UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**
**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): September 21, 2026

# GOODWIN'S FORM 8-K GUIDE

(Exact name of registrant as specified in its charter)

| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification Number) |
|---|---|---|

| **1900 N Street, NW, Washington, D.C.** | **20036** |
|---|---|
| (Address of principal executive offices) | (Zip code) |

**(202) 346-4000**
(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities Registered Pursuant to Section 12(b) of the Act:**

| Title of Each Class | Trading Symbol(s) | Name of Exchange on Which Registered |
|---|---|---|

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933, 17 CFR Section 230.405, or Rule 12b-2 of the Securities Exchange Act of 1934, 17 CFR Section 240.12b-2.

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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**Explanatory Note**

Goodwin's Public Company Advisory Practice published the 2026 edition of its Form 8-K Guide (the Guide) to assist public companies navigating Form 8-K compliance.

Form 8-K is a current report that public reporting companies file with the SEC (U.S. Securities and Exchange Commission) to inform shareholders and market participants of major events. The Guide focuses primarily on the standard Form 8-K current report. Practitioners should also be aware of specialized Form 8-K EDGAR (Electronic Data Gathering, Analysis, and Retrieval) submission variants, including Form 8-K12B for successor issuer registration under Section 12(b), Form 8-K12G3 for successor issuer reporting under Section 12(g), and Form 8-K15D5 for suspension of reporting obligations under Section 15(d). These variants generally use the Form 8-K item framework but serve specialized Securities Exchange Act of 1934 (Exchange Act) filing purposes.

*The disclosure examples included in the Guide are provided solely for illustrative and educational purposes. They are intended to demonstrate the types of disclosures that may be required under Form 8-K and are not intended to constitute legal advice, establish disclosure standards, or provide a complete analysis of any reporting obligation. The appropriateness of any disclosure will depend on the specific facts and circumstances, applicable SEC rules and guidance, and the company's particular situation. Companies should consult with legal counsel and other advisers when preparing Form 8-K disclosures.*

Due Date of Form 8-K

The general rule is that a Form 8-K must be filed with the SEC within four business days of the triggering event. However, several items on Form 8-K have special timing rules that differ from this standard. Key exceptions include:

| **Item** | **Timing Requirement** |
|---|---|
| Item 1.05: Material Cybersecurity Incidents | Within four business days of materiality determination |
| Item 5.07: Submission of Matters to a Vote of Security Holders | Say-on-frequency decision amendment due within 150 calendar days after the end of the annual or other meeting of shareholders at which shareholders voted on the frequency and no later than 60 calendar days before the Rule 14a-8 deadline |
| Item 5.08: Shareholder Director Nominations | Within four business days after setting meeting date if it differs by more than 30 days from prior year |
| Item 7.01: Regulation Fair Disclosure (FD) Disclosure | Simultaneous if intentional; if unintentional, in no event later than the later of 24 hours after a senior official of the company learns of the disclosure or the commencement of the next day's trading on the New York Stock Exchange |

| | |
|---|---|
| Item 8.01: Other Events | No prescribed Form 8-K deadline, except when used to satisfy Regulation FD or another applicable requirement |

If the due date for a Form 8-K falls on a weekend or US federal holiday, the filing is due on the next business day. Companies should consult the SEC's list of federal holidays to confirm whether the EDGAR system will be open on the due date.

Ability to Disclose Events in Periodic Reports

If a Form 8-K triggering event occurs within four business days before the registrant files a periodic report, the registrant may disclose the event in that periodic report instead of filing a separate Form 8-K, except for events required to be reported under Item 4.01 or 4.02. The disclosure should be included under Item 5 of Part II of Form 10-Q or Item 9B of Form 10-K, as applicable. Amendments to a previously filed Form 8-K must be filed on Form 8-K/A. Refer to Corporation Finance Interpretations, Exchange Act Form 8-K Question 101.01.

Consequences of Late Filings on Form S-3 Eligibility

A late Form 8-K can affect a company's ability to use Form S-3, but the consequence depends on which Form 8-K item was late. To be Form S-3 eligible, a company generally must be current in its reporting under the Exchange Act and have filed the reports required during the applicable lookback period, subject to specific Form 8-K exceptions, in a timely manner.

The timely filing requirement on Form S-3 does not apply to reports required solely under Form 8-K Item 1.01, 1.02, 1.04, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e). A late report under one of those excluded items generally will not, by itself, cause loss of Form S-3 eligibility.
By contrast, a late report under other Form 8-K items can affect Form S-3 eligibility, even if the company later files the report and becomes current.

Filed Versus Furnished

Companies submitting information through EDGAR generally either "file" or "furnish" the information to the SEC. Information that is filed becomes part of the company's reporting record, and it may be subject to Section 18 liability and incorporated by reference into other SEC filings if the applicable incorporation requirements are satisfied.

Information that is furnished is not treated as filed for purposes of Section 18 liability and is not automatically incorporated by reference into Securities Act of 1933 (Securities Act) or Exchange Act filings. A company may incorporate furnished information by reference only if it expressly does so. Companies commonly furnish information when they want to make disclosure publicly available without having it automatically become part of the filed reporting record, such as earnings releases under Item 2.02 or Regulation FD disclosures under Item 7.01 of Form 8-K.

Limited Safe Harbor for Late Form 8-K Filings

Exchange Act Rule 13a-11(c) and Rule 15d-11(c) provide a limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b-5 for a failure to timely file a Form 8-K required solely under Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e). For asset-backed securities, the safe harbor also applies to reports required solely under Item 6.03. The safe harbor does not apply to failures to timely file Form 8-K reports required under other items.

The safe harbor is narrow. It applies only to the failure to file the covered Form 8-K on time. It does not protect a company from liability for material misstatements or omissions in a filed Form 8-K, and it does not excuse any separate duty to disclose the information under the federal securities laws. For example, if a company has an independent duty to disclose material nonpublic information in connection with a securities offering, repurchase, or other transaction, the Form 8-K safe harbor would not protect the company from liability for failing to satisfy that separate duty.

The safe harbor is also temporary. It extends only until the due date of the company's periodic report for the period in which the Form 8-K was not timely filed. If the company has not filed the required Form 8-K by then, it should include the disclosure required by the applicable Form 8-K item in the Form 10-Q or Form 10-K for that period. Late filings can still have other consequences, including potential Form S-3 eligibility consequences when the late filing involves an item not excluded from Form S-3's timely filing requirement.

<u>Special Filing Considerations Under Securities Act and Exchange Act Rules</u>

When preparing a Form 8-K, companies must assess whether the filing is intended to satisfy additional disclosure obligations under the Securities Act or the Exchange Act. The cover page of Form 8-K includes four checkboxes corresponding to specific rules that may apply to certain types of communications:

- Rule 425 under the Securities Act
- Rule 14a-12 under the Exchange Act
- Rule 14d-2(b) under the Exchange Act
- Rule 13e-4(c) under the Exchange Act

Selecting the appropriate box ensures that the filing is deemed made under the corresponding rule and may trigger additional substantive requirements. Companies must exercise care when determining which boxes to check, as improper selection, or failure to check a required box, can result in securities law violations or noncompliance with applicable disclosure obligations.

*Rule 425 — Written Communications*

Rule 425 governs written communications made in connection with business combination transactions. If a Form 8-K is used to file a communication under Rule 425, the Rule 425 box on the cover page should be checked. The checkbox identifies that the filing is intended to be made under Rule 425, but the company must still confirm that the communication satisfies the substantive requirements of the applicable rule. If a communication is filed pursuant to Rule 425, the company generally is not required to separately check the Rule 14a-12 or Rule 14d-2(b) box solely for the same communication, provided the filing otherwise satisfies the applicable requirements.

*Rule 14a-12 — Soliciting Material*

Rule 14a-12 permits companies to publish or transmit soliciting material before filing a definitive proxy statement, subject to certain conditions. If a Form 8-K contains information that constitutes soliciting material, such as disclosures related to shareholder votes on mergers, executive compensation, or governance matters, the Rule 14a-12 box should be checked.

*Rule 14d-2(b) — Pre-Commencement Communications in Tender Offers*

Rule 14d-2(b) applies to communications made before the formal commencement of a third-party tender offer. If a Form 8-K includes such communications, whether announcing a potential offer or responding to one, the Rule 14d-2(b) box should be checked.

*Rule 13e-4(c) — Pre-Commencement Communications in Issuer Tender Offers*

Rule 13e-4(c) governs pre-commencement communications made by issuers in connection with their own tender offers, including self-tender offers and going private transactions. If a Form 8-K includes such communications, the Rule 13e-4(c) box should be checked.

## Best Practices for Form 8-K Compliance

*Establish and Maintain Robust Disclosure Controls and Procedures*

Companies should implement and maintain comprehensive disclosure controls and procedures that include (i) clear identification of personnel responsible for monitoring potential triggering events, (ii) escalation procedures to ensure executive officers and the board are promptly notified of material events, (iii) standardized checklists for each type of Form 8-K item to ensure complete disclosure, (iv) preapproved templates and forms of disclosure for common events, and (v) regular training for relevant personnel on Form 8-K requirements and timing deadlines.

*Document Materiality Determinations*

Companies should document the basis for materiality determinations, particularly for events that do not require disclosure. This documentation can be valuable for demonstrating good faith compliance efforts and consistency in decision-making. Consider maintaining a log of potential triggering events and the analysis conducted to determine whether disclosure was required. This practice can help identify patterns and improve future decision-making processes.

*Coordinate With Related Disclosure Obligations*

Companies should coordinate Form 8-K filings with other disclosure obligations, including press releases, investor calls, website updates, and social media communications. Ensure that all public communications are consistent with Form 8-K disclosures and that Regulation FD requirements are satisfied. Consider the timing of various communications outside of Form 8-K filings to avoid selective disclosure issues and ensure that material information is disseminated fairly to all investors.

*Prepare for Complex Transactions*

For complex transactions that may trigger multiple Form 8-K items, companies should prepare comprehensive disclosure plans in advance. Identify all potential triggering events, prepare draft disclosures, and coordinate with all relevant parties including counterparties, advisers, and service providers. Consider whether multiple Form 8-K items can be addressed in a single filing or whether separate filings are more appropriate. Ensure that all required exhibits are available and properly prepared before transactions close.

**Item 1.01: Entry Into a Material Definitive Agreement**

When Is Item 1.01 of Form 8-K Triggered?

Item 1.01 of Form 8-K is triggered when a company has entered into a material definitive agreement not made in the ordinary course of the company's business or any amendment of such agreement that is material to the company. A "material definitive agreement" is an agreement that provides for obligations that are material to and enforceable against the company or rights that are material to the company and enforceable by the company, whether or not they are subject to conditions in each case.

An agreement is considered not made in the ordinary course of business even if it is typical for the company's industry, if it involves

- any contract with directors, officers, promoters, voting trustees, security holders named in the report, or underwriters (other than contracts involving only the purchase or sale of current assets at market price);
- any contract upon which the company's business is substantially dependent;
- any contract for the acquisition or sale of property, plant, or equipment for a consideration exceeding 15% of the company's fixed assets on a consolidated basis; or
- any material lease under which the property described in the report is held.

An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) of Regulation S-K, including certain compensatory plans, contracts, or arrangements, need not be disclosed under Item 1.01 solely because it falls within those Item 601 categories.

Required Disclosure

Companies are required to disclose:

- The date the agreement was entered into or amended
- The identity of the parties to the agreement or amendment
- A brief description of any material relationship between the company or its affiliates and any of the parties
- A brief description of the material terms and conditions of the agreement or amendment

Even if the agreement is filed as an exhibit, the company must still summarize its material terms in the body of the Form 8-K.

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") entered into a Supply and Manufacturing Agreement (the "Agreement") with XYZ, Inc. ("XYZ"), pursuant to which XYZ will be the sole manufacturer and supplier of widgets to the Company. The Company has committed to pay XYZ up to $150 million over the term of the Agreement.<br><br>The Agreement has an initial three-year term and will automatically renew for additional one-year periods unless earlier terminated or advance written notice of nonrenewal is given. Either party may terminate the Agreement (i) by written mutual consent, (ii) by advance written notice from either party, (iii) for cause by either party after written notice of a material breach and failure by the other party to cure such breach within thirty (30) days, or (iv) immediately upon written notice by either party of the bankruptcy or insolvency of the other party.<br><br>The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement, a copy of which is filed as Exhibit 10.1 and incorporated herein by reference. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC (U.S. Securities and Exchange Commission) guidance on Item 1.01 of Form 8-K:

*Agreement That Is Not Material at Entry but Becomes Material at a Later Date*

A company is not required to file an Item 1.01 Form 8-K for an agreement that was not material at the date of entry if that agreement becomes material at a later date. In this situation, the company must apply Item 601 of Regulation S-K to determine if the agreement must be filed as an exhibit to the periodic report relating to the reporting period in which the agreement became material. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 102.01.

*Placement Agency or Underwriting Agreement*

Companies must analyze whether a placement agency or underwriting agreement is material under the established standards of materiality under Instruction 1 to Item 1.01 on Form 8-K. Companies may omit the identity of the underwriters from the disclosure to remain within the safe harbor of Rule 135c. Refer to CFIs, Exchange Act Form 8-K Question 102.02.

*Material Terms Must Be Summarized in the Body of the Item 1.01 Form 8-K*

Companies must include a brief description of the material terms and conditions of the agreement or amendment that are material to the company. Incorporation by reference of the actual agreement would not satisfy the disclosure requirement. Refer to CFIs, Exchange Act Form 8-K Question 102.03.

For a business combination agreement, the SEC generally views the following terms as material and expects them to be disclosed in the Item 1.01 Form 8-K:

- The amount and nature of the consideration or the method, exchange ratio, or formula for determining the consideration
- Any committed financing arrangements or any need for financing to close the transaction, together with the material terms of those arrangements
- Any material terms regarding the securities ownership or management structure of the combined or surviving company
- Any material closing conditions
- The anticipated time frames for filing any Securities Act of 1933 (Securities Act) registration statement, proxy or information statement, or tender offer materials and closing the transaction

The Form 8-K also must include any other material information necessary to make the required disclosure — in light of the circumstances under which it is made — not misleading. In a business combination, companies should consider disclosing whether any material term remains undetermined and, when the company filing the Form 8-K is the acquirer, information regarding the target's business, including at a minimum whether the target has existing operations or has generated revenues. Refer to CFIs, Exchange Act Form 8-K Question 102.04.

*Renewal of a Material Definitive Agreement*

An Item 1.01 Form 8-K is not triggered when a material definitive agreement automatically renews in accordance with its terms. Refer to CFIs, Exchange Act Form 8-K Question 103.02. However, if an agreement provides that either party may renew the agreement by sending a renewal notice and the other party does not reject the renewal, Item 1.01 is triggered by the passage of the rejection deadline, not by the sending of the renewal notice. Refer to CFIs, Exchange Act Form 8-K Question 103.03.

*Exhibits*

Although Item 1.01 of Form 8-K does not require the agreement to be filed as an exhibit to the Form 8-K, when feasible, the SEC encourages filing the agreement with the Item 1.01 Form 8-K as a best practice. If the agreement is not filed with the Form 8-K, the company should consider whether an explanation is appropriate and must file the agreement as an exhibit to the next periodic report if required by Item 601 of Regulation S-K. Refer to CFIs, Exchange Act Form 8-K Question 102.05.

*Redactions*

If a material definitive agreement is filed as an exhibit, companies may omit information that would constitute a clearly unwarranted invasion of personal privacy, such as bank account numbers, Social Security numbers, and home addresses. Companies may also redact confidential information from a material contract exhibit if the information is not material and is the type of information the company customarily and actually treats as private or confidential. In that case, the company must mark the exhibit index to indicate that portions of the exhibit have been omitted and include the required prominent statement on the first page of the redacted exhibit. The company must also include brackets indicating where information has been omitted from the filed version of the exhibit.

*Confidential Treatment Requests*

The current redaction process is distinct from the prior confidential treatment request process. Under the current exhibit rules, a company generally may omit immaterial information from a material contract exhibit without submitting a confidential treatment request under Rule 406 or Rule 24b-2 if the omitted information is the type of information the company customarily and actually treats as private or confidential. The SEC staff may request an unredacted copy and supporting analysis, and it may require an amendment if the redactions are not supported. Confidential treatment requests remain relevant in circumstances when a company affirmatively seeks confidential treatment under Rule 406 or Rule 24b-2 rather than relying on the exhibit redaction provisions.

