver, fiscal agent or similar officer and the date of his or her appointment.

(b) If an order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the registrant or its parent, disclose the following;

(1) the identity of the court or governmental authority;

(2) the date that the order confirming the plan was entered by the court or governmental authority;

(3) a summary of the material features of the plan and, pursuant to Item 9.01 (Financial Statements and Exhibits), a copy of the plan as confirmed;

(4) the number of shares or other units of the registrant or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) information as to the assets and liabilities of the registrant or its parent as of the date that the order confirming the plan was entered, or a date as close thereto as practicable.

Instructions.

1. The information called for in paragraph (b)(5) of this Item 1.03 may be presented in the Form in which it was furnished to the court or governmental authority.

2. With respect to asset-backed securities, disclosure also is required under this Item 1.03 if the depositor (or servicer if the servicer signs the report on Form 10-K (17 CFR 249.310) of the issuing entity) becomes aware of any instances described in paragraph (a) or (b) of this Item with respect to the sponsor, depositor, servicer contemplated by Item 1108(a)(3) of Regulation AB (17 CFR 229.1108(a)(3)), trustee, significant obligor, enhancement or support provider contemplated by Items 1114(b) or 1115 of Regulation AB (17 CFR 229.1114(b) or 229.1115) or other material party contemplated by Item 1101(d)(1) of Regulation AB (17 CFR 1101(d)(1)). Terms used in this Instruction 2 have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

Item 1.04 Mine Safety – Reporting of Shutdowns and Patterns of Violations.

(a) If the registrant or a subsidiary of the registrant has received, with respect to a coal or other mine of which the registrant or a subsidiary of the registrant is an operator

- an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a));

- a written notice from the Mine Safety and Health Administration that the coal or other mine has a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

- a written notice from the Mine Safety and Health Administration that the coal or other mine has the potential to have such a pattern, disclose the following information:

(1) The date of receipt by the issuer or a subsidiary of such order or notice.

(2) The category of the order or notice.

(3) The name and location of the mine involved.

Instructions to Item 1.04.

1. The term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq).

2. The term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

Item 1.05 Material Cybersecurity Incidents.

(a) If the registrant experiences a cybersecurity incident that is determined by the registrant to be material, describe the material aspects of the nature, scope, and timing of the incident, and the material impact or reasonably likely material impact on the registrant, including its financial condition and results of operations.

(b) A registrant shall provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual.

(c) Notwithstanding General Instruction B.1. to Form 8-K, if the United States Attorney General determines that disclosure required by paragraph (a) of this Item 1.05 poses a substantial risk to national security or public safety, and notifies the Commission of such determination in writing, the registrant may delay providing the disclosure required by this Item 1.05 for a time period specified by the Attorney General, up to 30 days following the date when the disclosure required by this Item 1.05 was otherwise required to be provided. Disclosure may be delayed for an additional period of up to 30 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing. In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security and notifies the Commission of such determination in writing. Beyond the final 60-day delay under this paragraph, if the Attorney General indicates that further delay is necessary, the Commission will consider additional requests for delay and may grant such relief through Commission exemptive order.

(d) Notwithstanding General Instruction B.1. to Form 8-K, if a registrant that is subject to 47 CFR 64.2011 is required to delay disclosing a data breach pursuant to such rule, it may delay providing the disclosure required by this Item 1.05 for such period that is applicable under 47 CFR 64.2011(b)(1) and in no event for more than seven business days after notification required under such provision has been made, so long as the registrant notifies the Commission in correspondence submitted to the EDGAR system no later than the date when the disclosure required by this Item 1.05 was otherwise required to be provided.

Instructions to Item 1.05.

1. A registrant's materiality determination regarding a cybersecurity incident must be made without unreasonable delay after discovery of the incident.

2. To the extent that the information called for in Item 1.05(a) is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 1.05 containing such information within four business days after the registrant, without unreasonable delay, determines such information or within four business days after such information becomes available.

3. The definition of the term "cybersecurity incident" in §229.106(a) [Item 106(a) of Regulation S-K] applies to this Item.

4. A registrant need not disclose specific or technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.

Section 2 - Financial Information

Item 2.01 Completion of Acquisition or Disposition of Assets.

If the registrant or any of its subsidiaries consolidated has completed the acquisition or disposition of a significant amount of assets, otherwise than in the ordinary course of business, or the acquisition or disposition of a significant amount of assets that constitute a real estate operation as defined in § 210.3-14(a)(2) disclose the following information:

(a) the date of completion of the transaction;

(b) a brief description of the assets involved;

(c) the identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship, other than in respect of the transaction, between such person(s) and the registrant or any of its affiliates, or any director or officer of the registrant, or any associate of any such director or officer;

(d) the nature and amount of consideration given or received for the assets and, if any material relationship is disclosed pursuant to paragraph (c) of this Item 2.01, the formula or principle followed in determining the amount of such consideration;

(e) if the transaction being reported is an acquisition and if a material relationship exists between the registrant or any of its affiliates and the source(s) of the funds used in the acquisition, the identity of the source(s) of the funds unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, in which case the identity of such bank may be omitted provided the registrant:

(1) has made a request for confidentiality pursuant to Section 13(d)(1)(B) of the Act; and

(2) states in the report that the identity of the bank has been so omitted and filed separately with the Commission; and

(f) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), immediately before the transaction in which the registrant acquired a business that is its predecessor, disclose the information that would be required if the acquired business or real estate operation that is its predecessor were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction. However, when, at the time of filing, the predecessor meets the conditions of an emerging growth company, as defined in § 230.405 of this chapter (Rule 405 of the Securities Act) or § 240.12b-2 of this chapter (Rule 12b-2 of the Exchange Act), the registrant need not present audited financial statements for the predecessor for any period prior to the earliest audited period presented in its financial statements included in a previously filed registration or proxy statement for the transaction resulting in the loss of shell company status. Notwithstanding General Instruction B.3. to Form 8-K, if any disclosure required by this Item 2.01(f) is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

Instructions.

1. No information need be given as to:

(i) any transaction between any person and any wholly-owned subsidiary of such person;

(ii) any transaction between two or more wholly-owned subsidiaries of any person; or

(iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities or by a wholly-owned subsidiary of that issuer.

2. The term acquisition includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition, except that the term does not include the construction or development of property by or for the registrant or its subsidiaries or the acquisition of materials for such purpose. The term disposition includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, assignment or hypothecation of assets, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this Item 2.01 is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities is deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition will be deemed to involve a significant amount of assets:

(i) if the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded 10 percent of the total assets of the registrant and its consolidated subsidiaries;

(ii) if it involved a business (see 17 CFR 210.11-01(d)) that is significant (see 17 CFR 210.11-01(b)). The acquisition of a business encompasses the acquisition of an interest in a business accounted for by the registrant under the equity method or, in lieu of the equity method, the fair value option; or

(iii) in the case of a business development company, if the amount paid for such assets exceeded 10 percent of the value of the total investments of the registrant and its consolidated subsidiaries.

The aggregate impact of acquired businesses are not required to be reported pursuant to this Item 2.01 unless they are related businesses (see 17 CFR 210.3-05(a)(3)), related real estate operations (see 17 CFR 210.3-14(a)(3)), or related funds (see 17 CFR 210.6-11(a)(3)), and are significant in the aggregate.

5. Attention is directed to the requirements in Item 9.01 (Financial Statements and Exhibits) with respect to the filing of:

(i) financial statements of businesses or funds acquired;

(ii) pro forma financial information; and

(iii) copies of the plans of acquisition or disposition as exhibits to the report.

Item 2.02 Results of Operations and Financial Condition.

(a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall disclose the date of the announcement or release, briefly identify the announcement or release and include the text of that announcement or release as an exhibit.

(b) A Form 8-K is not required to be furnished to the Commission under this Item 2.02 in the case of disclosure of material non-public information that is disclosed orally, telephonically, by webcast, by broadcast, or by similar means if:

(1) the information is provided as part of a presentation that is complementary to, and initially occurs within 48 hours after, a related, written announcement or release that has been furnished on Form 8-K pursuant to this Item 2.02 prior to the presentation;

(2) the presentation is broadly accessible to the public by dial-in conference call, by webcast, by broadcast or by similar means;

(3) the financial and other statistical information contained in the presentation is provided on the registrant's website, together with any information that would be required under 17 CFR 244.100; and

(4) the presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's website where the information would be available.

Instructions.

1. The requirements of this Item 2.02 are triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 2.02 requirement.

2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02.

3. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders are permitted to specify which portion of the report contains the information required to be furnished under this Item 2.02.

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10-K (17 CFR 249.310).

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

(a) If the registrant becomes obligated on a direct financial obligation that is material to the registrant, disclose the following information:

(1) the date on which the registrant becomes obligated on the direct financial obligation and a brief description of the transaction or agreement creating the obligation;

(2) the amount of the obligation, including the terms of its payment and, if applicable, a brief description of the material terms under which it may be accelerated or increased and the nature of any recourse provisions that would enable the registrant to recover from third parties; and;

(3) a brief description of the other terms and conditions of the transaction or agreement that are material to the registrant.

(b) If the registrant becomes directly or contingently liable for an obligation that is material to the registrant arising out of an off-balance sheet arrangement, disclose the following information:

(1) the date on which the registrant becomes directly or contingently liable on the obligation and a brief description of the transaction or agreement creating the arrangement and obligation;

(2) a brief description of the nature and amount of the obligation of the registrant under the arrangement, including the material terms whereby it may become a direct obligation, if applicable, or may be accelerated or increased and the nature of any recourse provisions that would enable the registrant to recover from third parties;

(3) the maximum potential amount of future payments (undiscounted) that the registrant may be required to make, if different; and

(4) a brief description of the other terms and conditions of the obligation or arrangement that are material to the registrant.

(c) For purposes of this Item 2.03, direct financial obligation means any of the following:

(1) a long-term debt obligation means a payment obligation under long-term borrowings referenced in FASB ASC paragraph 470- 10-50-1 (Debt Topic) as may be modified or supplemented;

(2) a finance lease obligation means a payment obligation under a lease that would be classified as a finance lease pursuant to FASB ASC Topic 842, Leases, as may be modified or supplemented;

(3) an operating lease obligation means a payment obligation under a lease that would be classified as an operating lease pursuant to FASB ASC Topic 840, as may be modified or supplemented; or

(4) a short-term debt obligation that arises other than in the ordinary course of business.

(d) For purposes of this Item 2.03, off-balance sheet arrangement means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has.

(1) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC paragraph 460-10-15-4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460-10-15-7, 460-10-25-1, and 460-10-30-1.

(2) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(3) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, Derivatives and Hedging, pursuant to FASB ASC subparagraph 815-10-15-74(a), as may be modified or supplemented; or

(4) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary), as may be modified or supplemented in an

unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

(e) For purposes of this Item 2.03, short-term debt obligation means a payment obligation under a borrowing arrangement that is scheduled to mature within one year, or, for those registrants that use the operating cycle concept of working capital, within a registrant's operating cycle that is longer than one year, as discussed in FASB ASC paragraph 210-10-45-3 (Balance Sheet Topic).

Instructions.

1. A registrant has no obligation to disclose information under this Item 2.03 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the direct financial obligation will arise or be created or issued. If there is no such agreement, the registrant must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the direct financial obligation arises or is created.

2. A registrant must provide the disclosure required by paragraph (b) of this Item 2.03 whether or not the registrant is also a party to the transaction or agreement creating the contingent obligation arising under the off-balance sheet arrangement. In the event that neither the registrant nor any affiliate of the registrant is also a party to the transaction or agreement creating the contingent obligation arising under the off-balance sheet arrangement in question, the four business day period for reporting the event under this Item 2.03 shall begin on the earlier of (i) the fourth business day after the contingent obligation is created or arises, and (ii) the day on which an executive officer, as defined in 17 CFR 240.3b-7, of the registrant becomes aware of the contingent obligation.

3. In the event that an agreement, transaction or arrangement requiring disclosure under this Item 2.03 comprises a facility, program or similar arrangement that creates or may give rise to direct financial obligations of the registrant in connection with multiple transactions, the registrant shall:

(i) disclose the entering into of the facility, program or similar arrangement if the entering into of the facility is material to the registrant; and

(ii) as direct financial obligations arise or are created under the facility or program, disclose the required information under this Item 2.03 to the extent that the obligations are material to the registrant (including when a series of previously undisclosed individually immaterial obligations become material in the aggregate).

4. For purposes of Item 2.03(b)(3), the maximum amount of future payments shall not be reduced by the effect of any amounts that may possibly be recovered by the registrant under recourse or collateralization provisions in any guarantee agreement, transaction or arrangement.

5. If the obligation required to be disclosed under this Item 2.03 is a security, or a term of a security, that has been or will be sold pursuant to an effective registration statement of the

registrant, the registrant is not required to file a Form 8-K pursuant to this Item 2.03, provided that the prospectus relating to that sale contains the information required by this Item 2.03 and is filed within the required time period under Securities Act Rule 424 (§230.424 of this chapter).

Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

(a) If a triggering event causing the increase or acceleration of a direct financial obligation of the registrant occurs and the consequences of the event, taking into account those described in paragraph (a)(4) of this Item 2.04, are material to the registrant, disclose the following information:

(1) the date of the triggering event and a brief description of the agreement or transaction under which the direct financial obligation was created and is increased or accelerated;

(2) a brief description of the triggering event;

(3) the amount of the direct financial obligation, as increased if applicable, and the terms of payment or acceleration that apply; and

(4) any other material obligations of the registrant that may arise, increase, be accelerated or become direct financial obligations as a result of the triggering event or the increase or acceleration of the direct financial obligation.

(b) If a triggering event occurs causing an obligation of the registrant under an off-balance sheet arrangement to increase or be accelerated, or causing a contingent obligation of the registrant under an off-balance sheet arrangement to become a direct financial obligation of the registrant, and the consequences of the event, taking into account those described in paragraph (b)(4) of this Item 2.04, are material to the registrant, disclose the following information:

(1) the date of the triggering event and a brief description of the off-balance sheet arrangement;

(2) a brief description of the triggering event;

(3) the nature and amount of the obligation, as increased if applicable, and the terms of payment or acceleration that apply; and

(4) any other material obligations of the registrant that may arise, increase, be accelerated or become direct financial obligations as a result of the triggering event or the increase or acceleration of the obligation under the off-balance sheet arrangement or its becoming a direct financial obligation of the registrant.

(c) For purposes of this Item 2.04, the term direct financial obligation has the meaning provided in Item 2.03 of this Form, but shall also include an obligation arising out of an off-balance sheet arrangement that is accrued under FASB ASC Section 450-20-25, Contingencies - Loss Contingencies – Recognition, as a probable loss contingency.

(d) For purposes of this Item 2.04, the term off-balance sheet arrangement has the meaning provided in Item 2.03 of this Form.

