

2017 SEC Financial Statement Staleness Dates

Financial statements are considered stale under the rules of the US Securities and Exchange Commission (“SEC”) when they are too old to use in a prospectus or proxy statement. Accordingly, if financial statements have gone stale, an issuer must file more recent financial statements for a deal to proceed. Deadlines vary based on the type of issuer. In this Legal Update, we provide key staleness dates for 2017.

JANUARY							FEBRUARY							MARCH							APRIL						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4													1	
8	9	10	11	12	13	14	5	6	7	8	9	10	11	5	6	7	8	9	10	11	2	3	4	5	6	7	8
15	16	17	18	19	20	21	12	13	14	15	16	17	18	12	13	14	15	16	17	18	9	10	11	12	13	14	15
22	23	24	25	26	27	28	19	20	21	22	23	24	25	19	20	21	22	23	24	25	16	17	18	19	20	21	22
29	30	31	26	27	28	26	27	28	29	30	31	23	24	25	26	27	28	29	30								

MAY							JUNE							JULY							AUGUST						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	1	2	3	1	2	3	1	2	3	4	5											
7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8	6	7	8	9	10	11	12
14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15	13	14	15	16	17	18	19
21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22	20	21	22	23	24	25	26
28	29	30	31	25	26	27	28	29	30	23	24	25	26	27	28	29	30	31	27	28	29	30	31				

SEPTEMBER							OCTOBER							NOVEMBER							DECEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
						1	2	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5				
3	4	5	6	7	8	9	8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9
10	11	12	13	14	15	16	15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16
17	18	19	20	21	22	23	22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23
24	25	26	27	28	29	30	29	30	31	26	27	28	29	30	24	25	26	27	28	29	30	31					

Large Accelerated Filers Accelerated Filers IPOs, Loss Corporations and Delinquent Filers All Other Filers Federal Holiday

Based on December 31, 2016 fiscal year end. Dates reflect staleness in light of weekends and federal holidays (Securities Act Rule 417).

STALENESS DATE	FINANCIAL STATEMENT	REGULATORY DEADLINE ¹
FEBRUARY 14	2016 Q3 financial statements for IPOs, loss corporations and delinquent filers	45 days after year end ²
MARCH 1	2016 Q3 financial statements for large accelerated filers	60 days after year end
MARCH 16	2016 Q3 financial statements for accelerated filers	75 days after year end
MARCH 31	2016 Q3 financial statements for all other filers	90 days after year end
MAY 9	2016 year-end financial statements for large accelerated filers and accelerated filers	129 days after year end
MAY 15	2016 year-end financial statements for all other filers	134 days after year end
AUGUST 7	2017 Q1 financial statements for large accelerated filers and accelerated filers	129 days after Q1 end
AUGUST 14	2017 Q1 financial statements for all other filers	134 days after Q1 end
NOVEMBER 6	2017 Q2 financial statements for large accelerated filers and accelerated filers	129 days after Q2 end
NOVEMBER 13	2017 Q2 financial statements for all other filers	134 days after Q2 end

Special Accommodation for Gap Periods: Staleness dates and Form 10-Q deadlines do not always correspond, resulting in gap periods during which registration statements may not be filed or declared effective. The SEC typically accommodates repeat issuers that have timely filed for the last 12 months by making the staleness date the same as the 10-Q deadline. The SEC may ask the issuer to confirm that the 10-Q will be timely filed after effectiveness and that there have been no material trends, events or transactions since the date of the latest balance sheet included in the filing that would materially affect an investor’s understanding of the issuer’s financial condition and results of operations.³

FOREIGN PRIVATE ISSUERS (“FPIs”)

Generally, FPIs’ audited financial statements go stale after 15 months, and interim financial statements (covering at least 6 months) go stale after 9 months, subject to the exceptions noted below.⁴

EXCEPTIONS:

- The 15-month and 9-month periods are extended to 18 months and 12 months, respectively, for the following offerings: (1) exercises of outstanding rights granted pro rata to all existing security holders; (2) dividends or interest reinvestment plans; and (3) conversions of outstanding convertible securities or exercises of outstanding transferable warrants.
- In an IPO of an FPI not yet listed elsewhere, audited financial statements go stale after 12 months unless the FPI sufficiently represents to the SEC: (1) compliance is not required in any other jurisdiction and (2) it is impracticable or involves undue hardship.
- If financial information for an annual or interim period more current than otherwise required is made available in any jurisdiction, such information should be included. The new financial information does not need to be reconciled to US GAAP, but narrative explanations of the differences in accounting principles should be provided and material new reconciling items should be quantified; however, such requirements do not apply to issuers filing audited financial statements prepared under IFRS.

Endnotes

¹ Regulation S-X Rule 3-12.

² Regulation S-X Rules 3-01(c) and 3-12(b).

³ SEC Division of Corporation Finance, Financial Reporting Manual (“FRM”) Section 1220.5, available at <https://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf>.

⁴ Regulation S-X Rule 3-12(f), Item 8 of Form 20-F and FRM Section 6220.

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For additional information on SEC filing deadlines, see the Mayer Brown Legal Update “2017 SEC Filing Deadlines,” published on November 14, 2016, available at www.mayerbrown.com/2017-SEC-Filing-Deadlines-11-14-2016/.

If you have any questions regarding the matters discussed in this Legal Update, please contact Jennifer Carlson at +1 650 331 2065, any of the lawyers listed below or any other member of our Corporate & Securities practice. Corporate & Securities associates Stephanie L. Mills, Timothy A. Gordon and Ashley H. T. Chow assisted in the preparation of this update.

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