



SEC

OFFICE of INVESTOR
EDUCATION and ADVOCACY

Investor Bulletin: How to Read an 8-K

A company has just released its quarterly earnings. Another company has auditor news that could raise a red flag, and a third company is filing for bankruptcy. Where can you find more facts? Information about these events and many more are found in a document called a current report on Form 8-K.

Form 8-K provides investors with current information to enable them to make informed decisions. The types of information required to be disclosed on Form 8-K are generally considered to be “material.” That means that, in general, there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision.

Companies typically provide a number of 8-Ks throughout the year, whenever significant corporate events take place that trigger a disclosure. Companies must file 8-Ks promptly, rather than waiting until their next periodic report, such as the quarterly report (on Form 10-Q) or annual report (on Form 10-K). Companies are required to make most 8-K disclosures within four business days of the triggering event and in some cases even earlier. The public can find 8-Ks on the SEC’s EDGAR website, available at www.sec.gov/edgar/searchedgar/companysearch.html. Please see *Additional Information* at the end of this Investor Bulletin for more information on how to use EDGAR.

The rest of this Investor Bulletin highlights a number of 8-K disclosures that investors may find particularly relevant, including some red flags for investors. This Investor Bulletin does not discuss all required 8-K disclosures.

Highlights of Disclosure Items in Form 8-K

Item 1.01 – Entry into a Material Definitive Agreement

This item requires disclosure of certain material agreements not made in the ordinary course of business, or material amendments to those agreements. For example, if a company takes out a five-year loan with a bank or signs a long-term lease, and the loan or lease is material to the company, the agreement must be reported here. But if a retailer already has a chain of stores and signs a lease for one more, the new lease generally would be in the ordinary course of business and would not be reported here.

Item 1.02 – Termination of a Material Definitive Agreement

Under this item, a company generally must disclose the termination of a material agreement. If the agreement simply expires according to its terms, that termination would not need to be reported on Form 8-K. For example, if a widget company made

most of its sales under a long-term supply agreement with one significant customer, and that customer terminates the agreement prior to the date on which it would otherwise expire, that event would need to be reported under this item.

Item 1.03 – Bankruptcy or Receivership

If a company becomes the subject of a bankruptcy or receivership court filing, that must be disclosed. Future 8-Ks may outline the company's plan for reorganization (under Chapter 11) or liquidation (under Chapter 7) and the court's confirmation of the plan. Investors should look at the reorganization plan for information about whether the company's common stock is likely to be canceled and when the company expects to emerge from bankruptcy.

Item 2.01 – Completion of Acquisition or Disposition of Assets

If a company acquires or disposes of a significant amount of assets, the company must file an 8-K to describe the terms of the transaction. Examples include buying or merging with another company, or selling a business unit. A company that is no longer a "shell company" as a result of a merger would also use this item to provide investors with comprehensive information about the other merging company. A shell company is a company that either has little or no operations or has little or no assets other than cash and cash equivalents.

Item 2.02 – Results of Operations and Financial Condition

Many companies announce their quarterly and annual results simultaneously in a press release and an 8-K (which includes the press release as an exhibit). The documents often include an announcement that the company will hold a conference call (sometimes called an analyst or earnings call) shortly after the release to discuss the results. The financial disclosures in the 8-K typically summarize the full financial statements, which will appear later in the company's quarterly report (on Form 10-Q) or annual report (on Form 10-K).

Item 2.03 – Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The basic terms of material financial obligations that the company takes on must be reported. These financial obligations include any long-term debt, capital or operating lease, and short-term debt outside the ordinary course of business. This item also requires disclosure of material financial obligations, whether direct or contingent, that arise out of off-balance sheet arrangements.