<u>Related Items to Consider With Item 1.01</u>

When evaluating a triggering event under Item 1.01, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 1.01:

- **Item 2.01 (Completion of Acquisition or Disposition of Assets):** Asset purchase agreements, merger agreements, and other acquisition or disposition agreements may trigger Item 1.01 upon signing and Item 2.01 upon completion if they involve a significant amount of assets.
- **Item 2.03 (Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant):** Credit agreements, loan facilities, guarantees, and other financing arrangements that create material direct financial obligations or off-balance sheet arrangements may trigger both Item 1.01 and Item 2.03 disclosure requirements.
- **Item 3.02 (Unregistered Sales of Equity Securities):** Securities purchase agreements, subscription agreements, and private placement agreements involving unregistered equity securities that exceed the applicable thresholds (1% for most companies or 5% for smaller reporting companies) may trigger both Item 1.01 and Item 3.02 disclosure requirements.
- **Item 3.03 (Material Modification to Rights of Security Holders):** Agreements that materially modify the rights of security holders, such as amendments to indentures, rights agreements, or other agreements affecting registered securities, may trigger both Item 1.01 and Item 3.03 disclosure requirements.
- **Item 5.01 (Changes in Control of Registrant):** Agreements that result in or may result in a change in control of the company, including voting agreements, tender offer agreements, and merger agreements, may trigger both Item 1.01 and Item 5.01 disclosure requirements.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** Employment agreements, severance arrangements, equity compensation plans, and other compensatory arrangements involving covered officers should be analyzed primarily under Item 5.02. Compensatory arrangements covered by Item 601(b)(10)(iii)(A) or (B) generally need not be disclosed under Item 1.01 solely because they are compensatory arrangements, although exhibit filing obligations may still apply.

Companies should carefully analyze each material definitive agreement to determine all applicable Form 8-K disclosure requirements.

## Item 1.02: Termination of a Material Definitive Agreement

When Is Item 1.02 of Form 8-K Triggered?

Item 1.02 of Form 8-K is triggered when a material definitive agreement that the company is a party to is terminated if the agreement was not made in the ordinary course of business and the termination is material to the company. Item 1.02 does not apply if the agreement ends because it expires on its stated termination date or because all parties have completed their obligations under the agreement.

Item 1.02 of Form 8-K is **not** triggered by

- the expiration of the agreement on its stated termination date;
- the completion of all obligations under the agreement by all parties;
- negotiations or discussions regarding termination, unless and until the agreement has been terminated; or
- situations in which the company believes in good faith that the agreement has not been terminated, unless the company has received a notice of termination pursuant to the terms of the agreement.

For purposes of Item 1.02 of Form 8-K, the term "material definitive agreement" has the same meaning as set forth in Item 1.01 of Form 8-K.

Required Disclosure

Companies are required to disclose:

- The date of termination of the material definitive agreement
- The identity of the parties to the agreement and a brief description of any material relationship between the company (including its affiliates) and any of the parties other than in relation to the agreement
- A brief description of the terms and conditions of the agreement that are material to the company
- A brief description of the material circumstances surrounding the termination
- Any material early termination penalties incurred by the company

| **Disclosure Example** |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") and XYZ, Inc. ("XYZ"), agreed to terminate, effective September 15, 2026, the Supply and Manufacturing Agreement (the "Agreement") dated as of September 15, 2025, pursuant to which XYZ was the sole manufacturer and supplier of widgets to the Company. The parties mutually agreed to the early termination of the Agreement. The parties will not incur any early termination penalties under the Agreement. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC (U.S. Securities and Exchange Commission) guidance on Item 1.02 of Form 8-K:

*Receipt of Termination Notice During Negotiations*

An Item 1.02 Form 8-K is triggered when a company receives notice of termination of a material definitive agreement pursuant to the terms of the agreement, even if the company intends to negotiate with the counterparty and believes in good faith that the agreement ultimately will not be terminated. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 103.01.

*Nonrenewal of a Material Definitive Agreement*

An Item 1.02 Form 8-K is triggered when a nonrenewal notice is sent for a material definitive agreement that, by its terms, would automatically renew unless a party sends a nonrenewal notice. The triggering event is the sending of the nonrenewal notice, not the later effective date of termination. Refer to CFIs, Exchange Act Form 8-K Question 103.02.

*Expiration Without Renewal Notice*

An Item 1.02 Form 8-K is not triggered when a material definitive agreement terminates on its stated expiration date because neither party sends a renewal notice. Refer to CFIs, Exchange Act Form 8-K Question 103.03.

Related Items to Consider With Item 1.02

When evaluating a triggering event under Item 1.02, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 1.02:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into a new agreement to replace the terminated agreement or enters into a termination agreement with specific terms, disclosure under Item 1.01 may be required.
- **Item 2.04 (Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement):** If the termination results from a default that also triggers acceleration of other obligations, Item 2.04 disclosure may be required.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the terminated agreement was a compensatory arrangement involving covered officers, Item 5.02 disclosure may also apply.

Companies should carefully analyze each termination event to determine all applicable Form 8-K disclosure requirements.

**Item 1.03: Bankruptcy or Receivership**

When Is Item 1.03 of Form 8-K Triggered?

Item 1.03 of Form 8-K is triggered when either of the following occurs:

- A receiver, fiscal agent, or similar officer is appointed for the company or its parent in a proceeding under the U.S. Bankruptcy Code or other federal or state law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the company or its parent, including when existing directors and officers remain in possession but are subject to the supervision and orders of the court or governmental authority
- A court or governmental authority with supervision or jurisdiction over substantially all of the assets or business of the company or its parent enters an order confirming a plan of reorganization, arrangement, or liquidation

Required Disclosure

If a receiver, fiscal agent, or similar officer is appointed, or if a court or governmental authority assumes jurisdiction over substantially all of the assets or business of the company or its parent, the Form 8-K must disclose:

- The name or other identification of the proceeding
- The identity of the court or governmental authority
- The date jurisdiction was assumed
- The identity of the receiver, fiscal agent, or similar officer and the date of their appointment

If an order confirming a plan of reorganization, arrangement, or liquidation is entered, the Form 8-K must disclose:

- The identity of the court or governmental authority
- The date the confirmation order was entered
- A summary of the material features of the plan and a copy of the confirmed plan filed as an exhibit under Item 9.01
- The number of shares or other units of the company or its parent issued and outstanding, the number reserved for future issuance under the plan, and the aggregate total
- Information regarding the assets and liabilities of the company or its parent as of the date the confirmation order was entered or as close to that date as practicable. This information may be presented in the form in which it was furnished to the court or governmental authority.

| Disclosure Example |
|---|
| On September 1, 2026, ABC Corporation (the "Company") and certain of its subsidiaries (together with the Company, the "Debtors") filed voluntary petitions for relief (the "Bankruptcy Petitions") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").<br><br>The Debtors will continue to operate their businesses as "debtors in possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court.<br><br>The Company has engaged XYZ, Inc., to advise on its strategic options, including a potential sale of all, substantially all, or a portion of the Debtors' assets in connection with the Bankruptcy Petitions. Any such sale(s) would be subject to review and approval by the Bankruptcy Court and compliance with court-approved bidding procedures. The Company cannot be certain that the Company's security holders will receive any payment or other distribution on account of their shares following such sales.<br><br>Additional information about the Bankruptcy Petitions, including access to Bankruptcy Court documents, is available online at www.XYZ.com/ABCCorp, a website administered by a third-party bankruptcy claims and noticing agent. The documents and other information on this website are not part of this Current Report on Form 8-K and shall not be deemed incorporated by reference herein. |

<u>Related Items to Consider With Item 1.03</u>

When evaluating a triggering event under Item 1.03, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 1.03:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into debtor-in-possession financing agreements, asset purchase agreements, or other material agreements in connection with the bankruptcy proceeding, disclosure under Item 1.01 may be required.
- **Item 1.02 (Termination of a Material Definitive Agreement):** Bankruptcy proceedings often result in the rejection or termination of material agreements, which may trigger Item 1.02 disclosure.
- **Item 2.01 (Completion of Acquisition or Disposition of Assets):** If the bankruptcy plan involves the sale of significant assets or the acquisition of assets through a plan of reorganization, Item 2.01 disclosure may be required.
- **Item 2.04 (Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement):** The bankruptcy filing itself may constitute an event of default that accelerates other obligations, which may trigger Item 2.04 disclosure.
- **Item 5.01 (Changes in Control of Registrant):** If the bankruptcy plan results in a change in control of the company, Item 5.01 disclosure may be required.

Companies should carefully analyze each bankruptcy-related event to determine all applicable Form 8-K disclosure requirements.

## Item 1.04: Mine Safety — Reporting of Shutdowns and Patterns of Violations

When Is Item 1.04 of Form 8-K Triggered?

Item 1.04 of Form 8-K is triggered when a company, or its subsidiary, has received one of the following, with respect to a coal or other mine of which the company or its subsidiary is an operator:

- An imminent danger order issued under Section 107(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act)
- A written notice from the Mine Safety and Health Administration (MSHA) that the coal or other mine "has a pattern of violations of mandatory health or safety standards [that] are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards" under Section 104(e) of the Mine Act
- A written notice from the MSHA that the coal or other mine has the potential to have such a pattern

For purposes of this item, the terms "coal or other mine" and "operator" have the meanings assigned in Section 3 of the Mine Act.

Required Disclosure

Companies must disclose:

- The date of receipt of the order or notice
- The category of the order or notice (i.e., imminent danger, pattern of violations, or potential pattern)
- The name and location of the mine involved

| **Disclosure Example** |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") received an imminent danger order issued by the Mine Safety and Health Administration under Section 107(a) of the Federal Mine Safety and Health Act of 1977 with respect to the Company's XYZ Mine in XYZ, Wyoming. The order alleged that a miner working on a platform was not wearing fall protection. Corrective action was immediately taken, no injuries occurred, and the order has been terminated. |

Related Items to Consider With Item 1.04

When evaluating a triggering event under Item 1.04, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 1.04:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into a material agreement with contractors, consultants, or other parties to address mine safety issues or implement corrective measures, Item 1.01 disclosure may be required.
- **Item 2.05 (Costs Associated With Exit or Disposal Activities):** If the mine safety event results in a commitment to an exit or a disposal plan under which material charges will be incurred, Item 2.05 disclosure may be required.
- **Item 2.06 (Material Impairments):** If the mine safety event leads the company to conclude that a material impairment charge to mine-related assets is required under generally accepted accounting principles, Item 2.06 disclosure may be required.
- **Item 8.01 (Other Events):** Companies may choose to provide additional context or updates regarding remediation efforts or operational impact under Item 8.01.

Companies should carefully analyze each mine safety event to determine all applicable Form 8-K disclosure requirements.

**Item 1.05: Material Cybersecurity Incidents**

When Is Item 1.05 of Form 8-K Triggered?

Item 1.05 of Form 8-K is triggered when a company experiences a cybersecurity incident that the company determines to be material. The materiality determination must be made without unreasonable delay after the discovery of the incident.

For purposes of Item 1.05, a "cybersecurity incident" is defined as "an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through [the company's] information systems that jeopardizes the confidentiality, integrity, or availability of [the company's] information systems or any information residing" in those systems.

Required Disclosure

Companies must disclose:

- The material aspects of the nature, scope, and timing of the incident
- The material impact or reasonably likely material impact on the company, including its financial condition and results of operations

Companies are not required to disclose specific or technical information about their response plans or cybersecurity systems if doing so would impede remediation efforts. The Form 8-K must be filed within four business days after the company determines the incident is material.

However, if the United States attorney general (AG) determines that Item 1.05 disclosure would pose a substantial risk to national security or public safety and notifies the SEC (U.S. Securities and Exchange Commission) in writing, the company may delay disclosure for the period specified by the AG, up to 30 days. Disclosure may be delayed for an additional period of up to 30 days if the AG determines that disclosure continues to pose a substantial risk to national security or public safety and notifies the SEC in writing. In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the AG determines that disclosure continues to pose a substantial risk to national security and notifies the SEC in writing. Beyond that final 60-day delay, the SEC may consider additional requests for delay and may grant relief by exemptive order.

If the company is required to delay disclosing a data breach incident involving customer proprietary network information under certain rules of the Federal Communications Commission (FCC), the company may delay providing Item 1.05 disclosure for such period provided under the FCC rules and in no event for more than seven business days after notification required under such rules has been made, so long as the company notifies the SEC via EDGAR (Electronic Data Gathering, Analysis, and Retrieval) correspondence by the date the Item 1.05 disclosure was otherwise required to be made.

If required disclosure information was not available or determined at the time of initial filing, an amendment to the company's Form 8-K is required within four business days of the required disclosure information becoming determined or available. The Item 1.05 disclosure must be tagged in Inline XBRL.

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") was notified regarding unauthorized activity on a portion of its information technology systems. The Company immediately activated its incident response procedures and began taking steps to investigate, contain, and remediate the incident with the help of external cybersecurity experts.<br><br>The Company experienced certain operational disruptions, including at certain of its facilities in parts of the United States. The Company, along with its external cybersecurity experts, continues to work diligently to respond to and mitigate the impact from the incident and has notified law enforcement. As the investigation of the incident is ongoing, the full scope, nature, and impact of the incident are not yet known.<br><br>As of the date of this filing, the incident has had and is reasonably likely to have a material impact on the Company's business operations. The expected costs related to the incident, including the loss of revenues, fees for the Company's cybersecurity experts and other advisers, and costs to restore any impacted systems, are reasonably likely to have a material impact on the Company's results of operations and financial condition for fiscal year 2026. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 1.05 of Form 8-K:

*Cybersecurity Incidents That Are Not Yet Determined to Be Material*

If a company voluntarily discloses a cybersecurity incident before making a materiality determination, or it discloses an incident that it determined was not material, the SEC staff encourages the company to disclose the incident under a different Form 8-K item, such as Item 8.01, rather than Item 1.05. If the company later determines that the incident is material, it must file an Item 1.05 Form 8-K within four business days after that determination. Refer to "Disclosure of Cybersecurity Incidents Determined To Be Material and Other Cybersecurity Incidents," a statement by Division of Corporation Finance Director Erik Gerding (May 21, 2024).

*Attorney General Delay*

Requesting a delay from the AG does not change the filing deadline. A company may delay Item 1.05 disclosure only if the AG determines that disclosure would pose a substantial risk to national security or public safety and notifies the SEC in writing before the Form 8-K otherwise would be due. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 104B.01.

If the AG grants a delay and then declines to extend it, or does not respond before the delay period expires, the company must file the Item 1.05 Form 8-K within four business days after the delay period expires. Refer to CFIs, Exchange Act Form 8-K Question 104B.02.

If, during a delay period, the AG determines that disclosure no longer poses a substantial risk to national security or public safety, the company must file the Item 1.05 Form 8-K within four business days after the AG notifies the SEC and the company of that determination. Refer to CFIs, Exchange Act Form 8-K Question 104B.03.

*Consultation With Law Enforcement*

The determination of whether an incident is material is based on all relevant facts and circumstances surrounding the incident, including both quantitative and qualitative factors, and it should focus on the traditional notion of materiality as articulated by the U.S. Supreme Court. The requirements of Item 1.05 do not preclude a company from consulting with the U.S. Department of Justice or any other law enforcement or national security agency at any point regarding the incident, including before a materiality assessment is completed. Refer to CFIs, Exchange Act Form 8-K Question 104B.04.

*Ransomware, Insurance, and Related Incidents*

The cessation or apparent cessation of a ransomware incident prior to the materiality determination, including as a result of the company making a ransomware payment, does not relieve the company of the requirement to make such a materiality determination. Further, in making the required materiality determination, the company cannot necessarily conclude that the incident is not material simply because of the prior cessation or apparent cessation of the incident. In assessing the materiality of the incident, the company should determine "if there is a 'substantial likelihood that a reasonable shareholder would consider it important' in making an investment decision, or if it would have significantly altered the 'total mix' of information made available," notwithstanding the fact that the incident may have already been resolved. Refer to CFIs, Exchange Act Form 8-K Question 104B.05.

If a company experienced a cybersecurity incident that it determined to be material, the subsequent ransomware payment and cessation or apparent cessation of the incident does not relieve the company of the requirement to report the incident under Item 1.05 of Form 8-K within four business days after the materiality determination. Refer to CFIs, Exchange Act Form 8-K Question 104B.06.

A cybersecurity incident covered by an insurance policy may still be material and the company should conduct a materiality analysis including all relevant facts and circumstances, which may involve consideration of both quantitative and qualitative factors. Refer to CFIs, Exchange Act Form 8-K Question 104B.07.

In addition, the size of the ransomware payment, by itself, is not determinative as to whether the cybersecurity incident is material. The size of any ransomware payment demanded or made is only one of the facts and circumstances that a company should consider in making its materiality determination regarding the cybersecurity incident. Refer to CFIs, Exchange Act Form 8-K Question 104B.08.

A series of related cybersecurity incidents may be material collectively even if each incident, viewed separately, is immaterial. Refer to CFIs, Exchange Act Form 8-K Question 104B.09.

