

## **SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 230, 239, 240, 243, and 249**

**[Release No. 33-10588; 34-84842; File No. S7-26-18]**

### **Request for Comment on Earnings Releases and Quarterly Reports**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Commission is requesting public comment on how we can enhance, or at a minimum maintain, the investor protection attributes of periodic disclosures while reducing administrative and other burdens on reporting companies associated with quarterly reporting. We are specifically requesting public comment on the nature and timing of the disclosures that reporting companies are required to provide in their quarterly reports filed on Form 10-Q, including when the disclosure requirements overlap with disclosures these companies voluntarily provide to the public in the form of an earnings release furnished on Form 8-K. We are interested in exploring ways to promote efficiency in periodic reporting by reducing unnecessary duplication in the information that reporting companies disclose and how such changes could affect capital formation, while enhancing, or at a minimum maintaining, appropriate investor protection. We also are requesting public comment on whether our rules should provide reporting companies, or certain classes of reporting companies, with flexibility as to the frequency of their periodic reporting. In addition, we are seeking comment on how the existing periodic reporting system, earnings releases, and earnings guidance, standing alone or in combination with other factors, may affect corporate decision making and strategic thinking — positively or negatively — including whether these factors foster an inefficient outlook among registrants and market participants by focusing on short-term results, sometimes referred

to as “short-termism.”

**DATES:** Comments should be received by [Insert date 90 days after publication in the Federal register].

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>);  
or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-26-18 in the subject line.

*Paper comments:*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-26-18. This file number should be included in the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Courtney L. Lindsay, Attorney-Adviser,

or Lilyanna L. Peyser, Special Counsel at (202) 551-3430, Division of Corporation Finance, 100 F Street, NE, Washington, DC 20549.

## **I. Background**

### ***Overview of Quarterly Reporting***

In addition to annual and current reports, companies subject to the periodic reporting requirements under the Securities Exchange Act of 1934 (“Exchange Act”), other than foreign private issuers, must file quarterly reports<sup>1</sup> on Form 10-Q,<sup>2</sup> which include interim financial statements<sup>3</sup> and other disclosure items.<sup>4</sup> Form 10-Q is often forward incorporated by reference into certain registration statements under the Securities Act of 1933 (“Securities Act”), thereby avoiding unnecessary duplication of information about an issuer’s recent financial results and material business developments that was previously filed and remains available electronically on EDGAR.<sup>5</sup> This forward incorporation helps reduce the time and costs associated with frequent updating of a registration statement to reflect such developments. A company’s Form 10-Q must comply with the requirements of Sections 13(a) or 15(d) of the Exchange Act, as applicable, and is subject to liability under Sections 10(b) and 18 of the Exchange Act and Rule 10b-5

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<sup>1</sup> See 17 CFR 240.13a-13 and 17 CFR 240.15d-13.

<sup>2</sup> 17 CFR 249.308a.

<sup>3</sup> See 17 CFR 210.8-03 (“Rule 8-03”) and 17 CFR 210.10-01 (“Rule 10-01”).

<sup>4</sup> Form 10-Q also requires a management’s discussion and analysis of financial condition and results of operations (“Management’s Discussion and Analysis”), along with disclosures on quantitative and qualitative market risk, company disclosure controls and procedures, legal proceedings, material changes to previously disclosed risk factors, unregistered sales of equity securities and the use of proceeds from such sales, defaults upon senior securities, mine safety disclosures, and any information required to be disclosed in a report on Form 8-K during the period covered by the relevant 10-Q that was not reported.

<sup>5</sup> See 17 CFR 230.415 (“Rule 415”), Item 12(a) of Part I of Form S-1 [17 CFR 239.11], and Item 12(a) of Part I of Form S-3 [17 CFR 239.13]. All documents, not just a Form 10-Q, subsequently filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act may be forward incorporated by reference on Form S-3. Smaller reporting companies may forward incorporate by reference on Form S-1 all documents subsequently filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act.

thereunder.<sup>6</sup> In addition, in certain circumstances, including in the offer and sale of securities, reporting companies, affiliates, and underwriters may be subject to liability for their disclosure in Form 10-Q under Sections 11, 12, and 17 of the Securities Act.<sup>7</sup>

By contrast, foreign private issuers<sup>8</sup> subject to the periodic reporting requirements of the Exchange Act are required to file annual reports, but are not required to file quarterly reports.<sup>9</sup>

Foreign private issuers are required to furnish reports on Form 6-K to the extent that the “issuer

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<sup>6</sup> 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78r; 15 U.S.C. 78j(b); and 17 CFR 240.10b-5. General Instruction F.1. of Form 10-Q states that pursuant to Rule 13a-13(d) [17 CFR 240.13a-13(d)] and Rule 15d-13(d) [17 CFR 240.15d-13(d)], the information presented to satisfy the requirements of Part I Items 1, 2 and 3 shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, but shall be subject to other provisions of the Exchange Act. Further, companies must submit their Form 10-Q financial statement disclosures in the eXtensible Business Reporting Language (“XBRL”) format, and these XBRL structured financial statement disclosures are subject to the same disclosure liability. *See* 17 CFR 229.601(b)(101) (“Item 601(b)(101) of Regulation S-K”). The Commission recently adopted amendments requiring Inline XBRL, a newer XBRL technology, with phased compliance dates depending on filer status: large accelerated filers and accelerated filers that prepare their financial statements in accordance with U.S. GAAP must comply with the requirements for fiscal periods ending on or after June 15, 2019 and June 15, 2020, respectively; all other filers must comply with the requirements for fiscal periods ending on or after June 15, 2021. *See* SEC Release No. 33-10514 (Sept. 17, 2018).

<sup>7</sup> 15 U.S.C. 77k; 15 U.S.C. 77l; and 15 U.S.C. 77q. Each of these provisions, which we reference throughout this Request for Comment, imposes liability on companies in certain instances for making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Liability under certain of these provisions, such as Sections 11 and 12 of the Securities Act and Section 18 of the Exchange Act, attaches only to documents that are filed with the Commission or incorporated by reference into a Securities Act registration statement. For example, Section 11 liability can result from disclosure in a Form 10-Q that is incorporated by reference into a Securities Act registration statement. There are instances, however, when liability may attach to documents that are not deemed to be filed. For example, liability under Section 10(b) and Rule 10b-5 of the Exchange Act may attach to documents that are furnished to, in addition to documents that are filed with, the Commission.

<sup>8</sup> A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers or directors are citizens or residents of the United States; more than 50% of its assets are located in the United States; or its business is principally administered in the United States. *See* 17 CFR 230.405 and 17 CFR 240.3b-4(c). Foreign private issuers with a class of securities listed on the NYSE or NASDAQ must submit semi-annual unaudited financial information under cover of Form 6-K within six months following the end of the second fiscal quarter. *See* NYSE Rule 203.03 and NASDAQ Rule 5250(c)(2). Similarly, Item 8.A.5 of Form 20-F requires a foreign private issuer to include interim financial statements when its registration statement is dated more than nine months after the end of the last audited financial year. In addition, foreign private issuers may have more frequent reporting requirements based on the laws of their home country.