Item 2.04 – Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement

Defaults on loans or other events that trigger the acceleration or increase of a financial obligation must be disclosed in an 8-K if the consequences of the event are material to the company. For example, if a company defaults on a loan, its creditors typically have the right to demand immediate payment of the entire amount owed. In such a case, if immediate repayment would be material, the company must disclose the amount to be repaid, the repayment terms and other financial obligations that might have to be repaid on an accelerated basis as a result of the initial default. Cross-default provisions may allow other creditors to demand immediate repayment of amounts owed to them.

Item 2.05 – Costs Associated with Exit or Disposal Activities

This item requires disclosure of restructuring plans under which the company will incur material charges. For example, the 8-K may report the company's decision to close some of its plants or stores or to lay off workers. The company also must disclose its estimates of the costs involved, once it is able to determine them. These costs could include, for example, total severance benefits for all laid-off employees.

Item 2.06 – Material Impairments

A company must disclose certain material write-downs (also called impairments) in an 8-K. (If the company determines the impairment when routinely preparing its financial statements for its periodic

report, the company may make the disclosure in the periodic report rather than in an 8-K.) A write-down may occur when a company significantly lowers its estimate of the value of certain assets, such as the value of its brand or of a business it has acquired. The write-down hits the financial statements in two places—as a decrease in assets on the balance sheet and as an expense on the income statement.

Item 3.01 – Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

If a stock exchange notifies a company that it no longer satisfies the requirements for continued listing, this must be disclosed. For example, the stock may have been trading below the minimum price requirement for a certain period of time. The company may have a grace period to return to compliance, and will have to disclose any steps it intends to take to avoid delisting.

Item 3.02 – Unregistered Sales of Equity Securities

Private sales of securities exceeding 1 percent of a company's outstanding shares of that class (or 5 percent for smaller reporting companies) would be reported under this item. Public offerings registered with the SEC need not be disclosed under this item. Investors can use the information provided under this item to determine the amount of capital raised by the company as well as the potential dilutive effect of reported private sales.

Item 3.03 – Material Modification to Rights of Security Holders

Under this item, companies must disclose material changes to instruments that define the rights of shareholders (such as a company's governing documents) or material limitations on the rights of security holders that result from the issuance or modification of another class of securities. Examples of such changes could include loan terms restricting dividend payments, the adoption of an antitakeover device or the issuance of preferred stock.

Item 4.01 – Changes in Registrant's Certifying Accountant

Companies must disclose if they dismiss their independent auditor, if the auditor resigns or declines to stand for re-appointment, and if the company hires a new auditor.

A change of auditors is sometimes, but not always, a cause for concern. It depends on the reasons for the change. The following circumstances are widely seen as red flags, and companies must disclose them if they occurred over the previous two fiscal years.

First, companies must disclose whether the departing auditor gave an adverse or qualified opinion on the company's financial statements. These indicate that the financial statements are not prepared in conformity with generally accepted accounting principles.

Second, the company must report certain disagreements it had with its departing auditor over accounting principles or practices, financial statements, or the scope or procedure of the audit.

Third, whether or not it led to a disagreement between the company and its auditor, companies must disclose whether its former auditor advised it that:

- the necessary internal controls to prepare reliable financial statements do not exist,
- the auditor can no longer rely on management's representations or is unwilling to be associated with the financial statements prepared by management,
- the auditor believed it should further investigate a matter or significantly expand the scope of its audit, and the auditor did not do so, or
- the auditor has found new information that materially impacts the fairness or reliability of current or prior financial statements, and the issue has not been resolved to the auditor's satisfaction.

Item 4.02 – Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

This item requires disclosure if the company believes that previously issued financial statements should not be relied upon because of an error in the statements. Disclosure is also required if the auditor believes that its previously issued audit reports or interim reviews on financial statements should not be relied upon. In both cases, the company also must disclose whether its audit committee, full board or authorized executive officers have discussed these matters with its auditor.

Investors should pay attention to these disclosures, which could affect the company's previously reported earnings. Companies generally restate their financial statements after the 8-K disclosure. The restatement could come at a much later date.