Related Items to Consider With Item 1.05

When evaluating a triggering event under Item 1.05, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 1.05:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into a material agreement in connection with the incident, such as a material remediation, services, settlement, or insurance-related agreement, Item 1.01 disclosure may be required.
- **Item 2.05 (Costs Associated With Exit or Disposal Activities):** If the incident results in a commitment to an exit or a disposal plan under which material charges will be incurred, Item 2.05 disclosure may be required.
- **Item 2.06 (Material Impairments):** If the incident leads the company to conclude that a material impairment charge is required under generally accepted accounting principles, Item 2.06 disclosure may be required.
- **Item 8.01 (Other Events):** Companies may choose to provide updates on remediation efforts, regulatory investigations, or other developments related to the cybersecurity incident under Item 8.01.

Companies should carefully analyze each cybersecurity incident to determine all applicable Form 8-K disclosure requirements.

## Item 2.01: Completion of Acquisition or Disposition of Assets

<u>When Is Item 2.01 of Form 8-K Triggered?</u>

Item 2.01 of Form 8-K is triggered when a company or any of its consolidated subsidiaries completes the acquisition or disposition of a significant amount of assets, other than in the ordinary course of business. Item 2.01 also applies to the acquisition or disposition of a significant amount of assets that constitute a real estate operation, as defined in Rule 3-14(a)(2) of Regulation S-X.

*What Constitutes a Significant Amount of Assets?*

An acquisition or disposition is considered significant if

- the company's and its subsidiaries' equity in the net book value of the assets, or the amount paid or received, exceeds 10% of the total assets of the company and its consolidated subsidiaries;
- the transaction involves a business that is significant under Rule 11-01 of Regulation S-X, including the acquisition of an interest in a business accounted for under the equity method or, in lieu of the equity method, the fair value option; or
- for business development companies, the amount paid exceeds 10% of the value of total investments of the company and its consolidated subsidiaries.

Disclosure is required for each transaction or series of related transactions that meets the applicable significance threshold.

<u>Required Disclosure</u>

Companies must disclose:

- The date the transaction was completed
- A description of the assets acquired or disposed of
- The identity of the person from whom the assets were acquired or to whom they were sold
- The nature of any material relationship, other than in respect of the transaction, between that person and the company, its affiliates, directors, officers, or associates of any director or officer
- The nature and amount of consideration paid or received
- If a material relationship is disclosed, the formula or principle used to determine the amount of consideration
- For an acquisition, if a material relationship exists between the company or its affiliates and the source of funds used in the acquisition, the identity of the funding source

If the company was a shell company, other than a business combination related shell company, immediately before a transaction in which it acquired a business that is its predecessor, the Form 8-K must include the information that would be required if the acquired business or real estate operation were filing a Form 10 registration statement.

*Financial Statements*

If Item 9.01 financial statements or pro forma financial information statements are required for an acquisition reported under Item 2.01, they may generally be filed with the initial Form 8-K or by amendment within the Item 9.01 extension period. The automatic 71-day extension is available for acquisitions but not dispositions. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 129.01.

For acquisitions, required historical financial statements must comply with Rule 3-05 or 3-14 of Regulation S-X, or Rule 8-04 or 8-06 for smaller reporting companies, as applicable. Required pro forma financial information must comply with Article 11, or Rule 8-05 for smaller reporting companies, of Regulation S-X.

If the financial statements are not included in the initial Form 8-K, the company should state that the required financial statements will be filed by amendment and indicate when they will be filed. The 71-day extension does not apply if the company was a shell company, other than a business combination related shell company, immediately before the transaction; in that case, the required financial statements and pro forma financial information must be filed in the initial Form 8-K.

| **Disclosure Example** |
|---|
| On September 1, 2026, ABC Corporation (the "Company") completed the acquisition of substantially all of the assets of XYZ, Inc. ("XYZ"), a privately held software company. The assets acquired include intellectual property, customer contracts, and equipment used in XYZ's operations.<br><br>The aggregate purchase price was $25 million in cash, funded through the Company's existing credit facility. There are no material relationships between the Company and XYZ or its affiliates other than in respect of the transaction.<br><br>The Company intends to file the required financial statements and pro forma financial information by amendment to this Form 8-K no later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed. |

<u>Relevant SEC Guidance</u>

The following descriptions summarize certain relevant SEC guidance on Item 2.01 of Form 8-K:

*Signing of Acquisition or Disposition Agreement Does Not Trigger Item 2.01*

Item 2.01 is triggered by the completion of an acquisition or disposition of a significant amount of assets, not by signing the agreement for the transaction. However, signing the agreement may separately trigger Item 1.01 if the agreement is a material definitive agreement not made in the ordinary course of business. If neither Item 1.01 nor Item 2.01 requires disclosure, the company may still voluntarily disclose the agreement under Item 8.01 if it considers the agreement important to security holders. The Item 9.01 financial statement requirement is triggered by Item 2.01, not by Item 1.01 or Item 8.01. Refer to CFIs, Exchange Act Form 8-K Interpretation 205.01.

*Minority Interest Acquisitions*

The purchase by a reporting company of a minority stock interest in a business from an independent third party generally does not require financial statements of that business to be filed with a Form 8-K reporting the transaction, so long as the minority position does not result in the reporting company's control of the assets. Refer to CFIs, Exchange Act Form 8-K Interpretation 205.02.

*Parent-Subsidiary Transactions*

If a reporting company subsidiary acquires a significant amount of assets from its reporting company parent, the subsidiary may be required to file an Item 2.01 Form 8-K even though the parent would not be required to file under Instruction 1 to Item 2.01. Refer to CFIs, Exchange Act Form 8-K Interpretation 205.03.

*Other Dispositions*

An indefinite closing of part of a company's facilities, coupled with a write-down of assets in excess of 10%, may constitute an "other disposition" for purposes of Item 2.01 and require a Form 8-K disclosure. Refer to CFIs, Exchange Act Form 8-K Interpretation 205.04.

*Issuer Securities Transactions*

Item 2.01 generally does not require a Form 8-K to report a redemption or acquisition of securities from the public, or a sale or other disposition of securities to the public, by the issuer of those securities or its wholly owned subsidiary. That instruction does not apply to a sale of a subsidiary's equity if the subsidiary would no longer be wholly owned after the transaction. Refer to CFIs, Exchange Act Form 8-K Interpretation 205.05.

*Financial Statement Extension*

If Item 9.01 financial statements or pro forma financial information statements are required for an acquisition reported under Item 2.01, they may generally be filed by amendment within the Item 9.01 extension period. Refer to CFIs, Exchange Act Form 8-K Question 129.01 and Goodwin's Form 8-K Guide "Item 9.01: Financial Statements and Exhibits" section.

Related Items to Consider With Item 2.01

When evaluating a triggering event under Item 2.01, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 2.01:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the acquisition or disposition is completed under a material agreement (such as a purchase agreement or merger agreement), disclosure under Item 1.01 may be required.
- **Item 1.02 (Termination of a Material Definitive Agreement):** If closing the transaction results in termination of a prior agreement (for example, a previous purchase option or exclusivity agreement), Item 1.02 may apply.

- **Item 2.03 (Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant):** If the acquisition involves new debt financing or guarantees, Item 2.03 disclosure may be required.
- **Item 2.05 (Costs Associated With Exit or Disposal Activities):** If the transaction results in a commitment to an exit or a disposal plan under which material charges will be incurred, Item 2.05 disclosure may be triggered.
- **Item 5.01 (Changes in Control of Registrant):** If the acquisition or disposition results in a change in control of the company, Item 5.01 disclosure may be required.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the acquisition or disposition results in changes to the company's directors, covered officers, or reportable compensatory arrangements, Item 5.02 disclosure may be required.

Companies should carefully analyze each triggering event to determine all applicable Form 8-K disclosure requirements.

**Item 2.02: Results of Operations and Financial Condition**

When Is Item 2.02 of Form 8-K Triggered?

Item 2.02 is triggered when a company, or a person acting on its behalf, makes a public announcement or release disclosing material nonpublic information regarding the company's results of operations or financial condition for a completed annual or quarterly fiscal period. This typically includes earnings releases, presentations, or communications that convey financial performance. Item 2.02 applies only to completed annual or quarterly fiscal periods.

Information furnished under Item 2.02 is not deemed filed for Section 18 purposes and is not incorporated by reference unless the company expressly provides otherwise.

Item 2.02(b) of Form 8-K provides that a Form 8-K is not required when material nonpublic information about a company's results of operations or financial condition is disclosed by oral, telephonic, webcast, broadcast, or similar means, if all of the following conditions are satisfied:

- The oral presentation is complementary to, and initially occurs within 48 hours after, a related written announcement or release that was furnished to the SEC (U.S. Securities and Exchange Commission) on Form 8-K under Item 2.02 before the presentation
- The presentation is broadly accessible to the public by dial-in conference call, webcast, broadcast, or similar means
- The financial and other statistical information contained in the presentation is provided on the company's website alongside any information that would be required under Regulation G
- The presentation was announced by a widely disseminated press release that included instructions on when and how to access the presentation as well as the location on the company's website where the information would be available

Required Disclosure

Companies must disclose:

- The date of the public announcement or release
- A brief identification of the announcement or release
- The announcement or release as an exhibit to the Form 8-K

If an earnings release or other Item 2.02 disclosure includes a non–generally accepted accounting principles (GAAP) financial measure, the company must comply with Regulation G and the applicable requirements of Item 10(e)(1)(i) of Regulation S-K. Key requirements generally include presenting the most directly comparable GAAP measure with equal or greater prominence, providing a reconciliation to the comparable GAAP measure, and explaining why management believes the non-GAAP measure is useful to investors. Companies should also consider the SEC's non-GAAP Corporation Finance Interpretations (CFIs), including guidance on misleading adjustments, inconsistent presentation between periods, individually tailored accounting principles, inappropriate labeling, and descriptions of charges or gains as "non-recurring," "infrequent," or "unusual."

| Disclosure Example |
| --- |
| On August 5, 2026, ABC Corporation issued a press release announcing financial results for the quarter ended June 30, 2026. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.<br><br>The information furnished under this Item 2.02, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, and shall not be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing. |

<u>Relevant SEC Guidance</u>

The following descriptions summarize certain relevant SEC guidance on Item 2.02 of Form 8-K:

*Website Posting Requirement of Conditional Exemption in Item 2.02(b)*

Companies have flexibility in how they provide the website information required to rely on the conditional exemption in Item 2.02(b). An audio file of the webcast or oral presentation may satisfy the condition if the audio file contains all material financial and other statistical information included in the presentation that was not previously disclosed and investors can access and replay it on the company's website. Alternatively, slides or similar written materials posted on the company's website at the time of the presentation may satisfy the condition if they contain the required, previously undisclosed material financial and other statistical information. Refer to CFIs, Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 106.01.

*Earnings Release Not Furnished Prior to Earnings Presentation*

If a company has not furnished its earnings release under Item 2.02 before an earnings conference call, it cannot rely on the Item 2.02(b) conditional exemption for the conference call. In that case, the company must furnish the material, previously nonpublic financial and other statistical information required by Item 2.02 as an exhibit to Form 8-K. A transcript of the relevant portion of the conference call, slides, or similar presentation materials that include the required information will satisfy this requirement. The filing must include all material, previously undisclosed financial and other statistical information, including information provided during any question and answer session. Refer to CFIs, Exchange Act Form 8-K Question 106.02.

*Website Timing and Regulation G Information*

To rely on the Item 2.02(b) conditional exemption, the required information must appear on the company's website at the time the oral presentation is made. If material financial or other statistical information is disclosed unexpectedly during the question and answer session of the presentation, the information must be posted on the company's website promptly after it is disclosed. Any applicable Regulation G and Regulation Fair Disclosure (FD) requirements also must be satisfied. Refer to CFIs, Exchange Act Form 8-K Question 106.03.

*Earnings Release Filed With Form 10-Q Prior to Earnings Call*

A company may rely on the Item 2.02(b) conditional exemption if it files its earnings release as an exhibit to its Form 10-Q before the related earnings conference call, even if it does not separately furnish the earnings release under Item 2.02, assuming all other conditions of Item 2.02(b) are satisfied. Refer to CFIs, Exchange Act Form 8-K Question 106.04.

*Form S-3 Eligibility Not Impacted by Late Item 2.02 Form 8-K*

Filings under Item 2.02 of Form 8-K are furnished and not filed. Failure to timely furnish an Item 2.02 Form 8-K does not affect a company's eligibility to use Form S-3. However, failure to comply with Item 2.02 of Form 8-K would be a violation of Section 13(a) of the Exchange Act. Refer to CFIs, Exchange Act Form 8-K Question 106.05.

*Results of Operations for a Completed Fiscal Period*

A press release announcing results of operations for a completed fiscal period, including expected adjusted earnings or other non-GAAP financial measures for that period, is subject to Item 2.02 if it contains material nonpublic information regarding the company's results of operations or financial condition. Refer to CFIs, Exchange Act Form 8-K Question 106.06.

*Preliminary Results of Operations for a Completed Fiscal Period*

A press release announcing a company's preliminary results of operations for a completed period is subject to Item 2.02 of Form 8-K if it contains material nonpublic information regarding the company's results of operations or financial condition. Refer to CFIs, Exchange Act Form 8-K Question 106.07.

*Meaning of "48 Hours" in Item 2.02(b)*

To rely on the Item 2.02(b) conditional exemption, the oral presentation must be complementary to and initially occur within 48 hours after a related written announcement or release that was furnished under Item 2.02. The 48-hour period is construed literally and is not the equivalent of two business days or two calendar days. Refer to CFIs, Exchange Act Form 8-K Interpretation 206.01.

<u>Related Items to Consider With Item 2.02</u>

When evaluating a triggering event under Item 2.02, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 2.02:

- **Item 7.01 (Regulation FD Disclosure):** If the release or presentation is also being used to satisfy Regulation FD, Item 7.01 may also be relevant.
- **Item 8.01 (Other Events):** Companies may use Item 8.01 instead of, or in addition to, Item 2.02 if they want the information to be filed rather than furnished, subject to applicable incorporation by reference requirements.

Companies should carefully analyze each earnings-related disclosure to determine all applicable Form 8-K disclosure requirements.

**Item 2.03: Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant**

When Is Item 2.03 of Form 8-K Triggered?

Item 2.03 of Form 8-K is triggered if a company becomes (i) obligated on a material direct financial obligation or (ii) directly or contingently liable for an obligation arising out of an off-balance sheet arrangement that is material to the company. Item 2.03 also applies to direct financial obligations and off-balance sheet arrangements of the company's subsidiaries that are material to the company.

A company is not required to disclose information under Item 2.03 of Form 8-K until it enters into an enforceable agreement, under which the direct financial obligation will arise or be created or issued. If there is no definitive agreement, a company must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement that creates the obligation.

*What Is a Direct Financial Obligation?*

For purposes of Item 2.03, a direct financial obligation includes

- a long-term debt obligation, meaning a payment obligation under long-term borrowings referenced in Financial Accounting Standards Board Accounting Standards Codification (ASC) 470-10-50-1;
- a finance lease obligation, meaning a payment obligation under a lease that would be classified as a finance lease under ASC Topic 842;
- an operating lease obligation, meaning a payment obligation under a lease that would be classified as an operating lease under ASC Topic 842; or
- short-term debt obligations arising outside the ordinary course of business.

For this purpose, a "short-term debt obligation" means a payment obligation under a borrowing arrangement that is scheduled to mature within one year or, for companies that use the operating cycle concept of working capital, within an operating cycle longer than one year.

*What Is an Off-Balance Sheet Arrangement?*

For purposes of Item 2.03, an "off-balance sheet arrangement" means a transaction, agreement, or other contractual arrangement to which an unconsolidated entity is a party, under which the company has

- an obligation under a guarantee contract that has the characteristics identified in ASC 460-10-15-4 and is not excluded from the applicable initial recognition and measurement provisions of ASC Topic 460;
- a retained or contingent interest in assets transferred to an unconsolidated entity, or a similar arrangement, that serves as credit, liquidity, or market risk support to that entity for those assets;

- an obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except for a contract that is both indexed to the company's own stock and classified in stockholders' equity; or
- an obligation, including a contingent obligation, arising out of a variable interest in an unconsolidated entity that is held by, and material to, the company, in which that entity provides financing, liquidity, market risk, or credit risk support to, or engages in leasing, hedging, or R&D services with, the company.