<sup>9</sup> Issuers conducting Tier 2 offerings under Regulation A also are required to file annual and semi-annual reports, as well as current reports, with the Commission, but are not required to file quarterly reports. *See* 17 CFR 230.257(b).

(i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its security holders.”<sup>10</sup> Among other information required to be furnished in this context, foreign private issuers must disclose material information about changes in business, changes in management or control, changes in the registrant’s auditors,<sup>11</sup> the financial condition and results of operations, material legal proceedings, and related party transactions.<sup>12</sup> Foreign private issuers are subject to liability for the disclosures they make in Form 6-K under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.<sup>13</sup> In addition, foreign private issuers, affiliates and underwriters are subject to liability for the disclosures they make in Form 6-K under Sections 11, 12, and 17 of the Securities Act<sup>14</sup> to the extent the Form 6-K is incorporated by reference into a Securities Act registration statement.

There are many jurisdictions and foreign exchanges that have quarterly reporting requirements similar to the United States, including Canada, Hong Kong and Japan.<sup>15</sup> The European Union and other jurisdictions, by contrast, recently developed requirements that differ from those in the United States to address concerns about the frequency of reporting. The evolution of reporting requirements in these jurisdictions may inform the policy considerations

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<sup>10</sup> 17 CFR 249.306.

<sup>11</sup> Commission rules and forms use various terms to refer to the accountant that is independent and performs the audit and review of the registrant’s financial statements as required by Regulation S-X. For example, Rule 2-01 of Regulation S-X uses the term “auditor” interchangeably with “certified public accountant,” “public accounting firm,” or “public accountant.” Form 6-K uses the term “certifying accountants.” In this Request for Comment, we refer to these accountants as “auditors.”

<sup>12</sup> 17 CFR 249.306

<sup>13</sup> 15 U.S.C. 78j; 17 CFR 240.10b-5.

<sup>14</sup> 15 U.S.C. 77k; 15 USC 77l; 15 USC 77q.

<sup>15</sup> See Hong Kong Stock Exchange Listing Rule 18.66, National Instrument 51-102 Continuous Disclosure Obligations (Canada), and Financial Instruments and Exchange Act (Act No. 25 of 1948) (Japan).

presented by potential changes to the United States reporting system. In 2004, the European Union adopted the Transparency Directive (2004/109/EC), which governs the ongoing disclosure requirements for companies whose securities are listed on a European Economic Area (“EEA”)-regulated market.<sup>16</sup> The Transparency Directive required listed companies to publish a quarterly report, known as the interim management statement (“IMS”).<sup>17</sup> Unlike a quarterly report on Form 10-Q, an IMS did not require financial statements, but rather, needed to include only a “general description of the [company’s] financial position and performance since the last half-yearly or annual report and [explain] any material events and transactions that have since taken place.”<sup>18</sup>

In 2013, the EU adopted the Revised Directive on transparency requirements (2013/50/EU), or the Revised Transparency Directive, which abolished the requirement to publish IMSs.<sup>19</sup> Although a report that preceded the Revised Transparency Directive noted that

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<sup>16</sup> Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information about Issuers Whose Securities Are Admitted to Trading on a Regulated Market and Amending Directive 2001/34/EC (Dec. 15, 2004) (OJ L 390, 31.12.2004, p.38-57) (“Transparency Directive”).

<sup>17</sup> A key argument in favor of quarterly reports was to increase investor protection and investor confidence, as well as to “close the transparency gap between the USA and the EU.” See Thomas Schleicher & Martin Walker, *Are Interim Management Statements Redundant?* 233 (Mar. 2015), available at <http://dx.doi.org/10.1080/00014788.2014.1002444> (“Are Interim Management Statements Redundant?”). Prior to the Transparency Directive, most European Union member states required only semi-annual and annual reports, although several countries required quarterly reports, specifically: Finland, Greece, Portugal, Sweden, Italy, and Spain.

<sup>18</sup> See Transparency Directive, *supra* note 16. Commentators observed that “IMSs are lightly regulated trading statements with management retaining considerable control over form and content” and that “the issuer can choose which financial statement line item, if any, to comment on....” See *Are Interim Management Statements Redundant?*, *supra* note 17.

<sup>19</sup> Directive 2013/50/EU Amending Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information About Issuers Whose Securities are Admitted to Trading on a Regulated Market, Directive 2003/71/EC on the Prospectus to be Published When Securities are Offered to the Public or Admitted to Trading and Commission Directive 2007/14/EC Laying Down Detailed Rules for the Implementation of Certain Provisions of Directive 2004/109/EC of the European Parliament and of the Council of 22 October 2013 Amending Directive 2004/109/EC, (Oct. 22, 2013) (OJ L 294, 6.11.2013, p. 13-27). This followed the 2010 European Commission report reviewing the operation of the Transparency Directive, which considered whether quarterly disclosures contributed to undue focus on near-term results. The report noted that abolishing the quarterly information requirement would alleviate pressure on issuers and establish incentives for a longer-term

IMSS were generally well-perceived by market participants,<sup>20</sup> the Revised Transparency Directive noted that the IMSS were a burden for small and medium-sized issuers<sup>21</sup> without being necessary for investor protection.<sup>22</sup> Furthermore, the IMSS were thought to encourage a focus on short-term performance and discourage long-term investment.<sup>23</sup>

Under the Revised Transparency Directive, a European Union member state may require issuers to publish additional periodic financial information on a more frequent basis than the annual or half-yearly reports only under specific conditions.<sup>24</sup> Companies may nonetheless publish quarterly information on a voluntary basis.

In addition, effective November 7, 2014, the Financial Conduct Authority (“FCA”) of the United Kingdom<sup>25</sup> eliminated IMS requirements. Issuers are permitted to continue to publish

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vision. *See* Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Operation of Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information About Issuers Whose Securities are Admitted to Trading on a Regulated Market (May 27, 2010)(SEC 611)(“EU Commission Report”).

<sup>20</sup> *See* EU Commission Report, *supra* note 19.

<sup>21</sup> *See* Commission Recommendation of 6 May 2003 Concerning the Definition of Micro, Small and Medium-Sized Enterprises, (May 5, 2003)(OJ L 124 20.5.2003, p. 36-41)(defining “micro,” “small” and “medium-sized” enterprises as “enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million” and further clarifying that “small” enterprises as those that “[employ] fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.”).

<sup>22</sup> *See* Revised Transparency Directive, *supra* note 19 at 13 (“The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection.”).

<sup>23</sup> *See* the Revised Transparency Directive at 13 (“Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.”).

<sup>24</sup> Specifically, more frequent reporting may be instituted if, after an assessment of the impacts, it is shown that such additional requirement does not lead to (a) an excessive focus on short-term results and performance of the issuers and (b) to a negative impact on the access of small and medium sized issuers to regulated markets.

<sup>25</sup> The FCA is the conduct regulator for financial services firms and financial markets in the United Kingdom and the prudential regulator for many of those firms.

