

# Desktop Reference: Form 8-K Filing Events

REPORT WITHIN 4 BUSINESS DAYS EXCEPT WHERE NOTED

## 1 BUSINESS & OPERATIONS

(Compensation arrangements are excluded from 1.01 and covered in 5.02)

### 1.01 Entry into a Material Definitive Agreement\*

- Entry into or material amendment of material agreement (not made in the ordinary course of business)
- Amendment may make an agreement material
- Non-binding agreements are excluded

### 1.02 Termination of a Material Definitive Agreement\*

- Excludes termination as a result of expiration of the agreement by its terms or completion of obligations

### 1.03 Bankruptcy or Receivership

- Includes petitions and orders confirming reorganization, arrangement or liquidation

### 1.04 Mine Safety - Reporting of Shutdowns and Patterns of Violations\*

## 2 FINANCIAL INFORMATION

### 2.01 Completion of Acquisition or Disposition of Assets

- Involves a significant amount of assets otherwise than in the ordinary course of business

### 2.02 Results of Operations & Financial Condition\*\*

- Public announcement or release disclosing material non-public information for a completed quarterly or annual fiscal period

### 2.03 Creation of a Direct Financial Obligation (DFO) or an Obligation under an Off-Balance Sheet Arrangement\*

- Must be material
- DFO means long-term debt, capital lease, operating lease or short-term debt that arises other than in the ordinary course of business
- Applies even if the registrant is not a party to the transaction
- Exemption if securities are sold in a registered offering

### 2.04 Triggering Events that Accelerate or Increase a DFO or Obligation under an Off-Balance Sheet Arrangement\*

- Must be material
- Includes conversion from contingent to direct obligation
- DFO includes obligations accrued as probable loss under GAAP

### 2.05 Costs Associated with Exit or Disposal Activities\*

- Commitment to an exit or disposal plan, disposal of a long-lived asset or termination of employees under a plan
- Material charges to be incurred under GAAP and future aggregate cash charges

### 2.06 Material Impairments\*

- Determination that a material charge for impairment is required under GAAP
- Not required if determination is made during preparation, review or audit of timely filed 10-Q or 10-K disclosing impairment charge

## 3 SECURITIES & TRADING MARKETS

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

- From the US stock exchange that maintains the principal listing for any class of the registrant's common equity
- Includes a public reprimand letter but not an early warning notice
- Includes notice to exchange by registrant of material noncompliance with rule or listing standard, or registrant's board decision to delist

### 3.02 Unregistered Sales of Equity Securities

- If the securities sold constitute, in the aggregate since last filing of 8-K or periodic report, at least 1% of the registrant's outstanding securities (5% for smaller reporting companies)

### 3.03 Material Modification to Rights of Security Holders

- Any material changes defining the rights of holders of any class of registered securities
- Working capital restrictions and limitations on payment of dividends

## 4 ACCOUNTANTS & FINANCIAL STATEMENTS

### 4.01 Changes in Certifying Accountant

- Must disclose in 8-K even if previously reported (e.g., in a 10-K, 10-Q or definitive proxy statement)

### 4.02 Non-Reliance on Previously Issued Financial Statements

- Determination that investors should no longer rely upon previously issued financial statements\*
- Also triggered if determined by independent auditor
- Must disclose in 8-K even if previously reported (e.g., in a 10-K, 10-Q or definitive proxy statement)

## 5 CORP. GOVERNANCE & MANAGEMENT

### 5.01 Changes in Control

### 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers\*

- Decision regarding departure of director, NEO, CEO, president, CFO, chief accounting officer, COO or person performing similar functions
- Appointment of any CEO, president, CFO, chief accounting officer, COO or person performing similar functions
- Directors elected other than by shareholder vote
- Entry into or material amendment of a compensatory arrangement with any CEO, CFO or NEO\*
- Excludes wholly-owned subsidiaries of a reporting company

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

- Amendment to the articles or bylaws if amendment was not proposed in previously filed proxy statement
- Change in fiscal year other than by shareholder vote or amendment to the articles or bylaws

### 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

### 5.05 Amendments to the Code of Ethics, or Waiver of a Provision of the Code of Ethics

- Excludes technical, administrative or other non-substantive amendments

### 5.06 Change in Shell Company Status

### 5.07 Submission of Matters to a Vote of Security Holders

- Include date of meeting, names of elected directors and brief description of matters voted on (including detailed vote results)
- Disclose board's decision as to frequency of shareholder vote on executive compensation (due within 150 days of annual meeting but not later than 60 days prior to the deadline for submission of shareholder proposals for the next annual meeting)

### 5.08 Shareholder Director Nominations

- Deadline for shareholder notice for director nominees, if proxy access is required and annual meeting date has changed by more than 30 days from prior year or annual meeting was not held in prior year