Required Disclosure

*Direct Financial Obligation*

If a company becomes obligated on a material direct financial obligation, the Form 8-K must disclose:

- The date on which the company becomes obligated on the direct financial obligation and a brief description of the transaction or agreement creating the obligation
- The amount of the obligation, including the terms of payment, and, if applicable, a brief description of (i) the material terms under which the obligation may be accelerated or increased and (ii) the nature of any recourse provisions that would enable the company to recover from third parties
- A brief description of other material terms and conditions of the transaction or agreement

*Off-Balance Sheet Arrangement*

If a company becomes directly or contingently liable for a material obligation arising out of an off-balance sheet arrangement, the Form 8-K must disclose:

- The date on which the company becomes directly or contingently liable on the obligation and a brief description of the transaction or agreement creating the arrangement and obligation
- A brief description of the nature and amount of the company's obligation under the arrangement, including, if applicable, (i) the material terms under which it may be accelerated or increased or become a direct obligation and (ii) the nature of any recourse provisions that would enable the company to recover from third parties
- The maximum potential number of future payments, undiscounted, that the company may be required to make, if different
- A brief description of other material terms and conditions of the obligation or arrangement

| Disclosure Example — Direct Financial Obligation |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") entered into a credit agreement with XYZ Bank, pursuant to which the Company became obligated under a $500.0 million term loan facility (the "Credit Agreement"). The term loan bears interest at a rate equal to SOFR plus 1.2% per annum and matures on September 1, 2030. The Credit Agreement includes customary covenants and events of default, including financial maintenance covenants. The Company may prepay the term loan at any time without penalty. The foregoing description is qualified in its entirety by reference to the Credit Agreement, a copy of which will be filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ending September 30, 2026. |

| Disclosure Example — Off-Balance Sheet Arrangement |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") entered into a receivables securitization facility (the "Facility") with XYZ Funding LLC ("XYZ"), an unaffiliated special purpose entity. Under the Facility, the Company may transfer certain trade receivables to XYZ from time to time in exchange for cash proceeds of up to $200.0 million.<br><br>The Company retains a subordinated interest in the transferred receivables and provides credit support through limited recourse obligations. The Company's maximum potential exposure under the Facility is approximately $200.0 million, representing the maximum amount of trade receivables that may be outstanding under the Facility, plus related limited recourse obligations.<br><br>The Facility includes customary covenants and termination provisions. The foregoing description is qualified in its entirety by reference to the Facility, a copy of which will be filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ending September 30, 2026. |

<u>Relevant SEC Guidance</u>

The following descriptions summarize certain relevant SEC guidance on Item 2.03 of Form 8-K:

*Triggered by Subsidiary Events*

Item 2.03 is triggered by definitive obligations or off-balance sheet arrangements of the company or its subsidiaries that are material to the company. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 101.02.

*Timing of Disclosure*

If the company becomes contingently liable under an off-balance sheet arrangement and neither the company nor any affiliate of the company is a party to the transaction or agreement creating the contingent obligation, the four–business day filing period begins on the earlier of (i) the fourth business day after the contingent obligation is created or arises and (ii) the day on which an executive officer of the company becomes aware of the contingent obligation. Refer to Instruction 2 to Item 2.03 on Form 8-K and CFIs, Exchange Act Form 8-K Question 107.01.

*Refinancing or Replacement of Debt*

When a company refinances or replaces long-term debt with another long-term debt issuance of the same principal amount and similar terms, Item 2.03 disclosure may not be required if the company determines, based on the facts and circumstances, that the new financial obligation is not material. In making that determination, companies should consider all relevant facts, including the amount of the obligation, the similarity of the terms, and the impact on covenants, liquidity, debt capacity, and other debt requirements. Refer to CFIs, Exchange Act Form 8-K Question 107.02.

<u>Related Items to Consider With Item 2.03</u>

When evaluating a triggering event under Item 2.03, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 2.03:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into a credit agreement, loan agreement, guarantee, or other material contract that creates the financial obligation, disclosure under Item 1.01 may be required.
- **Item 1.02 (Termination of a Material Definitive Agreement):** If the new obligation replaces or results from the termination of an existing material agreement, Item 1.02 may be triggered.
- **Item 2.04 (Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement):** If the new obligation is related to a default, acceleration, or increase under an existing agreement, Item 2.04 may apply.

Companies should carefully analyze each triggering event to determine all applicable Form 8-K disclosure requirements.

**Item 2.04: Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement**

When Is Item 2.04 of Form 8-K Triggered?

Item 2.04 of Form 8-K is triggered when a triggering event occurs that causes (i) a direct financial obligation to increase or accelerate or (ii) an obligation under an off-balance sheet arrangement to increase, accelerate, or become a direct financial obligation and the consequences are material to the company.

For purposes of Item 2.04, a "triggering event" includes an event of default, an event of acceleration, or a similar event as a result of which (i) a direct financial obligation or an obligation under an off-balance sheet arrangement is increased or accelerated or (ii) a contingent obligation under an off-balance sheet arrangement becomes a direct financial obligation.

For purposes of Item 2.04, the terms "direct financial obligation" and "off-balance sheet arrangement" generally have the meanings provided in Item 2.03 of Form 8-K. A direct financial obligation also includes an obligation arising out of an off-balance sheet arrangement that is accrued as a probable loss contingency under ASC 450-20-25.

Required Disclosure

If a triggering event causes the increase or acceleration of a direct financial obligation and the consequences are material to the company, the Form 8-K must disclose:

- The date of the triggering event and a brief description of the agreement or transaction under which the direct financial obligation was created and is increased or accelerated
- A brief description of the triggering event
- The amount of the direct financial obligation, as increased if applicable, and the terms of payment or acceleration that apply
- Any other material obligations of the company that may arise, increase, be accelerated, or become direct financial obligations as a result of the triggering event or the increase or acceleration of the direct financial obligation

If a triggering event causes (i) an obligation under an off-balance sheet arrangement to increase or accelerate or (ii) a contingent obligation under an off-balance sheet arrangement to become a direct financial obligation and the consequences are material to the company, the Form 8-K must disclose:

- The date of the triggering event and a brief description of the off-balance sheet arrangement
- A brief description of the triggering event
- The nature and amount of the obligation, as increased if applicable, and the terms of payment or acceleration that apply
- Any other material obligations of the company that may arise, increase, be accelerated, or become direct financial obligations as a result of the triggering event, the increase or acceleration of the obligation under the off-balance sheet arrangement, or the obligation becoming a direct financial obligation

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the “Company”) received notice from XYZ Bank that the Company had failed to maintain the minimum debt service coverage ratio required under its credit agreement, dated September 1, 2024 (the “Credit Agreement”). As a result of this covenant violation, the outstanding principal balance of $10.0 million under the Credit Agreement became immediately due and payable.<br><br>The Company is currently in discussions with XYZ Bank regarding a potential waiver or amendment to the Credit Agreement. There can be no assurance that such discussions will result in a favorable outcome for the Company. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC (U.S. Securities and Exchange Commission) guidance on Item 2.04 of Form 8-K:

*Conditions Occurred but no Notice of Default*

If all conditions necessary to trigger an acceleration or increase in a direct financial obligation have occurred, but the counterparty has not declared or provided notice of default, whether Item 2.04 is triggered depends on the agreement. If the agreement requires a declaration or notice before the obligation is accelerated or increased, Item 2.04 is not triggered until that declaration or notice occurs. If no declaration or notice is required, the acceleration or increase occurs automatically upon the event, and the consequences are material to the company, then Item 2.04 disclosure is required. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 108.01.

*Voluntary Redemption of Convertible Notes*

A company’s voluntary redemption of convertible notes is not a triggering event under Item 2.04 because it is not an event of default, an event of acceleration, or a similar event. Refer to CFIs, Exchange Act Form 8-K Interpretation 208.01.

*Notice of Default Even if Disputed*

If a company receives notice of default, an Item 2.04 Form 8-K may be required even if the company believes in good faith that no event of default occurred and the matter is pending before an arbitrator. The company may include a discussion of its position and the basis for disputing the default in the Form 8-K. Refer to CFIs, Exchange Act Form 8-K Interpretation 208.02.

Related Items to Consider With Item 2.04

When evaluating a triggering event under Item 2.04, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 2.04:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into a waiver, an amendment, or a forbearance agreement to address the default or acceleration, disclosure under Item 1.01 may be required.

- **Item 1.02 (Termination of a Material Definitive Agreement):** If the acceleration results in termination of the underlying agreement (for example, a credit facility being terminated upon default), Item 1.02 may be triggered.
- **Item 1.03 (Bankruptcy or Receivership):** If the acceleration or default leads to a bankruptcy filing or receivership, Item 1.03 may apply.
- **Item 2.03 (Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant):** If the company incurs a new obligation to refinance or replace the accelerated debt, Item 2.03 disclosure may be required.

Companies should carefully analyze each triggering event to determine all applicable Form 8-K disclosure requirements.

**Item 2.05: Costs Associated With Exit or Disposal Activities**

When Is Item 2.05 of Form 8-K Triggered?

Item 2.05 of Form 8-K is triggered when the company's board of directors, a committee of the board, or an authorized officer or authorized officers (i) commit the company to an exit or a disposal plan, (ii) otherwise dispose of a long-lived asset, or (iii) terminate employees under a plan of termination described in Accounting Standards Codification (ASC) 420-10-25-4, under which material charges will be incurred under generally accepted accounting principles (GAAP).

Examples may include restructurings, workforce reductions, facility closures, or other exit or disposal activities that are expected to result in material charges.

Required Disclosure

Companies must disclose:

- The date of the commitment to the course of action
- A description of the course of action, including the facts and circumstances leading to the expected action and the expected completion date
- An estimate of the total amount or range of amounts expected to be incurred in connection with the action
- For each major type of cost associated with the course of action, such as one-time termination benefits, contract termination costs, and other associated costs, an estimate of the total amount or range of amounts expected to be incurred
- An estimate of the amount or range of amounts of the charge that will result in future cash expenditures

If the company is unable in good faith to estimate the amounts required to be disclosed at the time of filing, it is not required to disclose those estimates in the initial Form 8-K. In that case, the company must file an amendment within four business days after it determines the estimate or range of estimates.

| **Disclosure Example** |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") committed to a restructuring plan designed to reduce operating expenses. The plan includes the closure of two manufacturing facilities and a reduction in workforce of approximately 500 employees. The Company expects the restructuring to be substantially complete by the end of the fourth quarter of 2026.<br><br>The Company estimates that it will incur total charges of approximately $25.0 million in connection with the restructuring, consisting primarily of approximately $15.0 million of severance and employee-related costs and approximately $10.0 million of facility closure and other associated costs. The Company expects approximately $20.0 million of these charges to result in future cash expenditures. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 2.05 of Form 8-K:

*Triggering Event*

Item 2.05 is triggered when the company is committed to a "plan of termination" as described in the accounting standards. This commitment may come from the board, a board committee, or authorized officers. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Interpretation 209.01.

*Costs Not Limited to Accounting Standards*

Costs associated with exit activities are not limited to those addressed in ASC 420. Other costs that may need to be disclosed under Item 2.05 may be governed by other accounting standards. Refer to CFIs, Exchange Act Form 8-K Question 109.01.

*Disclosure Timing for Employee Terminations*

If an exit plan involves terminating employees, a Form 8-K is not required until affected employees have been informed. Refer to CFIs, Exchange Act Form 8-K Question 109.02.

Related Items to Consider With Item 2.05

When evaluating a triggering event under Item 2.05, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 2.05:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the company enters into facility lease termination agreements or other material contracts in connection with the exit plan, disclosure under Item 1.01 may be required.
- **Item 1.02 (Termination of a Material Definitive Agreement):** If the exit or disposal plan involves terminating material agreements, such as supply contracts or facility leases, Item 1.02 disclosure may be required.
- **Item 2.01 (Completion of Acquisition or Disposition of Assets):** If the exit or disposal plan involves the sale or disposition of a significant amount of assets, Item 2.01 disclosure may be required.
- **Item 2.06 (Material Impairments):** If the exit or disposal plan leads the company to conclude that a material impairment charge is required under GAAP, Item 2.06 disclosure may be required.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the exit plan affects compensatory arrangements for covered officers, Item 5.02 disclosure may apply.

Companies should carefully analyze each exit or disposal plan to determine all applicable Form 8-K disclosure requirements.

**Item 2.06: Material Impairments**

When Is Item 2.06 of Form 8-K Triggered?

Item 2.06 of Form 8-K is triggered when a company's board of directors, a committee of the board, or the company's authorized officer or officers, if board action is not required, conclude that a material charge for impairment to one or more of the company's assets, including impairments of securities or goodwill, is required under generally accepted accounting principles.

Item 2.06 is not triggered if the impairment conclusion is made in connection with the preparation, review, or audit of financial statements required to be included in the company's next periodic report, the periodic report is filed on a timely basis, and the conclusion is disclosed in that report.

Required Disclosure

Companies must disclose:

- The date of the impairment conclusion
- A description of the impaired asset or assets and the facts and circumstances leading to the conclusion that the impairment charge is required
- An estimate of the amount or range of amounts of the impairment charge
- An estimate of the amount or range of amounts of the impairment charge that will result in future cash expenditures

If the company cannot in good faith estimate the amount of the impairment charge, or the amount that will result in future cash expenditures, at the time of the initial filing, it is not required to disclose that estimate in the initial Form 8-K. In that case, the company must file an amendment within four business days after it determines the estimate or range of estimates.

| **Disclosure Example** |
| --- |
| On September 1, 2026, the Board of Directors of ABC Corporation (the "Company") concluded that a material impairment charge is required under generally accepted accounting principles. The impairment relates to goodwill associated with the Company's Software Solutions reporting unit.<br><br>The impairment determination was based on a decline in projected cash flows and market conditions affecting the reporting unit. The Company currently estimates that the impairment charge will range between $45.0 million and $55.0 million. The impairment charge is noncash and is not expected to result in future cash expenditures. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 2.06 of Form 8-K:

*Impairment Conclusion Coincides With Preparation, Review, or Audit of Financial Statements*

Item 2.06 does not require a separate Form 8-K if the impairment conclusion coincides with the preparation, review, or audit of financial statements required to be included in the company's next periodic report, as long as the periodic report is filed on a timely basis and the impairment conclusion is disclosed in that report. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 110.01.

*Deferred Tax Assets and Changes in Tax Laws*

The remeasurement of a deferred tax asset to reflect the impact of a change in tax rate or tax laws is not an impairment under Accounting Standards Codification Topic 740 and does not, by itself, trigger Item 2.06. However, changes in tax rates or tax laws may have financial statement implications, including whether it is more likely than not that the deferred tax asset will be realized. Refer to CFIs, Exchange Act Form 8-K Question 110.02.

Related Item to Consider With Item 2.06

When evaluating a triggering event under Item 2.06, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following item may be triggered in connection with Item 2.06:

- **Item 2.05 (Costs Associated With Exit or Disposal Activities):** If the impairment is related to a decision to exit certain operations or dispose of assets, Item 2.05 disclosure may also be required.

Companies should carefully analyze each impairment event to determine all applicable Form 8-K disclosure requirements.

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

When Is Item 3.01 of Form 8-K Triggered?

Item 3.01 of Form 8-K is triggered when any of the following occurs with respect to a class of the company's common equity that has its principal listing on a national securities exchange or national securities association:

- The company receives notice from the exchange or association that the company, or the class of securities, does not satisfy a continued listing rule or standard
- The company receives notice that the exchange has submitted an application to the SEC (U.S. Securities and Exchange Commission) to delist the class of securities or the association has taken all necessary steps under its rules to delist the securities from its automated interdealer quotation system
- The company notifies the exchange or association that it is aware of material noncompliance with a continued listing rule or standard
- The exchange or association issues a public reprimand letter or similar communication indicating that the company violated a continued listing rule or standard, in lieu of suspending trading or delisting the securities
- The company's board of directors, a board committee, or authorized officers take definitive action to withdraw the listing or terminate the quotation of the securities, including in connection with a transfer to another exchange or quotation system

Required Disclosure

If the company receives notice from the exchange or association that it does not satisfy a continued listing rule or standard, or if the company notifies the exchange or association that it is aware of material noncompliance, the Form 8-K must disclose:

- The date the notice was received or provided
- The rule or standard for continued listing that the company fails, or has failed, to satisfy
- Any action or response that, at the time of filing, the company has determined to take in response to the notice or noncompliance

If the exchange or association issues a public reprimand letter or similar communication, the Form 8-K must state the date of the letter or communication and summarize its contents.

If the company takes definitive action to withdraw the listing or terminate the quotation of a class of its common equity, including in connection with a transfer to another exchange or quotation system, the Form 8-K must describe the action taken and state the date of the action.