IMs on a voluntary basis, but the FCA does not treat them as regulated information.<sup>26</sup> A 2017 market survey found that, in a sample of 516 U.K. companies, 471 (91.3%) continued issuing quarterly reports in 2015.<sup>27</sup> A more recent analysis found that “between October 2016 and [August 2017], the number of [Financial Times Stock Exchange (“FTSE”)] 100 companies issuing quarterly reports fell by nearly a fifth, from 70 to 57. Among the FTSE 250, the figure fell by a quarter, from 111 to 83.”<sup>28</sup>

We also note that a 2017 study found that when quarterly reporting was no longer required of U.K. companies in 2014, there was no significant difference between the levels of corporate investment of the U.K. companies that stopped quarterly reporting and those that continued quarterly reporting.<sup>29</sup> There was, however, a general decline in the analyst coverage of those companies that reduced the frequency of reporting.<sup>30</sup>

### ***Observations on Quarterly Reporting and Earnings Release Practices***

Many companies required to file Form 10-Q also voluntarily communicate certain

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<sup>26</sup> See *Removing the Transparency Directive’s Requirement to Publish Interim Management Statements*, Financial Conduct Authority (Nov. 2014), available at <https://www.fca.org.uk/publication/policy/ps14-15.pdf>.

<sup>27</sup> See Suresh Nallareddy, Robert Pozen & Shivaram Rajgopal, *Consequences of Mandatory Quarterly Reporting: The U.K. Experience*, Columbia Business School Research Paper No. 17-33 (Mar. 1, 2017), available at <https://ssrn.com/abstract=2817120> (the survey also found evidence that the companies that ceased issuing quarterly reports were smaller than average, were less likely to provide marginal guidance in mandatory reporting, and were more likely to be in the energy industry). See also PricewaterhouseCoopers’ survey on quarterly reporting for listed companies and transition to IFRS 16 (Nov. 9, 2017), available at <https://www.pwc.no/no/publikasjoner/kapitalmarkedstjenester/PwC-survey-quarterly-reporting-listed-companies-and-transition-ifrs-16.pdf> (finding that 5% of surveyed companies stated that they would not continue to report quarterly or had not yet made a decision).

<sup>28</sup> Owen Walker, *The Long and Short of the Quarterly Reports Controversy*, Financial Times (July 1, 2018), available at <https://www.ft.com/content/e61046bc-7a2e-11e8-8e67-1e1a0846c475>.

<sup>29</sup> See Robert Pozen, Suresh Nallareddy & Shivaram Rajgopal, *Impact of Reporting Frequency on UK Companies*, CFA Institute Research Foundation (Mar. 2017).

<sup>30</sup> *Id.*

quarterly financial results through earnings releases.<sup>31</sup> Federal securities laws do not require reporting companies to publish earnings releases, conduct earnings calls with investors and analysts, or issue forward-looking earnings guidance.<sup>32</sup> To the extent that a company makes such communications, neither the disclosure of specific information, nor the structure of that information, is regulated by the Commission. The Commission does, however, regulate the presentation of certain financial measures by reporting companies, including in their earnings releases.<sup>33</sup> To the extent that a company elects to make a public announcement or release of earnings information,<sup>34</sup> it must furnish the earnings release on Form 8-K.<sup>35</sup>

While some companies provide earnings releases in advance of the corresponding Form 10-Q filings, many companies now issue earnings releases concurrently with their Form 10-Q filings.<sup>36</sup> Given the potential overlap between the financial information provided in the earnings

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<sup>31</sup> Among all Form 10-Qs filed with the Commission in calendar year 2017, we estimate that 63% were accompanied by prior or concurrent earnings releases furnished on Form 8-K. For Form 10-Qs filed by S&P 500 and S&P 1500 Super Composite companies in calendar year 2017, we estimate that 97% and 98%, respectively were accompanied by prior or concurrent earnings releases furnished on Form 8-K.

<sup>32</sup> The term “earnings release” as used in this Request for Comment means a public announcement or release by a company, or person acting on its behalf, of material non-public information regarding a company’s results of operations or financial condition for a completed quarterly or annual financial period. The requirements of Item 2.02 of Form 8-K are triggered by the disclosure of this information. Forward-looking information provided by a company to its investors on a quarterly basis in a method other than Form 8-K or Form 10-Q is referred to as “forward-looking earnings guidance” or “earnings guidance.”

<sup>33</sup> See 17 CFR 244.100 and 17 CFR 229.10. In addition, earnings releases and related communications are subject to the antifraud provisions of the federal securities laws.

<sup>34</sup> Generally, a company publishes an earnings release prior to the occurrence of any associated conference call with investors and analysts.

<sup>35</sup> See Item 2.02 of Form 8-K [17 CFR 249.308]. Forms 8-K that are furnished to, as opposed to filed with, the Commission are not automatically incorporated into Securities Act registration statements or subject to liability under Section 18 of the Exchange Act; however, they are subject to liability under Section 10(b) and Rule 10b-5 of the Exchange Act. An issuer also may choose to file, rather than furnish, earnings release information on Form 8-K, for example, in order to ensure that a registration statement currently in use does not contain a material omission of the information contained in an earnings release.

<sup>36</sup> See Arif, Salman et. al. *A Growing Disparity in Earnings Disclosure Mechanisms: The Rise of Concurrently Released Earnings Announcements and 10-Ks* (June 6, 2018), Kelley School of Business Research Paper No. 16-50, available at <https://ssrn.com/abstract=2801701> (stating that “the fraction of concurrent [earnings releases

release and the Form 10-Q, some market participants view the Form 10-Q primarily as a compliance document that subsequently (or concurrently) confirms the material information about the quarterly period included in an earnings release issued before (or at the same time as) the Form 10-Q.<sup>37</sup> Other market participants, however, view the Form 10-Q as distinct from earnings releases and as an essential component of market transparency.<sup>38</sup>

Form 10-Q typically contains most, if not all, of the historical information presented in an earnings release along with additional information, such as the financial disclosures required by U.S. GAAP. The information in Form 10-Q is typically provided in greater detail than in an earnings release and is easier to machine process and analyze, through the aggregation of results and comparison across filers, because it is required to be structured in interactive data format.

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and Form 10-Q filings] has increased from 20% in 2002 to more than 60% by 2015”) (“A Growing Disparity in Earnings Disclosure Mechanisms”).

<sup>37</sup> See *The Promise of Market Reform*, Nasdaq, (May 2017), available at [https://business.nasdaq.com/media/Nasdaq\\_Blueprint\\_to\\_Revitalize\\_Capital\\_Markets\\_April\\_2018\\_tcm5044-43175.pdf](https://business.nasdaq.com/media/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf) (stating that “companies provide key data via an earnings press release each quarter” and that “[f]or virtually all investors, the press release is the quarterly report. Yet companies are then required to file a formal Form 10-Q...which is complex, time-consuming, and provides little additional actionable information that cannot be found in the press release”)(“The Promise of Market Reform”). See, also, Diamond, Colin J. and Irina Yevmenenko, *Earnings Releases and Earnings Calls*, White & Case LLP (2015), available at <https://www.whitecase.com/sites/whitecase/files/files/download/publications/article-earnings-releases-and-earnings-calls.pdf> (stating that “earnings releases and calls are among the most material announcements that reporting companies make” and “often result in significant movements in a reporting company’s stock price,” and that “a company’s stock price usually is not affected by the filing of its Form 10-K or Form 10-Q following a corresponding earnings release, because all material information has already been disclosed in the earnings release”).