(e) For purposes of this Item 2.04, a triggering event is an event, including an event of default, event of acceleration or similar event, as a result of which a direct financial obligation of the registrant or an obligation of the registrant arising under an off-balance sheet arrangement is increased or becomes accelerated or as a result of which a contingent obligation of the registrant arising out of an off-balance sheet arrangement becomes a direct financial obligation of the registrant.

Instructions.

1. Disclosure is required if a triggering event occurs in respect of an obligation of the registrant under an off-balance sheet arrangement and the consequences are material to the registrant, whether or not the registrant is also a party to the transaction or agreement under which the triggering event occurs.

2. No disclosure is required under this Item 2.04 unless and until a triggering event has occurred in accordance with the terms of the relevant agreement, transaction or arrangement, including, if required, the sending to the registrant of notice of the occurrence of a triggering event pursuant to the terms of the agreement, transaction or arrangement and the satisfaction of all conditions to such occurrence, except the passage of time.

3. No disclosure is required solely by reason of this Item 2.04 if the registrant believes in good faith that no triggering event has occurred, unless the registrant has received a notice described in Instruction 2 to this Item 2.04.

4. Where a registrant is subject to an obligation arising out of an off-balance sheet arrangement, whether or not disclosed pursuant to Item 2.03 of this Form, if a triggering event occurs as a result of which under that obligation an accrual for a probable loss is required under FASB ASC Section 450-20-25, the obligation arising out of the off-balance sheet arrangement becomes a direct financial obligation as defined in this Item 2.04. In that situation, if the consequences as determined under Item 2.04(b) are material to the registrant, disclosure is required under this Item 2.04.

5. With respect to asset-backed securities, as defined in 17 CFR 229.1101, disclosure also is required under this Item 2.04 if an early amortization, performance trigger or other event, including an event of default, has occurred under the transaction agreements for the asset-backed securities that would materially alter the payment priority or distribution of cash flows regarding the asset-backed securities or the amortization schedule for the asset-backed securities. In providing the disclosure required by this Item, identify the changes to the payment priorities, flow of funds or asset-backed securities as a result. Disclosure is required under this Item whether or not the registrant is a party to the transaction agreement that results in the occurrence identified.

Item 2.05 Costs Associated with Exit or Disposal Activities.

If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, commits the registrant to an exit or disposal plan, or otherwise disposes of a long-lived asset or terminates employees under a plan of termination described in FASB ASC paragraph 420-10-25-4 (Exit or Disposal Cost Obligations Topic), under which material charges will be incurred under generally accepted accounting principles applicable to the registrant, disclose the following information:

(a) the date of the commitment to the course of action and a description of the course of action, including the facts and circumstances leading to the expected action and the expected completion date;

(b) for each major type of cost associated with the course of action (for example, one-time termination benefits, contract termination costs and other associated costs), an estimate of the total amount or range of amounts expected to be incurred in connection with the action;

(c) an estimate of the total amount or range of amounts expected to be incurred in connection with the action; and

(d) the registrant's estimate of the amount or range of amounts of the charge that will result in future cash expenditures, provided, however, that if the registrant determines that at the time of filing it is unable in good faith to make a determination of an estimate required by paragraphs (b), (c) or (d) of this Item 2.05, no disclosure of such estimate shall be required; provided further, however, that in any such event, the registrant shall file an amended report on Form 8-K under this Item 2.05 within four business days after it makes a determination of such an estimate or range of estimates.

Item 2.06 Material Impairments.

If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, concludes that a material charge for impairment to one or more of its assets, including, without limitation, impairments of securities or goodwill, is required under generally accepted accounting principles applicable to the registrant, disclose the following information:

(a) the date of the conclusion that a material charge is required and a description of the impaired asset or assets and the facts and circumstances leading to the conclusion that the charge for impairment is required;

(b) the registrant's estimate of the amount or range of amounts of the impairment charge; and

(c) the registrant's estimate of the amount or range of amounts of the impairment charge that will result in future cash expenditures, provided, however, that if the registrant determines that at the time of filing it is unable in good faith to make a determination of an estimate required by paragraphs (b) or (c) of this Item 2.06, no disclosure of such estimate shall be required; provided further, however, that in any such event, the registrant shall file an amended report on

Form 8-K under this Item 2.06 within four business days after it makes a determination of such an estimate or range of estimates.

Instruction.

No filing is required under this Item 2.06 if the conclusion is made in connection with the preparation, review or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act, the periodic report is filed on a timely basis and such conclusion is disclosed in the report.

Section 3 - Securities and Trading Markets

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

(a) If the registrant has received notice from the national securities exchange or national securities association (or a facility thereof) that maintains the principal listing for any class of the registrant's common equity (as defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2)) that:

- the registrant or such class of the registrant's securities does not satisfy a rule or standard for continued listing on the exchange or association;
- the exchange has submitted an application under Exchange Act Rule 12d2-2 (17 CFR 240.12d2-2) to the Commission to delist such class of the registrant's securities; or
- the association has taken all necessary steps under its rules to delist the security from its automated inter-dealer quotation system,

the registrant must disclose:

(i) the date that the registrant received the notice;

(ii) the rule or standard for continued listing on the national securities exchange or national securities association that the registrant fails, or has failed to, satisfy; and

(iii) any action or response that, at the time of filing, the registrant has determined to take in response to the notice.

(b) If the registrant has notified the national securities exchange or national securities association (or a facility thereof) that maintains the principal listing for any class of the registrant's common equity (as defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2) that the registrant is aware of any material noncompliance with a rule or standard for continued listing on the exchange or association, the registrant must disclose:

(i) the date that the registrant provided such notice to the exchange or association;

(ii) the rule or standard for continued listing on the exchange or association that the registrant fails, or has failed, to satisfy; and

(iii) any action or response that, at the time of filing, the registrant has determined to take regarding its noncompliance.

(c) If the national securities exchange or national securities association (or a facility thereof) that maintains the principal listing for any class of the registrant's common equity (as defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2)), in lieu of suspending trading in or delisting such class of the registrant's securities, issues a public reprimand letter or similar communication indicating that the registrant has violated a rule or standard for continued listing on the exchange or association, the registrant must state the date, and summarize the contents of the letter or communication.

(d) If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, has taken definitive action to cause the listing of a class of its common equity to be withdrawn from the national securities exchange, or terminated from the automated inter-dealer quotation system of a registered national securities association, where such exchange or association maintains the principal listing for such class of securities, including by reason of a transfer of the listing or quotation to another securities exchange or quotation system, describe the action taken and state the date of the action.

Instructions.

1. The registrant is not required to disclose any information required by paragraph (a) of this Item 3.01 where the delisting is a result of one of the following:

- the entire class of the security has been called for redemption, maturity or retirement; appropriate notice thereof has been given; if required by the terms of the securities, funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments; and such funds have been made available to security holders;

- the entire class of the security has been redeemed or paid at maturity or retirement;

- the instruments representing the entire class of securities have come to evidence, by operation of law or otherwise, other securities in substitution therefor and represent no other right, except, if true, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision); or

- all rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as the result of an order of a court or other governmental authority, the order shall be final, all applicable appeal periods shall have expired and no appeals shall be pending.

2. A registrant must provide the disclosure required by paragraph (a) or (b) of this Item 3.01, as applicable, regarding any failure to satisfy a rule or standard for continued listing on the national securities exchange or national securities association (or a facility thereof) that

maintains the principal listing for any class of the registrant's common equity (as defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2)) even if the registrant has the benefit of a grace period or similar extension period during which it may cure the deficiency that triggers the disclosure requirement.

3. Notices or other communications subsequent to an initial notice sent to, or by, a registrant under Item 3.01(a), (b) or (c) that continue to indicate that the registrant does not comply with the same rule or standard for continued listing that was the subject of the initial notice are not required to be filed, but may be filed voluntarily.

4. Registrants whose securities are quoted exclusively (i.e., the securities are not otherwise listed on an exchange or association) on automated inter-dealer quotation systems are not subject to this Item 3.01 and such registrants are thus not required to file a Form 8-K pursuant to this Item 3.01 if the securities are no longer quoted on such quotation system. If a security is listed on an exchange or association and is also quoted on an automated inter-dealer quotation system, the registrant is subject to the disclosure obligations of Item 3.01 if any of the events specified in Item 3.01 occur.

Item 3.02 Unregistered Sales of Equity Securities.

(a) If the registrant sells equity securities in a transaction that is not registered under the Securities Act, furnish the information set forth in paragraphs (a) and (c) through (e) of Item 701 of Regulation S-K (17 CFR 229.701(a) and (c) through (e). For purposes of determining the required filing date for the Form 8-K under this Item 3.02(a), the registrant has no obligation to disclose information under this Item 3.02 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the registrant must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the equity securities are to be sold.

(b) No report need be filed under this Item 3.02 if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 1% of the number of shares outstanding of the class of equity securities sold. In the case of a smaller reporting company, no report need be filed if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 5% of the number of shares outstanding of the class of equity securities sold.

Instructions.

1. For purposes of this Item 3.02, "the number of shares outstanding" refers to the actual number of shares of equity securities of the class outstanding and does not include outstanding securities convertible into or exchangeable for such equity securities.

2. A smaller reporting company is defined under Item 10(f)(1) of Regulation S-K (17 CFR 229.10(f)(1)).

Item 3.03 Material Modification to Rights of Security Holders.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities of the registrant have been materially modified, disclose the date of the modification, the title of the class of securities involved and briefly describe the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities by the registrant, briefly disclose the date of the issuance or modification, the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction.

Working capital restrictions and other limitations upon the payment of dividends must be reported pursuant to this Item 3.03.

Section 4 - Matters Related to Accountants and Financial Statements

Item 4.01 Changes in Registrant's Certifying Accountant.

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, disclose the information required by Item 304(a)(1) of Regulation S-K (17 CFR 229.304(a)(1) of this chapter), including compliance with Item 304(a)(3) of Regulation S-K (17 CFR 229.304(a)(3) of this chapter).

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, the registrant must disclose the information required by Item 304(a)(2) of Regulation S-K (17 CFR 229.304(a)(2)).

Instruction.

The resignation or dismissal of an independent accountant, or its refusal to stand for re-appointment, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8-K are required for a single change in accountants, the first on the resignation (or refusal to stand for re-appointment) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 8-K in such situations need not be provided to the extent that it has been reported previously in the first Form 8-K.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

(a) If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, concludes that any previously issued financial statements, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (17 CFR 210) should no longer be relied upon because of an error in such financial statements as addressed in FASB ASC Topic 250, Accounting Changes and Error Corrections, as may be modified, supplemented or succeeded, disclose the following information:

(1) the date of the conclusion regarding the non-reliance and an identification of the financial statements and years or periods covered that should no longer be relied upon;

(2) a brief description of the facts underlying the conclusion to the extent known to the registrant at the time of filing; and

(3) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the registrant's independent accountant the matters disclosed in the filing pursuant to this Item 4.02(a).

(b) If the registrant is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements, disclose the following information:

(1) the date on which the registrant was so advised or notified;

(2) identification of the financial statements that should no longer be relied upon;

(3) a brief description of the information provided by the accountant; and

(4) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the independent accountant the matters disclosed in the filing pursuant to this Item 4.02(b).

(c) If the registrant receives advisement or notice from its independent accountant requiring disclosure under paragraph (b) of this Item 4.02, the registrant must:

(1) provide the independent accountant with a copy of the disclosures it is making in response to this Item 4.02 that the independent accountant shall receive no later than the day that the disclosures are filed with the Commission;

(2) request the independent accountant to furnish to the registrant as promptly as possible a letter addressed to the Commission stating whether the independent accountant agrees with the statements made by the registrant in response to this Item 4.02 and, if not, stating the respects in which it does not agree; and

(3) amend the registrant's previously filed Form 8-K by filing the independent accountant's letter as an exhibit to the filed Form 8-K no later than two business days after the registrant's receipt of the letter.

Section 5 - Corporate Governance and Management

Item 5.01 Changes in Control of Registrant.

(a) If, to the knowledge of the registrant's board of directors, a committee of the board of directors or authorized officer or officers of the registrant, a change in control of the registrant has occurred, furnish the following information:

(1) the identity of the person(s) who acquired such control;

(2) the date and a description of the transaction(s) which resulted in the change in control;

(3) the basis of the control, including the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control;

(4) the amount of the consideration used by such person(s);

(5) the source(s) of funds used by the person(s), unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, in which case the identity of such bank may be omitted provided the person who acquired control:

(i) has made a request for confidentiality pursuant to Section 13(d)(1)(B) of the Act; and

(ii) states in the report that the identity of the bank has been so omitted and filed separately with the Commission.

(6) the identity of the person(s) from whom control was assumed;

(7) any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters; and

(8) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), immediately before the change in control, the information that would be required if the registrant were filing a general Form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the change in control, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8-K, if any disclosure required by this Item 5.01(a)(8) is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may

identify the filing in which that disclosure is included instead of including that disclosure in this report.

(b) Furnish the information required by Item 403(c) of Regulation S-K (17 CFR 229.403(c)).

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(a) (1) If a director has resigned or refuses to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the registrant, known to an executive officer of the registrant, as defined in 17 CFR 240.3b-7, on any matter relating to the registrant's operations, policies or practices, or if a director has been removed for cause from the board of directors, disclose the following information:

(i) the date of such resignation, refusal to stand for re-election or removal;

(ii) any positions held by the director on any committee of the board of directors at the time of the director's resignation, refusal to stand for re-election or removal; and

(iii) a brief description of the circumstances representing the disagreement that the registrant believes caused, in whole or in part, the director's resignation, refusal to stand for re-election or removal.

(2) If the director has furnished the registrant with any written correspondence concerning the circumstances surrounding his or her resignation, refusal or removal, the registrant shall file a copy of the document as an exhibit to the report on Form 8-K.

(3) The registrant also must:

(i) provide the director with a copy of the disclosures it is making in response to this Item 5.02 no later than the day the registrant file the disclosures with the Commission;

(ii) provide the director with the opportunity to furnish the registrant as promptly as possible with a letter addressed to the registrant stating whether he or she agrees with the statements made by the registrant in response to this Item 5.02 and, if not, stating the respects in which he or she does not agree; and

(iii) file any letter received by the registrant from the director with the Commission as an exhibit by an amendment to the previously filed Form 8-K within two business days after receipt by the registrant.

(b) If the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, or any named executive officer, retires, resigns or is terminated from that position, or if a director retires, resigns, is removed, or refuses to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), disclose the fact that the event has occurred and the date of the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions, disclose the following information with respect to the newly appointed officer:

(1) the name and position of the newly appointed officer and the date of the appointment;

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S-K (17 CFR 229.401(b), (d), (e) and 229.404(a)); and

(3) a brief description of any material plan, contract or arrangement (whether or not written) to which a covered officer is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

Instruction to paragraph (c).