## 6 ASSET-BACKED SECURITIES

## 7-8 OPTIONAL 8-K FILINGS

### 7.01 Regulation FD\*

### 8.01 Other Events (deemed important to security holders)▲

## 9 FINANCIAL STATEMENTS & EXHIBITS

- Financial statements required by S-X Rule 3-05
- Exhibits required by S-K Item 601
- Material contracts may be filed with the next periodic report covering the period in which the contract was executed or effective▲

\* Late filing under this Item does not affect S-3 eligibility

❖ Will be deemed furnished and not filed

◆ Named Executive Officers are those for whom compensation disclosure was most recently required (S-K Item 402)

▲ Not required to be reported within 4 business days

# Desktop Reference: 2019 SEC Filing & Staleness Dates

## Periodic Report Deadlines for Filers with Year Ending December 31, 2018

Must be filed with the SEC by 5:30 PM (Eastern) on the following dates in 2019

<b>March 1</b>	Annual Report on Form 10-K Filing Date for Large Accelerated Filers
<b>March 18*</b>	Annual Report on Form 10-K Filing Date for Accelerated Filers
<b>April 1*</b>	Annual Report on Form 10-K Filing Date for All Other Filers
<b>April 30</b>	Definitive proxy (or information) statement if Form 10-K Part III incorporated by reference
<b>May 10</b>	Q1 Quarterly Report on Form 10-Q Filing Date for Large Accelerated and Accelerated Filers
<b>May 15</b>	Q1 Quarterly Report on Form 10-Q Filing Date for All Other Filers
<b>August 9</b>	Q2 Quarterly Report on Form 10-Q Filing Date for Large Accelerated and Accelerated Filers
<b>August 14</b>	Q2 Quarterly Report on Form 10-Q Filing Date for All Other Filers
<b>November 12*</b>	Q3 Quarterly Report on Form 10-Q Filing Date for Large Accelerated and Accelerated Filers
<b>November 14</b>	Q3 Quarterly Report on Form 10-Q Filing Date for All Other Filers

January	February	March	April	May	June
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■ SEC Filing Due Date    ■ SEC Closed

## When Do Financial Statements Go Stale for Registered Offerings?

At the close of business on the following dates in 2019 (for issuers with a fiscal year ended December 31, 2018)

<b>February 14</b>	Q3 Financial Statements for IPOs, Loss Corporations, and Delinquent Filers
<b>March 1</b>	Q3 Financial Statements of Large Accelerated Filers
<b>March 18*</b>	Q3 Financial Statements of Accelerated Filers
<b>April 1*</b>	Q3 Financial Statements of All Other Filers
<b>May 9</b>	Year-End Financial Statements of Large Accelerated and Accelerated Filers
<b>May 14</b>	Year-End Financial Statements of All Other Filers
<b>August 7</b>	Q1 Financial Statements of Large Accelerated and Accelerated Filers
<b>August 12</b>	Q1 Financial Statements of All Other Filers
<b>November 6</b>	Q2 Financial Statements of Large Accelerated and Accelerated Filers
<b>November 12*</b>	Q2 Financial Statements of All Other Filers

\*Dates reflect a permitted extension to the next business day where dates would have otherwise occurred on a weekend or federal holiday

A "Loss Corporation" does not expect to report positive income after taxes but before extraordinary items and the cumulative effect of a change in accounting principle for (a) the most recently ended fiscal year and (b) at least one of the two prior fiscal years.

A "Large Accelerated Filer" has an aggregate market value held by non-affiliates of \$700m or more as of the last business day of the most recent Q2. Once you are in, you have to fall below \$500m to get out.

An "Accelerated Filer" has an aggregate market value held by non-affiliates of greater than \$75m but less than \$700m as of the last business day of the most recent Q2 (unless you were previously a Large Accelerated Filer, in which case the range is \$50-500m). Once you are in, you have to fall below \$50m to get out.

**Special Accommodation for Timely Filers:** Staleness dates do not correspond exactly with the Form 10-Q filing deadlines because the 10-Q deadlines run from the end of the most recently ended quarter, whereas the staleness dates run from the end of the preceding quarter. However, the SEC Staff generally provides an accommodation for repeat issuers that have been timely filers for the past 12 months by allowing such issuers' registration statements to become effective during the gap period between the staleness dates shown above and the nearest 10-Q filing deadline, absent unusual circumstances. As a result, for most repeat issuers, the effective staleness date is the same as the applicable 10-K or 10-Q filing deadline.

The information contained herein shall not be construed as legal advice. Should further analysis or explanation of the subject matter be required, contact the Latham & Watkins attorney whom you normally consult.

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