<sup>38</sup> See, e.g., Jamie Dimon & Warren E. Buffett, *Short-Termism Is Harming the Economy: Public companies should reduce or eliminate the practice of estimating quarterly earnings*, Wall St. J. (Jun. 6, 2018) (“Dimon and Buffet WSJ Article”), available at <https://www.wsj.com/articles/short-termism-is-harming-the-economy-1528336801> (stating that the authors’ misgivings about quarterly earnings forecasts should not be misconstrued as opposition to quarterly and annual reporting that offers a retrospective look at actual reporting); Michael Posner, *Why Quarterly Reporting Makes Business Sense*, Forbes (Aug. 17, 2018), available at <https://www.forbes.com/sites/michaelposner/2018/08/17/why-quarterly-reporting-from-business-makes-sense/#1416b5c67ed8> (discussing information that is contained in the Form 10-Q that is distinct from what is providing in an earnings release); Robert C. Pozen & Mark Roe, *Keep Quarterly Reporting*, Brookings Institution (Sept. 5, 2018), available at <https://www.brookings.edu/opinions/keep-quarterly-reporting/> (opposing quarterly earnings guidance and expressing a belief that a semi-annual reporting would not be beneficial).

While financial statements in Form 10-Q are unaudited, Regulation S-X<sup>39</sup> specifies that the interim financial statements included in Form 10-Q must be reviewed by an auditor<sup>40</sup> and U.S. GAAP prescribes the form and content of interim financial statements.<sup>41</sup> In addition, the Form 10-Q requires certification by the principal executive and financial officers of the reporting company.<sup>42</sup> A Form 8-K, however, is not subject to such requirements. Some of the potential changes and flexibility described in this Request for Comment, therefore, may require coordination with standard-setters, such as the FASB, PCAOB, as well as the stock exchanges and appropriate quoting venues.

## II. Purpose of Request for Comment

The purpose of this Request for Comment is to solicit public input on the nature, timing, format and frequency of periodic reporting, as well as the relationship between the periodic reports that Exchange Act reporting companies must provide and the earnings releases that they must furnish on Form 8-K, to the extent they choose to issue such releases. We seek to

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<sup>39</sup> Rules 8-03 and 10-01(d).

<sup>40</sup> The Public Company Accounting Oversight Board (“PCAOB”) is generally the standard-setter for audit and review procedures in the United States. The PCAOB’s AS 4105, *Reviews of Interim Financial Information*, addresses the auditor requirements for reviews of interim financial information.

<sup>41</sup> Financial Accounting Standards Board (“FASB”) *Accounting Standards Codification (“ASC”) 270: Interim Reporting* also provides recognition and measurement guidance for interim periods. The Commission has designated the FASB as the private-sector accounting standard setter for United States financial reporting purposes. Section 108 of the Sarbanes-Oxley Act amended Section 19 of the Securities Act to provide that the Commission “may recognize, as ‘generally accepted’ for purposes of the securities laws, any accounting principles established by a standard setting body that met certain criteria.” The Commission has determined that the FASB satisfies the criteria in Section 19 and, accordingly, the FASB’s financial accounting and reporting standards are recognized as “generally accepted” for purposes of the federal securities laws. *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Release No. 33-8221 (Apr. 25, 2003) [68 FR 23333 May 1, 2003].

<sup>42</sup> 17 CFR 240.13a-14 (“Rule 13a-14”) and 17 CFR 240.15d-14 (“Rule 15d-14”). These rules require the certifying officers to certify, among other things, that they have reviewed the Form 10-Q and that based on their knowledge: (i) the 10-Q does not contain any untrue statement of material fact or omit to state a material fact necessary to make any statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the 10-Q; and (ii) the financial statements, and other financial information included in the 10-Q, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in the 10-Q.

understand how we might simplify the process by which investors access, process, and evaluate information, for example, by relieving any burdens associated with investors' efforts to compare an earnings release and Form 10-Q to identify information that is new or different. We also are interested in exploring how we might enhance, or at a minimum maintain, the investor protection benefits of disclosure, while reducing the costs (including time)<sup>43</sup> that companies spend complying with quarterly reporting requirements. For example, we seek comment on the potential benefits and drawbacks of providing an option for companies that issue earnings releases to use the releases to satisfy the core disclosure requirements of Form 10-Q.

In addition, we are seeking comment on how the periodic reporting system, earnings releases, and earnings guidance may affect corporate decision making and strategic thinking — positively and negatively — including whether it fosters an inefficient outlook among registrants and market participants by focusing on short-term results. For example, some market participants have urged companies to “move away from providing” earnings per share guidance that companies give and instead put more focus in Form 10-Qs on demonstrating progress made against the company's long-term strategic plan.<sup>44</sup>

In the past, the Commission has received input related to some of the issues discussed in this Request for Comment.<sup>45</sup> Most recently, we requested comment on issues related to the

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<sup>43</sup> See The Promise of Market Reform, *supra* note 37.

<sup>44</sup> Matt Turner, *Here is the Letter the World's Largest Investor, BlackRock CEO Larry Fink, Just Sent to CEOs Everywhere*, Business Insider (Feb. 2, 2016) (“2016 Fink Letter to CEOs”), available at <https://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-2> (affirming support of quarterly reports and stating that companies should stop publishing earnings per share guidance to encourage a focus on a company's long-term plans for value creation). See also Dimon and Buffet WSJ Article, *supra* note 38.

<sup>45</sup> See, e.g., *Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission*, Advisory Committee on Improvements to Financial Reporting, (Aug. 1, 2008), available at <https://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf>. See also, e.g., Final Rule:

frequency of reporting in our Concept Release on business and financial disclosure requirements in Regulation S-K (“Concept Release”).<sup>46</sup> As we continue to evaluate this topic, we are soliciting additional input from the public on issues related to the nature, timing, format, and frequency of reporting in the context of the more narrow scope of this Request for Comment. The Commission encourages commenters to provide any data and information that could help us quantify the effects of the approaches discussed herein on capital formation and investor protection.

### **III. Issues for Consideration**

#### **A. Information Content Resulting from the Quarterly Reporting Process**

Certain material information required by Form 10-Q is frequently provided in earnings releases. However, in our observation, there is variation in the items and methods of presentation in earnings releases. Companies often report certain financial (and statistical) information such as net income, earnings per share, and net sales, and some may include condensed income statements, balance sheets, and cash flow statements along with segment information. This financial information is often accompanied by a narrative discussion of the financial information provided. However, more detailed information that is generally reported on Form 10-Q, such as the notes to the financial statements, a detailed and comprehensive Management’s Discussion and Analysis, disclosure relating to contractual obligations and

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Conditions for Use of Non-GAAP Financial Measures, Release No. 33-8176; 34-47226 (Jan. 22, 2003), *available at* <https://www.sec.gov/rules/final/33-8176.htm>.