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") received a written notice from The Nasdaq Stock Market LLC indicating that the Company no longer complies with Nasdaq Listing Rule 5550(a)(2), which requires a minimum bid price of $1.00 per share. The notice stated that the Company's common stock had closed below $1.00 per share for 30 consecutive business days.<br><br>The notice has no immediate effect on the listing of the Company's common stock, which will continue to trade on Nasdaq under the symbol "ABC." The Company intends to regain compliance during the 180-day compliance period provided under Nasdaq rules and is considering available options, including a reverse stock split. |

<u>Relevant SEC Guidance</u>

The following description summarizes certain relevant SEC guidance on Item 3.01 of Form 8-K:

*Application for Listing Does Not Trigger Disclosure*

An Item 3.01 Form 8-K is not required when a company applies for listing on a national securities exchange or when the application is approved. Item 3.01 applies to delisting, failure to satisfy continued listing standards, public reprimand letters or similar communications, and definitive action to withdraw a listing or terminate a quotation. Refer to Corporation Finance Interpretations, Securities Exchange Act of 1934 (Exchange Act) Form 8-K Interpretation 211.01.

<u>Related Items to Consider With Item 3.01</u>

When evaluating a triggering event under Item 3.01, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 3.01:

- **Item 3.03 (Material Modification to Rights of Security Holders):** If the delisting, listing deficiency, or transfer of listing materially modifies the rights of holders of a class of securities registered under Section 12 of the Exchange Act, Item 3.03 disclosure may also be required.
- **Item 5.03 (Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year):** If the company amends its governing documents in response to a listing deficiency, such as to effect a reverse stock split, Item 5.03 disclosure may also be required.

Companies should carefully analyze each listing-related event to determine all applicable Form 8-K disclosure requirements.

**Item 3.02: Unregistered Sales of Equity Securities**

When Is Item 3.02 of Form 8-K Triggered?

Item 3.02 of Form 8-K is triggered when (i) a company sells equity securities in a transaction that is not registered under the Securities Act of 1933 (Securities Act) and (ii) the aggregate amount of securities sold since the company's last Item 3.02 Form 8-K or last periodic report, whichever is more recent, constitutes 1% or more of the number of shares outstanding of the class of equity securities sold. For smaller reporting companies, the threshold is 5%.

For purposes of Item 3.02, "the number of shares outstanding" means the actual number of shares of the class outstanding and does not include outstanding securities convertible into or exchangeable for that class.

A company is not required to disclose information under Item 3.02 until it enters into an agreement that is enforceable against the company, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the company must provide the disclosure within four business days after the closing or settlement of the transaction or arrangement under which the equity securities are to be sold.

Required Disclosure

Companies must provide the information required by paragraphs (a) and (c) through (e) of Item 701 of Regulation S-K, including:

- The date of sale
- The title and amount of securities sold
- The aggregate offering price or other consideration received by the company
- The section of the Securities Act or SEC (U.S. Securities and Exchange Commission) rule under which exemption from registration was claimed
- The facts relied upon to make the exemption available
- The terms of conversion, exercise, or exchange if the securities (i) are convertible or exchangeable into equity securities or (ii) are warrants or options representing equity securities

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") entered into a securities purchase agreement with certain accredited investors, pursuant to which the Company agreed to issue and sell 1,500,000 shares of the Company's common stock at a purchase price of $10.00 per share, for aggregate gross proceeds of $15.0 million.<br><br>The shares were offered and sold in a private placement exempt from registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D. The Company relied on this exemption based in part on representations from the investors that they were accredited investors and were acquiring the shares for investment purposes. The shares have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 3.02 of Form 8-K:

*Grant of Stock Options*

The grant of stock options under an employee stock option plan does not require disclosure under Item 3.02 if the grant does not constitute a "sale" or an "offer to sell" under Securities Act Section 2(a)(3). Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 112.01.

*Issuance of Class of Equity Securities Not Previously Outstanding*

If a company sells, in an unregistered transaction, shares of a class of equity securities that is not currently outstanding, the volume threshold under Item 3.02 is exceeded, triggering a Form 8-K filing requirement. Refer to CFIs, Exchange Act Form 8-K Question 112.02.

*Trigger Date Is Date of Entry Into Agreement to Issue Unregistered Equity Securities*

Item 3.02 is triggered when a company enters into an enforceable agreement to issue unregistered equity securities to a third party in exchange for services and the applicable volume threshold is exceeded. Refer to CFIs, Exchange Act Form 8-K Interpretation 212.01.

*Issuance in Connection With Investment in Subsidiary*

If a wholly owned subsidiary that is an Exchange Act reporting company receives an additional equity investment from its Exchange Act reporting parent and the volume threshold under Item 3.02 is exceeded, the subsidiary must file an Item 3.02 Form 8-K, even if it qualifies for abbreviated periodic reports. Refer to CFIs, Exchange Act Form 8-K Interpretation 212.02.

*Warrant, Option, and Convertible Note Issuances*

An Item 3.02 Form 8-K filing requirement is triggered upon an unregistered sale of warrants to purchase equity securities, options outside a stock option plan, or convertible notes if the volume threshold for the underlying equity securities is exceeded. The Form 8-K must disclose the terms of exercise or conversion. If the initial Form 8-K includes the maximum number of underlying securities issuable, no additional filing is required upon exercise or conversion. Refer to CFIs, Exchange Act Form 8-K Interpretation 212.03.

Related Items to Consider With Item 3.02

When evaluating a triggering event under Item 3.02, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 3.02:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the unregistered sale is made pursuant to a securities purchase agreement, a subscription agreement, or another material contract, disclosure under Item 1.01 may be required.
- **Item 2.03 (Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant):** If the securities sold include convertible debt or other instruments that create material financial obligations, Item 2.03 disclosure may be required.
- **Item 5.01 (Changes in Control of Registrant):** If the unregistered sale results in or may result in a change in control of the company, Item 5.01 disclosure may be required.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the unregistered securities are issued as compensation to covered officers, Item 5.02 disclosure may apply.

Companies should carefully analyze each unregistered securities transaction to determine all applicable Form 8-K disclosure requirements.

## Item 3.03: Material Modification to Rights of Security Holders

When Is Item 3.03 of Form 8-K Triggered?

Item 3.03 of Form 8-K is triggered when a material modification is made to the rights of holders of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (Exchange Act). Material modifications may include changes to voting rights, dividend rights, liquidation preferences, redemption rights, conversion rights, or other material rights of security holders. Working capital restrictions and other limitations on the payment of dividends must also be reported under Item 3.03.

Required Disclosure

Companies must disclose:

- The date of the modification
- The title of the class of securities involved
- A brief description of the general effect of the modification on the rights of holders of those securities

If the rights of a class of registered securities are materially limited or qualified by the issuance or modification of another class of securities, the company must disclose the date of the issuance or modification and briefly describe the general effect on the rights of holders of the registered securities.

| **Disclosure Example** |
|---|
| On September 1, 2026, ABC Corporation (the "Company") filed a Certificate of Designation with the Secretary of State of the State of Delaware establishing the rights, preferences, and privileges of a new series of preferred stock designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock").<br><br>The Series A Preferred Stock ranks senior to the Company's common stock with respect to dividends and distributions upon liquidation, dissolution, or winding up. Holders of Series A Preferred Stock are entitled to receive dividends before any dividends may be paid on the Company's common stock, and no shares of common stock may be repurchased or redeemed while dividends on the Series A Preferred Stock are accrued and unpaid, subject to certain exceptions. As a result, the issuance of the Series A Preferred Stock limits the rights of holders of the Company's common stock with respect to dividends, distributions, and repurchases.<br><br>The foregoing description of the Series A Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the Certificate of Designation, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K. |

Relevant SEC Guidance

The following description summarizes certain relevant SEC guidance on Item 3.03 of Form 8-K:

*Shareholder Rights Plan*

Under Item 3.03(b), the triggering event for a shareholder rights plan occurs upon issuance of the dividend that distributes the rights, not upon adoption of the plan or filing of the certificate of designation. However, the company must file an Item 1.01 Form 8-K when entering into the plan if it constitutes a material definitive agreement outside the ordinary course of business. Refer to Corporation Finance Interpretations, Exchange Act Form 8-K Interpretation 213.01.

Related Items to Consider With Item 3.03

When evaluating a triggering event under Item 3.03, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 3.03:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the modification to security holder rights is implemented through a material agreement, such as an amendment to an indenture or a rights agreement, Item 1.01 disclosure may be required.
- **Item 5.03 (Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year):** If the modification is implemented through amendments to the company's charter or bylaws, Item 5.03 disclosure may also be required.
- **Item 5.07 (Submission of Matters to a Vote of Security Holders):** If the modification required shareholder approval, Item 5.07 disclosure of the voting results may be required.

Companies should carefully analyze each modification to security holder rights to determine all applicable Form 8-K disclosure requirements.

## Item 4.01: Changes in Registrant's Certifying Accountant

When Is Item 4.01 of Form 8-K Triggered?

Item 4.01 of Form 8-K is triggered when a company changes its independent registered public accounting firm. This includes when the company's existing independent accountant resigns, declines to stand for reappointment, or is dismissed and when the company engages a new independent accountant.

Required Disclosure

If the company's former accountant resigns, declines to stand for reappointment, or is dismissed, the Form 8-K must include the disclosure required by Item 304(a)(1) of Regulation S-K, including:

- Whether the former accountant resigned, declined to stand for reelection, or was dismissed, and the date of such event
- Whether the former accountant's reports on the company's financial statements for either of the past two fiscal years (i) contained an adverse opinion or a disclaimer of opinion or (ii) were qualified or modified as to uncertainty, audit scope, or accounting principles and the nature of each such adverse opinion, disclaimer, qualification, or modification
- Whether the decision to change accountants was recommended or approved by the audit committee or board of directors
- Whether, during the company's two most recent fiscal years and any subsequent interim period, there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that would require disclosure under Item 304(a)(1)(iv)
- Whether any reportable events described in Item 304(a)(1)(v) occurred during the company's two most recent fiscal years and any subsequent interim period

The company must provide the former accountant with a copy of the Item 4.01 disclosures no later than the day the Form 8-K is filed and request a letter addressed to the SEC (U.S. Securities and Exchange Commission) stating whether the former accountant agrees with those disclosures and, if not, the respects in which it does not agree. The company must file the letter as Exhibit 16.1. If the letter is unavailable at the time of filing, the company must request that the former accountant provide the letter so that it can be filed within 10 business days after the Form 8-K is filed, and the company must file the letter by amendment within two business days after receipt.

If the company engages a new independent accountant, the Form 8-K must include the disclosure required by Item 304(a)(2) of Regulation S-K, including:

- The identity of the newly engaged accountant and the date of engagement
- Any consultations with the new accountant during the company's two most recent fiscal years and any subsequent interim period, including consultations regarding the application of accounting principles to a specific completed or proposed transaction, the type of audit opinion that might be rendered, or any matter that was the subject of a disagreement or reportable event

| **Disclosure Example — Dismissal** |
|---|
| On September 1, 2026, the Audit Committee of the Board of Directors of ABC Corporation (the “Company”) dismissed XYZ LLP (“XYZ”) as the Company’s independent registered public accounting firm, effective immediately.<br><br>XYZ’s reports on the Company’s financial statements for the fiscal years ended December 31, 2025 and 2024, did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles.<br><br>During the fiscal years ended December 31, 2025 and 2024, and the subsequent interim period through September 1, 2026, there were no disagreements with XYZ on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that, if not resolved to XYZ’s satisfaction, would have caused XYZ to make reference to the subject matter of the disagreement in connection with its reports. During the same period, there were no reportable events within the meaning of Item 304(a)(1)(v) of Regulation S-K.<br><br>The Company provided XYZ with a copy of the disclosures in this Item 4.01 and requested that XYZ furnish a letter addressed to the Securities and Exchange Commission stating whether it agrees with the statements made herein. A copy of XYZ’s letter is filed as Exhibit 16.1 to this Current Report on Form 8-K. |

| **Disclosure Example — New Auditor** |
|---|
| On September 1, 2026, the Audit Committee of the Board of Directors of ABC Corporation (the “Company”) approved the engagement of DEF LLP (“DEF”) as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2026.<br><br>During the Company’s fiscal years ended December 31, 2025 and 2024, and the subsequent interim period through September 1, 2026, neither the Company nor anyone acting on its behalf consulted with DEF regarding (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company’s financial statements, and DEF did not provide any written report or oral advice that DEF concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing, or financial reporting issue, or (ii) any matter that was the subject of a disagreement within the meaning of Item 304(a)(1)(iv) of Regulation S-K or a reportable event within the meaning of Item 304(a)(1)(v) of Regulation S-K. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 4.01 of Form 8-K:

*PCAOB Registration Revoked*

If a principal accountant resigns, declines to stand for reappointment, or is dismissed because its Public Company Accounting Oversight Board (PCAOB) registration was revoked, the company should disclose this fact in the Item 4.01 Form 8-K. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 114.01.

*New Accountant Related to Old Accountant*

If a company engages a new principal accountant that is related to the former principal accountant, such as an affiliate or a member firm of the same network, Item 4.01 still applies if the new accountant is a separate legal entity and is separately registered with the PCAOB. Refer to CFIs, Exchange Act Form 8-K Question 114.02.

*Merger of Accountant*

Whether an Item 4.01 Form 8-K is required when the principal accountant enters into a business combination with another accounting firm depends on the structure of the transaction and the related facts and circumstances. Accounting firms involved in these transactions are encouraged to consult with the SEC Division of Corporation Finance's Office of the Chief Accountant. Refer to CFIs, Exchange Act Form 8-K Question 114.03.

*Former Accountant Declines to Provide Letter*

If the former accountant declines to provide the required letter stating whether it agrees with the company's disclosures, the company should disclose that fact in the Form 8-K. Refer to CFIs, Exchange Act Form 8-K Interpretation 214.01.

*Disclosure Must Be Reported on Form 8-K*

A change in certifying accountant required to be reported under Item 4.01 must be reported on Form 8-K, and any required amendment must be filed on Form 8-K/A. It is not sufficient to report the event only in a periodic report. Refer to CFIs, Exchange Act Form 8-K Interpretation 214.02.

Related Item to Consider With Item 4.01

When evaluating an auditor change under Item 4.01, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following item may be triggered in connection with Item 4.01:

- **Item 4.02 (Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review):** If the auditor change is related to a conclusion that previously issued financial statements, an audit report, or a completed interim review should no longer be relied upon, Item 4.02 disclosure may also be required.

Companies should carefully analyze each auditor change to determine all applicable Form 8-K disclosure requirements.

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

When Is Item 4.02 of Form 8-K Triggered?

Item 4.02 of Form 8-K is triggered when

- the company's board of directors, a committee of the board, or an authorized officer or authorized officers, if board action is not required, conclude that previously issued financial statements covering one or more years or interim periods for which the company is required to provide financial statements under Regulation S-X should no longer be relied upon because of an error in those financial statements, as addressed in Accounting Standards Codification Topic 250; or
- the company is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements.

Required Disclosure

If the company reaches the non-reliance conclusion, the Form 8-K must disclose:

- The date of the conclusion and an identification of the financial statements and years or periods covered that should no longer be relied upon
- A brief description of the facts underlying the conclusion, to the extent known at the time of filing
- A statement of whether the audit committee, or the board of directors or authorized officer or officers in the absence of an audit committee, discussed the matters disclosed in the Form 8-K with the company's independent accountant

If the company is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review, the Form 8-K must disclose:

- The date on which the company was advised or notified
- An identification of the financial statements that should no longer be relied upon
- A brief description of the information provided by the accountant
- A statement of whether the audit committee, or the board of directors or authorized officer or officers in the absence of an audit committee, discussed the matters disclosed in the Form 8-K with the independent accountant

If the company receives advisement or notice from its independent accountant requiring disclosure under Item 4.02(b), the company must:

- Provide the independent accountant with a copy of the disclosures no later than the day the Form 8-K is filed

- Request that the independent accountant furnish a letter addressed to the SEC (U.S. Securities and Exchange Commission) stating whether it agrees with the statements made by the company and, if not, the respects in which it does not agree
- File the independent accountant's letter as an exhibit to an amendment to the Form 8-K no later than two business days after the company receives the letter

| **Disclosure Example — Company Non-Reliance Conclusion** |
| --- |
| On September 1, 2026, the Audit Committee of the Board of Directors of ABC Corporation (the "Company") concluded that the Company's previously issued financial statements for the fiscal year ended December 31, 2025, and the interim periods ended March 31, 2026, and June 30, 2026, should no longer be relied upon.<br>The determination was based on the identification of material errors related to revenue recognition. The Company intends to restate these financial statements and file amended reports as soon as practicable.<br>The Audit Committee discussed the matters disclosed in this Item 4.02 with the Company's independent registered public accounting firm. |

| **Disclosure Example — Auditor Notice** |
| --- |
| On September 1, 2026, ABC Corporation (the "Company") was advised by its independent registered public accounting firm that disclosure should be made to prevent future reliance on the auditor's report on the Company's financial statements for the fiscal year ended December 31, 2025.<br>The auditor's advice was based on information indicating that certain liabilities were not properly recorded. The Company is evaluating the impact of this matter and expects to restate its financial statements.<br>The Audit Committee discussed the matters disclosed in this Item 4.02 with the Company's independent registered public accounting firm. The Company has provided a copy of the disclosures in this Item 4.02 to its independent registered public accounting firm and requested that the firm furnish a letter addressed to the SEC stating whether it agrees with the statements made herein. The Company will file the letter as an exhibit to an amendment to this Current Report on Form 8-K no later than two business days after receipt. |

<u>Relevant SEC Guidance</u>

The following descriptions summarize certain relevant SEC guidance on Item 4.02 of Form 8-K:

*Second Form 8-K Not Required for Auditor Notice*

A company that has filed an Item 4.02(a) Form 8-K because its financial statements should no longer be relied upon does not need to file a second Form 8-K under Item 4.02(b) when its auditor reaches the same conclusion, unless the auditor's conclusion relates to a different error or matter.

Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 115.01.

*Pro Forma Financial Information Not Covered*

Item 4.02 does not apply to pro forma financial information. If an error is detected in pro forma data, an amendment to the form containing such information may be required to correct the error. Refer to CFIs, Exchange Act Form 8-K Question 115.02.

*Interactive Data File Errors Do Not Trigger Item 4.02*

Item 4.02(a) does not apply when a material error is discovered in an Interactive Data File if the underlying financial statements remain reliable. Filers may voluntarily disclose the error under Item 7.01 or Item 8.01 but must promptly correct the error and file an amendment. Refer to CFIs, Exchange Act Form 8-K Question 115.03.

*Item 4.02 Must Be Reported on Form 8-K*

A decision that previously issued financial statements should no longer be relied upon must be reported on Form 8-K, and any required amendment must be filed on Form 8-K/A. Reporting the event only in a periodic report is not sufficient. Refer to CFIs, Exchange Act Form 8-K Interpretation 215.01.

<u>Related Item to Consider With Item 4.02</u>

When evaluating a triggering event under Item 4.02, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following item may be triggered in connection with Item 4.02:

- **Item 4.01 (Changes in Registrant's Certifying Accountant):** If the non-reliance determination leads to a change in auditors, Item 4.01 disclosure will also be required.

Companies should carefully analyze each non-reliance event to determine all applicable Form 8-K disclosure requirements.

**Item 5.01: Changes in Control of Registrant**

When Is Item 5.01 of Form 8-K Triggered?

Item 5.01 of Form 8-K is triggered when, to the knowledge of the company's board of directors, a committee of the board, or authorized officers, a change in control of the company has occurred.

Item 5.01 also requires disclosure of any arrangement, including any pledge by a person of securities of the company, whose operation may at a later date result in a change in control of the company. This disclosure is not required for ordinary default provisions in the company's charter, bylaws, trust indentures, or other governing instruments.

A change in control analysis is facts-and-circumstances-based and may involve ownership of voting securities, contractual rights, board or management rights, voting agreements, financing arrangements, or other arrangements that confer control.

Required Disclosure

If a change in control has occurred, the Form 8-K must disclose:

- The identity of the person or persons who acquired control
- The date and a description of the transaction or transactions that resulted in the change in control
- The basis of control, including the percentage of voting securities of the company beneficially owned, directly or indirectly, by the person or persons who acquired control
- The amount of consideration used by the person or persons who acquired control
- The source of funds used by the person or persons who acquired control, subject to the bank-loan confidentiality exception described in the following paragraph
- The identity of the person or persons from whom control was assumed
- Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters

If all or part of the consideration used by the person who acquired control is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934 (Exchange Act), the identity of the bank may be omitted if the person who acquired control has requested confidentiality under Section 13(d)(1)(B) of the Exchange Act. In that case, the Form 8-K must state that the identity of the bank has been omitted and filed separately with the SEC (U.S. Securities and Exchange Commission).

If the company was a shell company, other than a business combination related shell company, immediately before the change in control, the Form 8-K must include the information that would be required if the company were filing a Form 10 registration statement.

If the company is aware of an arrangement that may later result in a change in control, the Form 8-K must describe the arrangement. Ordinary default provisions in the company's charter, bylaws, trust indentures, or other governing instruments do not need to be disclosed.

| Disclosure Example |
| --- |
| On September 1, 2026, ABC Corporation (the “Company”) became aware that a group consisting of Stockholder A, Stockholder B, Stockholder C, and Stockholder D (collectively, the “Schedule 13D Group”) reported in an amendment to Schedule 13D that, on August 31, 2026, Stockholder A purchased an aggregate of 500,000 shares of the Company’s voting common stock, par value $0.001 per share (“Voting Common Stock”), in open market purchases.<br><br>The Voting Common Stock was acquired for an aggregate purchase price of approximately $5.0 million. The source of funds was the working capital of Stockholder A and its affiliates. As a result of the purchases, the Schedule 13D Group beneficially owns 10,000,000 shares of Voting Common Stock, representing approximately 51.0% of the outstanding Voting Common Stock.<br><br>Prior to the purchases, the Schedule 13D Group beneficially owned 9,500,000 shares of Voting Common Stock, representing less than a majority of the outstanding Voting Common Stock. Because the purchases were made in open market transactions, the Schedule 13D Group did not assume control from any specific person. The Company is not aware of any arrangements or understandings among the Schedule 13D Group and any other persons with respect to the election of directors or other matters, other than as disclosed in the Schedule 13D Group’s amendment to Schedule 13D.<br><br>As a result of the purchases, the Company is a “controlled company” under NYSE corporate governance standards. The Company has not elected to rely on any exemptions available to controlled companies. |

<u>Related Items to Consider With Item 5.01</u>

When evaluating a triggering event under Item 5.01, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 5.01:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the change in control results from or involves a material agreement, such as a merger agreement, voting agreement, stock purchase agreement, or tender offer agreement, Item 1.01 disclosure may be required.
- **Item 2.01 (Completion of Acquisition or Disposition of Assets):** If the change in control involves the completion of an acquisition or a disposition of a significant amount of assets, Item 2.01 disclosure may be required.
- **Item 3.02 (Unregistered Sales of Equity Securities):** If the change in control involves the issuance of unregistered equity securities that meets the applicable Item 3.02 threshold, Item 3.02 disclosure may be required.

- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the change in control results in changes to the company's directors or covered officers, or in reportable compensatory arrangements, Item 5.02 disclosure may also be required.
- **Item 5.06 (Change in Shell Company Status):** If the change in control causes the company to cease being a shell company, Item 5.06 disclosure may be required.

Companies should carefully analyze each change in control event to determine all applicable Form 8-K disclosure requirements.

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

When Is Item 5.02 of Form 8-K Triggered?

Item 5.02 of Form 8-K is triggered by certain director and officer departures, director elections, officer appointments, and compensatory arrangements involving specified executive officers.

Item 5.02 generally requires disclosure when

- a director retires, resigns, is removed, or refuses to stand for reelection;
- a new director is elected, except by a vote of security holders at an annual meeting or a special meeting convened for such purpose;
- the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, any person performing similar functions, or any named executive officer retires, resigns, or is terminated from that position;
- the company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions;
- the company enters into, adopts, commences, materially amends, or materially modifies a material compensatory plan, contract, or arrangement, whether written or unwritten, in which the principal executive officer, principal financial officer, or any named executive officer participates;
- the company makes or materially modifies a material grant or an award under such a compensatory plan, contract, or arrangement; or
- a payment, a grant, an award, a decision, or another occurrence causes salary or bonus amounts for a named executive officer to become calculable, in whole or in part, if those amounts were previously omitted from the Summary Compensation Table under Instruction 1 to Item 402(c)(2)(iii) or (iv) of Regulation S-K.

For these purposes, "named executive officers" generally means the individuals for whom disclosure was required under Item 402(c) of Regulation S-K in the company's most recent SEC (U.S. Securities and Exchange Commission) filing containing executive compensation disclosure. For foreign private issuers, named executive officers are the individuals for whom compensation disclosure was provided under Item 6.B or 6.E.2 of Form 20-F.

A title change alone does not necessarily trigger Item 5.02 if the officer continues to perform substantially the same functions and no reportable compensation arrangement is entered into or materially amended. The analysis should focus on whether the individual has begun or ceased serving as a covered officer, including as a person performing functions similar to those of a principal executive, financial, accounting, or operating officer.

Disclosure under Item 5.02 is not required if the company is a wholly owned subsidiary of a reporting company. If Item 5.02 is triggered, the Form 8-K generally must be filed within four business days after the triggering event, although disclosure of certain officer appointments may be delayed until the date of public announcement if the company intends to make that announcement by means other than Form 8-K.

For a director departure involving a disagreement with the company or removal for cause, Item 5.02 requires additional disclosure regarding the circumstances of the departure.

Required Disclosure

*Director Departures Due to Disagreement*

If a director resigns or refuses to stand for reelection because of a disagreement with the company on any matter relating to the company's operations, policies, or practices that is known to an executive officer of the company, or if a director is removed for cause, the Form 8-K must disclose:

- The date of the resignation, refusal to stand for reelection, or removal
- Any committee positions held by the director at the time of the event
- A brief description of the circumstances representing the disagreement that the company believes caused, in whole or in part, the director's resignation, refusal to stand for reelection, or removal

If the director has furnished the company with written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the company must file that correspondence as an exhibit to the Form 8-K.

The company must provide the director with a copy of the Item 5.02 disclosure no later than the day the Form 8-K is filed and must give the director the opportunity to furnish a letter addressed to the company stating whether they agree with the company's disclosure and, if not, the respects in which they do not agree. The company must file any such letter as an exhibit to an amendment to the Form 8-K within two business days after receipt.

| **Disclosure Example — Director Departure With Disagreement** |
|---|
| On September 1, 2026, Director B notified ABC Corporation (the "Company") of his resignation from the Board of Directors (the "Board"), effective immediately, due to a disagreement with management over certain employee benefits. A copy of Director B's resignation letter is filed as Exhibit 17.1 to this Current Report on Form 8-K. Director B did not serve on any committees of the Board.<br><br>The Company has provided Director B with a copy of the disclosures in this Item 5.02 and has given Director B the opportunity to furnish the Company with a letter stating whether he agrees with these disclosures and, if not, the respects in which he does not agree. The Company will file any such letter as an exhibit to an amendment to this Current Report on Form 8-K within two business days after receipt. |

*Director Departures — No Disagreement*

If a director retires, resigns, is removed, or refuses to stand for reelection, other than in circumstances involving a disagreement or removal for cause as previously described, the Form 8-K must disclose that the event occurred and the date of the event.

| **Disclosure Example — Director Departure With No Disagreement** |
| --- |
| On September 1, 2026, Director A notified ABC Corporation (the "Company") of his retirement from the Company's Board of Directors (the "Board"), effective immediately. Director A also resigned from all committees of the Board on which he served. Director A's retirement was not due to any disagreement with the Company on any matter relating to the Company's operations, policies, or practices. |

*Director Appointment Other Than by Stockholder Vote*

If a director is elected other than by stockholders at an annual or a special meeting convened for that purpose, the Form 8-K must disclose:

- The director's name and the date of election
- A brief description of any arrangement or understanding between the director and any other person, naming that person, pursuant to which the director was selected as a director
- The committees of the board of directors on which the director has been, or is expected to be, named to serve
- Any related person transaction information required by Item 404(a) of Regulation S-K
- A brief description of any material plan, contract, or arrangement, whether written or unwritten, to which the director is a party or in which the director participates that is entered into or materially amended in connection with the director's election
- A brief description of any grant or award made to the director, or any modification to an existing grant or award, under any such plan, contract, or arrangement in connection with the director's election

If the director's committee assignments or Item 404(a) related person transaction information is not determined or available at the time of the initial Form 8-K, the company must include a statement to that effect and file an amendment within four business days after the information is determined or becomes available.

Information is not required for plans, contracts, and arrangements that are available generally to all salaried employees and do not discriminate in scope, terms, or operation in favor of executive officers or directors. However, when a new director is elected, the Form 8-K must describe the director's compensatory and other arrangements, including standard nonemployee director compensation arrangements, or cross-reference the company's most recent Item 402 disclosure describing those arrangements.

| Disclosure Example — Director Appointment |
| --- |
| Effective September 1, 2026, the Board of Directors of ABC Corporation (the "Company"), upon the recommendation of its Nominating and Corporate Governance Committee, appointed Director C as a Class I director. Director C was also appointed to the Audit Committee.<br><br>Director C will participate in the Company's standard non-employee director compensation program, as described in the Company's definitive proxy statement filed with the Securities and Exchange Commission on April 7, 2026. In connection with Director C's appointment, the Company granted Director C an option to purchase 50,000 shares of the Company's common stock under the Company's Equity Incentive Plan, consistent with the Company's standard non-employee director compensation program.<br><br>In connection with Director C's appointment, the Company and Director C entered into the Company's standard form of indemnification agreement, which was previously filed as Exhibit 10.44 to the Company's Annual Report on Form 10-K for the year ended December 31, 2025, filed with the Securities and Exchange Commission on February 25, 2026.<br><br>Director C is not a party to any transaction requiring disclosure under Item 404(a) of Regulation S-K, and there are no arrangements or understandings between Director C and any other person pursuant to which Director C was selected as a director. |

*Officer Departures*

If the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, any person performing similar functions, or any named executive officer retires, resigns, or is terminated from that position, the Form 8-K must disclose that the event occurred and the date of the event.

| Disclosure Example — Officer Resignation |
| --- |

On September 1, 2026, ABC Corporation (the "Company") announced that Officer A resigned as President, Chief Executive Officer, and principal executive officer of the Company, effective September 1, 2026. Officer A also resigned from the Company's Board of Directors, effective as of the same date. Officer A's resignation was not the result of any disagreement with the Company on any matter relating to the Company's operations, policies, or practices.

In connection with Officer A's resignation, the Company entered into a separation and release agreement with Officer A (the "Separation Agreement"). Pursuant to the Separation Agreement, subject to Officer A's execution and non-revocation of a release of claims and continued compliance with restrictive covenants, Officer A will receive (i) cash severance in an amount equal to $1,200,000, representing 12 months of base salary, (ii) a pro-rated annual bonus for 2026 based on actual performance, (iii) Company-paid COBRA premiums for up to 12 months, and (iv) accelerated vesting of 50,000 restricted stock units.

The Company also entered into a consulting agreement with Officer A (the "Consulting Agreement"), pursuant to which Officer A will provide transition advisory services to the Company through December 31, 2026, in exchange for consulting fees of $25,000 per month.

The foregoing descriptions of the Separation Agreement and Consulting Agreement do not purport to be complete and are qualified in their entirety by reference to the full texts of the agreements, which the Company intends to file as exhibits to its Quarterly Report on Form 10-Q for the quarter ending September 30, 2026.

Officer Appointment

If a company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions, the Form 8-K must disclose:

- The officer's name, age, position, and date of appointment
- All other positions and offices the officer holds with the company, if any, and the term of office for each
- Any arrangement or understanding between the officer and any other person, naming that person, pursuant to which the officer was selected, excluding arrangements or understandings with directors or officers of the company acting solely in that capacity
- Any family relationship required to be disclosed under Item 401(d) of Regulation S-K
- The officer's business experience during the past five years and any directorships required to be disclosed under Item 401(e) of Regulation S-K
- Any related person transaction information required by Item 404(a) of Regulation S-K

- A brief description of any material plan, contract, or arrangement, whether written or unwritten, to which the officer is a party or in which the officer participates that is entered into or materially amended in connection with the appointment
- A brief description of any grant or award made to the officer, or any modification to an existing grant or award, under any such plan, contract, or arrangement in connection with the appointment

If the officer's compensatory plan, contract, arrangement, grant, or award is not determined or available at the time of filing, the company must include a statement to that effect and file an amendment within four business days after the information is determined or becomes available.

Information is not required for plans, contracts, and arrangements that are available generally to all salaried employees and do not discriminate in scope, terms, or operation in favor of executive officers or directors.

