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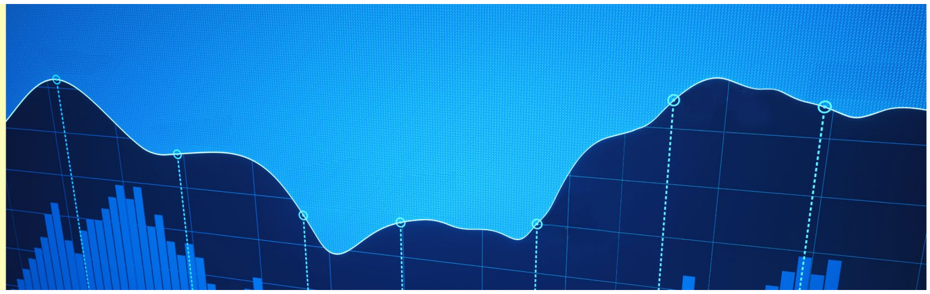

Securities Quarterly Update

September 2025 | Fall Edition

Welcome to the fall edition of Securities Quarterly Update*, a publication that provides updates and guidance on securities regulatory and compliance issues. In this edition, we review considerations for quarterly reports on Form 10-Q; considerations for the upcoming annual reporting and proxy season; recent SEC, Nasdaq and OTC updates; and California climate-related disclosure updates.*

Form 10-Q Disclosure Considerations

Current Events

Companies should consider how the following might impact their disclosures, particularly in the Business, Risk Factor, Management's Discussion and Analysis, and Quantitative and Qualitative Disclosures About Market Risk sections, and whether any updates are necessary.

- *Interest rates:* On September 17, 2025, the Federal Reserve cut interest rates for the first time in nine months and indicated that future cuts may be coming.
- *Foreign currency exchange risk:* The value of the U.S. dollar against other currencies dropped around 11% in the first half of the year.
- *Tariffs and supply chains*: Tariffs continue to remain in flux and disrupt supply chains. On September 23, 2025, the OECD released a report indicating that the full impact of tariffs are "yet to be fully felt in the US economy." Companies should assess the impact of tariffs on their business at the time of filing and disclose the impact, including quantitative impact, if material.
- *General macroeconomic conditions:* Inflation remains a risk, with new U.S. inflation data being released later this month. Job growth in the U.S. has slowed, potentially due to immigration policies, among other factors, and as of August 2025 the U.S. unemployment rate was near a four-year high of 4.3%.

Segment Reporting

Beginning with 2024 Form 10-K filings (for year-end filers), companies are subject to new segment reporting disclosures in the notes to the financial statements. SEC comments have begun to emerge on these disclosures, including the following:

- *Reconciliation of total segment earnings:* Please revise future filings to reconcile the total of the reportable segments' amount for each measure of profit or loss to consolidated income before income taxes.... In this regard, the reconciliation should include a single amount for the subtotal of the reportable segments' measures of profit or loss with a reconciliation of that amount to consolidated income before income taxes. The segment note currently separates reconciling items among the reportable segments and Corporate/Inter-segment eliminations category and results in the presentation of an additional non-GAAP measure of consolidated adjusted operating income.
- *Chief operating decision maker and the segment performance measure:* Please tell us your consideration for disclosing how your Chief Operating Decision Maker (CODM) uses the segment measure of net income (loss) in assessing segment performance and deciding how to allocate resources pursuant to ASC 280-10-50- 29(f).
- *Multiple segments:* We note your disclosure explaining that although the business is organized geographically into three operating segments, these have been aggregated into one reportable segment "...due to the similar nature of their operations and economic characteristics." However, disclosures on pages 13 and 14 indicate the regulatory landscape in which you

conduct operations is "constantly evolving and subject to significant change" which could require changes to your operating practices that would influence demand, or require that you incur significant additional costs that could adversely affect your results of operations. Please explain to us how you considered differences in the regulatory landscapes of each geographically differentiated segment, including the likelihood of change and susceptibility of operations to significant change in these regulatory environments, relative to the aggregation criteria in FASB ASC 280-10-50-11(e), and explain how you view the aggregation result as being consistent with the objectives set forth in FASB ASC 280-10-10-1, if this is your view….