<sup>46</sup> See Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064; 34-77599 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)], *available at* <https://www.sec.gov/rules/concept/2016/33-10064.pdf>. Comment letters related to the Concept Release are *available at* <https://www.sec.gov/comments/s7-06-16/s70616.htm>.

market risk, and a description of material changes to previously disclosed risk factors,<sup>47</sup> typically does not appear in an earnings release.<sup>48</sup> Information included in earnings releases sometimes does not appear in a Form 10-Q. For example, management may provide its expectations of the company's future financial performance or "forward-looking earnings guidance" in the earnings release or on the quarterly earnings call.

### **Request for Comment**

1. Why do reporting companies choose to issue earnings releases, most typically quarterly? What are the costs to such companies in preparing earnings releases? Would companies choose to stop issuing these releases if disclosure of quarterly results was not required on Form 10-Q, or would this provide a greater incentive to issue them? Why do some companies choose to file only a Form 10-Q report and not to issue a separate earnings release?
2. Do quarterly earnings releases provide benefits to investors, companies, or the marketplace separate and apart from the Form 10-Q report? If so, please describe the primary benefits. How do investors use earnings guidance to inform their investment decisions? To the extent there are benefits, do they stem largely from the content of the releases, their timing, or other reasons? Do they have any negative effects on investors, companies, or the marketplace? If so, please describe such effects.

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<sup>47</sup> Pursuant to Rule 13a-13(d) and Rule 15d-13(d), the information presented to satisfy the requirements of Part I Items 1, 2 and 3 shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, but shall be subject to other provisions of the Exchange Act.

<sup>48</sup> In our observation, the financial information contained in earnings releases is not ordinarily presented in a manner that constitutes interim financial statements pursuant to Rules 8-03 and 10-01. We also note that Rule 10-01(a)(5) includes a presumption that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year. Further, it permits the omission of certain footnote disclosures that substantially duplicates the disclosure contained in the most recent annual report to shareholders or audited financial statements.

3. How do companies determine the information to present in the earnings release? Is there a market standard, or are companies otherwise generally consistent in the type and amount of information they present in earnings releases? To what extent is the content of earnings releases provided in response to investor and analyst needs or demands? Are such releases satisfying those needs? How would the content of earnings releases change if they were required to be filed with the Commission and become subject to applicable liability provisions?
4. Is the Form 10-Q or the earnings release the primary document upon which investors rely when a company provides both? What are the factors or circumstances that an investor considers when determining which document to rely on? Are there any benefits to investors and other market participants from having two sources of historical quarterly financial information, when only one is required? How do investors use quarterly financial information, and how does it inform, if at all, their investment decisions made throughout the year? Are there specific pieces of quarterly information that are important to long-term investors?
5. Are there meaningful differences between the financial information typically provided in an earnings release and the financial information required by Form 10-Q? What accounts for the differences?
6. When a company issues an earnings release that includes much of the information required by Form 10-Q before the form is filed, is the Form 10-Q still useful? Why or why not? How important to investors is the confirmation or interpretation by the Form 10-Q of the information in the earnings release? If investors rely on Form 10-Q as the primary document, is the historical financial information about the quarterly

- period included in the earnings release useful? Why or why not? Does the fact that Form 10-Qs are filed as opposed to furnished, and include certifications, impact the extent to which investors rely on them?<sup>49</sup> Are there any instances when information disclosed in earnings releases may be useful to investors for purposes of interpreting the content of Form 10-Q? If so, when and how?
7. Does confusion arise from overlapping disclosures in the earnings release and Form 10-Q? If so, are there changes we could make to our rules that would discourage the practice of providing earnings releases that contain information that is different than what is contained in Form 10-Q? Are there unnecessary burdens to investors or other market participants associated with reviewing, comparing, and digesting two presentations of similar financial information?
  8. Some have suggested that the practice of providing quarterly forward-looking earnings guidance creates an undue focus on short-term financial results and thereby negatively affects the ability of companies to focus on long-term results.<sup>50</sup> Is this the case and, if so, are there changes we could make to our rules that would discourage this practice or address this concern? For example, should we require that earnings guidance be filed with or furnished to the Commission? Are there other factors that

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<sup>49</sup> See General Instruction F of Form 10-Q.

<sup>50</sup> See, e.g., Dimon and Buffet WSJ Article, *supra* note 38 (stating that public companies should move “away from providing quarterly earnings-per-share guidance” because it “often leads to an unhealthy focus on short-term profits at the expense of long-term strategy, growth and sustainability”); 2016 Fink Letter to CEOs, *supra* note 44 (noting that “CEOs should be more focused in these reports on demonstrating progress against their strategic plans than a one-penny deviation from their EPS targets or analyst consensus estimates”). See also, e.g., Darr, Rebecca and Tim Killer, *How to Build an Alliance Against Corporate Short-Termism*, McKinsey & Company (Jan. 2017), available at <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-to-build-an-alliance-against-corporate-short-termism> (stating that longer-term investors, who have “an outsize influence on a company’s share price over time” due to their ownership of seven in ten shares of U.S. companies, “generally oppose earnings guidance, especially quarterly guidance” and “don’t like quarterly calls and find them a waste of time” due to the quality of the calls).

- promote a focus on short-term results? If so, what are they and what is their impact on investors and companies?
9. What are the specific benefits of the required Form 10-Q disclosures to investors and the marketplace separate and apart from the earnings releases? Do they stem largely from the incremental financial statement disclosures, incremental management discussion and analysis, auditor review, officer certificates or other items? Are there sections of the Form 10-Q that are particularly informative for investors? Are there any quarterly disclosure requirements that we should eliminate because they elicit disclosures that are not material to investors to make it easier for investors to focus on the disclosures that are material? If so, which requirements should be eliminated?
10. Do the XBRL requirements of Form 10-Q enhance accessibility and/or usability of quarterly information relative to what is available from earnings releases, which are not required to be structured for machine readability or processing?<sup>51</sup> If so, how is that information used and by whom? Would similar benefits be achieved if companies structured earnings releases using XBRL? Why or why not? How would the costs of structuring earnings releases in XBRL compare to the costs of complying with the XBRL requirements for Form 10-Q?
11. What is the impact of the auditor review requirement of quarterly financial information on investors, companies, and other market participants? Do investors value the independent auditor review of quarterly financial information? Why or why

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<sup>51</sup> See Item 601(b)(101) of Regulation S-K. See also Ken Tysiac, *Driving Faster Decisions*, Journal of Accountancy (Apr. 13, 2015), available at <https://www.journalofaccountancy.com/issues/2015/apr/data-driven-auditing.html>.

- not? Does the auditor review requirement have a relationship to the cost of capital for companies? If so, how?
12. What are the cost burdens associated with the preparation of a Form 10-Q? Are these cost burdens borne solely from the preparation of the Form 10-Q? How do the costs of preparation vary among different sections of the report? Would there be costs to a company to the extent it does not file a Form 10-Q? Would additional cost burdens be associated with the preparation of a registration statement in which a company would otherwise incorporate by reference a previously filed Form 10-Q?
13. Are there other sources of information investors use to supplement information from earnings releases or quarterly reports? If so, please describe these sources.
14. Are there approaches the Commission should consider to help alleviate any burden associated with the preparation of a Form 10-Q without adversely affecting the total mix of information provided to investors? For example, should we permit companies to omit certain disclosures currently furnished on Form 10-Q, such as unregistered sales of securities, so long as the information is provided elsewhere, such as on their websites? If so, should the information provided elsewhere be expressly incorporated by reference into the Form 10-Q, such that the same liability attaches to the disclosure of that information? What would be the benefits and drawbacks to investors and other market participants of such additional flexibility?