If the company intends to publicly announce the officer appointment by means other than a Form 8-K, the company may delay the Form 8-K disclosure until the date of that public announcement.

| Disclosure Example — Officer Appointment |
|---|
| On September 1, 2026, the Board of Directors of ABC Corporation (the “Company”) appointed Officer B as Chief Financial Officer and principal financial officer of the Company, effective September 1, 2026.<br><br>Officer B, age 50, has more than 25 years of experience in corporate finance and accounting. Prior to joining the Company, Officer B served as Executive Vice President and Chief Financial Officer of XYZ Industries from 2018 to 2026, where he oversaw global financial operations, strategic planning, and investor relations. From 2012 to 2018, Officer B held various senior finance roles at DEF Corporation, including Vice President of Finance and Corporate Controller. Officer B began his career at a Big Four accounting firm, where he specialized in audit and advisory services for technology and life sciences companies.<br><br>In connection with Officer B’s appointment, the Company entered into an employment agreement with Officer B (the “Employment Agreement”), pursuant to which Officer B will receive an annual base salary of $500,000 and will be eligible to earn an annual target bonus equal to 75% of his annual base salary. Officer B will also receive a one-time sign-on bonus of $150,000, subject to repayment if Officer B resigns without good reason or is terminated for cause within 12 months after his start date.<br><br>In connection with his appointment, Officer B will receive an initial equity award with an aggregate grant date value of $1,500,000, consisting of 50% restricted stock units and 50% stock options, which will vest over four years, subject to Officer B’s continued service. Officer B will also be eligible to participate in the Company’s employee benefit plans generally available to similarly situated employees.<br><br>The Employment Agreement provides that, if Officer B’s employment is terminated by the Company without cause or by Officer B for good reason, subject to his execution and non-revocation of a release of claims, Officer B will be entitled to receive cash severance equal to 12 months of base salary, payment of any earned but unpaid annual bonus for the prior year, and up to 12 months of Company-paid COBRA premiums.<br><br>Officer B is not a party to any transaction with the Company that would require disclosure under Item 404(a) of Regulation S-K, there are no arrangements or understandings between Officer B and any other person pursuant to which he was selected as an officer of the Company, and there are no family relationships between Officer B and any of the Company’s directors or executive officers.<br><br>The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the Employment Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K. |

*Compensatory Plans, Contracts, or Arrangements With Officers*

If the company enters into, adopts, commences, materially amends, or materially modifies a material compensatory plan, contract, or arrangement, whether written or unwritten, in which the principal executive officer, principal financial officer, or any named executive officer participates or is a party, the Form 8-K must disclose:

- A brief description of the material terms and conditions of the plan, contract, or arrangement

- The amounts payable to the covered officer under the plan, contract, or arrangement

Disclosure is also required if the company makes or materially modifies a material grant or an award to the principal executive officer, principal financial officer, or any named executive officer under such a plan, contract, or arrangement.

Disclosure under Item 5.02(e) may be required regardless of whether the compensatory plan, contract, arrangement, grant, or award is related to another event triggering disclosure under Item 5.02.

Disclosure is not required for grants, awards, or modifications made under a plan, contract, or arrangement if they are materially consistent with previously disclosed terms and will be disclosed when required under Item 402 of Regulation S-K. In addition, plans, contracts, or arrangements that are available generally to all salaried employees and do not discriminate in scope, terms, or operation in favor of executive officers or directors do not trigger Item 5.02(e).

| **Disclosure Example — Compensatory Plans, Contracts, or Arrangements With Officers** |
|---|
| On September 1, 2026, ABC Corporation (the "Company") entered into an amended and restated employment agreement (the "Employment Agreement") with Officer A, the Company's Chief Executive Officer. The Employment Agreement provides that Officer A will receive an annual base salary of $850,000 and will be eligible to earn an annual target bonus equal to 100% of his annual base salary. Officer A will also continue to be eligible to participate in the Company's equity compensation plans and employee benefit plans generally available to similarly situated executives.<br><br>In connection with the Employment Agreement, the Board of Directors approved a one-time retention grant to Officer A of 500,000 restricted stock units under the Company's 2025 Equity Incentive Plan. The restricted stock units will vest in three equal annual installments, subject to Officer A's continued service through each applicable vesting date.<br><br>The foregoing description of the Employment Agreement and restricted stock unit award does not purport to be complete and is qualified in its entirety by reference to the full text of the Employment Agreement, which the Company intends to file as Exhibit 10.1 to its Quarterly Report on Form 10-Q for the quarter ending September 30, 2026. |

*Salary or Bonus Becomes Determinable*

If a payment, a grant, an award, a decision, or another occurrence causes salary or bonus amounts for a named executive officer to become calculable, in whole or in part, after those amounts were previously omitted from the Summary Compensation Table under Instruction 1 to Item 402(c)(2)(iii) or (iv) of Regulation S-K, the company must disclose the new total compensation figure for that named executive officer.

If the named executive officer is the company's principal executive officer and the omitted salary or bonus amounts become calculable in whole, the company must also recalculate and disclose the pay ratio information required by Item 402(u) of Regulation S-K.

| **Disclosure Example — Bonus Becomes Determinable** |
|---|

On September 1, 2026, ABC Corporation (the "Company") determined the amount of the discretionary annual cash bonus payable to Officer A, the Company's Chief Executive Officer and principal executive officer, for fiscal year 2025. The amount of Officer A's fiscal year 2025 annual cash bonus was previously omitted from the Summary Compensation Table included in the Company's definitive proxy statement filed with the Securities and Exchange Commission on April 7, 2026, because the amount was not calculable at the time of filing.

As a result of the determination, Officer A's total compensation for fiscal year 2025 has been recalculated to include the annual cash bonus amount of $550,000. Officer A's revised total compensation for fiscal year 2025 is $3,575,775.

The following table sets forth Officer A's revised total compensation for fiscal year 2025:

| Name and Principal Position | Year | Salary ($) | Bonus ($)(1) | Stock Awards ($)(2) | Option Awards ($)(2) | Non-Equity Incentive Plan Compensation ($) | Change in Pension Value and Nonqualified Deferred Compensation Earnings ($) | All Other Compensation ($)(3) | Total ($) |
|---|---|---|---|---|---|---|---|---|---|
| Officer A, Chief Executive Officer | 2025 | 850,000 | 550,000 | 1,250,000 | 700,000 | 200,000 | — | 25,775 | 3,575,775 |

(1) Represents the annual cash bonus for fiscal year 2025 that was not calculable at the time the Company filed its definitive proxy statement.

(2) Represents the aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718. The assumptions used in calculating these amounts are described in the notes to the Company's financial statements included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2025.

(3) Represents Company matching contributions under the Company's 401(k) plan, Company-paid life insurance premiums, and other perquisites and personal benefits.

Based on Officer A's revised annual total compensation for fiscal year 2025, the Company recalculated the pay ratio disclosure required by Item 402(u) of Regulation S-K. The Company's median employee annual total compensation for fiscal year 2025 was $112,000. As a result, the ratio of Officer A's revised annual total compensation to the median employee's annual total compensation was 32 to 1.

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 5.02 of Form 8-K:

*Director and Officer Departures*

A Form 8-K reporting obligation under Item 5.02(b) is triggered when a director provides notice of a decision to resign, retire, or refuse to stand for reelection, whether (i) the notice is written or oral and (ii) the decision is conditional or subject to acceptance. The Form 8-K must disclose the effective date of the resignation or retirement. For a refusal to stand for reelection, the Form 8-K must disclose when the election will occur. No disclosure is required for mere discussions or consideration of resignation, retirement, or refusal to stand for reelection. Refer to Corporation Finance Interpretations (CFIs), Securities Exchange Act of 1934 (Exchange Act) Form 8-K Question 117.01.

A company's decision not to nominate a director for reelection does not, by itself, trigger Item 5.02. However, if the director resigns after being notified that the company does not intend to nominate the director for reelection, or if the director notifies the company that they refuse to stand for reelection, Item 5.02 disclosure is required. Refer to CFIs, Exchange Act Form 8-K Question 117.04.

If a director gives notice that they will resign upon the occurrence of a future event, the company must file a Form 8-K under Item 5.02(b) and clearly disclose the contingency and the extent to which the director can control whether the contingency occurs. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.03.

If a director tenders a resignation solely to comply with a corporate governance policy, such as a mandatory retirement policy, job-change policy, or majority-vote resignation policy, the company must file a Form 8-K under Item 5.02(b) within four business days after the board decides to accept the resignation. If the board does not accept the resignation, no Form 8-K is required. Refer to CFIs, Exchange Act Form 8-K Question 117.15.

Item 5.02(b) does not require disclosure of the death of a director or covered officer. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.04.

If a director resigns because of a disagreement with the company on a matter relating to the company's operations, policies, or practices, the Form 8-K under Item 5.02(a) must describe the circumstances of the disagreement. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.01.

*Officer Termination, Demotion, or Temporary Replacement*

A Form 8-K is not triggered merely because an executive officer is no longer a "named executive officer" based on compensation level. Item 5.02(b) is triggered when a named executive officer identified in the company's most recent filing containing Item 402(c) disclosure retires, resigns, or is terminated from the position listed in that filing. Refer to CFIs, Exchange Act Form 8-K Question 117.02.

For purposes of Item 5.02, "termination" includes a demotion or removal of duties and responsibilities such that the officer no longer functions in the covered position, even if they remain employed by the company and retain the same title. Refer to CFIs, Exchange Act Form 8-K Question 117.03.

If a covered officer must be notified of termination a specified number of days before employment ends, the Item 5.02(b) filing obligation is triggered on the date the company provides the notice of termination, not the later employment end date. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.05.

If a principal financial officer temporarily steps down and another person assumes the role, the company must file a Form 8-K under Item 5.02(b) for the original officer's departure and Item 5.02(c) for the replacement officer's appointment. When the original officer returns, the same reporting applies for the temporary officer's departure and the original officer's reappointment. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.02.

*Officer Appointment Timing*

If a company appoints a new executive officer, the company may delay disclosure under Item 5.02(c) until it publicly announces the appointment. If the new officer is simultaneously appointed to the board, disclosure under Item 5.02(d), and related disclosure under Item 5.02(e), may also be delayed until the public announcement. Refer to CFIs, Exchange Act Form 8-K Question 117.05.

The appointment of a new principal accounting officer triggers Item 5.02(c), and the related Form 8-K may be delayed until public announcement. However, the retirement, resignation, or termination of the prior principal accounting officer triggers Item 5.02(b) immediately upon notice and cannot be delayed until the appointment Form 8-K disclosure is filed. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.06.

Disclosure is required for specified officers covered by Item 5.02, including the principal accounting officer, even if the officer is not an "executive officer" for purposes of Item 401 or 404 of Regulation S-K. Refer to CFIs, Exchange Act Form 8-K Question 117.06.

*Director Appointments and Committee Assignments*

If a director is elected to the board other than by a vote of security holders at a meeting, the Item 5.02(d) reporting obligation is triggered on the date of election, even if the director's term begins later. The Form 8-K should disclose both the election date and the date the director's term begins. Refer to CFIs, Exchange Act Form 8-K Question 117.07.

If a director's committee assignment changes after the company has already disclosed the director's initial election and committee assignment under Item 5.02(d), no new Form 8-K or amendment is required if the change was not contemplated at the time of the director's initial election. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.07.

When a new director is appointed, the Form 8-K must include a brief description of their compensatory and other agreements and arrangements, such as equity awards, annual cash compensation, and indemnification agreements, even if those arrangements are consistent with previously disclosed standard nonemployee director arrangements. The company may cross-reference its most recent Item 402 disclosure in its Form 10-K or proxy statement instead of repeating the description of any material plan, contract, or arrangement. The cross-reference accommodation does not extend to material amendments, grants, awards, or modifications, which must be described in the Form 8-K. Refer to CFIs, Exchange Act Form 8-K Question 117.16.

*Compensatory Arrangements*

Board adoption of a material equity compensation plan in which named executive officers are eligible to participate requires disclosure under Item 5.02(e). If adoption is subject to shareholder approval, the Form 8-K filing obligation is triggered upon receipt of shareholder approval. The same timing rule applies to plan amendments or stock option grants subject to shareholder approval. Refer to CFIs, Exchange Act Form 8-K Question 117.08.

Adoption of a material cash bonus plan under which named executive officers participate requires disclosure under Item 5.02(e), even if no specific performance criteria, performance goals, or bonus opportunities have been communicated to participants. If the plan is subject to shareholder approval, the reporting obligation is triggered upon receipt of shareholder approval. Refer to CFIs, Exchange Act Form 8-K Question 117.09.

If a company has already disclosed a material cash bonus plan and later sets specific performance goals and business criteria that are materially consistent with the previously disclosed terms of the plan, an additional Form 8-K is not required. Refer to CFIs, Exchange Act Form 8-K Question 117.10.

Payment of a material cash award under a previously disclosed cash bonus plan generally does not require an additional Form 8-K if the payment is made upon determining that the previously disclosed performance criteria have been satisfied and are materially consistent with the plan's disclosed terms. However, if the company exercises discretion to pay a bonus even though the specified performance criteria were not satisfied, Item 5.02(e) disclosure is required, even if the plan allowed discretion. Refer to CFIs, Exchange Act Form 8-K Question 117.11.

A Form 8-K filed under Item 5.02(e) to disclose an annual non-equity incentive plan award does not need to include specific target levels for quantitative or qualitative performance-related factors, or other confidential criteria, if disclosure would result in competitive harm. Refer to CFIs, Exchange Act Form 8-K Question 117.12.

If a previously disclosed employment agreement provides for a discretionary cash bonus, an Item 5.02(e) Form 8-K is not required when the compensation committee makes an ad hoc determination of the bonus amount. Material information about the bonus should instead be disclosed in the company's Compensation Discussion and Analysis and related Item 402 disclosure. Refer to CFIs, Exchange Act Form 8-K Question 117.13.

Automatic renewal of a named executive officer's employment agreement does not trigger Item 5.02(e). Refer to CFIs, Exchange Act Form 8-K Interpretation 217.08.

Termination of an executive compensation plan may constitute a material amendment or modification requiring disclosure under Item 5.02(e). Refer to CFIs, Exchange Act Form 8-K Question 117.14.

*Foreign Private Issuer Named Executive Officer Determination*

Foreign private issuers should determine "named executive officers" for Item 5.02 based on the individuals for whom compensation disclosure was provided in the company's most recent Securities Act of 1933 (Securities Act) or Exchange Act filing under Item 6.B or Item 6.E.2 of Form 20-F. Refer to CFIs, Exchange Act Form 8-K Interpretation 217.09.

<u>Related Items to Consider With Item 5.02</u>

When evaluating a triggering event under Item 5.02, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 5.02:

- **Item 3.02 (Unregistered Sales of Equity Securities):** If a compensatory arrangement involves the issuance of unregistered equity securities and the issuance meets the applicable Item 3.02 threshold, Item 3.02 disclosure may be required.

- **Item 5.01 (Changes in Control of Registrant):** If director or officer changes are related to, or result from, a change in control, Item 5.01 disclosure may also be required.
- **Item 5.03 (Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year):** If the company amends its charter or bylaws in connection with the director or officer event, Item 5.03 disclosure may be required.

Companies should carefully analyze each director, officer, or compensatory event to determine all applicable Form 8-K disclosure requirements.

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

When Is Item 5.03 of Form 8-K Triggered?

Item 5.03 of Form 8-K is triggered when

- a company with a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (Exchange Act) amends its articles of incorporation or bylaws, unless the proposal for the amendment was disclosed in a proxy statement or an information statement filed by the company; or
- a company determines to change its fiscal year from the fiscal year used in its most recent SEC (U.S. Securities and Exchange Commission) filing, unless the change is made by a vote of security holders, through the solicitation of proxies or otherwise, or by an amendment to the company's articles of incorporation or bylaws.

Required Disclosure

For amendments to articles of incorporation or bylaws, the Form 8-K must disclose:

- The effective date of the amendment
- A description of the provision adopted or changed by the amendment and, if applicable, the previous provision

The company should also consider the exhibit requirements of Item 601(b)(3) of Regulation S-K. If the amendment is reported on Form 8-K, the company is required to file the text of the amendment as an exhibit to the Form 8-K. A complete copy of the articles of incorporation or bylaws, as amended, must be filed as an exhibit to the company's next Securities Act of 1933 registration statement or periodic report to which the exhibit requirement applies.