- *Significant segment expenses:* Please more fully explain to us how you believe you have complied with the requirements to disclose significant expenses and other segment items required by ASC 280-10-50-26A and 26B or explain how you intend to revise your disclosures in future filings to comply with this guidance. If you have no significant expense categories, please tell us where and how you explain the nature of the expense information the CODM uses to manage operations as required by ASC 280-10-50-26C or explain how you intend to revise your disclosures in future filings to comply with this guidance.
- *Non-GAAP segment performance measures:* We note that you present Segment EBITDA on a consolidated and segment basis. Although Segment EBITDA on a segment basis is a disclosure required by ASC 280 in the notes to the financial statements, the presentation on a consolidated basis outside of the segment footnote is a non-GAAP measure. Please revise to properly identify consolidated Segment EBITDA as a non-GAAP measure and ensure that you provide all related disclosures required by Item 10(e) of Reg. S-K.

Looking Ahead – Year-End Reminders and 2026 Annual Shareholder Meetings

SEC Filer Status

In preparation for the annual reporting cycle, companies should confirm their SEC filer status for the upcoming fiscal year by calculating their non-affiliate public float as of the last business day of the second fiscal quarter. The SEC filer status is relevant in determining the company's filing deadlines for annual and quarterly reports and the scope of required disclosures. Consider also if the company remains a well known seasoned issuer (WKSI), smaller reporting company, and/or an emerging growth company, as applicable.

Proxy Disclosures

To kick off the annual meeting and proxy season preparation, consider reviewing and updating director and officer questionnaires (no regulatory updates are currently anticipated), benchmarking risk factor disclosures, preparing initial drafts of compensation discussion and analysis and other executive compensation disclosures, and confirming related party transaction approvals, director attendance at board and board committee meetings (e.g., ensuring that all directors attended at least 75% of all meetings) and any untimely Section 16 filings that may require disclosure in the proxy statement.

Proxy Proposals

For annual meeting proposals, companies may want to revisit annually if say-on-pay and/or say-on-pay frequency proposals are needed, if there are sufficient shares available under the company's equity plans or if any such plans are expiring, whether the company has sufficient authorized shares under its certificate of incorporation (particularly if stock is intended to be used for acquisitions or any securities offerings are contemplated), if any reverse stock split or forward stock split proposals are needed, and if the company's corporate governance documents should be updated (such as for officer exculpation, if desired and not already completed).

Workforce and Sustainability

Companies should revisit any diversity, equity, and inclusion (DEI) and sustainability disclosures and also consider if revisions or additional disclosures are needed in response to last year's say-on-pay results, shareholder feedback, or any ISS and Glass Lewis reports.

An End to Quarterly Reporting?

On September 15, 2025, President Trump again called for an end to quarterly earnings reporting, stating that companies should be allowed to report earnings every six months. If adopted, this change would likely impact securities offerings processes, insider trading policies and procedures, and stock option proxy statement reporting that is dependent on disclosure of material nonpublic information. The elimination of quarterly reporting would also likely result in the filing of more Forms 8-K. Although corporate support for the switch is robust, many investors may still want companies to report quarterly financials.

SEC Releases Spring 2025 Reg-Flex Agenda

On September 4, 2025, the SEC released its Spring 2025 Reg Flex Agenda. While the Reg Flex Agenda is not binding, it provides some indication of when the SEC may propose or finalize various rules. The items listed in the agenda represent the SEC's "renewed focus on supporting innovation, capital formation, market efficiency, and investor protection," according to Chairman Paul S. Atkins. April 2026 is listed as a target date for issuing proposed rules relating to Rule 144 safe harbor, simplification of filer status, shelf registration modernization, exempt offering pathways, rationalization of disclosure practices, shareholder proposal modernization, and crypto assets and crypto market structure amendments, among others. The Reg Flex Agenda does not specifically address executive compensation or semiannual reporting, but proposed changes to those rules may be included as part of the "Rationalization of Disclosure Practices" agenda item.

SEC Issues Policy Statement on Mandatory Arbitration

On September 17, 2025, the SEC issued a policy statement announcing that the presence of a company-investor mandatory arbitration provision in a company's certificate of incorporation or bylaws will not impact decisions regarding whether to accelerate the effectiveness of a registration statement, noting that state law may limit such provisions. When deciding whether to accelerate effectiveness of a registration statement, the SEC will focus on the adequacy of disclosure in the registration statement, including disclosure regarding company-investor mandatory arbitration provisions.

Low Retail Shareholder Participation? Exxon Mobil's Proposed Retail Voting Program

On September 15, 2025, the SEC granted no-action relief for Exxon Mobil Corporation's proposed retail voting program, which allows retail shareholders to elect to have their shares automatically voted in accordance with the board's recommendations at any annual or special shareholder meetings. The no-action letter suggests that the SEC is open to new approaches to increase engagement among retail shareholders. However, establishing a retail voting program will likely require significant expense, increased compliance costs, and increased administrative burdens. Additionally, companies would need to review the legality of these programs under applicable state law.