**B. Timing of the Quarterly Reporting Process**

Some companies issue an earnings release prior to filing the associated Form 10-Q,<sup>52</sup> though, as noted above, many companies now issue earnings releases concurrently with the filing

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<sup>52</sup> See A Growing Disparity in Earnings Disclosure Mechanisms.

of these forms. While we did not specifically solicit comment in the Concept Release on issues related to earnings releases, some commenters nonetheless provided input on this topic.<sup>53</sup> One commenter suggested requiring registrants to file Form 10-Q simultaneously with any earnings release filed or furnished on Form 8-K, on the ground that this would help investors to be more informed and better able to address issues with management on earnings calls.<sup>54</sup> Other commenters suggested requiring the Form 10-Q to be filed prior to earnings releases and earnings calls to allow analysts to digest U.S. GAAP disclosures before receiving earnings release information, which may include non-U.S. GAAP disclosures.<sup>55</sup> Finally, one commenter suggested that structured reporting in XBRL format is most effective when it is applied broadly to all aspects of reporting, including earnings releases.<sup>56</sup>

### **Request for Comment**

15. One study indicates that the “average public company needed 31.7 days to announce its earnings . . . and another four days after that to file its formal quarterly report.”<sup>57</sup> The study finds that companies that release both documents on the same day tend to “take more time to deliver those pronouncements,” while companies that publish an earnings release “soon after the end of the quarter take more time to file their quarterly report.”<sup>58</sup> Why do some companies publish an earnings release before filing Form 10-Q while other companies publish an earnings report and file Form 10-

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<sup>53</sup> See Concept Release at 280.

<sup>54</sup> See letter from R.G. Associates, Inc. (July 6, 2016).

<sup>55</sup> See letters from Council of Institutional Investors (July 8, 2016), Railpen Investments (July 21, 2016), and California State Teachers’ Retirement System (July 21, 2016).

<sup>56</sup> See letter from CFA Institute (Oct. 6, 2016).

<sup>57</sup> *How Long Does It Take to Announce Earnings?* Calcbench, Inc. (Oct. 20, 2016), available at <https://www.calcbench.com/home/pdf?name=CB-EarningsDays-Advisory-20161027.pdf>.

<sup>58</sup> *Id.*

- Q on the same day or near the same time? Should the Commission take any action to address time lapses between an earnings release and Form 10-Q, and if so, what action? If the Commission should take action to facilitate a decrease in this delay, what is the best mechanism to facilitate such a decrease? Is it more or less burdensome to issue the two documents concurrently?
16. What is the impact on investors and other market participants participating in earnings calls when a company publishes its earnings release before filing its Form 10-Q? Are investors or other market participants disadvantaged at the time of the earnings call by not having access to the more detailed information contained in the Form 10-Q? If so, what are those disadvantages? Do the same disadvantages exist for the fourth quarter earnings release in comparison to the filing of Form 10-K?
17. To what extent are auditors involved with earnings releases? Does such involvement or the auditor review of the quarterly financial statements contribute to any delay between publication of an earnings release and the filing of a Form 10-Q? If so, how? What steps could or should be taken to help ameliorate this delay? Do auditors conduct their review of quarterly financial information in phases due to companies' preparation of two reporting documents? If so, does this result in efficiencies or inefficiencies based upon the nature of the two disclosure documents?

**C. Earnings Release as Core Quarterly Disclosure**

The Commission is requesting comment on different ways to alleviate burdens related to Form 10-Q reporting while maintaining investor protection. Among other approaches, we are requesting comment on whether we should provide an option for companies that issue earnings releases to use the releases to satisfy the core financial disclosure requirements of Form 10-Q.

Under this option, a company would use its Form 10-Q to supplement a Form 8-K earnings release with additional material information required by the Form 10-Q not already presented in the Form 8-K or alternatively incorporate by reference disclosure from the Form 8-K earnings release into its Form 10-Q (the “Supplemental Approach”). For example, registrants that do not provide interim financial statements in accordance with Regulation S-X<sup>59</sup> in the earnings release would be required to include them in the Form 10-Q under the Supplemental Approach.

### **Request for Comment**

18. To what extent do companies take advantage of General Instructions D.1 and D.2 of Form 10-Q to satisfy the requirements of Form 10-Q?<sup>60</sup> What changes to our rules, if any, would increase the use of these Instructions? Is the required quarterly reporting process complex and burdensome for investors or companies? If so, how is it complex and burdensome? If so, what approaches should we consider apart from the Supplemental Approach (hereafter “other suggested approach”) to simplify the process by which investors collect and evaluate information and ease the burdens associated with the publication of earnings releases and the preparation and filing of Form 10-Q without adversely affecting the total mix of information provided to investors?

19. Should Commission rules, accounting standards, and auditing standards allow for the

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<sup>59</sup> Item 1 of Form 10-Q requires interim financial statements in accordance with Rule 8-03 or 10-01. These rules require disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. ASC 270-10-50-1 also requires certain disclosures that must be provided at a minimum when reporting companies report summarized financial information at interim dates.

<sup>60</sup> General Instruction D.1 of Form 10-Q permits companies to incorporate information by reference from a document that meets some or all of the requirements of Part I of Form 10-Q and General Instruction D.2. directs registrants to Exchange Act Rule 12b-23 with respect to other information that may be incorporated by reference in response to all or some of Part II of Form 10-Q.

- interim financial statements to be separated so that certain parts could be presented only in the earnings release to satisfy the Form 10-Q requirements under the Supplemental Approach or other suggested approach? For example, should a registrant be able to present condensed interim income statements only in the earnings release and the remaining Regulation S-X required interim statements and footnotes in the Form 10-Q? What changes would be needed to the current accounting and/or auditing standards to accomplish such separation? Would separation of the financial statements help, harm, or have no effect on an investor's ability to evaluate a company's performance?
20. Should information in an earnings release that is submitted on Form 8-K be allowed to satisfy the Form 10-Q requirements? Why or why not, and if so to what extent? What are the potential benefits and drawbacks to investors, companies, and other market participants of the Supplemental Approach or other suggested approach?
21. If companies were permitted to omit from Form 10-Q information already contained in a Form 8-K earnings release, what specific information should they be allowed to omit? Is there any earnings release information that should not be allowed to satisfy the requirements of Form 10-Q? Would companies be likely to rely on the Supplemental Approach or other suggested approach, if available? If so, would certain types of companies benefit more from the Supplemental Approach other suggested approach than others?
22. If we adopt the Supplemental Approach or other suggested approach, should we

- require the relevant Form 8-K to be filed rather than furnished?<sup>61</sup> Should we further require the relevant Form 8-K to be incorporated by reference into the Form 10-Q, in whole or in part? Should we require a hyperlink from the Form 10-Q to the relevant Form 8-K? Should we require the relevant Form 8-K to include certain disclosures that are otherwise required in Form 10-Q? If so, which disclosures should be required and why?
23. Are there issues or concerns with the above approaches in relation to a registration statement and the ability to incorporate by reference? If so, please describe. For example, should a company relying on the Supplemental Approach or other suggested approach have to incorporate by reference the historical financial information in its earnings release into a Securities Act registration statement so that Securities Act liability would apply to that information, just as such liability applies to Form 10-Q information that is incorporated by reference into a registration statement?
24. Would the Supplemental Approach or other suggested approach affect the quantity, quality, or nature of the disclosure being made to the public? If so, how? Would the Supplemental Approach or other suggested approach simplify or complicate the process by which investors collect and evaluate information? How would the Supplemental Approach or other suggested approach affect investors' evaluation of company performance? Overall, what impact would the Supplemental Approach or other suggested approach have on investors?