If the registrant intends to make a public announcement of the appointment other than by means of a report on Form 8-K, the registrant may delay filing the Form 8-K containing the disclosures required by this Item 5.02(c) until the day on which the registrant otherwise makes public announcement of the appointment of such officer.

(d) If the registrant elects a new director, except by a vote of security holders at an annual meeting or special meeting convened for such purpose, disclose the following information:

(1) the name of the newly elected director and the date of election;

(2) a brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director;

(3) the committees of the board of directors to which the new director has been, or at the time of this disclosure is expected to be, named; and

(4) the information required by Item 404(a) of Regulation S-K (17 CFR 229.404(a)).

(5) a brief description of any material plan, contract or arrangement (whether or not written) to which the director is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(e) If the registrant enters into, adopts, or otherwise commences a material compensatory plan, contract or arrangement (whether or not written), as to which the registrant's principal executive officer, principal financial officer, or a named executive officer participates or is a party, or such compensatory plan, contract or arrangement is materially amended or modified, or a material grant or award under any such plan, contract or arrangement to any such person is

made or materially modified, then the registrant shall provide a brief description of the terms and conditions of the plan, contract or arrangement and the amounts payable to the officer thereunder.

Instructions to paragraph (e).

1. Disclosure under this Item 5.02(e) shall be required whether or not the specified event is in connection with events otherwise triggering disclosure pursuant to this Item 5.02.

2. Grants or awards (or modifications thereto) made pursuant to a plan, contract or arrangement (whether involving cash or equity), that are materially consistent with the previously disclosed terms of such plan, contract or arrangement, need not be disclosed under this Item 5.02(e), provided the registrant has previously disclosed such terms and the grant, award or modification is disclosed when Item 402 of Regulation S-K (17 CFR 229.402) requires such disclosure.

(f) (1) If the salary or bonus of a named executive officer cannot be calculated as of the most recent practicable date and is omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K, disclose the appropriate information under this Item 5.02(f) when there is a payment, grant, award, decision or other occurrence as a result of which such amounts become calculable in whole or part. Disclosure under this Item 5.02(f) shall include a new total compensation figure for the named executive officer, using the new salary or bonus information to recalculate the information that was previously provided with respect to the named executive officer in the registrant's Summary Compensation Table for which the salary and bonus information was omitted in reliance on Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K (17 CFR 229.402(c)(2)(iii) and (iv)).

(2) As specified in Instruction 6 to Item 402(u) of Regulation S-K (17 CFR 229.402(u)), disclosure under this Item 5.02(f) with respect to the salary or bonus of a principal executive officer shall include pay ratio disclosure pursuant to Item 402(u) of Regulation S-K calculated using the new total compensation figure for the principal executive officer. Pay ratio disclosure is not required under this Item 5.02(f) until the omitted salary or bonus amounts for such principal executive officer become calculable in whole.

Instructions to Item 5.02.

1. The disclosure requirements of this Item 5.02 do not apply to a registrant that is a wholly-owned subsidiary of an issuer with a class of securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

2. To the extent that any information called for in Item 5.02(c)(3) or Item 5.02(d)(3) or Item 5.02(d)(4) is not determined or is unavailable at the time of the required filing, the registrant shall include a statement this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 5.02 containing such information within four business days after the information is determined or becomes available.

3. The registrant need not provide information with respect to plans, contracts, and arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

4. For purposes of this Item, the term "named executive officer" shall refer to those executive officers for whom disclosure was required in the registrant's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a et seq.) or Exchange Act (15 U.S.C. 78a et seq.) that required disclosure pursuant to Item 402(c) of Regulation S-K (17 CFR 229.402(c)).

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

1. If a registrant with a class of equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l) amends its articles of incorporation or bylaws and a proposal for the amendment was not disclosed in a proxy statement or information statement filed by the registrant, disclose the following information:

(i) the effective date of the amendment; and

(ii) a description of the provision adopted or changed by amendment and, if applicable, the previous provision.

2. If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission other than by means of:

(i) a submission to a vote of security holders through the solicitation of proxies or otherwise; or

(ii) an amendment to its articles of incorporation or bylaws, disclose the date of such determination, the date of the new fiscal year end and the Form (for example, Form 10-K or Form 10-Q) on which the report covering the transition period will be filed.

Instructions to Item 5.03.

1. Refer to Item 601(b)(3) of Regulation S-K (17 CFR 229.601(b)(3) regarding the filing of exhibits to this Item 5.03.

2. With respect to asset-backed securities, as defined in 17 CFR 229.1101, disclosure is required under this Item 5.03 regarding any amendment to the governing documents of the issuing entity, regardless of whether the class of asset-backed securities is reporting under Section 13 or 15(d) of the Exchange Act.

Item 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans.

(a) No later than the fourth business day after which the registrant receives the notice required by section 101(i)(2)(E) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(2)(E)), or, if such notice is not received by the registrant, on the same date by which the registrant transmits a timely notice to an affected officer or director within the time

period prescribed by Rule 104(b)(2)(i)(B) or 104(b)(2)(ii) of Regulation BTR (17 CFR 245.104(b)(2)(i)(B) or 17 CFR 245.104(b)(2)(ii)), provide the information specified in Rule 104(b) (17 CFR 245.104(b)) and the date the registrant received the notice required by section 101(i)(2)(E) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(2)(E)), if applicable.

(b) On the same date by which the registrant transmits a timely updated notice to an affected officer or director, as required by the time period under Rule 104(b)(2)(iii) of Regulation BTR (17 CFR 245.104(b)(2)(iii)), provide the information specified in Rule 104(b)(3)(iii) (17 CFR 245.104(b)(2)(iii)).

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

(a) Briefly describe the date and nature of any amendment to a provision of the registrant's code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulations S-K (17 CFR 228.406(b)).

(b) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to an officer or person described in paragraph (a) of this Item 5.05, and the waiver relates to one or more of the elements of the code of ethics definition referred to in paragraph (a) of this Item 5.05, briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(c) The registrant does not need to provide any information pursuant to this Item 5.05 if it discloses the required information on its Internet website within four business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by this Item 5.05 through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions.

1. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

2. For purposes of this Item 5.05:

(i) The term waiver means the approval by the registrant of a material departure from a provision of the code of ethics; and

(ii) The term implicit waiver means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics

that has been made known to an executive officer, as defined in Rule 3b-7 (17 CFR 240.3b-7) of the registrant.

Section 5.06 -Change in Shell Company Status.

If a registrant that was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), has completed a transaction that has the effect of causing it to cease being a shell company, as defined in Rule 12b-2, disclose the material terms of the transaction. Notwithstanding General Instruction B.3. to Form 8-K, if any disclosure required by this Item 5.06 is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

Item 5.07 Submission of Matters to a Vote of Security Holders.

If any matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise, provide the following information:

(a) The date of the meeting and whether it was an annual or special meeting. This information must be provided only if a meeting of security holders was held.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting, as well as a brief description of each other matter voted upon at the meeting; and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office. For the vote on the frequency of shareholder advisory votes on executive compensation required by section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1) and §240.14a-21(b), state the number of votes cast for each of 1 year, 2 years, and 3 years, as well as the number of abstentions.

(c) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (17 CFR 240.14a-101)) terminating any solicitation subject to Rule 14a-12(c), including the cost or anticipated cost to the registrant.

(d) No later than one hundred fifty calendar days after the end of the annual or other meeting of shareholders at which shareholders voted on the frequency of shareholder votes on the compensation of executives as required by section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1), but in no event later than sixty calendar days prior to the deadline for submission of shareholder proposals under §240.14a-8, as disclosed in the registrant's most recent proxy statement for an annual or other meeting of shareholders relating to the election of directors at which shareholders voted on the frequency of shareholder votes on the compensation of executives as required by section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(2)), by amendment to the most recent Form 8-K filed pursuant to (b) of this Item, disclose the company's decision in light of such vote as to how frequently the company will include a shareholder vote on the compensation of executives in its proxy materials until the next required vote on the frequency of shareholder votes on the compensation of executives.

Instruction 1 to Item 5.07. The four business day period for reporting the event under this Item 5.07, other than with respect to Item 5.07(d), shall begin to run on the day on which the meeting ended. The registrant shall disclose on Form 8-K under this Item 5.07 the preliminary voting results. The registrant shall file an amended report on Form 8-K under this Item 5.07 to disclose the final voting results within four business days after the final voting results are known. However, no preliminary voting results need be disclosed under this Item 5.07 if the registrant has disclosed final voting results on Form 8-K under this Item.

Instruction 2 to Item 5.07. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be provided. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

Instruction 3 to Item 5.07. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto regarding the election of directors.

Instruction 4 to Item 5.07. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (c), the paragraph may be answered by reference to the information contained in such material.

Instruction 5 to Item 5.07. A registrant may omit the information called for by this Item 5.07 if, on the date of the filing of its report on Form 8-K, the registrant meets the following conditions:

1. All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Exchange Act and which has filed all the material required to be filed pursuant to Section 13, 14 or 15(d) thereof, as applicable; and

2. During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases.

Item 5.08 Shareholder Director Nominations

(a) If the registrant did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 calendar days from the date of the previous year's meeting, then the registrant is required to disclose the date by which a nominating shareholder or nominating shareholder group must submit the notice on Schedule 14N (§ 240.14n–101) required pursuant to § 240.14a–11(b)(10), which date shall be a reasonable time before the registrant mails its proxy materials for the meeting. Where a registrant is required to include shareholder director nominees in the registrant's proxy materials pursuant to either an applicable state or foreign law provision, or a provision in the registrant's governing documents, then the registrant is required to disclose the date by which a nominating shareholder or nominating shareholder group must submit the notice on Schedule 14N required pursuant to § 240.14a–18.

(b) If the registrant is a series company as defined in Rule 18f–2(a) under the Investment Company Act of 1940 (§ 270.18f–2 of this chapter), then the registrant is required to disclose in connection with the election of directors at an annual meeting of shareholders (or, in lieu of such an annual meeting, a special meeting of shareholders) the total number of shares of the registrant outstanding and entitled to be voted (or if the votes are to be cast on a basis other than one vote per share, then the total number of votes entitled to be voted and the basis for allocating such votes) on the election of directors at such meeting of shareholders as of the end of the most recent calendar quarter.

Section 6 -Asset-Backed Securities

The Items in this Section 6 apply only to asset-backed securities. Terms used in this Section 6 have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

Item 6.01 ABS Informational and Computational Material.

Report under this Item any ABS informational and computational material filed in, or as an exhibit to, this report.

Item 6.02 Change of Servicer or Trustee.

If a servicer contemplated by Item 1108(a)(2) of Regulation AB (17 CFR 229.1108(a)(2)) or a trustee has resigned or has been removed, replaced or substituted, or if a new servicer contemplated by Item 1108(a)(2) of Regulation AB or trustee has been appointed, state the date the event occurred and the circumstances surrounding the change. In addition, provide the disclosure required by Item 1108(d) of Regulation AB (17 CFR 229.1108(c)), as applicable, regarding the servicer or trustee change. If a new servicer contemplated by Item 1108(a)(3) of this Regulation AB or a new trustee has been appointed, provide the information required by Item 1108(b) through (d) of Regulation AB regarding such servicer or Item 1109 of Regulation AB (17 CFR 229.1109) regarding such trustee, as applicable.

Instruction.

To the extent that any information called for by this Item regarding such servicer or trustee is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 6.02 containing such information within four business days after the information is determined or becomes available.

Item 6.03 Change in Credit Enhancement or Other External Support.

(a) Loss of existing enhancement or support. If the depositor (or servicer if the servicer signs the report on Form 10-K (17 CFR 249.310) of the issuing entity) becomes aware that any material enhancement or support specified in Item 1114(a)(1) through (3) of Regulation AB (17 CFR 229.1114(a)(1) through (3)) or Item 1115 of Regulation AB (17 CFR 229.1115) that was previously applicable regarding one or more classes of the asset-backed securities has terminated other than by expiration of the contract on its stated termination date or as a result of all parties completing their obligations under such agreement, then disclose:

(1) the date of the termination of the enhancement;

(2) the identity of the parties to the agreement relating to the enhancement or support;

(3) a brief description of the terms and conditions of the enhancement or support that are material to security holders;

(4) a brief description of the material circumstances surrounding the termination; and

(5) any material early termination penalties paid or to be paid out of the cash flows backing the asset-backed securities.

(b) Addition of new enhancement or support. If the depositor (or servicer if the servicer signs the report on Form 10-K (17 CFR 249.310) of the issuing entity) becomes aware that any material enhancement specified in Item 1114(a)(1) through (3) of Regulation AB (17 CFR 229.1114(a)(1) through (3)) or Item 1115 of Regulation AB (17 CFR 229.1115) has been added with respect to one or more classes of the asset-backed securities, then provide the date of addition of the new enhancement or support and the disclosure required by Items 1114 or 1115 of Regulation AB, as applicable, with respect to such new enhancement or support.

(c) Material change to enhancement or support. If the depositor (or servicer if the servicer signs the report on Form 10-K (17 CFR 249.310) of the issuing entity) becomes aware that any existing material enhancement or support specified in Item 1114(a)(1) through (3) of Regulation AB or Item 1115 of Regulation AB with respect to one or more classes of the asset-backed securities has been materially amended or modified, disclose:

(1) the date on which the agreement or agreements relating to the enhancement or support was amended or modified;

(2) the identity of the parties to the agreement or agreements relating to the amendment or modification; and

(3) a brief description of the material terms and conditions of the amendment or modification.

Instructions.

1. Disclosure is required under this Item whether or not the registrant is a party to any agreement regarding the enhancement or support if the loss, addition or modification of such enhancement or support materially affects, directly or indirectly, the asset-backed securities, the pool assets or the cash flow underlying the asset-backed securities.

2. To the extent that any information called for by this Item regarding the enhancement or support is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 6.03 containing such information within four business days after the information is determined or becomes available.

3. The instructions to Items 1.01 and 1.02 of this Form apply to this Item.

4. Notwithstanding Items 1.01 and 1.02 of this Form, disclosure regarding changes to material enhancement or support is to be reported under this Item 6.03 in lieu of those Items.

Item 6.04 Failure to Make a Required Distribution.

If a required distribution to holders of the asset-backed securities is not made as of the required distribution date under the transaction documents, and such failure is material, identify the failure and state the nature of the failure to make the timely distribution.

Item 6.05 Securities Act Updating Disclosure.

Regarding an offering of asset-backed securities registered on Form SF-3 (17 CFR 239.45), if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 5% or more (other than as a result of the pool assets converting into cash in accordance with their terms) from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (17 CFR 230.424), disclose the information required by Items 1111 and 1112 of Regulation AB (17 CFR 229.1111 and 17 CFR 229.1112) regarding the characteristics of the actual asset pool. If applicable, also provide information required by Items 1108 and 1110 of Regulation AB (17 CFR 229.1108 and 17 CFR 229.1110) regarding any new servicers or originators that would be required to be disclosed under those items regarding the pool assets.

