

Periodic Reporting

A company can become a Securities and Exchange Commission (“SEC”) reporting a couple of ways—by registering a securities offering under the Securities Act of 1933, registering a class of securities under the Securities Exchange Act of 1934, or by meeting certain shareholder requirements. A company that becomes reporting under either the Securities Act or the Exchange Act is obligated to file annual reports on Form 10-K, quarterly reports on Form 10-Q and current information reports on Form 8-K. In addition to these reports, companies reporting under the Exchange Act must comply with the SEC’s proxy rules which include the obligation to file proxy and /or information statements in advance of certain corporate actions requiring approval by the company’s shareholders.

Timing of Periodic Reports

Q: Which periodic reports require audited financial statements?

A: The company must provide audited financial statements in its annual report on Form 10-K. The company can provide unaudited financial statements in its quarterly reports on Form 10-Q. Under some circumstances, audited financial statements are required in Form 8-K.

Q: Can the company extend the due date of its annual report?

A: Yes, the company can extend its due date by 15 days by filing a Form 12b-25 with the Securities & Exchange Commission.

In This Issue

- Periodic Reporting
- Timing of Periodic Reports
- What information is required in Forms 10-K, 10-Q and 8-K?
- What is Material Information?
- What Are the Anti-Fraud Provisions?

Smaller reporting companies must file annual reports on Form 10-K within 90 days after the year end and quarterly reports within 45 days after each quarter other than the quarter following the company’s year end.





What is Material Information?

A sponsoring market maker is a FINRA registered broker-dealer firm that accepts the risk of holding certain number of shares of a particular security in order to facilitate trading in that security. Broker-dealers must register with FINRA to act as a market maker.

It should be noted that sponsoring market makers have become one of the most important players in the going public process because they are the only ones who can apply for a ticker symbol.

For the first 30 days after a ticker symbol assignment in a going public transaction, only the sponsoring market maker who filed the Form 211 can publish quotes of the company's securities. Thereafter, other market makers can publish their own quotes.

Market maker activities are regulated by the SEC as well as by FINRA. FINRA oversees registration, education and testing of market makers, broker-dealers and registered representatives.

What Information is Required in Form 10-K?

According to the Securities Act of 1934, a Funding Portal means "any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others." A funding portal does not offer investment advice, solicit purchases or offers to buy the securities, compensate employees based on the sale of the securities, hold or manage investor funds, or engage in other activities described by the SEC.

With the recent advent of the crowdfunding portals online such as Kickstarter and Indiegogo, the SEC has provided clarification on just what exactly a funding portal is.

What Information is Required in Form 10-Q?

Under the JOBS Act, any person who wants to start or grow a business can use an online crowdfunding portal to raise up to \$1,000,000 through the sales of stock in their company. Although crowdfunding platforms offer the means by which a person or business can collect the funds, the use of social media is also typically employed to get the word out about the securities being offered.

When is Form 8-K Required?

Under the JOBS Act, Crowdfunding portals must:

- Register with the SEC and any applicable Self Regulatory Organizations
- Provide disclosures related to risks, as well as other investor education materials
- Ensure that offering proceeds are provided to the issuer and allow purchasers to cancel orders
- Make efforts to ensure that no investor exceeds the individual crowdfunding maximum investment amounts
- Protect investor privacy
- Not directly or indirectly compensate promoters, finders or lead generators who refer or direct investors to the offering
- Not allow crowdfunding portal officers, directors or partners to have a financial interest in any issuer using the portal's services.



The Role of the Securities Lawyer in Periodic Reporting

In order for a Company to be quoted on the OTC Markets OTCQB, it must be a fully reporting company that files periodic reports with the SEC. A company can become reporting a couple of ways—by registering a securities offering under the Securities Act of 1933, registering a class of securities under the Securities Exchange Act of 1934, or by meeting certain shareholder requirements.

A company that becomes reporting under either the Securities Act or the Exchange Act is obligated to file annual reports on Form 10-K, quarterly reports on Form 10-Q and current information reports on Form 8-K. In addition to these reports, companies reporting under the Exchange Act must comply with the Securities & Exchange Commission's proxy rules which include the obligation to file proxy and / or information statements in advance of certain corporate actions requiring approval by the company's shareholders.

The SEC doesn't review all periodic reports filed by reporting companies. Periodic reports are reviewed periodically. As such, just because the SEC does not comment about a periodic report does not mean that the report complies with the SEC's disclosure requirements.

An OTC Markets Lawyer reviews the company's SEC filings and reports to ensure they comply with Regulation S-K of the Securities Act of 1933, which enables the issuer to avoid deficient SEC disclosures.

Why Do SEC Reporting Companies Need an Accountant and an Auditor?

While crowdfunding can be used to raise funds for many things, it generally has not been used as a means to offer and sell securities. This has caused some confusion about the legality of crowdfunding for some market participants.

Congress created an exemption to permit securities-based crowdfunding when it passed the JOBS Act of 2012.

Title III of the JOBS Act established the foundation for a regulatory structure that would permit small businesses and startups to use crowdfunding, and directed the SEC to write the rules implementing the exemption. It also creates an exemption allowing funding ports to operate internet based platforms to facilitate the offer and sale of securities without having to register with the SEC as brokers.

As mandated by Title III of the JOBS Act, securities purchased in a crowdfunding transaction will be restricted securities that could not be resold for a period of one year. Holders of these securities would not count toward the threshold that requires a company to register with the SEC under Section 12(g) of the Exchange Act.

Companies conducting a crowdfunding offering are required to file certain information with the SEC as well as make this information available to potential investors or any intermediaries. This information may include, but is not limited to financial statements, a description of the business, and how the proceeds will be used. These financial statements may be required to be reviewed or audited by an independent public accountant or auditor.

Companies relying on the crowdfunding exemption to offer and sell securities would be required to file an annual report with the SEC and provide this report to investors.



What Are the Anti-Fraud Provisions?

The anti-fraud provisions apply to both SEC reporting and non-reporting companies. Even if a securities offering is exempt or registered with the SEC, the antifraud provisions apply. There are various provisions in federal and state securities statutes that it illegal to make a misstatement or omit of a material fact in connection with a securities offering. The anti-fraud provisions require disclosure of any other material information necessary to make the disclosed information not misleading. Companies must comply with the anti-fraud provisions in addition to any reporting obligations. A common mistake SEC reporting companies make is omitting material information when it is not specifically required by an line item of Regulation S-K. One of the more difficult tasks a company faces when formulating public disclosures is the determination of which facts constitute "material" information. As a general proposition, a fact will be deemed "material" if there is a substantial likelihood that a reasonable investor would consider the fact to be important in deciding whether to invest in the company. The determination of what constitutes "material" determines antifraud liability for the company and its officers and directors. As is the case with numerous matters under the federal and state securities laws, companies should seek the assistance of an experienced securities attorney to assist them in making a determination of what constitutes material information.

Does the SEC Review Periodic Reports?

The SEC reviews periodic reports at least once every three years and may review an issuer's reports more often if it files a registration statement under the Securities Act, as a part of a review of the registration statement.

Contact Us

Give us a call for more information about periodic reporting, securities law and going public!

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