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<sup>61</sup> The information required by Items 1 (Financial Statements), 2 (Management's Discussion and Analysis of Financial Condition and Results of Operations) and 3 (Quantitative and Qualitative Disclosures About Market Risk) of Part I of the Form 10-Q is not deemed to be filed for purposes of Section 18 of the Exchange Act, but an issuer may choose to file, rather than furnish, earnings release information on Form 8-K, for example, to ensure that a registration statement currently in use does not contain a material omission of the information contained in an earnings release.

25. Would the Supplemental Approach affect the timing of earnings releases? If so, how? If we implement the Supplemental Approach or other suggested approach, should we modify the due date of Form 10-Q? Why or why not, and if so, how?
26. How should the Supplemental Approach or other suggested approach take into consideration the XBRL requirements of Form 10-Q? If information currently required to be structured using the XBRL format on Form 10-Q were instead only disclosed in an unstructured format on Form 8-K, would this adversely affect investors or other market participants?
27. If an earnings release were used to satisfy the requirements of Form 10-Q, should any financial statements included in an earnings release be subject to auditor review procedures at the time the Form 8-K is filed? Why or why not?
28. Would the Supplemental Approach or other suggested approach reduce or add to companies' disclosure or auditor review burdens? How should the Supplemental Approach other suggested approach take into consideration the requirements regarding disclosure controls and procedures set forth in Rules 13a-15 and 15d-15,<sup>62</sup> as well as the related officer certification requirements, which apply to Forms 10-Q but not to earnings releases furnished on Form 8-K?<sup>63</sup>
29. Does the Supplemental Approach or other suggested approach raise concerns regarding a company's liability under the federal securities laws? If so, please explain.

**D. Reporting Frequency**

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<sup>62</sup> 17 CFR 240.13a-15; 17 CFR 240.15d-15.

<sup>63</sup> Rules 13a-14 and 15d-14.

As noted above, we previously solicited public input on issues related to the frequency of interim reporting in connection with the Concept Release. Prior to adoption of Form 10-Q in 1970,<sup>64</sup> reporting companies were not required to provide specific information on a quarterly basis, other than to satisfy the requirements of Form 8-K.<sup>65</sup> However, as noted in the Concept Release, prior to the adoption of Form 10-Q, more than 70% of public companies produced quarterly reports, partly in response to exchange listing standards.<sup>66</sup>

Commenters' responses to this issue as set forth in the Concept Release were mixed. Many commenters recommended a less-than-quarterly reporting requirement, such as a semi-annual reporting requirement, either for all companies or a subset of companies.<sup>67</sup> A number of commenters expressly opposed increasing the frequency of reporting,<sup>68</sup> with many of these commenters noting the costs and burdens associated with the current quarterly reporting regime

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<sup>64</sup> See SEC Release No. 34-9004 (Oct. 28, 1970).

<sup>65</sup> Prior to the adoption of Form 9-K in 1955, reporting companies were only required to provide limited information related to quarterly results in response to requirements on Form 8-K. See SEC Release No. 34-5129 (Jan. 27, 1955). With the adoption of Form 9-K, companies were required to report certain financial information on a semi-annual basis. See SEC Release No. 34-5189 (June 23, 1955). In 1969, the Commission proposed to rescind Form 9-K and adopt Form 10-Q for the reporting of quarterly financial and other information based on the observation that "Current Reports on Form 8-K [were] not widely used by investors and their advisors. This may be because these reports [were] not filed at regular intervals and they [were] not truly current reports since they need not be filed until 10 days after the end of a month in which a reportable event occurred." The Commission reasoned that mandated quarterly reports may "provide detailed information as a back-up to information released pursuant to timely disclosure policies." See SEC Release 34-8683 (Sept. 15, 1969).

<sup>66</sup> See Concept Release at 281.

<sup>67</sup> See letters from Dylan Schweitzer (Apr. 20, 2016); Legal & General Investment Management (July 20, 2016); National Association of Real Estate Investment Trusts (July 21, 2016); Eric Bormel (July 27, 2016); Ball Corporation (July 19, 2016); Frederick D. Lipman (May 2, 2016); Ernst & Young LLP (July 21, 2016); American Council of Life Insurers (July 19, 2016); Insured Retirement Institute (July 21, 2016); and Committee of Annuity Insurers (July 21, 2016).

<sup>68</sup> See letters from American Bankers Association (July 15, 2016) ("American Bankers Association"); U.S. Chamber of Commerce (July 20, 2016) ("Chamber"); FedEx Corporation (July 21, 2016) ("FedEx"); Business Roundtable (July 21, 2016) ("BRT"); Securities Industry and Financial Markets Association (July 21, 2016) ("SIFMA"); Allstate Insurance Company (July 21, 2016) ("Allstate"); General Motors Company (Sept. 30, 2016); and Financial Executives International (Oct. 3, 2016).

as one reason for opposition.<sup>69</sup> Many other commenters, citing a wide variety of reasons, specifically supported retaining quarterly reporting.<sup>70</sup> Some of these commenters recommended evaluating the content of quarterly reports, rather than changing the frequency.<sup>71</sup> Other commenters suggested that semi-annual reporting may increase the risk of insider trading by lengthening the time insiders would be unable to trade in order to comply with the insider trading prohibitions of Section 10(b) and Rule 10b-5.<sup>72</sup>

We recognize that there is ongoing debate regarding the adequacy and appropriateness of mandated quarterly reporting.<sup>73</sup> As we continue to evaluate the existing reporting frequency, we are soliciting additional input on reporting frequency and what alternate approaches, if any, should be considered that would appropriately address the informational needs of investors while reducing the costs and other burdens on registrants who provide that information.

### **Request for Comment**

30. What are the benefits and costs to investors, companies, and other market participants

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<sup>69</sup> See letters from American Bankers Association; Chamber; FedEx; BRT; SIFMA; and Allstate.

<sup>70</sup> See letters from Sat Parashar (Apr. 20, 2016); A. Whigman (May 4, 2016); SEC Investor Advisory Committee (June 15, 2016); R.G. Associates, Inc. (July 6, 2016); US SIF and US SIF Foundation (July 14, 2016); New York State Society of Certified Public Accountants (July 19, 2016); Investment Program Association (July 21, 2016); Committee on Securities Law, Maryland State Bar Association (July 21, 2016) (“Maryland Bar Securities Committee”); AFL-CIO (July 21, 2016); Bloomberg LP (July 21, 2016); Stephen P. Percoco (July 24, 2016); National Investor Relations Institute (Aug. 4, 2016) (“NIRI”); Institute of Management Accountants (July 29, 2016) (“IMA”); Nasdaq Inc. (Sept. 16, 2016) (“Nasdaq”); and Northrop Grumman Corporation (Sept. 27, 2016).