Instruction.

No report is required under this Item if substantially the same information is provided in a post-effective amendment to the Securities Act registration statement or in a subsequent prospectus filed pursuant to Securities Act Rule 424 (17 CFR 230.424).

Item 6.06 Static Pool.

Regarding an offering of asset-backed securities registered on Form SF-1 (17 CFR 239.44) or Form SF-3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a Form of prospectus or prospectus, an issuer may file the required information in this report or as an exhibit to this report. The static pool disclosure must be filed by the time of effectiveness of a registration statement on Form SF-1, by the same date of the filing of a Form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)), and by the same date of the filing of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S-K (17 CFR 229.601(b)(106)) regarding the filing of exhibits to this Item 6.06.

2. Refer to Item 10 of Form SF-1 (17 CFR 239.44) or Item 10 of Form SF-3 (17 CFR 239.45) regarding incorporation by reference.

Section 7 - Regulation FD

Item 7.01 Regulation FD Disclosure.

Unless filed under Item 8.01, disclose under this item only information that the registrant elects to disclose through Form 8-K pursuant to Regulation FD (17 CFR 243.100 through 243.103).

Section 8 - Other Events

Item 8.01 Other Events.

The registrant may, at its option, disclose under this Item 8.01 any events, with respect to which information is not otherwise called for by this Form, that the registrant deems of importance to security holders. The registrant may, at its option, file a report under this Item 8.01 disclosing the nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 through 243.103).

Section 9 - Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

List below the financial statements, pro forma financial information and exhibits, if any, filed as a part of this report.

(a) Financial statements of businesses or funds acquired.

(1) For any business acquisition or fund acquisition required to be described in answer to Item 2.01 of this Form, file financial statements and any applicable supplemental information, of the business acquired specified in Rules 3-05 or 3-14 of Regulation S-X (17 CFR 210.3-05 and 210.3-14), or Rules 8-04 or 8-06 of Regulation S-X (17 CFR 210.8-04 and 210.8-06) for smaller reporting companies, or of the fund acquired specified in Rule 6-11 of Regulation S-X (17 CR 210.6-11).

(2) The financial statements must be prepared pursuant to Regulation S-X except that supporting schedules need not be filed unless required by Rule 6-11 of Regulation S-X (17 CFR 210.6-11). A manually signed accountant's report should be provided pursuant to Rule 2-02 of Regulation S-X (17 CFR 210.2-02).

(3) Financial statements required by this item may be filed with the initial report, or by amendment not later than 71 calendar days after the date that the initial report on Form 8-K must be filed. If the financial statements are not included in the initial report, the registrant should so indicate in the Form 8-K report and state when the required financial statements will be filed.

The registrant may, at its option, include unaudited financial statements in the initial report on Form 8-K.

(b) Pro forma financial information.

(1) For any transaction required to be described in answer to Item 2.01 of this Form, file any pro forma financial information that would be required pursuant to Article 11 of Regulation S-X (17 CFR 210) or Rule 8-05 of Regulation S-X (17 CFR 210.8-05) for smaller reporting companies unless it involves the acquisition of a fund subject to Rule 6-11 of Regulation S-X (17 CFR 210.6-11).

(2) The provisions of paragraph (a)(3) of this Item 9.01 must also apply to pro forma financial information relative to the acquired business.

(c) *Shell company transactions.* The provisions of paragraph (a)(3) and (b)(2) of this Item do not apply to the financial statements or pro forma financial information required to be filed under this Item with regard to any transaction required to be described in answer to Item 2.01 of this Form by a registrant that was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), immediately before that transaction. Accordingly, with regard to any transaction required to be described in answer to Item 2.01 of this Form by a registrant that was a shell company, other than a business combination related shell company, immediately before that transaction, the financial statements and pro forma financial information required by this Item must be filed in the initial report. Notwithstanding General Instruction B.3. to Form 8-K, if any financial statement or any financial information required to be filed in the initial report by this Item 9.01(c) is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in the initial report.

(d) *Exhibits.* The exhibits shall be deemed to be filed or furnished, depending on the relevant item requiring such exhibit, in accordance with the provisions of Item 601 of Regulation S-K (17 CFR 229.601) and Instruction B.2 to this Form.

Instruction.

During the period after a registrant has reported an acquisition pursuant to Item 2.01 of this Form, until the date on which the financial statements specified by this Item 9.01 must be filed, the registrant will be deemed current for purposes of its reporting obligations under Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). With respect to filings under the Securities Act, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective unless financial statements meeting the requirements of Rule 3-05, Rule 3-14, Rule 6-11, Rule 8-04, and Rule 8-06 of Regulation S-X (17 CFR 210.3-05, 210.3-14, 210.6-11, 210.8-04, and 210.8-06), as applicable, are provided. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rule 506 of Regulation D (17 CFR 230.506) where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the audited financial statements required by Rule 3-05, Rule 3-14, Rule 6-11, Rule 8-04, and Rule 8-06 of Regulation S-X (17 CFR 210.3-05, 210.3-14, 210.6-11, 210.8-04, and 210.8-06), as applicable, are filed; provided, however, that the following offerings or sales of securities may proceed notwithstanding that financial statements of the acquired business have not been filed:

(a) offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) dividend or interest reinvestment plans;

(c) employee benefit plans;

(d) transactions involving secondary offerings; or

(e) sales of securities pursuant to Rule 144 (17 CFR 230.144).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____
(Registrant)

Date _____

_____
(Signature)*

*Print name and title of the signing officer under his signature.

APPENDIX B:
COMPLIANCE AND DISCLOSURE INTERPRETATIONS:
EXCHANGE ACT FORM 8-K

Exchange Act Form 8-K

Last Update: June 24, 2024

These interpretations replace the Form 8-K interpretations in the July 1997 Manual of Publicly Available Telephone Interpretations, the June 13, 2003 Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures and the November 22, 2004 Form 8-K Frequently Asked Questions. Some of the interpretations included here were originally published in the sources noted above, and have been revised in some cases. The bracketed date following each interpretation is the latest date of publication or revision.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 101. Form 8-K — General Guidance

Question 101.01

Question: If a triggering event specified in one of the items of Form 8-K occurs within four business days before a registrant's filing of a periodic report, may the registrant disclose the event in its periodic report rather than a separate Form 8-K? If so, under what item of the periodic report should the event be disclosed? Item 5 of Part II of Form 10-Q and Item 9B of Form 10-K appear to be limited to events that were required to be disclosed during the period covered by those reports.

Answer: Yes, a triggering event occurring within four business days before the registrant's filing of a periodic report may be disclosed in that periodic report, except for filings required to be made under Item 4.01 of Form 8-K, Changes in Registrant's Certifying Accountant and Item 4.02 of Form 8-K, Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review. The registrant may disclose triggering events, other than Items 4.01 and 4.02 events, on the periodic report under Item 5 of Part II of Form 10-Q or Item 9B of Form 10-K, as applicable. All Item 4.01 and Item 4.02 events must be reported on Form 8-K. Of course, amendments to previously filed Forms 8-K must be filed on a Form 8-K/A. See also Exchange Act Form 8-K Question 106.04 regarding the ability to rely on Item 2.02 of Form 8-K. [April 2, 2008]

Question 101.02

Question: Some items of Form 8-K are triggered by the specified event occurring in relation to the "registrant" (such as Items 1.01, 1.02, 2.03, 2.04). Other items of Form 8-K refer also to majority-owned subsidiaries (such as Item 2.01). Should registrants interpret all Form 8-K Items as applying the triggering event to the registrant and subsidiaries, other than items that obviously apply only at the registrant level, such as changes in directors and principal officers?

Answer: Yes. Triggering events apply to registrants and subsidiaries. For example, entry by a subsidiary into a non-ordinary course definitive agreement that is material to the registrant is reportable under Item 1.01 and termination of such an agreement is reportable under Item 1.02. Similarly, Item 2.03 disclosure is triggered by definitive obligations or off-balance sheet arrangements of the registrant and/or its subsidiaries that are material to the registrant. [April 2, 2008]

Question 101.03

Question: General Instruction E to Form 8-K requires that a copy of the report be filed with each exchange where the registrant's securities are listed. Does the term "exchange" as used in the instruction refer only to domestic exchanges?

Answer: Yes. The term "exchange" as used in the instruction refers only to domestic exchanges and, accordingly, Form 8-K reports need be furnished only to domestic exchanges. [April 2, 2008]

Question 101.04

Question: If a Form 8-K contains audited annual financial statements that are a revised version of financial statements previously filed with the Commission and have been revised to reflect the effects of certain subsequent events, such as discontinued operations, a change in reportable segments or a change in accounting principle, then under Item 601(b)(101)(i) of Regulation S-K, the filer must submit an interactive data file with the Form 8-K for those revised audited annual financial statements. Paragraph 6(a) of General Instruction C of Form 6-K contains a similar requirement. Item 601(b)(101)(ii) of Regulation S-K and Paragraph 6(b) of General Instruction C of Form 6-K permit a filer to voluntarily submit an interactive data file with a Form 8-K or 6 K, respectively, under specified conditions. Is a filer permitted to voluntarily submit an interactive data file with a Form 8-K or 6-K for other financial statements that may be included in the Form 8-K or 6-K, but for which an interactive data file is not required to be submitted? For example, if the Form 6-K contains interim financial statements other than pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20-F?

Answer: Yes, if the filer otherwise complies with Item 601(b)(101)(ii) of Regulation S-K and Paragraph 6(b) of General Instruction C of Form 6-K, as applicable. [Sep. 14, 2009]

Question 101.05

Question: If a filer is required to submit an interactive data file with a form other than a Form 8-K or 6-K, may the filer satisfy this requirement by submitting the interactive data file with a Form 8-K or 6-K?

Answer: No. If a filer does not submit an interactive data file with a form as required, the filer must amend the form to include the interactive data file. [Sep. 14, 2009]

Section 102. Item 1.01 Entry into a Material Definitive Agreement

Question 102.01

Question: If an agreement that was not material at the time the registrant entered into it becomes material at a later date, must the registrant file an Item 1.01 Form 8-K at the time the agreement becomes material?

Answer: No. If an agreement becomes material to the registrant but was not material to the registrant when it entered into, or amended, the agreement, the registrant need not file a Form 8-K under Item 1.01. In any event, the registrant must file the agreement as an exhibit to the periodic report relating to the reporting period in which the agreement became material if, at any time during that period, the agreement was material to the registrant. In this regard, the registrant would apply the requirements of Item 601 of Regulation S-K to determine if the agreement must be filed with the periodic report. [April 2, 2008]

Question 102.02

Question: Is a placement agency or underwriting agreement a material definitive agreement for purposes of Item 1.01? If so, does the requirement to disclose the parties to the agreement require disclosure of the name of the placement agent or underwriter? Would such disclosure render the safe harbor from the definition of an "offer" included in Securities Act Rule 135c not available for the Form 8-K filing?

Answer: The registrant must determine whether specific agreements are material using established standards of materiality and with reference to Instruction 1 to Item 1.01. If the registrant determines that such an agreement requires filing under Item 1.01, it may, as under Item 3.02, omit the identity of the underwriters from the disclosure in the Form 8-K to remain within the safe harbor of Rule 135c. [April 2, 2008]

Question 102.03

Question: Must a material definitive agreement be summarized in the body of the Form 8-K if it is filed as an exhibit to the Form 8-K?

Answer: Yes. Item 1.01 requires "a brief description of the material terms and conditions of the agreement or amendment that are material to the registrant." Therefore, incorporation by reference of the actual agreement would not satisfy this disclosure requirement. In some cases, the agreement may be so brief that it may make sense to disclose all the terms of the agreement into the body of the Form 8-K. [April 2, 2008]

Question 102.04

Question: A registrant enters into a business combination agreement, such as a merger agreement, that is reportable under Item 1.01 of Form 8-K as a material definitive agreement. What material terms and conditions of the agreement should the registrant disclose in the Form 8-K?

Answer: Item 1.01 of Form 8-K requires a brief description of the terms and conditions of the agreement that are material to the registrant. Although the materiality of a term or condition of the business combination agreement will ultimately depend on the particular facts and circumstances, the following terms should generally be viewed as material and disclosed in the Form 8-K:

- the amount and nature of consideration offered for the business combination (or the method, exchange ratio, or formula for determining the consideration);
- any committed financing arrangements (e.g., PIPE investments), or the need for financing to close the business combination transaction, along with the material terms of such arrangements;
- any material terms regarding the securities ownership or management structure of the combined or surviving company after the closing of the business combination transaction;
- any material conditions to the closing of the transaction; and
- the anticipated timeframes for filing any Securities Act registration statement, proxy or information statement, or tender offer materials, as well as for the closing of the business combination transaction.

The Form 8-K also must include all other material information that is necessary to make the required disclosure, in light of the circumstances under which it is made, not misleading. See Exchange Act Rule 12b-20 and Exchange Act Section 10(b). For example, the registrant should consider disclosing the following information in the Form 8-K so that investors can evaluate the business combination agreement with the proper context:

- if a material term of the agreement has not yet been determined by the parties, the Form 8-K should affirmatively state so; and

- in the case where the registrant is the acquiror, the Form 8-K should briefly describe the nature of the target company's business, including, at a minimum, whether it has existing operations or has generated revenues, as well as any information disclosed by the target company in announcing the business combination transaction. [March 22, 2022]

Question 102.05

Question: Under the factual circumstances described in Question 102.04 above, should the registrant file the material definitive agreement as an exhibit to the Item 1.01 Form 8-K?

Answer: Registrants are encouraged, as a best practice, to file the agreement as an exhibit to the Item 1.01 Form 8-K. The Commission did not require the material definitive agreement to be filed as an exhibit to the Item 1.01 Form 8-K due to the registrant's need for time to (1) request confidential treatment of sensitive terms of the agreement and (2) prepare the agreement in the proper EDGAR format. See Release No. 33-8400 (March 16, 2004).

The Commission, however, recently amended Form 8-K to permit registrants to redact sensitive terms of a material definitive agreement without submitting a confidential treatment request. See Instructions 5 and 6 to Item 1.01 of Form 8-K; see also Release No. 33-10618 (March 20, 2019). The need for confidential treatment generally can no longer be the basis for declining to file the material definitive agreement as an exhibit to the Item 1.01 Form 8-K. This is consistent with the Commission's previous views. See Release No. 33-8400 ("[W]e encourage companies to file the exhibit with the Form 8-K when feasible, particularly when no confidential treatment is requested.").