Item 5.01 – Changes in Control of Registrant

If there is a change of control of the company, the company must identify the persons who have acquired control and the percentage of voting securities that they beneficially own, as well as any arrangements between the old and new control groups regarding the election of directors or other matters.

Item 5.02 – Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

If a board member resigns or refuses to stand for re-election because of a disagreement with the company relating to the company's operations, policies or practices, or a director is removed for cause from the board, the company must briefly describe the circumstances of the disagreement. If the director provides a letter regarding her resignation, refusal or removal, the company must file the letter as an exhibit to the 8-K.

If a high-level executive officer—such as the chief executive officer, president, chief financial officer, chief accounting officer or chief operating officer—retires, resigns or is terminated, the company must disclose that fact.

The company also must disclose the appointment of any new director or high-level officers and briefly describe any related compensation arrangements. In addition, the company must disclose any changes to the compensation of current high-level officers.

Item 5.03 – Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

This item generally requires disclosure if a company amends its articles of incorporation or bylaws, or changes its fiscal year, unless the company already disclosed the proposed amendment or fiscal year change in a proxy statement or information statement. Companies that issue only debt securities are typically not required to comply with this item.

Item 5.05 – Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

Companies must generally report changes to their code of ethics that apply to the chief executive officer, chief financial officer, chief accounting officer or controller, or others performing similar functions. The company also must disclose any waivers granted to any of these persons. Many investors consider ethics waivers to be a red flag. Please note that a company may elect to provide these disclosures on the company's website instead of filing an 8-K.

Item 5.07 – Submission of Matters to a Vote of Security Holders

Within four business days of the end of an annual or special meeting, companies must file the results of shareholder votes in director elections and on all other matters put to a vote. If the company is only able to report preliminary results at that time, it must file an amended 8-K to report the final vote results within four business days after those results are known.

Item 7.01 – Regulation FD

The purpose of Regulation FD—for “fair disclosure”—is to prevent companies from selectively disclosing material, non-public information.

Regulation FD is intended to level the playing field: companies generally must give material information to the public at the same time they provide it to others, such as securities market professionals.

Companies may submit an 8-K under this item or Item 8.01 as one method of complying with the public disclosure requirement of Regulation FD. Actual examples of 8-Ks filed under this item address a wide range of topics, such as announcements of dividends, quarterly sales figures, or other business developments.

Item 8.01 – Other Events

This is the place where companies may report anything that they believe is important but is not specifically required elsewhere in the 8-K.

Item 9.01 – Financial Statements and Exhibits

Under this item, a company must file certain financial statements and list the exhibits that it has filed as part of the 8-K. For example, if a company discloses in Item 2.01 that it has acquired a business, Item 9.01 would require the company to provide the financial statements of the business acquired in the same or a later-filed amended 8-K. In addition, the company must also present “pro forma” financial statements that show what the company’s financial results might have been if the transaction had been completed earlier. Likewise, if the company discloses in Item 1.01 that it has entered into a material agreement, that agreement may be filed as an exhibit in the 8-K.

Additional Information

For our [Using Edgar - Researching Public Companies](#), providing information on how to search for company documents, such as Forms 8-K, in the SEC’s EDGAR database, visit investor.gov/researching-managing-investments/researching-investments/using-edgar-researching-public-companies.

For our [Researching Public Companies Through EDGAR: A Guide for Investors](#), another resource for using EDGAR, visit www.sec.gov/investor/pubs/edgarguide.htm.

For [Form 8-K](#), which lists all items and has instructions on how to complete it, visit www.sec.gov/about/forms/form8-k.pdf.

For the [2004 Final Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date](#), see www.sec.gov/rules/final/33-8400.htm.

For [How to Read a 10-K](#), visit www.investor.gov/news-alerts/investor-bulletins/how-read-10-k.

For additional educational information for investors, see the SEC’s Office of Investor Education and Advocacy’s website at www.investor.gov.

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.