<sup>71</sup> See letters from Nasdaq and IMA.

<sup>72</sup> See letters from NIRI and Maryland Bar Securities Committee.

<sup>73</sup> See, e.g., Zweig, Jason, *The End of Quarterly Reporting? Not Much to Cheer About*, The Wall Street Journal (Aug. 17, 2018), available at <https://www.wsj.com/articles/the-end-of-quarterly-reporting-not-much-to-cheer-about-1534540127>. See also, e.g., Whelan, Tensie, *Trump is Right: Quarterly Earnings Reports Should Go*, CNN Money (Aug. 23, 2018), available at <https://money.cnn.com/2018/08/23/news/trump-quarterly-reporting/index.html>, and La Croix, Kevin, *Is It Time to End Quarterly Reporting? The D&O Diary* (Aug. 19, 2018), available at <https://www.dandodiary.com/2018/08/articles/corporate-governance/time-end-quarterly-reporting/>.

associated with the current reporting frequency model, which requires from domestic issuers quarterly reports on Form 10-Q, annual reports on Form 10-K, and current reports on Form 8-K? Does the frequency of reporting lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? If so, does this negatively affect investors? If so, how? Would less frequent reporting change management decision-making or otherwise positively affect investors? Or does the practice of issuing earnings guidance, including the frequency with which companies issue earnings guidance, lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? Would more frequent reporting change management decision-making?

31. Should we move to a semi-annual reporting model for all or certain categories of reporting companies? Why or why not, and to which categories of reporting companies (*e.g.*, smaller reporting companies, non-accelerated filers, emerging growth companies)? Are there other categories of reporting companies, such as by industry, that we should consider? For example, are there any unique considerations we should give to certain commodity trusts, business development companies, and other collective investment vehicles? Would any other frequency of reporting model be more appropriate for these or other types of companies?
32. What would the costs and benefits be to investors, companies, and other market participants of a semi-annual reporting model for all or certain categories of reporting companies? Are there market practices in place, for example contractually mandated reports to lenders and indenture trustees, that rely on the current regulatory reporting regime? If so, how would these market practices be affected by changes to that

- regime and what are the downstream effects?
33. Would a change in reporting frequency affect the cost of capital to companies? Why or why not, and if so, how?
34. How would a semi-annual reporting model affect the general use of Form 8-K to report material information? Should we consider any particular additional Form 8-K requirements or triggers under a semi-annual reporting model? If so, what type(s)?
35. How would a semi-annual reporting model affect the use of earnings releases? If we were to allow semi-annual reporting, should we require voluntarily published earnings releases, either on a quarterly or semi-annual basis, to be filed rather than furnished? Or, if we were to allow semi-annual reporting, should we require companies to file earnings releases?
36. Should we allow for additional flexibility by permitting companies to select an approach to periodic reporting that best suits their needs and the needs of their investors? For example, should we allow a company conducting an initial public offering to announce its approach to periodic reporting, such as semi-annual periodic reporting, during registration and implement the elected approach going forward? Should a company be permitted to change its approach to frequency of reporting once it selects a reporting frequency? Why or why not? If it is permitted to change the frequency of reporting after it has established an approach, how often should the company be permitted to change its reporting frequency?
37. What are the downstream effects of changing the reporting frequency to investment companies, investment advisers, broker-dealers, data aggregators, and other users of the reports?

38. Should an emerging growth company or smaller reporting company be permitted to elect a semi-annual reporting frequency?
39. What would the costs and benefits be to investors, companies, and other market participants of moving to a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model)? How would a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model) affect the ability of investors, analysts, and other market participants to compare results among companies, especially if companies in the same industry report on different schedules? Would companies that choose to report more frequently suffer adverse competitive consequences if peer companies choose to report less frequently (e.g., because relative performance and/or estimates of expected future cash flows would be measured on a less frequent basis)? Alternatively, would companies that choose to report more frequently benefit from their provision to investors of more and more timely information about historical results?
40. What are the accounting and auditing changes that would be necessary for a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model)? For example, would there be concerns with how to apply ASC 270 *Interim Reporting* in U.S. GAAP or certain Regulation S-X disclosure requirements in a flexible reporting frequency model? Would there be concerns with how to apply auditing standards<sup>74</sup> in relation to interim financial information, including procedures performed in relation to letters for underwriters and certain other requesting parties,

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<sup>74</sup> For example, would there be questions about how to apply PCAOB AS 4105 and AS 6101, *Letters for Underwriters and Certain Other Requesting Parties*.

- in a flexible reporting frequency model?
41. What other topics may raise concerns or questions with application under a flexible reporting model, and what are those concerns or questions? Do these concerns and questions exist in the current quarterly reporting model and would they still exist with a mandatory semi-annual model?
  42. Are existing U.S. GAAP taxonomies used for XBRL reporting appropriate for a flexible reporting frequency model?
  43. Should we limit such flexibility in reporting frequency to a particular group of companies as an initial step before considering whether to provide such an option to all companies? If so, which group of companies and why? Should any potential election by a company be limited to a specific period of time?
  44. How would a move to either a mandatory or optional semi-annual reporting model affect the current rules of self-regulatory organizations and national securities exchanges? For example, would exchanges still require quarterly reporting as a requirement of listing, as they did prior to 1970 when Form 10-Q was adopted?
  45. How would a move to either a mandatory or optional semi-annual reporting model affect a company's ability to comply with current rules relating to Securities Act offerings? For example, given that Form 10-Q is often incorporated by reference into certain registration statements under the Securities Act,<sup>75</sup> how would a company that reports semi-annually ensure that a registration statement currently in use does not contain a material omission of information? For example, how would an issuer

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<sup>75</sup> See Rule 415, Item 12(a) of Part I of Form S-1 [17 CFR 239.11], and Item 12(a) of Part I of Form S-3 [17 CFR 239.13].

ensure that a shelf registration statement on Form S-3 remains current? Under a flexible approach, would companies nonetheless elect to maintain a quarterly reporting model to avoid concerns about keeping their Securities Act registration statements current? How would companies meet the requirements regarding the age of financial statements<sup>76</sup> under Regulation S-X with respect to new registration statements under such an approach? How would a change in reporting frequency impact the Commission's integrated disclosure regime, including, for example, determining issuer eligibility and the speed by which a company may offer securities? How would a change in reporting frequency impact companies who use reports filed in the United States to satisfy state or international reporting requirements?

46. Are there additional approaches that we should consider to better facilitate the dissemination of timely periodic information to investors and other market participants?

#### **IV. Closing**

This request for comment is not intended to limit the scope of comments, views, issues or approaches to be considered. In addition to investors and companies, the Commission welcomes comment from other market participants, in particular statistical, empirical and other data from commenters that may support their views and/or support or refute the views or issues raised.

By the Commission.

Dated: December 18, 2018

Eduardo A. Aleman  
Deputy Secretary

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<sup>76</sup> See 17 CFR 230.3-12.