Further, absent unusual circumstances, it should generally be feasible to prepare the agreement in the proper EDGAR format within the four business day timeframe for filing an Item 1.01 Form 8-K, given technological advances since 2004 and widespread availability of EDGAR filing services. Registrants that are unable to prepare the agreement in the proper EDGAR format and file the agreement as an exhibit should, as a best practice, provide an explanation in the Form 8-K. [March 22, 2022]

Section 103. Item 1.02 Termination of a Material Definitive Agreement

Question 103.01

Question: A material definitive agreement has an advance notice provision that requires 180 days advance notice to terminate. The counterparty delivers to the registrant written advance notice of termination. Even though the registrant intends to negotiate with the counterparty and believes in good faith that the agreement will ultimately not be terminated, is an Item 1.02 Form 8-K required when the registrant receives the appropriate advance notice of termination?

Answer: Yes. Although Instruction 1 to Item 1.02 notes that no disclosure is required solely by reason of that item during negotiations or discussions regarding termination of a material definitive agreement unless and until the agreement has been terminated, and Instruction 2 indicates that no disclosure is required if the registrant believes in good faith that the material definitive agreement has not been terminated, Instruction 2 clarifies that, once notice of termination pursuant to the terms of the agreement has been received, the Form 8-K is required, notwithstanding the registrant's continued efforts to negotiate a continuation of the contract. [April 2, 2008]

Question 103.02

Question: A material definitive agreement expires automatically on June 30, 200X, but is continued for successive one-year terms until the next June 30th unless one party sends a non-renewal notice during a 30-day window period six months before the automatic renewal – in other words, January. Does non-renewal of this type of agreement by sending the notice in January trigger Item 1.02 disclosure?

Answer: Yes. The triggering event is the sending of the notice in January, not the termination of the agreement on June 30th. However, automatic renewal in accordance with the terms of the agreement (in other words, when no non-renewal notice is sent) does not trigger the filing of an Item 1.01 Form 8-K. [April 2, 2008]

Question 103.03

Question: A material definitive agreement expires on June 30, 200X. It provides that either party may renew the agreement for another one-year term ending on June 30th if it sends a renewal notice to the other party during January, and the other party does not affirmatively reject that notice in February. If neither party sends a renewal notice during January, which means that the agreement terminates on June 30th, is an Item 1.02 Form 8-K filing required?

Answer: No. This would be a termination on the agreement's stated termination date that does not trigger an Item 1.02 filing. If one party sends a renewal notice that is not rejected, an Item 1.01 Form 8-K is required. Such a filing would be triggered by the passage of the rejection deadline on February 28th, and not the sending of the renewal notice in January. [April 2, 2008]

Section 104. Item 1.03 Bankruptcy or Receivership

None

Section 104A. Item 1.04 Mine Safety – Reporting of Shutdowns and Patterns of Violations

None

Section 104B. Item 1.05 Material Cybersecurity Incidents.

Question 104B.01

Question: A registrant experiences a material cybersecurity incident, and requests that the Attorney General determine that disclosure of the incident on Form 8-K poses a substantial risk to national security or public safety. The Attorney General declines to make such determination or does not respond before the Form 8-K otherwise would be due. What is the deadline for the registrant to file an Item 1.05 Form 8-K disclosing the incident?

Answer: The registrant must file the Item 1.05 Form 8-K within four business days of its determination that the incident is material. Requesting a delay does not change the registrant's filing obligation. The registrant may delay providing the Item 1.05 Form 8-K disclosure only if the Attorney General determines that disclosure would pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing before the Form 8-K otherwise would be due. For further information on the Department of Justice's procedures with respect to Item 1.05(c) of Form 8-K, please see Department of Justice Material Cybersecurity Incident Delay Determinations, Department of Justice (2023), at https://www.justice.gov/media/1328226/dl?inline [December 12, 2023]

Question 104B.02

Question: A registrant experiences a material cybersecurity incident, and requests that the Attorney General determine that disclosure of the incident on Form 8-K poses a substantial risk to national security or public safety. The Attorney General makes such determination and notifies the Commission that disclosure should be delayed for a time period as provided for in Form 8-K Item 1.05(c). The registrant subsequently requests that the Attorney General determine that disclosure should be delayed for an additional time period. The Attorney General declines to make such determination or does not respond before the expiration of the current delay period. What is the deadline for the registrant to file an Item 1.05 Form 8-K disclosing the incident?

Answer: The registrant must file the Item 1.05 Form 8-K within four business days of the expiration of the delay period provided by the Attorney General. For further information on the Department of Justice's procedures with respect to Item 1.05(c) of Form 8-K, please see Department of Justice Material Cybersecurity Incident Delay Determinations, Department of Justice (2023), at https://www.justice.gov/media/1328226/dl?inline [December 12, 2023]

Question 104B.03

Question: A registrant experiences a material cybersecurity incident and disclosure of the incident on Form 8-K is delayed pursuant to Form 8-K Item 1.05(c) for a time period of up to 30 days, as specified by the Attorney General. Subsequently, during the pendency of the delay period, the Attorney General determines that disclosure of the incident no longer poses a substantial risk to national security or public safety. The Attorney General notifies the Commission and the registrant of this new determination. What is the deadline for the registrant to file an Item 1.05 Form 8-K disclosing the incident?

Answer: The registrant must file the Item 1.05 Form 8-K within four business days of the Attorney General's notification to the Commission and the registrant that disclosure of the incident no longer poses a substantial risk to national security or public safety. See also "Changes in circumstances during a delay period" in Department of Justice Material Cybersecurity Incident Delay Determinations, Department of Justice (2023), at https://www.justice.gov/media/1328226/dl?inline [December 12, 2023]

Question 104B.04

Question: Would the sole fact that a registrant consults with the Department of Justice regarding the availability of a delay under Item 1.05(c) necessarily result in the determination that the incident is material and therefore subject to the requirements of Item 1.05(a)?

Answer: No. As the Commission stated in the adopting release, the determination of whether an incident is material is based on all relevant facts and circumstances surrounding the incident, including both

quantitative and qualitative factors, and should focus on the traditional notion of materiality as articulated by the Supreme Court.

Furthermore, the requirements of Item 1.05 do not preclude a registrant from consulting with the Department of Justice, including the FBI, the Cybersecurity & Infrastructure Security Agency, or any other law enforcement or national security agency at any point regarding the incident, including before a materiality assessment is completed. [December 14, 2023]

Question 104B.05

Question: A registrant experiences a cybersecurity incident involving a ransomware attack. The ransomware attack results in a disruption in operations or the exfiltration of data. After discovering the incident but before determining whether the incident is material, the registrant makes a ransomware payment, and the threat actor that caused the incident ends the disruption of operations or returns the data. Is the registrant still required to make a materiality determination regarding the incident?

Answer: Yes. Item 1.05 of Form 8-K requires a registrant that experiences a cybersecurity incident to determine whether that incident is material. The cessation or apparent cessation of the incident prior to the materiality determination, including as a result of the registrant making a ransomware payment, does not relieve the registrant of the requirement to make such materiality determination.

Further, in making the required materiality determination, the registrant cannot necessarily conclude that the incident is not material simply because of the prior cessation or apparent cessation of the incident. Instead, in assessing the materiality of the incident, the registrant should, as the Commission noted in the adopting release for Item 1.05 of Form 8-K, determine "if there is a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision, or if it would have significantly altered the total mix of information made available," notwithstanding the fact that the incident may have already been resolved. Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11216; 34-97989 (July 26, 2023) [88 FR 51896, 51917 (Aug. 4, 2023)] (quoting Matrixx Initiatives v. Siracusano, 563 U.S. 27, 38-40 (2011); Basic Inc. v. Levinson, 485 U.S. 224, 240 (1988); TSC Indus. v. Northway, 426 U.S. 438, 449 (1976)) (internal quotation marks omitted). [June 24, 2024]

Question 104B.06

Question: A registrant experiences a cybersecurity incident that it determines to be material. That incident involves a ransomware attack that results in a disruption in operations or the exfiltration of data and has a material impact or is reasonably likely to have a material impact on the registrant, including its financial condition and results of operations. Subsequently, the registrant makes a ransomware payment, and the threat actor that caused the incident ends the disruption of operations or returns the data. If the registrant has not reported the incident pursuant to Item 1.05 of Form 8-K before it made the ransomware payment and the threat actor has ended the disruption of operations or returned the data before the Form 8-K Item 1.05 filing deadline, does the registrant still need to disclose the incident pursuant to Item 1.05 of Form 8-K?

Answer: Yes. Because the registrant experienced a cybersecurity incident that it determined to be material, the subsequent ransomware payment and cessation or apparent cessation of the incident does not relieve the registrant of the requirement to report the incident under Item 1.05 of Form 8-K within four business days after the registrant determines that it has experienced a material cybersecurity incident. [June 24, 2024]

Question 104B.07

Question: A registrant experiences a cybersecurity incident involving a ransomware attack, and the registrant makes a ransomware payment to the threat actor that caused the incident. The registrant has an insurance policy that covers cybersecurity incidents and is reimbursed for all or a substantial portion of the ransomware payment. Is the incident necessarily not material as a result of the registrant being reimbursed for the ransomware payment under its insurance policy?

Answer: No. The standard that the Commission articulated for assessing the materiality of a cybersecurity incident under Item 1.05 of Form 8-K is set forth in the adopting release for the rule and is reiterated in Question 104B.05. Further, as the Commission noted in the adopting release for Item 1.05 of Form 8-K, when assessing the materiality of cybersecurity incidents, registrants "should take into consideration all relevant facts and circumstances, which may involve consideration of both quantitative and qualitative factors" including, for example, "consider[ing] both the immediate fallout and any longer term effects on its operations, finances, brand perception, customer relationships, and so on, as part of its materiality analysis." Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11216; 34-97989 (July 26, 2023) [88 FR 51896, 51917 (Aug. 4, 2023)]. Under the facts described in this question, such consideration also may include an assessment of the subsequent availability of, or increase in cost to the registrant of, insurance policies that cover cybersecurity incidents. [June 24, 2024]

Question 104B.08

Question: A registrant experiences a cybersecurity incident involving a ransomware attack. Is the size of the ransomware payment, by itself, determinative as to whether the cybersecurity incident is material? For example, would a ransomware payment that is small in size necessarily make the related cybersecurity incident immaterial?

Answer: No. The standard that the Commission articulated for assessing the materiality of a cybersecurity incident under Item 1.05 of Form 8-K is set forth in the adopting release for the rule and reiterated in Question 104B.05. Under that standard, the size of any ransomware payment demanded or made is only one of the facts and circumstances that registrants should consider in making its materiality determination regarding the cybersecurity incident. Further, in the adopting release for Item 1.05 of Form 8-K, the Commission declined "to use a quantifiable trigger for Item 1.05 because some cybersecurity incidents may be material yet not cross a particular financial threshold."

Any ransomware payment made is only one of the various potential impacts of a cybersecurity incident that a registrant should consider under Item 1.05. As the Commission further stated in Item 1.05's adopting release:

[T]he material impact of an incident may encompass a range of harms, some quantitative and others qualitative. A lack of quantifiable harm does not necessarily mean an incident is not material. For example, an incident that results in significant reputational harm to a registrant . . . may not cross a particular quantitative threshold, but it should nonetheless be reported if the reputational harm is material.

Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11216; 34-97989 (July 26, 2023) [88 FR 51896, 51906 (Aug. 4, 2023)]. [June 24, 2024]

Question 104B.09

Question: A registrant experiences a series of cybersecurity incidents involving ransomware attacks over time, either by a single threat actor or by multiple threat actors. The registrant determines that each incident, individually, is immaterial. Is disclosure of those cybersecurity incidents nonetheless required pursuant to Item 1.05 of Form 8-K?

Answer: Disclosure of those cybersecurity incidents may, depending on the particular facts and circumstances, be required pursuant to Item 1.05 of Form 8-K. In these circumstances, the registrant should consider whether any of those incidents were related, and if so, determine whether those related incidents, collectively, were material. The definition of "cybersecurity incident" under Item 106(a) of Regulation S-K (which, as noted in Instruction 3 to Item 1.05, is the definition that applies to Item 1.05 of Form 8-K) includes "a series of related unauthorized occurrences." In the adopting release for Item 1.05, the Commission noted:

[W]hen a company finds that it has been materially affected by what may appear as a series of related cyber intrusions, Item 1.05 may be triggered even if the material impact or reasonably likely material impact could be parceled among the multiple intrusions to render each by itself immaterial. One example was provided in the Proposing Release: the same malicious actor engages in a number of smaller but continuous cyberattacks related in time and form against the same company and collectively, they are either quantitatively or qualitatively material. Another example is a series of related attacks from multiple actors exploiting the same vulnerability and collectively impeding the company's business materially.

Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11216; 34-97989 (July 26, 2023) [88 FR 51896, 51910 (Aug. 4, 2023)]. [June 24, 2024]

Section 105. Item 2.01 Completion of Acquisition or Disposition of Assets

None

Section 106. Item 2.02 Results of Operations and Financial Condition

Question 106.01

Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any financial and other statistical information contained in the presentation, together with any information that would be required by Regulation G. Would an audio file of the initial webcast satisfy this condition to the exemption?

Answer: Yes, provided that: (1) the audio file contains all material financial and other statistical information included in the presentation that was not previously disclosed, and (2) investors can access it and replay it through the company's web site. Alternatively, slides or a similar presentation posted on the web site at the time of the presentation containing the required, previously undisclosed, material financial and other statistical information would satisfy the condition. In each case, the company must provide all previously undisclosed material financial and other statistical information, including information provided in connection with any questions and answers. Regulation FD also may impose disclosure requirements in these circumstances. [Jan. 11, 2010]

Question 106.02

Question: A company issues its earnings release after the close of the market and holds a properly

noticed conference call to discuss its earnings two hours later. That conference call contains material, previously undisclosed, information of the type described under Item 2.02 of Form 8-K. Because of this timing, the company is unable to furnish its earnings release on a Form 8-K before its conference call. Accordingly, the company cannot rely on the exemption from the requirement to furnish the information in the conference call on a Form 8-K. What must the company file with regard to its conference call?

Answer: The company must furnish the material, previously non-public, financial and other statistical information required to be furnished on Item 2.02 of Form 8-K as an exhibit to a Form 8-K and satisfy the other requirements of Item 2.02 of Form 8-K. A transcript of the portion of the conference call or slides or a similar presentation including such information will satisfy this requirement. In each case, all material, previously undisclosed, financial and other statistical information, including that provided in connection with any questions and answers, must be provided. [Jan. 11, 2010]

Question 106.03

Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any material financial and other statistical information not previously disclosed and contained in the presentation, together with any information that would be required by Regulation G. When must all of this information appear on the company's web site?

Answer: The required information must appear on the company's web site at the time the oral presentation is made. In the case of information that is not provided in a presentation itself but, rather, is disclosed unexpectedly in connection with the question and answer session that was part of that oral presentation, the information must be posted on the company's web site promptly after it is disclosed. Any requirements of Regulation FD also must be satisfied. A webcast of the oral presentation would be sufficient to meet this requirement. [Jan. 11, 2010]

Question 106.04

Question: Company X files its quarterly earnings release as an exhibit to its Form 10-Q on Wednesday morning, prior to holding its earnings conference call Wednesday afternoon. Assuming that all of the other conditions of Item 2.02(b) are met, may the company rely on the exemption for its conference call even if it does not also furnish the earnings release in an Item 2.02 Form 8-K?