Recent Nasdaq Updates

Proposed Changes to Listing Standards

On September 3, 2025, Nasdaq proposed changes to its listing standards, including enhanced requirements for minimum public company float and stricter suspension and delisting procedures for companies that do not meet Nasdaq's continued listing standards. The proposed changes include:

- *Increased minimum public float:* Companies seeking to list on Nasdaq under the net income standard would be required to have a minimum public float of $15 million.
- *Stricter suspension and delisting procedures:* Companies that fall below a $5 million market value of listed securities and that do not comply with certain listing standards would be subject to an accelerated suspension and delisting process.

Nasdaq has submitted the proposed changes to the SEC for review. If approved, the changes to the initial listing requirements will be implemented "promptly," and companies already in the initial listing process would have a 30-day transition period to complete their listing under the prior standards. The new process for suspension and delisting would take effect 60 days after SEC approval.

Accelerated Delisting and Suspension of 10-Cent Stocks

On September 3, 2025, the SEC posted a notice and request for comment for proposed changes to Nasdaq's minimum bid price rules in situations where a security does not maintain a closing bid price of greater than 10 cents for 10 consecutive trading days, including:

- *Immediate delisting determination*: Under the proposed changes, if a company's security has a closing bid price below 10 cents for 10 consecutive days, Nasdaq will immediately issue a delisting determination, regardless of whether the company is first noncompliant with the $1 minimum bid price requirement. (Under current rules, Nasdaq will only issue a delisting determination in such instance if the company is also noncompliant with the $1 minimum bid price requirement.)

- *Suspension from trading*: Under the proposed changes, companies with securities that trade at less than 10 cents for 10 consecutive trading days that request a hearing will not have the suspension and delisting action stayed pending the hearing panel's decision; instead, such securities would trade on the over-the-counter market while the appeal is pending.

OTCID™ Basic Market Launches

On July 1, 2025, OTC Markets Group Inc. launched the OTCID Basic Market, which replaced the Pink Current Market. Companies trading on the Basic Market are required to meet specific disclosure benchmarks, including timely quarterly and annual financials, management certifications, and updated company profile information. See updated OTCID Disclosure Guidelines here.

Trade Secrets and Noncompete Agreements

In light of recent noncompete and trade secret developments, consider reviewing related policies and noncompete and similar agreements. See our recent Trade Secret Quarterly for more details.

Updates Relating to California's Climate Disclosure Laws

On August 21, 2025, the California Air Resources Board (CARB) hosted its second public workshop to solicit public feedback on proposed definitions and concepts underpinning rules for the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261). During the workshop, CARB proposed alternative definitions of "revenue," "doing business in California," and parent-subsidiary relationships; introduced a flat annual fee structure to fund both programs; and provided additional insight into the implementation of each law. After the workshop, CARB released additional guidance, including clarifications in the form of a checklist for reporting entities subject to California's climate reporting laws.

Nevertheless, much uncertainty still surrounds the climate rules, including the threshold question as to which companies would be subject to California climate reporting. See our recent Corporate Sustainability Update for more details.

Transition to EDGAR Next

The deadline to transition to EDGAR Next was September 15, 2025. As of that date, filers that have not been enrolled in EDGAR Next cannot make filings with the SEC until such enrollment is completed, and legacy EDGAR codes may only be used for enrollment.

Starting December 22, 2025, legacy codes can no longer be used to enroll in EDGAR Next, and all filers, including existing filers who did not enroll in EDGAR Next by such date, will be required to apply for access by submitting a new Form ID. The SEC has advised Form ID applicants to apply for EDGAR Next access well in advance of any anticipated filing, as SEC staff currently requires an average of at least six business days to conduct Form ID reviews.

Going forward, companies should incorporate EDGAR Next enrollment into their director and officer onboarding processes. Please see our previous Securities Law Update for more details on how to prepare for EDGAR Next.

