

On December 18, 2018, the Securities and Exchange Commission (SEC) issued a Request for Comment on Earnings Releases and Quarterly Reports (Request for Comment)¹. This is the culmination of recent comments from Chairman Clayton indicating the SEC's willingness to look at the nature and timing of disclosures that reporting companies are required to provide on Form 10-Q, and also follows comments earlier in 2018 from President Trump suggesting that the SEC should stop quarterly reporting and move to a six-month system.

The Request for Comment indicates that the SEC is interested in exploring ways to promote efficiency in periodic reporting, and how such changes could affect capital formation while enhancing or maintaining investor protection. The SEC also asks if the rules should provide reporting companies with flexibility as to frequency of reporting, as well as comment on how the existing system, standing alone or in combination with other factors, may affect decision making by companies focusing on short-term results.

The Request for Comment requests input on a variety of topics, including the relationship between the earnings release and Form 10-Q, posing a number of questions regarding this relationship. In particular, whether quarterly earnings releases (which most companies issue) provide benefits separate and apart from the Form 10-Q, and would companies choose to stop issuing earnings releases if disclosure of quarterly results were not required on Form 10-Q. The Request for Comment also asks if confusion arises from overlapping disclosure.

Feedback is also solicited on the timing of the quarterly reporting process and related earnings release and Form 10-Q filing, to understand what impact on investors and market participants would be if such timing was changed, and the role of auditors in this process. The Request for Comment also seeks feedback on different ways to alleviate disclosure burdens. One alternative method suggested in the Request for Comment is a "supplemental approach," where an earnings release could satisfy core financial disclosure requirements of Form 10-Q, with the Form 10-Q merely supplementing the earnings release.

As a practical matter, many issuers see quarterly financial reporting as a key component of its investor relations function and a necessary part of ongoing shareholder engagement. While the vast majority of companies with an active trading market would likely continue with some form of quarterly reporting, the focus by the SEC on streamlining and minimizing the regulatory burdens associated with quarterly reporting would be a welcomed change. An approach that recognizes the relationship and reliance upon earnings releases and similar information, apart from the required Form 10-Q, would help to streamline reporting and minimize the costs associated with the quarterly reporting process.

Of course, any change would require additional focus. For example, as noted in the Request for Comment, how would a "supplemental approach" that utilizes the earnings release take into consideration the requirements regarding disclosure controls and procedures, as well as officer certification requirements? These currently apply to Form 10-Q but not earnings releases. Other questions regarding a company's liability under federal securities laws would also need to be considered and carefully evaluated.

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¹ <https://www.sec.gov/rules/other/2018/33-10588.pdf>