Answer: Yes. Company X's filing of the earnings release as an exhibit to its Form 10-Q, rather than in an Item 2.02 Form 8-K, before the conference call takes place, would not preclude reliance on the exemption for the conference call. [Jan. 11, 2010]

Question 106.05

Question: Does a company's failure to furnish to the Commission the Form 8-K required by Item 2.02 in a timely manner affect the company's eligibility to use Form S-3?

Answer: No. Form S-3 requires the company to have filed in "a timely manner all reports required to be filed in twelve calendar months and any portion of a month immediately preceding the filing of the registration statement." Because an Item 2.02 Form 8-K is furnished to the Commission, rather than filed with the Commission, failure to furnish such a Form 8-K in a timely manner would not affect a company's eligibility to use Form S-3. While not affecting a company's Form S-3 eligibility, failure to comply with

Item 2.02 of Form 8-K would, of course, be a violation of Section 13(a) of the Exchange Act and the rules thereunder. [Jan. 11, 2010]

Question 106.06

Question: Company A issues a press release announcing its results of operations for a just-completed fiscal quarter, including its expected adjusted earnings (a non-GAAP financial measure) for the fiscal period. Would this press release be subject to Item 2.02 of Form 8-K?

Answer: Yes, because it contains material, non-public information regarding its results of operations for a completed fiscal period. The adjusted earnings range presented would be subject to the requirements of Item 2.02 applicable to non-GAAP financial measures. [Jan. 11, 2010]

Question 106.07

Question: A registrant reports "preliminary" earnings and results of operations for a completed quarterly period, and some of these amounts may even be estimates. In issuing this preliminary earnings release, must the registrant comply with all of the requirements of, and instructions to, Item 2.02 of Form 8-K?

Answer: Yes. [April 24, 2009]

Section 107. Item 2.03 Creation of a Direct Financial Obligation under an Off-Balance Sheet Arrangement of a Registrant

Question 107.01

Question: Instruction 2 to Item 2.03 states that if the registrant is not a party to the transaction creating the contingent obligation arising under the off-balance sheet arrangement, the four business day period begins on the "earlier of" (1) the fourth business day after the contingent obligation is created or arises, and (2) the day on which an executive officer becomes aware. How can a registrant disclose something of which it is not aware?

Answer: A registrant must maintain disclosure and internal controls and procedures designed to ensure that information required to be disclosed by the issuer in the reports that it files under the Exchange Act, including Current Reports on Form 8-K, is recorded, processed, summarized and reported within the required time frames. Instruction 2 to Item 2.03 provides for an additional four business days as a "grace" period given the nature of the requirement. [April 2, 2008]

Question 107.02

Question: If a registrant has a long-term debt issuance in a private placement that is coming due, and replaces it or refunds it with another long term debt issuance of the same principal amount and with similar terms in another private placement, is a Form 8-K required to be filed under Item 2.03?

Answer: Item 2.03 requires disclosure of a direct financial obligation that is material to the registrant. Materiality is a facts and circumstances determination. Whether the financial obligation is a refinancing on similar terms is one such fact; the amount of the obligation is another. Depending on other facts and circumstances (including but not limited to factors such as current impact on covenants, liquidity and debt capacity and other debt requirements), a registrant may be able to conclude that a financial obligation in this situation is not material. [April 2, 2008]

Section 108. Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement

Question 108.01

Question: Is an Item 2.04 Form 8-K required if all conditions necessary to an event triggering acceleration or an increase in a direct financial obligation under an agreement have occurred but the counterparty has not declared, or provided notice of, a default?

Answer: It depends on how the agreement is written. If, as is often the case, such declaration or notice is necessary prior to the increase or the acceleration of the obligation, then Item 2.04 is not triggered. If no such declaration or notice is necessary and the increase or acceleration is triggered automatically on the occurrence of an event without declaration or notice and the consequences of the event are material to the registrant, then disclosure is required under Item 2.04. [April 2, 2008]

Section 109. Item 2.05 Costs Associated with Exit or Disposal Activities

Question 109.01

Question: Are costs associated with an exit activity limited to those addressed in FASB Statement of Financial Accounting Standards No. 146, Accounting for Costs Associated with Exit or Disposal Activities (SFAS 146)?

Answer: No. SFAS 146 addresses certain costs associated with an exit activity. Paragraph 2 of SFAS 146 states that such costs include, but are not limited to, those costs addressed by the SFAS. Other costs that may need to be disclosed pursuant to Item 2.05 of Form 8-K are addressed by FASB Statements of Financial Accounting Standards Nos. 87, 88, 106 and 112. [April 2, 2008]

Question 109.02

Question: If a registrant, in connection with an exit activity, is terminating employees, must it file the Form 8-K when the registrant commits to the plan, or can it wait until it has informed its employees?

Answer: Item 2.05 was intended to be generally consistent with SFAS 146. SFAS 146 states that, if a registrant is terminating employees as part of a plan to exit an activity, it need not disclose the commitment to the plan until it has informed affected employees. Similarly, a Form 8-K need not be filed until those employees have been informed. See paragraphs 8, 20 and 21 of SFAS 146. [April 2, 2008]

Section 110. Item 2.06 Material Impairments

Question 110.01

Question: The Instruction to Item 2.06 of Form 8-K indicates that a filing is not required if an impairment conclusion is made "in connection with" the preparation, review or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act, the periodic report is filed on a timely basis and such conclusion is disclosed in the report. If an impairment conclusion is made at a time that coincides with, but is not in connection with, the preparation, review or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act, is an Item 2.06 Form 8-K required?

Answer: No. If the impairment conclusion coincides with the preparation, review or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act and the other conditions of the Instruction to Item 2.06 are satisfied, a filing would not be required under Item 2.06. [May 16, 2013]

Question 110.02

Question: Does the re-measurement of a deferred tax asset ("DTA") to incorporate the effects of newly enacted tax rates or other provisions of the Tax Cuts and Jobs Act ("Act") trigger an obligation to file under Item 2.06 of Form 8-K?

Answer: No, the re-measurement of a DTA to reflect the impact of a change in tax rate or tax laws is not an impairment under ASC Topic 740. However, the enactment of new tax rates or tax laws could have implications for a registrant's financial statements, including whether it is more likely than not that the DTA will be realized. As discussed in Staff Accounting Bulletin No. 118 (Dec. 22, 2017), a registrant that has not yet completed its accounting for certain income tax effects of the Act by the time the registrant issues its financial statements for the period that includes December 22, 2017 (the date of the Act's enactment) may apply a "measurement period" approach to complying with ASC Topic 740. Registrants employing the "measurement period" approach as contemplated by SAB 118 that conclude that an impairment has occurred due to changes resulting from the enactment of the Act may rely on the Instruction to Item 2.06 and disclose the impairment, or a provisional amount with respect to that possible impairment, in its next periodic report. [December 22, 2017]

Section 111. Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

None

Section 112. Item 3.02 Unregistered Sales of Equity Securities

Question 112.01

Question: Does the grant of stock options pursuant to an employee stock option plan require disclosure under Item 3.02 of Form 8-K?

Answer: If a grant of stock options pursuant to an employee stock option plan does not constitute a "sale" or "offer to sell" under Securities Act Section 2(a)(3), the grant need not be reported under Item 3.02 of Form 8-K. See, e.g., Millennium Pharmaceuticals, Inc. (May 21, 1998). [April 2, 2008]

Question 112.02

Question: If a registrant sells, in an unregistered transaction, shares of a class of equity securities that is not currently outstanding, would the volume threshold under Item 3.02 of Form 8-K be exceeded by such sale?

Answer: Yes. As such, in these circumstances, an Item 3.02 Form 8-K filing requirement would be triggered. [April 2, 2008]

Section 113. Item 3.03 Material Modification to Rights of Security Holders

None

Section 114. Item 4.01 Changes in Registrant's Certifying Accountant

Question 114.01

Question: If a principal accountant resigns, declines to stand for re-election or is dismissed because its registration with the PCAOB has been revoked, should the registrant disclose this fact when filing an Item 4.01 Form 8-K to report a change in certifying accountant?

Answer: Yes. Disclosure of the revocation of the accountant's PCAOB registration is necessary to understanding the required disclosure with respect to whether the former accountant resigned, declined to stand for re-election or was dismissed. [Jan. 14, 2011]

Question 114.02

Question: A registrant engages a new principal accountant that is related in some manner to the former principal accountant (e.g., the firms are affiliates or are member firms of the same network), but the new principal accountant is a separate legal entity and is separately registered with the PCAOB. Should the registrant file an Item 4.01 Form 8-K to report a change in certifying accountant?

Answer: Yes. Because the new principal accountant is a different legal entity from the former principal accountant and is separately registered with the PCAOB, there is a change in certifying accountant, which must be reported on Item 4.01 Form 8 K. [Jan. 14, 2011]

Question 114.03

Question: If a registrant's principal accountant enters into a business combination with another accounting firm, should the registrant file an Item 4.01 Form 8-K to report a change in certifying accountant?

Answer: Whether an Item 4.01 Form 8-K is required will depend on how the combination is structured and on other facts and circumstances. Accounting firms that enter into business combinations are encouraged to discuss their transactions with the Division's Office of Chief Accountant. [Jan. 14, 2011]

Section 115. Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

Question 115.01

Question: If a registrant has taken appropriate action to prevent reliance on the financial statements and also has filed a Form 8-K under Item 4.02(a), must the registrant file a second Form 8-K under Item 4.02(b) if it is separately advised by, or receives notice from, its auditor that the auditor has reached the same conclusion?

Answer: No. If the registrant has reported that reliance should not be placed on previously issued financial statements because of an error in such financial statements, the issuer does not need to file a

second Form 8-K to indicate that the auditor also has concluded that future reliance should not be placed on its audit report, unless the auditor's conclusion relates to an error or matter different from that which triggered the registrant's filing under Item 4.02(a). [April 2, 2008]

Question 115.02

Question: Does the Item 4.02 requirement to file a Form 8-K if a company concludes that any previously issued financial statements should no longer be relied upon because of an error in such financial statements, as addressed in FASB Statement of Financial Accounting Standards No. 154, Accounting Changes and Error Corrections, apply to pro forma financial information?

Answer: No. The Item 4.02 requirement does not apply to pro forma financial information. If an error is detected in pro forma financial information, an amendment to the form containing such information may be required to correct the error. [April 2, 2008]

Question 115.03

Question: Must a filer provide disclosures under Item 4.02(a) of Form 8-K when it discovers a material error in its Interactive Data File while the financial statements upon which they are based do not contain an error and may continue to be relied on?

Answer: No. Item 4.02(a) requires a Form 8-K only when the filer determines that previously issued financial statements should no longer be relied upon because of an error in those financial statements. If a filer wants to voluntarily provide non-reliance disclosure similar to Item 4.02(a) that pertains only to the interactive data, it can do so under either Item 7.01 or Item 8.01 of Form 8-K. In any event, if a filer finds a material error in its Interactive Data File, it must file an amendment to correct the error. In addition, once a filer becomes aware of the error in its Interactive Data File, it must correct the error promptly in order for the Interactive Data File to be eligible for the modified treatment under the federal securities laws provided by Rule 406T of Regulation S-T. [May 29, 2009]

Section 116. Item 5.01 Changes in Control of Registrant

None

Section 117. Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Question 117.01

Question: When is the obligation to report an event specified in Item 5.02(b) of Form 8-K triggered? Must the Form 8-K filed to report an Item 5.02(b) event disclose the effective date of the resignation or other event?

Answer: With respect to any resignation, retirement or refusal to stand for re-election reportable under Item 5.02(b), other than in the corporate governance policy situations addressed in Question 117.15, the Form 8-K reporting obligation is triggered by a notice of a decision to resign, retire or refuse to stand for re-election provided by the director, whether or not such notice is written, and regardless of whether the resignation, retirement or refusal to stand for re-election is conditional or subject to acceptance. The disclosure shall specify the effective date of the resignation or retirement. In the case of a refusal to stand for re-election, the registrant must disclose when the election in question will occur, for example, at the

registrant's next annual meeting. No disclosure is required solely by reason of Item 5.02(b) of discussions or consideration of resignation, retirement or refusal to stand for re-election. Whether communications represent discussion or consideration, on the one hand, or notice of a decision, on the other hand, is a facts and circumstances determination. A registrant should ensure that it has appropriate disclosure controls and procedures in place – for example, a board policy that all directors must provide any such notice directly to the corporate secretary – to determine when a notice of resignation, retirement or refusal has been communicated to the registrant. [June 26, 2008]

Question 117.02

Question: Item 5.02(b) of Form 8-K requires current disclosure when any named executive officer retires, resigns or is terminated from that position. Since status as a named executive officer is determined based on the level of total compensation under Item 402(a)(3) of Regulation S-K, does this mean that disclosure on Form 8-K is triggered when the person is no longer required to be included in the Summary Compensation Table because of the executive officer's level of total compensation?

Answer: No. Under Instruction 4 to Item 5.02, the term "named executive officer" refers to those executive officers for whom disclosure under Item 402(c) of Regulation S-K was required in the most recent Commission filing. A Form 8-K is triggered under Item 5.02(b) when one of those officers retires, resigns or is terminated from the position that the executive officer is listed as holding in the most recent filing including executive compensation disclosure under Item 402(c) of Regulation S-K. [April 2, 2008]

Question 117.03

Question: A registrant's principal operating officer has his duties and responsibilities as principal operating officer removed and reassigned to other personnel in the organization; however, the person remains employed by the registrant, and the person's title remains the same. Is the registrant required to file a Form 8-K under Item 5.02 to report the principal operating officer's termination?

Answer: Yes. The term "termination" includes situations where an officer identified in Item 5.02 has been demoted or has had his or her duties and responsibilities removed such that he or she no longer functions in the position of that officer. [April 2, 2008]

Question 117.04

Question: If a registrant decides not to nominate a director for re-election at its next annual meeting, is a Form 8-K required?

Answer: No. That situation is not covered under the phrase "is removed." However, if the director, upon receiving notice from the registrant that it does not intend to nominate him or her for re-election, then resigns his or her position as a director, then a Form 8-K would be required pursuant to Item 5.02. If the director tells the registrant that he or she refuses to stand for re-election, a Form 8-K is required because the director has communicated a "refusal to stand for re-election," whether or not in response to an offer by the registrant to be nominated. [April 2, 2008]

Question 117.05

Question: If a registrant appoints a new executive officer, it may delay disclosure until it makes a public announcement of the event under the Instruction to Item 5.02(c). If the new executive officer were simultaneously appointed to the board of directors of the registrant, would the registrant have to disclose

such appointment pursuant to Item 5.02(d) within four business days following such appointment, even if that date is before the public announcement of the officer's appointment?