Insider Trading Policies: A Survey of Recent Filings[1]

Start of Quarterly Blackout Period	% of Public Companies
10-15 days prior	63.80%
< 10 days prior	12.50%
> 15 days prior	12.50%
Not specified	7.50%
Other	3.80%
End of Quarterly Blackout Period	**% of Public Companies**
One full trading day after release	33.80%
Two full trading days after release	57.50%
Three full trading days after release	1.30%
Not specified	7.50%
Groups Subject to Quarterly Blackouts	**% of Public Companies**
Directors, officers, and other designated employees	66.30%
Directors, officers, and all employees	12.50%
Other	17.50%
Not specified	3.80%
Treatment of 10b5-1 Plans	**% of Public Companies**
Plans are permitted, provided plan is: (i) pre-cleared and (ii) complies with Rule 10b5-1	97.50%
Not specified	2.50%
Groups Subject to Pre-Clearance Procedures	**% of Public Companies**
Directors, officers and other designated employees	61.30%
Directors, officers and employees	3.80%
Directors and officers only	8.80%
Directors, officers and other designated employees; includes third parties (e.g., consultants)	13.80%
Directors, officers, and employees; includes third parties (e.g., consultants)	2.50%
Other	1.30%
Not specified	8.80%
Who Grants Pre-Clearance	**% of Public Companies**
General Counsel or Chief Legal Officer	56.30%
Compliance Officer	10.00%
Chief Financial Officer	7.50%
General Counsel or Chief Financial Officer	5.00%
Chief Executive Officer	1.30%
Legal Department	2.50%
Other	10.00%
Not specified	7.50%
Duration of Pre-Clearance Validity	**% of Public Companies**
2 days	27.50%
3 days	5.00%
4 days	2.50%
5 days	20.00%
Other	7.50%
Not specified	37.50%
Consulting Firm ("Expert Network") Limitations	**# of Public Companies**
Mentioned	15.00%
Not specified	85.00%
Post-Termination Application of Insider Trading Policies	**% of Public Companies**
Directors, officers and employees	23.80%
Directors, officers, employees, and third parties	25.00%
Directors, officers and designated employees	15.00%
Directors, officers, designated employees, and third parties	3.80%
Directors and officers; includes third parties	1.30%
Directors and officers	1.30%
Employees	1.30%
Not specified	28.80%

Prohibitions on Hedging Company Securities	% of Public Companies
Directors, officers, and employees	56.30%
Directors, officers, and designated employees	33.80%
Directors and officers	2.50%
Not specified	7.50%
Exceptions to Hedging Policy	**% of Public Companies**
No exceptions	82.50%
Exceptions permitted, granted by General Counsel	5.00%
Exceptions permitted, granted by Chief Financial Officer	1.30%
Exceptions permitted, granted by Board or Audit Committee	1.30%
Exceptions permitted, granted by Compliance Officer or Board of Directors	1.30%
Other	1.30%
Not specified	7.50%
Prohibitions on Pledging Company Securities	**% of Public Companies**
Directors, officers, and employees	47.50%
Directors, officers, and designated employees	35.00%
Directors and officers	6.30%
Not specified	11.30%
Exceptions to Pledging Policy	**% of Public Companies**
No exceptions	57.50%
Exceptions permitted, granted by General Counsel	12.50%
Exceptions permitted, granted by Compliance Officer	5.00%
Exceptions permitted, granted by Board or Audit Committee	7.50%
Exceptions permitted, granted by Chief Financial Officer	1.30%
Other	3.80%
Not specified	12.50%
Treatment of Gifts	**# of Public Companies**
Gifts are subject to the policy's trading restrictions	60.00%
Bona fide gifts are permitted	25.00%
Gifts are permitted	5.00%
Not specified	8.80%
Other	1.30%
Treatment of 401(k) Transactions	**# of Public Companies**
Explicitly carved out	40.00%
Not specified	60.00%
Treatment of Stock Option Exercises	**# of Public Companies**
Explicitly carved out	93.80%
Not specified	6.30%
Treatment of Tax Withholdings	**# of Public Companies**
Explicitly carved out	81.30%
Not specified	18.80%
Treatment of ESPPs	**# of Public Companies**
Explicitly carved out	46.30%
Not specified	53.80%
Post-Termination Application of Insider Trading Policies – Duration	**% of Public Companies**
Applies until no longer in possession of MNPI	57.50%
Applies until no longer in possession of MNPI; if subject to blackout period, must comply with restrictions until period ends	7.50%
Pre-clearance required for six months post termination	2.50%
Not specified	28.80%
Other	3.80%

1. The table above summarizes a review of insider trading policies of 80 companies selected based on the following criteria as of July 21, 2025: (1) market capitalization between $100 million and $4 billion; (2) representative sample of a variety of industries, including manufacturing, technology, healthcare, retail, financial services, telecommunications, energy, consumer goods, transportation, and defense; and (3) insider trading policies filed as Exhibit 19 or otherwise referenced in the most recently available Form 10-K filing.

FOR MORE INFORMATION

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Previous Editions of Securities Quarterly Update

- Summer 2025
- Spring 2025
- Winter 2024
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