

# SEC Reporting & Compliance Alert

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## SEC Requests Public Comment on Earnings Releases and Quarterly Reports

On December 18, 2018, the Securities and Exchange Commission (SEC) issued a concept release requesting comments on the nature, content and timing of earnings releases and quarterly reports made by reporting companies.<sup>1</sup> In particular, the SEC is soliciting input on whether the existing periodic reporting system, earnings releases and earnings guidance are useful or overly burdensome and whether it should take steps to simplify the reporting system and evaluate how such changes could affect capital formation, while enhancing, or at a minimum maintaining, appropriate investor protections. Through the formal comment process, the SEC intends to study the degree to which the frequency of reporting and guidance influences management and market participants to focus on short-term results while negatively affecting the ability of reporting companies to plan for the long term.

The public comment period will remain open for 90 days following publication of the SEC's concept release in the Federal Register. Any changes to the SEC's rules as a result of the comments received in response to the SEC's request for comment will require the SEC to propose and adopt, after a public comment period, new or revised rules.

### Overview

On April 13, 2016, the SEC issued a concept release seeking feedback on ways to modernize the business and financial disclosure requirements of Regulation S-K. While the concept release covered a wide array of disclosure topics and sought to elicit how reporting companies can most effectively present such information, the release also solicited public comment on reporting frequency and its impact on reporting companies and market participants.<sup>2</sup>

<sup>1</sup> The SEC's press release "SEC Solicits Public Comment on Earnings Releases and Quarterly Reports" (Dec. 18, 2018) and related request for public comment are available [here](#), and Chairman Jay Clayton's public statement "Statement on Investing in America for the Long Term" (Aug. 17, 2018) is available [here](#).

<sup>2</sup> For the full list of topics and questions raised by the SEC, please see a copy of the release available [here](#), and for additional detail, please see our client alert "SEC Issues Concept Release Seeking Feedback on Business and Financial Disclosure Requirements" (Apr. 20, 2016) available [here](#).

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The SEC's renewed interest and request for comment seeks to expand on the quarterly reporting process information received in response to the 2016 concept release. Some of the questions raised in the SEC's new concept release include, among others:

- Timing and informational content resulting from the quarterly reporting process, including areas in which the Form 10-Q disclosure requirements overlap with the disclosures such companies voluntarily provide to the public in earnings releases furnished on Form 8-K and timing considerations regarding the publication of earnings releases (*e.g.*, time lapse between an earnings release and Form 10-Q).
- Whether reporting companies should be afforded an opportunity to use an earnings release to satisfy the core financial disclosure requirements of Form 10-Q.

- Frequency of periodic reporting (*e.g.*, semi-annual reporting requirement for all or a subset of reporting companies).

## Conclusion

Although the launch of a formal comment process signals a significant step forward in the SEC's desire to consider alternatives to periodic reports and quarterly guidance in order to alleviate pressures associated with undue focus on short-term financial results and promote long-term strategic planning among both reporting companies and market participants, it remains to be seen whether the SEC's examination of these matters will give rise to rulemaking and/or other SEC initiatives.

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