Answer: No. In these circumstances, disclosures under paragraph (d) of Item 5.02 may be delayed to the time of public announcement consistent with Item 5.02(c). Similarly, any disclosure required under paragraph (e) of Item 5.02 may be delayed to the time of public announcement consistent with Item 5.02(c). [April 2, 2008]

Question 117.06

Question: If the registrant does not consider its principal accounting officer an executive officer for purposes of Items 401 or 404 of Regulation S-K, must the registrant make all of the disclosures required by Item 5.02(c)(2) of Form 8-K?

Answer: Yes. All of the information required by Item 5.02(c)(2) regarding specified newly appointed officers, including a registrant's principal accounting officer, is required to be reported on Form 8-K even if the information was not required to be disclosed in the Form 10-K because the position does not fall within the definition of an executive officer for purposes of Items 401 or 404 of Regulation S-K. [April 2, 2008]

Question 117.07

Question: If a director is elected to the board of directors other than by a vote of security holders at a meeting, but the director's term will begin on a later date, when is the reporting requirement under Item 5.02(d) of Form 8-K triggered?

Answer: The reporting requirement is triggered as of the date of the director's election to the board. The Item 5.02(d) Form 8-K should disclose the date on which the director's term begins. [April 2, 2008]

Question 117.08

Question: The board of directors of the registrant adopts a material equity compensation plan in which named executive officers are eligible to participate. No awards have been made under the plan. Does board adoption of the plan trigger disclosure under Item 5.02(e)? Does the fact that adoption of the plan is subject to shareholder approval affect the timing of disclosure under Item 5.02(e)?

Answer: Adoption by the registrant's board of directors of a material equity compensation plan in which named executive officers are eligible to participate requires current disclosure pursuant to Item 5.02(e) of Form 8-K. Where the registrant's board adopts a compensation plan subject to shareholder approval, the obligation to file a Form 8-K pursuant to Item 5.02(e) is triggered upon receipt of shareholder approval of the plan. Similarly, if a reportable plan amendment or stock option grant is adopted subject to shareholder approval, the obligation to file a Form 8-K pursuant to Item 5.02 is triggered upon receipt of shareholder approval of the plan amendment or grant. [April 2, 2008]

Question 117.09

Question: The board of directors of the registrant adopts a material cash bonus plan under which named executive officers participate. No specific performance criteria, performance goals or bonus opportunities have been communicated to plan participants. Does the adoption of such a plan require disclosure pursuant to Item 5.02(e) of Form 8-K?

Answer: Yes. Moreover, if the plan is adopted and is also subject to shareholder approval, the receipt of shareholder approval – and not the plan's adoption – triggers the obligation to file a Form 8-K pursuant to Item 5.02(e). [April 2, 2008]

Question 117.10

Question: After the adoption of a material cash bonus plan has been disclosed in an Item 5.02(e) Form 8-K, the board of directors sets specific performance goals and business criteria for named executive officers during the performance period. Does this action require disclosure pursuant to Item 5.02(e) of Form 8-K if the specific performance goals and business criteria set for the performance period are materially consistent with the previously disclosed terms of the plan?

Answer: No. In reliance on Instruction 2 to Item 5.02(e), the registrant is not required to file an Item 5.02(e) Form 8-K to report this action if the specific performance goals and business criteria set for the performance period are materially consistent with the previously disclosed terms of the plan, for example if the specific goals and criteria are among the previously disclosed performance goals and business criteria (such as EBITDA, return on equity or other applicable measure) that the plan may apply or has applied. [April 2, 2008]

Question 117.11

Question: A registrant pays out a material cash award pursuant to a cash bonus plan for which disclosure previously was filed consistent with Exchange Act Form 8-K Questions 117.09 and 117.10. Does payment of the award require disclosure pursuant to Item 5.02(e) of Form 8-K?

Answer: Disclosure under Item 5.02(e) depends on the circumstances relating to the payment of the cash award. If the registrant pays out a cash award upon determining that the performance criteria have been satisfied, pursuant to Instruction 2 to Item 5.02(e), a Form 8-K reporting such a payment would not be required under Item 5.02(e) because the payment was materially consistent with the previously disclosed terms of the plan. However, if the registrant exercised discretion to pay the bonus even though the specified performance criteria were not satisfied, a Form 8-K reporting such a payment would be required under Item 5.02(e) because the payment was not materially consistent with the previously disclosed terms of the plan, even if the plan provided for the exercise of such discretion. [April 2, 2008]

Question 117.12

Question: If an Item 5.02(e) Form 8-K is filed to disclose an annual non-equity incentive plan award, does the disclosure have to include the specific target levels?

Answer: The registrant is not required to provide disclosure pursuant to Item 5.02(e) of target levels with respect to specific quantitative or qualitative performance related-factors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. This position is consistent with the treatment of similar information under Instruction 4 to Item 402(b) of Regulation S-K and Instruction 2 to Item 402(e)(1) of Regulation S-K. [April 24, 2009]

Question 117.13

Question: If a previously-disclosed employment agreement provides that the principal executive officer

is entitled to receive a cash bonus in an amount determined by the compensation committee in its discretion, would an Item 5.02(e) Form 8-K be required when the committee makes an ad hoc determination of the amount of the principal executive officer's bonus at the end of the first year that the contract is in effect? Would an Item 5.02(e) Form 8-K be required if the committee makes an ad hoc determination of the amount of the CEO's bonus at the end of the second year in which the contract is in effect?

Answer: No. In both cases, no Item 5.02(e) Form 8-K would be required to report the discretionary bonus amount. Disclosure regarding material information about the bonus should be included in the registrant's Compensation Discussion and Analysis and related disclosures under Item 402 of Regulation S-K. [April 2, 2008]

Question 117.14

Question: A registrant intends to terminate an executive compensation plan. Item 5.02(e) requires that material amendments or modifications of compensatory arrangements be disclosed on Form 8-K. Does this item require disclosure of plan terminations?

Answer: Yes. A termination should be disclosed if it constitutes a material amendment or modification of the executive compensation plan. Release No. 33-8732A stated that "[i]nstead of being required to be disclosed based on the general requirements with regard to material definitive agreements in Item 1.01 and Item 1.02 of Form 8-K, employment compensation arrangements will now be covered under Item 5.02 of Form 8-K, as amended." [April 2, 2008]

Question 117.15

Question: If a company has a corporate governance policy that requires a director to tender her resignation from the board of directors upon the occurrence of an event — such as reaching mandatory retirement age, changing jobs or failing to receive a majority of votes cast for election of directors at the annual meeting of shareholders — when must a company file a Form 8-K under Item 5.02(b)?

Answer: Under these circumstances, in which a director tenders her resignation only because she is required to do so in order to comply with a corporate governance policy, the company must file a Form 8-K under Item 5.02(b) within four business days of the board's decision to accept the director's tender of resignation. If the board does not accept the director's tender of resignation — and thus, the director remains on the board — the company should consider informing shareholders as to whether and to what extent corporate governance policies are being followed and enforced. [June 26, 2008]

Question 117.16

Question: A registrant appoints a new director, triggering the obligation to file a Form 8-K pursuant to Item 5.02(d). The newly appointed director enters into the standard compensatory and other agreements and arrangements that the company provides its non-employee directors (e.g., an equity award, annual cash compensation and an indemnification agreement). Pursuant to Item 5.02(d)(5), must the Form 8-K describe these compensatory and other agreements and arrangements?

Answer: Yes. Item 5.02(d)(5) requires a brief description of the newly appointed director's compensatory and other agreements and arrangements, even if they are consistent with the registrant's previously disclosed standard agreements and arrangements for non-employee directors. In lieu of describing any material plan, contract or arrangement to which the director is a party or in which he or she

participates, (but not material amendments or grants or awards or modifications thereto), the registrant may cross-reference the description of such plan, contract or arrangement from the Item 402 disclosure in the company's most recent annual report on Form 10-K or proxy statement. [May 29, 2009]

Section 118. Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Question 118.01

Question: Does the restatement of a registrant's articles of incorporation, without any substantive amendments to those articles or any requirement to be approved by security holders, trigger a Form 8-K filing requirement?

Answer: No. An Item 5.03 Form 8-K is not required to be filed when the registrant is merely restating its articles of incorporation (e.g., a restatement that merely consolidates previous amendments without any substantive changes to the articles of incorporation). However, the Division staff recommends that a registrant refile its complete articles of incorporation, if restated, in its next periodic report for ease of reference by investors. [April 2, 2008]

Section 119. Item 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

Question 119.01

Question: Is a Form 8-K filing required for the notice of any time period that constitutes a "blackout period" for purposes of the notice requirements under ERISA, without regard to whether it is also a "blackout period" for purposes of Section 306(a) of the Sarbanes-Oxley Act of 2002 and Regulation BTR?

Answer: No. Item 5.04 applies only to a notice of a "blackout period" under Section 306(a) of Sarbanes-Oxley and Regulation BTR. [May 29, 2009]

Section 120. Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

None

Section 121. Item 5.06 Change in Shell Company Status

None

Section 121A. Item 5.07 Submission of Matters to a Vote of Security Holders

Question 121A.01

Question: How should an issuer calculate the four business day filing period for an Item 5.07 Form 8-K?

Answer: Pursuant to Instruction 1 to Item 5.07, the date on which the shareholder meeting ends is the triggering event for an Item 5.07 Form 8-K. Day one of the four-business day filing period is the day after

the date on which the shareholder meeting ends. For example, if the meeting ends on Tuesday, day one would be Wednesday, and the four-business day filing period would end on Monday. [Feb. 16, 2010]

Question 121A.02

Question: Does the Item 5.07(b) requirement to report the number of shareholder votes cast for, against or withheld with respect to a matter apply only to matters voted upon at a meeting that involves the election of directors?

Answer: No. This reporting obligation applies with respect to any matter submitted to a vote of security holders, through the solicitation of proxies or otherwise. [June 4, 2010]

Question 121A.03

Question: Item 5.07(b) requires disclosure of the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each matter submitted to a vote of security holders. With respect to the advisory vote on the frequency of shareholder advisory votes on executive compensation, Item 5.07(b) requires disclosure of the number of votes cast for each of the one, two and three year frequency options, as well as the number of abstentions. Are companies also required to state the number of broker non-votes with respect to the frequency of shareholder advisory votes on executive compensation?

Answer: No. Item 5.07(b) does not require disclosure of the number of broker non-votes with respect to the advisory vote on the frequency of shareholder advisory votes on executive compensation. If a company believes this information would be useful for investors, then it may disclose such information under Item 5.07(b). [July 8, 2011]

Question 121A.04

Question: May an issuer disclose its decision as to how frequently it will include a shareholder advisory vote on executive compensation in its proxy materials in a periodic report instead of an Item 5.07 Form 8-K, pursuant to General Instruction B.3 to Form 8-K?

Answer: Yes. Pursuant to General Instruction B.3, an issuer may report Item 5.07 Form 8-K information in a periodic report that is filed on or before the date that an Item 5.07 Form 8-K would otherwise be due. If the issuer reports its annual meeting voting results in a Form 10-Q or Form 10-K, it may file a new Item 5.07 Form 8-K, rather than an amended Form 10-Q or Form 10-K, to report its decision as to how frequently it will include a shareholder advisory vote on executive compensation in its proxy materials. However, if the issuer reports its annual meeting voting results in an Item 5.07(b) Form 8-K and also intends to report its frequency decision in a Form 8-K, then, as required by Item 5.07(d), that Form 8-K must be filed as an amendment to the Item 5.07(b) Form 8-K - using submission type 8-K/A - and not as a new Form 8-K. [July 8, 2011]

Section 122. Item 6.01 ABS Information and Computational Material

None

Section 123. Item 6.02 Change of Servicer or Trustee

None

Section 124. Item 6.03 Change in Credit Enhancement or Other External Support

None

Section 125. Item 6.04 Failure to Make a Required Distribution

None

Section 126. Item 6.05 Securities Act Updating Disclosure

None

Section 127. Item 7.01 Regulation FD Disclosure

None

Section 128. Item 8.01 Other Events

None

Section 129. Item 9.01 Financial Statements and Exhibits

Question 129.01

Question: Is the automatic 71-day extension of time in Item 9.01 of Form 8-K available with respect to dispositions?

Answer: No. The automatic 71-day extension of time in Item 9.01 of Form 8-K is available only with respect to acquisitions, not dispositions. The Division's Office of the Chief Accountant will continue to address questions regarding dispositions on a case-by-case basis. [April 2, 2008]

INTERPRETIVE RESPONSES REGARDING PARTICULAR SITUATIONS

Section 201. Form 8-K – General Guidance

None

Section 202. Item 1.01 Entry into a Material Definitive Agreement

202.01 If an Item 1.01 Form 8-K filing requirement is triggered in early April for a registrant with a calendar year fiscal year (i.e., after the end of the registrant's first quarter but before the registrant is required to file its Form 10-Q for that quarter), and the registrant timely files the Item 1.01 Form 8-K but does not file the agreement (to which the Item 1.01 Form 8-K relates) as an exhibit to that Form 8-K, the registrant is required to file the agreement as an exhibit to its second quarter Form 10-Q. The disclosure requirement under Item 1.01 of Form 8-K does not alter the existing requirements for the filing of exhibits under Item 601 of Regulation S-K. [April 10, 2008]

Section 203. Item 1.02 Termination of a Material Definitive Agreement

None

Section 204. Item 1.03 Bankruptcy or Receivership

None

Section 205. Item 2.01 Completion of Acquisition or Disposition of Assets

205.01 Item 2.01 of Form 8-K, which calls for disclosure of the acquisition or disposition of a significant amount of assets, does not require disclosure of the execution of a contract to acquire or dispose of the assets. Disclosure under Item 2.01 is specifically required only when such an acquisition or disposition is consummated. Nevertheless, the filing of a Form 8-K reporting the execution of a contract for the acquisition or disposition of assets may be required earlier by Item 1.01 of Form 8-K if the registrant has entered into a material definitive agreement not made in the ordinary course of business of the registrant (or an amendment of such agreement that is material). Even if Item 1.01 and Item 2.01 do not require disclosure, if the registrant deems the contract to be of importance to security holders, then the registrant may voluntarily disclose it pursuant to Item 8.01. The financial statement requirement of Item 9.01 is triggered by Item 2.01, but is not triggered by Item 1.01 or 8.01. [April 2, 2008]

205.02 The purchase by a reporting company of a minority stock interest in a business from an independent third party (which is accounted for under the cost method) would not require the filing of the financial statements of that business with any Form 8-K filed to report the transaction, so long as that minority position did not result in the reporting company's control of the assets. [April 2, 2008]

205.03 A wholly-owned subsidiary acquires a significant amount of assets from its parent. Both the subsidiary and the parent are reporting companies. The term "any person" found in Instruction 1 to Item 2.01 of Form 8-K refers to the company that has the obligation to file the report. Therefore, while Instruction 1 would not require a filing by the parent, the subsidiary would be required to file the report. [April 2, 2008]

205.04 An indefinite closing of a portion of a company's restaurant facilities, coupled with a write-down of its assets in excess of 10 percent, constitutes an "other disposition" for purposes of Instruction 2 to Item 2.01 of Form 8-K, and thus requires the filing of a Form 8-K report. [April 2, 2008]

205.05 Paragraph (iii) of Instruction 1 to Item 2.01 of Form 8-K indicates that a Form 8-K filing is not required to report the redemption or acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities or by a wholly-owned subsidiary of that issuer. This instruction does not apply to the sale of a subsidiary's equity, because the subsidiary would not be wholly-owned after the transaction is completed. [April 2, 2008]

Section 206. Item 2.02 Results of Operations and Financial Condition

206.01 Item 2.02(b) provides that a Form 8-K is not required to report the disclosure of material nonpublic information that is disclosed orally, telephonically, by webcast, broadcast or similar means if, among other things, that presentation is complementary to and initially occurs within 48 hours following a related written announcement or release that has been furnished on an Item 2.02 Form 8-K. This 48-hour safe harbor is construed literally and is not the equivalent of two business or calendar days. [April 2, 2008]

Section 207. Item 2.03 Creation of a Direct Financial Obligation under an Off-Balance Sheet Arrangement of a Registrant

None

Section 208. Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement

208.01 A voluntary redemption of convertible notes by a registrant is not a triggering event for purposes of Item 2.04 of Form 8-K. [April 2, 2008]

208.02 A company disagrees with the legitimacy of a notice of default and brings the matter to arbitration, pursuant to its rights under the terms of the applicable loan agreement. The matter is pending with an arbitrator. Notwithstanding its good faith belief that no event of default has taken place and the fact that the arbitrator has yet to rule on the legitimacy of the event of default, the notice of default is a triggering event under Item 2.04. When the company files the Form 8-K, it may include a discussion of the basis for its belief that no event of default has occurred. [April 2, 2008]

Section 209. Item 2.05 Costs Associated with Exit or Disposal Activities

209.01 An Item 2.05 Form 8-K filing requirement is triggered when a registrant's board or board committee, or the registrant's officer(s) authorized to take such action if board action is not required, commits the registrant to a "plan of termination" that meets the description of such a plan in paragraph 8 of SFAS No. 146, under which material charges will be incurred under generally accepted accounting principles applicable to the registrant under the plan. The "plan of termination" need not fall within an "exit activity," as defined in SFAS No. 146, or otherwise constitute an "exit or disposal plan" (or part of one), to trigger an Item 2.05 Form 8-K filing requirement. [April 2, 2008]

Section 210. Item 2.06 Material Impairments

None

Section 211. Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

211.01 A registrant's common stock is traded on the OTC Bulletin Board, which is not an automated inter-dealer quotation system of a registered national securities association, and is not otherwise traded on an exchange. The registrant has applied to list its common stock on the American Stock Exchange. In this instance, an Item 3.01 Form 8-K filing requirement is not triggered upon the registrant's application for listing on the American Stock Exchange, or upon the approval of the application. [April 2, 2008]

Section 212. Item 3.02 Unregistered Sales of Equity Securities

212.01 An Item 3.02 Form 8-K filing requirement is triggered when a registrant enters into an agreement enforceable against the registrant to issue unregistered equity securities to a third party in exchange for services and the applicable volume threshold is exceeded. [April 2, 2008]

212.02 If an Exchange Act reporting, wholly-owned subsidiary receives an additional equity investment from its Exchange Act reporting parent and the volume threshold under Item 3.02 of Form 8-K is exceeded, the wholly-owned subsidiary is required to file an Item 3.02 Form 8-K to report the additional equity investment, regardless of whether the wholly-owned subsidiary meets the conditions for the filing of abbreviated periodic reports under General Instruction H of Form 10-Q and General Instruction I of Form 10-K. [April 2, 2008]

212.03 An Item 3.02 Form 8-K filing requirement is triggered upon an unregistered sale of warrants to purchase equity securities (or an unregistered sale of options outside a stock option plan), if the volume

threshold under Item 3.02 is exceeded, or upon an unregistered sale of convertible notes (convertible into equity securities), if the volume threshold under Item 3.02 of the underlying equity security issuable upon conversion is exceeded. Pursuant to Item 701(e) of Regulation S-K, the registrant must disclose the terms of, as applicable, the exercise of the warrants or the options or the conversion of the convertible notes in the Item 3.02 Form 8-K. If the Item 3.02 Form 8-K that discloses the initial sale of the warrants, the options, or the convertible notes also discloses the maximum amount of the underlying securities that may be issued through, as applicable, the exercise of the warrants or the options or the conversion of the convertible notes, then a subsequent Item 3.02 Form 8-K filing requirement is not triggered upon the exercise of the warrants or the options or the conversion of the notes. [April 2, 2008]

Section 213. Item 3.03 Material Modifications to Rights of Security Holders

213.01 Upon adoption of a shareholder rights plan, a registrant undertook to make a dividend of a preferred share purchase right for each outstanding share of common stock. The Plan was adopted by the board on August 9. The certificate of designation related to the preferred share purchase right was filed with the state on August 25. The dividend, not yet declared, will occur only upon certain change in control events. Under Item 3.03(b) of Form 8-K, the triggering event related to the plan occurs not upon adoption of the plan or upon filing of the certificate of designation with the state, but rather upon the issuance of the dividend. The rights of the holders of the registered common stock are not materially limited or qualified until the issuance of, in this case, the preferred share purchase rights. The preferred share purchase rights are not issued until the dividend is declared and the rights are distributed. Although the registrant is not required to file an Item 3.03 Form 8-K until the issuance of the dividend, the registrant must file an Item 1.01 Form 8-K when it enters into the shareholder rights plan if the plan constitutes a material definitive agreement not made in the ordinary course of business. [April 2, 2008]

Section 214. Item 4.01 Changes in Registrant's Certifying Accountant

214.01 Item 4.01 of Form 8-K requires an issuer to report a change in its certifying accountant. The item also requires that the issuer request the former accountant to furnish a letter stating whether the former accountant agrees with the issuer's statements concerning the reasons for the change. Where the former accountant declines to provide such a letter, the issuer should indicate that fact in the Form 8-K. [April 2, 2008]

214.02 Item 4.01 of Form 8-K requires a registrant to report changes in its certifying accountant. The company must file the report on a Form 8-K and must file any required amendments to the report on a Form 8-K/A. It is not sufficient to report the event in a periodic report. See Exchange Act Form 8-K Question 101.01. [April 2, 2008]

Section 215. Section 215. Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

215.01 Item 4.02 of Form 8-K requires an issuer to report a decision that its past financial statements should no longer be relied upon. The company must file the report on a Form 8-K and file any required amendments on a Form 8-K/A. It is not sufficient to report the event in a periodic report. See Exchange Act Form 8-K Question 101.01. [April 2, 2008]

Section 216. Section 216. Item 5.01 Changes in Control of Registrant

None

Section 217. Item 5.02 Departure of Certain Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

217.01 Item 5.02(a) of Form 8-K requires registrants to describe the circumstances of a director's resignation when he or she resigned "because of a disagreement with the registrant… on any matter related to the registrant's operations, policies or practices." A disagreement with the process chosen by the Chairman and other board members to address a director's alleged violation of a company's policy regarding unauthorized public disclosures and the board's related decision to ask the director to resign is a disagreement on matters "related to the registrant's operations, policies or practices." See In the Matter of Hewlett Packard Company, Release 34-55801 (May 23, 2007). [April 2, 2008]

217.02 When a principal financial officer temporarily turns his or her duties over to another person, a company must file a Form 8-K under Item 5.02(b) to report that the original principal financial officer has temporarily stepped down and under Item 5.02(c) to report that the replacement principal financial officer has been appointed. If the original principal financial officer returns to the position, then the company must file a Form 8-K under Item 5.02(b) to report the departure of the temporary principal financial officer and under Item 5.02(c) to report the "re-appointment" of the original principal financial officer. [April 2, 2008]

217.03 A director who is designated by an issuer's majority shareholder gives notice that he will resign if the majority shareholder sells its entire holdings of issuer stock. This notice triggers an obligation to file an Item 5.02(b) Form 8-K, which should state clearly the nature of the contingency and the extent to which the resigning director can control occurrence of the contingency. [April 2, 2008]

217.04 Item 5.02(b) of Form 8-K does not require a registrant to report the death of a director or listed officer. [April 2, 2008]

217.05 If, pursuant to a contractual provision in a named executive officer's employment contract or otherwise, the registrant must notify the named executive officer of the termination of his or her employment a specified number of days prior to the date on which the named executive officer's employment would end, an Item 5.02(b) Form 8-K filing requirement is triggered on the date the registrant notifies the named executive officer of his or her termination, not on the date the named executive officer's employment actually ends. [April 2, 2008]

217.06 A registrant appoints a new principal accounting officer, which triggers an Item 5.02(c) Form 8-K filing requirement. The registrant can decide to delay the filing of the Item 5.02(c) Form 8-K until it makes a public announcement of the appointment of the new principal accounting officer, pursuant to the Instruction to paragraph (c) of Item 5.02. The new principal accounting officer replaces the old principal accounting officer, who retired, resigned, or was terminated from that position. The retirement, resignation, or termination of the old principal accounting officer triggers an Item 5.02(b) Form 8-K filing requirement. The registrant may not delay the filing of the Item 5.02(b) Form 8-K until the filing of the Form 5.02(c) Form 8-K. Rather, the Item 5.02(b) Form 8-K filing obligation is triggered by the old principal accounting officer's notice of a decision to retire or resign or by the notice of termination, whether or not such notice is written. [April 2, 2008]

217.07 A director was appointed by board vote and, at the same time, named to the audit committee. Both the appointment of the director to the board and the committee assignment were disclosed under Item 5.02(d) of Form 8-K. Three months later, the board rotates committee assignments, and the new director is moved from the audit committee to the compensation committee. No new Form 8-K or amendment to the Item 5.02(d) Form 8-K is required by Instruction 2 to Item 5.02 in this situation, provided that the

change in committee assignment was not contemplated at the time of the director's initial election to the board and appointment to the audit committee. [April 2, 2008]

217.08 In the past, a named executive officer entered into an employment agreement that will, pursuant to its terms, expire after two years. The employment agreement automatically extends for an additional two-year term, unless the registrant or the named executive officer affirmatively gives notice that it is not renewing the agreement. The automatic renewal of the employment agreement (i.e., when the original two-year term of the employment agreement expires and neither party gives notice that it does not wish to renew the agreement) does not trigger an Item 5.02(e) Form 8-K filing requirement. [April 2, 2008]

217.09 Foreign private issuers that satisfy the Item 402 of Regulation S-K disclosure requirement by providing compensation disclosure in accordance with Item 402(a)(1) should refer to Instruction 4 to Item 5.02 to determine who is a "named executive officer." The named executive officers will be those individuals for whom disclosure was provided in the last Securities Act or Exchange Act filing pursuant to Item 6.B or 6.E.2 of Form 20-F. [April 2, 2008]

Section 218. Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year

218.01 Release No. 34-26589, which significantly amended Rule 15d-10, states that "[a] change from a fiscal year ending as of the last day of the month to a 52-53 week fiscal year commencing within seven days of the month end (or from a 52-53 week to a month end) is not deemed a change in fiscal year for purposes of reporting subject to Rule 13a-10 or 15d-10 if the new fiscal year commences with the end of the old fiscal year. In such cases, a transition report would not be required. Either the old or new fiscal year could, therefore, be as short as 359 days, or as long as 371 days (372 in a leap year)." While a transition report would not be required in such a situation, an Item 5.03(b) Form 8-K would have to be filed to report the change in fiscal year-end. [April 2, 2008]

Section 219. Item 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

None

Section 220. Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

None

Section 221. Item 5.06 Change in Shell Company Status

None

Section 222. Item 6.01 ABS Information and Computational Material

None

Section 223. Item 6.02 Change of Servicer or Trustee

None

Section 224. Item 6.03 Change in Credit Enhancement or Other External Support

None

Section 225. Item 6.04 Failure to Make a Required Distribution

None

Section 226. Section 226. Item 6.05 Securities Act Updating Disclosure

None

Section 227. Item 7.01 Regulation FD Disclosure

None

Section 228. Item 8.01 Other Events

None

Section 229. Item 9.01 Financial Statements and Exhibits

229.01 Item 20.D. of Industry Guide 5 requires, inter alia, an undertaking to file every three months post-effective amendments containing financial statements of acquired properties. Even if the automatic 71-day extension of time to file the financial statements for an acquired property is applicable to a Form 8-K, this extension does not apply to the Guide 5 post-effective amendment. Accordingly, the post-effective amendment must be filed when required by Item 20 of Guide 5, and must contain the required financial statements. This is the same position as that taken before the Form 8-K extensions were made automatic. [April 2, 2008]

229.02 During the pendency of a 71-day extension applicable to a Form 8-K, Securities Act offerings may not be made except as provided in the Instruction to Item 9.01 of Form 8-K. The Division staff has been asked whether this provision applies to real estate limited partnership offerings, thus prohibiting sales from being made until financial statements for properties acquired during the offering period have been filed (even when the quarterly post-effective amendment is not yet due). The amendment to Form 8-K was not intended to change the procedure established in Item 20.D. of Guide 5. Accordingly, when properties are acquired during the offering period, the registrant may continue sales activities notwithstanding the pendency of an 8-K extension, so long as the quarterly post-effective amendments containing the financial statements are filed when required. [April 2, 2008]

229.03 The Instruction to Item 9.01 of Form 8-K addresses the status of transactions in securities registered under the Securities Act and Rule 144 sales during the pendency of an extension, but does not address the status of such sales after a denial of a request for waiver of financial statements. This question will be dealt with on a case-by-case basis. [April 2, 2008]

229.04 Item 17(b)(7) of Form S-4 states generally that the financial statements of acquired companies that were not previously Exchange Act reporting companies need be audited only to the extent practicable, unless the Form S-4 prospectus is to be used for resales by any person deemed an underwriter within the meaning of Rule 145(c), in which case such financial statements must be audited. The Division staff was asked whether a resale pursuant to Rule 145(d), in lieu of the Form S-4 prospectus, would require the financial statements to be audited. The Division staff noted that Rule 145(d) is not included in the

Instruction to Item 9.01 of Form 8-K regarding sales pursuant to Rule 144 during the 71-day extension period for filing financial statements. As the audited financial statements for the acquired company would be required pursuant to Item 9.01 of Form 8-K, a resale pursuant to Rule 145(d) would not be permitted until they are filed. [April 2, 2008]

Last Reviewed or Updated: June 24, 2024