For a change in fiscal year, the Form 8-K must disclose:

- The date of the determination
- The date of the new fiscal year-end
- The form on which the report covering the transition period will be filed, such as Form 10-K or Form 10-Q

Disclosure may be required even if no transition report is required.

| Disclosure Example — Amendment to Bylaws |
|---|
| On September 1, 2026, the Board of Directors (the "Board") of ABC Corporation (the "Company") approved and adopted amended and restated bylaws of the Company (the "Bylaws"), effective as of such date. Among other things, the Bylaws<br>• revise the procedural mechanics and disclosure requirements relating to business proposals submitted and director nominations made by stockholders, including provisions (i) requiring a stockholder to provide certain information, and make certain representations, to the Company or (ii) pertaining to stockholder solicitations covered by the Securities Exchange Act of 1934, as amended, including pursuant to Rule 14a-19 (i.e., the universal proxy rule);<br>• add a provision for exclusive Delaware forum selection or federal forum selection for certain claims;<br>• clarify that indemnification of agents of the Company is permissive instead of mandatory, and remove the standard of conduct requirement for advancement of expenses to directors and officers;<br>• remove references to the Executive Chairman position, and add a provision establishing a Chair of the Board;<br>• clarify the Board's ability to appoint alternate members of Board committees; and<br>• make certain other updates and conforming, ministerial, or technical changes, including changes to align with Delaware law.<br>The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Bylaws, a copy of which is filed herewith as Exhibit 3.2 and is incorporated herein by reference. |

| Disclosure Example — Fiscal Year Change |
|---|
| On September 1, 2026, the Board of Directors of ABC Corporation (the "Company") approved a change in the Company's fiscal year-end from September 30 to December 31, effective beginning with the fiscal year ending December 31, 2026. The Company expects to file a transition report on Form 10-Q for the transition period from October 1, 2026, through December 31, 2026. |

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 5.03 of Form 8-K:

*Disclosure of Non-Substantive Restatement Not Required*

Under Item 5.03 of Form 8-K, a mere restatement of a company's articles of incorporation that consolidates prior amendments without making substantive changes does not trigger a Form 8-K filing requirement. However, the SEC staff recommends refiling the complete restated articles in the next periodic report for ease of reference. Refer to Corporation Finance Interpretations (CFIs), Exchange Act Form 8-K Question 118.01.

*Form 8-K May Be Required for Change in Fiscal Year Even if No Transition Report Is Required*

Under Item 5.03(b) of Form 8-K, a change from a month-end fiscal year to a 52-to-53-week fiscal year (or vice versa) that begins within seven days of the prior year-end does not require a transition report under Rule 13a-10 or 15d-10. However, the company must still file a Form 8-K to report the fiscal year change, even if no transition report is required. Refer to CFIs, Exchange Act Form 8-K Interpretation 218.01.

<u>Related Items to Consider With Item 5.03</u>

When evaluating a triggering event under Item 5.03, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 5.03:

- **Item 3.03 (Material Modification to Rights of Security Holders):** If the amendment to the company's governing documents materially modifies the rights of holders of a class of securities registered under Section 12 of the Exchange Act, Item 3.03 disclosure may also be required.
- **Item 5.07 (Submission of Matters to a Vote of Security Holders):** If the amendment or fiscal year change was submitted to a vote of security holders, Item 5.07 disclosure may be required.
- **Item 8.01 (Other Events):** Companies may use Item 8.01 to provide additional context regarding the reasons for the amendment or its expected impact.

Companies should carefully analyze each governing document amendment and fiscal year change to determine all applicable Form 8-K disclosure requirements.

**Item 5.04: Temporary Suspension of Trading Under Registrant's Employee Benefit Plans**

When Is Item 5.04 of Form 8-K Triggered?

Item 5.04 of Form 8-K is triggered when a company is required to provide notice to the SEC (U.S. Securities and Exchange Commission) regarding a blackout period under Section 306(a) of the Sarbanes-Oxley Act of 2002 and Regulation Blackout Trading Restriction (BTR).

Item 5.04 requires a Form 8-K

- no later than the fourth business day after the company receives the notice required by Section 101(i)(2)(E) of the Employee Retirement Income Security Act of 1974 (ERISA); or
- on the same date by which the company transmits a timely notice to affected directors and executive officers under Regulation BTR if the company does not receive such ERISA notice.

If the company transmits an updated notice to affected directors and executive officers because the beginning or ending date of the blackout period changes, the company must file an updated Form 8-K on the same date by which it transmits the updated notice.

Required Disclosure

The Form 8-K must include the information required by Rule 104(b) of Regulation BTR, including:

- The date the company received the ERISA notice, if applicable
- The reason or reasons for the blackout period
- A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period
- A description of the class of equity securities subject to the blackout period
- The actual or expected beginning and ending dates of the blackout period or, if exact dates are not known, the calendar week during which the blackout period is expected to begin and the calendar week during which it is expected to end
- If calendar weeks are used instead of exact dates, a description of how directors and executive officers may obtain, without charge, information as to whether the blackout period has begun or ended, and how security holders and other interested persons may obtain, without charge, the actual beginning and ending dates during the blackout period and for two years after it ends
- The name, address, and telephone number of the person designated by the company to respond to inquiries about the blackout period or, if no person is designated, the company's human resources director or person performing equivalent functions

For an updated notice, the Form 8-K must disclose the updated beginning or ending date of the blackout period, explain the reason for the change, and identify all material changes to the information included in the prior Form 8-K.

| Disclosure Example |
|---|
| On September 1, 2026, ABC Corporation (the "Company") received notice from the plan administrator of the ABC Corporation 401(k) Plan (the "Plan") that a blackout period will be imposed under the Plan in connection with a transition to a new plan administrator.<br><br>The blackout period is expected to begin at 4:00 p.m. Eastern Time on October 15, 2026, and end during the week of November 9, 2026. During the blackout period, Plan participants will be unable to change contribution rates or investment allocations, make loan repayments or request new loans, or request withdrawals or distributions under the Plan, including with respect to shares of the Company's common stock, par value $0.001 per share, (the "Common Stock").<br><br>On September 3, 2026, the Company notified its directors and executive officers of the blackout period and related trading restrictions under Section 306(a) of the Sarbanes-Oxley Act and Regulation BTR. Subject to limited exemptions, directors and executive officers are prohibited during the blackout period from directly or indirectly purchasing, selling, or otherwise acquiring or transferring any Common Stock, including derivative securities, acquired in connection with their service or employment.<br><br>A copy of the notice to directors and executive officers is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. During the blackout period and for two years after it ends, security holders and other interested persons may obtain, without charge, the actual beginning and ending dates of the blackout period by contacting:<br><br>Corporate Secretary<br>ABC Corporation<br>123 ABC Corp Road<br>New York, NY 10001<br>Telephone: 123-123-1234 |

Relevant SEC Guidance

The following description summarizes certain relevant SEC guidance on Item 5.04 of Form 8-K:

*No Disclosure Required for "Blackout Period" Under ERISA Only*

A Form 8-K is not required solely because a period constitutes a "blackout period" for purposes of ERISA. Item 5.04 applies only to notice of a blackout period under Section 306(a) of the Sarbanes-Oxley Act and Regulation BTR. Refer to Corporation Finance Interpretations, Securities Exchange Act of 1934 Form 8-K Question 119.01.

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

<u>When Is Item 5.05 of Form 8-K Triggered?</u>

Item 5.05 of Form 8-K is triggered when a company

- amends a provision of its code of ethics that (i) applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and (ii) relates to an element of the "code of ethics" definition in Item 406(b) of Regulation S-K; or
- grants a waiver, including an implicit waiver, from such a provision to any of those covered officers.

For purposes of Item 5.05, a "waiver" means the company's approval of a material departure from a provision of the code of ethics. An "implicit waiver" means the company's failure to take action within a reasonable period of time after a material departure from a provision of the code of ethics has been made known to an executive officer.

Technical, administrative, or other non-substantive amendments to the code of ethics do not require disclosure under Item 5.05.

<u>Required Disclosure</u>

The Form 8-K must disclose:

- For an amendment, the date and nature of the amendment
- For a waiver, the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver

Instead of filing a Form 8-K, a company may disclose the required information on its website if the company disclosed in its most recent annual report both its website address and its intention to provide Item 5.05 disclosure in this manner. The website disclosure must be posted within four business days after the amendment or waiver, remain available on the website for at least 12 months, and be retained by the company for at least five years. Upon request, the company must furnish the retained information to the SEC (U.S. Securities and Exchange Commission) or its staff.

| Disclosure Example |
| --- |
| On September 1, 2026, the Board of Directors (the “Board”) of ABC Corporation (the “Company”), upon the recommendation of the Nominating and Corporate Governance Committee of the Board, approved an amendment to the Company’s Code of Business Conduct and Ethics (the “Code of Ethics”), effective immediately.<br><br>The amendment revises the conflicts of interest provisions of the Code of Ethics applicable to the Company’s principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. The amendment clarifies the procedures for reporting potential conflicts of interest and requires prior approval by the Audit Committee for any waiver of those provisions for covered officers.<br><br>The amendment did not result in any waiver, explicit or implicit, of any provision of the Code of Ethics. A copy of the amended Code of Ethics is available under the Investor Relations section of the Company’s website at www.ABCCorporation.com. The contents of the Company’s website are not incorporated by reference into this Current Report on Form 8-K. |

**Item 5.06: Change in Shell Company Status**

When Is Item 5.06 of Form 8-K Triggered?

Item 5.06 of Form 8-K is triggered when a company that was a shell company, other than a business combination related shell company, completes a transaction that causes it to cease being a shell company.

A "shell company" is a company, other than an asset-backed issuer, that has

- no or nominal operations and
- (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents as well as nominal other assets.

For purposes of the shell company definition, the determination of the company's assets is based solely on the amount of assets that would be reflected on the company's balance sheet prepared in accordance with US generally accepted accounting principles on the determination date.

Item 5.06 does not apply if a business combination related shell company ceases to be a shell company. A business combination related shell company is a shell company formed by a non-shell company solely to change corporate domicile within the United States or to complete a business combination transaction among entities that are not shell companies.

The Form 8-K must be filed within four business days after the transaction is completed.

Required Disclosure

The Form 8-K must disclose the material terms of the transaction that caused the company to cease being a shell company.

If the required Item 5.06 disclosure has been previously reported, the company may identify the prior filing that includes the disclosure instead of repeating it in the Form 8-K.

In many transactions that cause a shell company to cease being a shell company, other Form 8-K items may also be triggered, including Item 2.01 or Item 5.01. If the company was a shell company, other than a business combination related shell company, immediately before a transaction that triggers those items, the company may also be required to include the information that would be required in a Form 10 registration statement for the company after giving effect to the transaction in Form 8-K. In those cases, the financial statements and pro forma financial information required by Item 9.01 must be filed in the initial Form 8-K, and the 71-day extension is not available.

| Disclosure Example |
| --- |
| Upon the closing of the business combination on September 1, 2026, ABC Corporation (the "Company") ceased to be a shell company. The material terms of the business combination are described beginning on page 35 of the final prospectus and definitive proxy statement, dated July 29, 2026 (the "Proxy Statement/Prospectus"), in the section titled "Proposal No. 1 – The Business Combination Proposal," whose description is incorporated herein by reference.<br><br>As a result of the business combination, the Company became an operating company engaged in the development of certain digital publishing technologies. The information required by Item 2.01(f) is included in this Current Report and, to the extent set forth in the Proxy Statement/Prospectus, incorporated herein by reference. |

Related Items to Consider With Item 5.06

When evaluating a triggering event under Item 5.06, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 5.06:

- **Item 1.01 (Entry Into a Material Definitive Agreement):** If the transaction involves entry into material agreements (such as a merger agreement, an asset purchase agreement, a subscription agreement, and a registration rights agreement) or other closing-related agreements, Item 1.01 disclosure may be required.
- **Item 2.01 (Completion of Acquisition or Disposition of Assets):** If the transaction involves the completion of an acquisition or a disposition of a significant amount of assets, Item 2.01 disclosure may be required.
- **Item 3.02 (Unregistered Sales of Equity Securities):** If the transaction involves the issuance of unregistered equity securities that meets the applicable Item 3.02 threshold, Item 3.02 disclosure may be required.
- **Item 5.01 (Changes in Control of Registrant):** If the transaction results in a change in control, Item 5.01 disclosure may be required.
- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the transaction results in changes to the company's directors or covered officers or their reportable compensatory arrangements, Item 5.02 disclosure may be required.
- **Item 9.01 (Financial Statements and Exhibits):** If financial statements and pro forma financial information are required in connection with the transaction, Item 9.01 disclosure will be required. For applicable shell company transactions, the required financial statements and pro forma financial information must be filed in the initial Form 8-K.

Companies should carefully analyze each shell company's status change to determine all applicable Form 8-K disclosure requirements.

**Item 5.07: Submission of Matters to a Vote of Security Holders**

When Is Item 5.07 of Form 8-K Triggered?

Item 5.07 of Form 8-K is triggered when any matter is submitted to a vote of the company's security holders, through the solicitation of proxies or otherwise. If a matter is submitted to security holders through means other than a meeting, such as by consent or other authorization, corresponding disclosure is required.

The Form 8-K must be filed within four business days after the meeting ends. The day after the meeting ends is day one for calculating the four–business day filing period.

A company may omit Item 5.07 disclosure if, on the date the Form 8-K would be filed, all of the company's equity securities are owned, directly or indirectly, by a single person who is a reporting company and has filed all required Securities Exchange Act of 1934 (Exchange Act) reports, and the company has not had a material uncured default on indebtedness or a material default in rental payments under material long-term leases during the preceding 36 months.

Required Disclosure

The Form 8-K must disclose:

- The date of the meeting and whether it was an annual or a special meeting if a meeting was held
- If the meeting involved the election of directors, the name of each director elected
- A brief description of each other matter voted upon
- The number of votes cast for, against, or withheld, as applicable, and the number of abstentions and broker non-votes, for each matter, including a separate tabulation for each director nominee

For an advisory vote on the frequency of future shareholder advisory votes on executive compensation, the Form 8-K must disclose the number of votes cast for one year, two years, and three years, as well as any abstentions. Disclosure of broker non-votes for the say-on-frequency vote is permitted but not required.

If final voting results are not known by the Form 8-K filing deadline, the company must disclose preliminary voting results and file an amendment within four business days after final results are known. If final voting results are disclosed within the initial Form 8-K filing period, preliminary results do not need to be disclosed.

If any matter is submitted to security holders other than at a meeting, the company must provide corresponding disclosure.

If the company did not solicit proxies and the board of directors previously reported to the SEC (U.S. Securities and Exchange Commission) was reelected in its entirety, a statement to that effect is sufficient for the director election disclosure.

The Form 8-K must also disclose the terms of any settlement between the company and another participant terminating a solicitation subject to Rule 14a-12(c), including the cost or anticipated cost to the company. If the company's proxy materials contain this information, the Form 8-K may refer to that disclosure.

For a say-on-frequency vote, the company must disclose its decision regarding the frequency of future say-on-pay votes no later than 150 calendar days after the end of the annual or other meeting of shareholders at which shareholders voted on the frequency and, in any event, no later than 60 calendar days before the deadline for shareholder proposals under Rule 14a-8 for the next annual meeting. If the voting results were reported on an Item 5.07 Form 8-K, the company must disclose the frequency decision by amendment to that Form 8-K.

**Disclosure Example**

On May 7, 2026, the ABC Corporation (the "Company") held its 2026 annual meeting of shareholders (the "Annual Meeting"). A quorum was present at the Annual Meeting. The final voting results for the Annual Meeting are set forth below.

*Proposal 1:* To elect Nominee 1, Nominee 2, Nominee 3, Nominee 4, Nominee 5, Nominee 6, and Nominee 7 to serve as directors for an annual term expiring at the Company's 2027 annual meeting of shareholders and until their successors are duly elected and qualified. Each of Nominee 1, Nominee 2, Nominee 3, Nominee 4, Nominee 5, Nominee 6, and Nominee 7 was elected for an annual term by a vote of the Company's shareholders as follows:

| | **For** | **Against** | **Abstain** | **Broker Non-Votes** |
|---|---|---|---|---|
| Nominee 1 | [__] | [__] | [__] | [__] |
| Nominee 2 | [__] | [__] | [__] | [__] |
| Nominee 3 | [__] | [__] | [__] | [__] |
| Nominee 4 | [__] | [__] | [__] | [__] |
| Nominee 5 | [__] | [__] | [__] | [__] |
| Nominee 6 | [__] | [__] | [__] | [__] |
| Nominee 7 | [__] | [__] | [__] | [__] |

*Proposal 2:* To ratify the selection of XYZ Auditor as the Company's independent registered public accounting firm for the year ending December 31, 2026. The proposal was approved by a vote of the Company's shareholders as follows:

| | |
|---|---|
| **For** | [__] |
| **Against** | [__] |
| **Abstain** | [__] |

*Proposal 3:* To approve, on an advisory basis, the Company's named executive officer compensation as disclosed in the proxy statement for the Annual Meeting. The proposal was approved, on an advisory basis, by a vote of the Company's shareholders as follows:

| | |
|---|---|
| **For** | [__] |
| **Against** | [__] |
| **Abstain** | [__] |
| **Broker Non-Votes** | [__] |

*Proposal 4:* To vote, on an advisory basis, on the frequency of holding an advisory vote on the Company's named executive officer compensation. The option of once every one year received the highest number of votes cast on an advisory basis by the Company's shareholders as follows:

| | |
|---|---|
| **One Year** | [__] |
| **Two Years** | [__] |
| **Three Years** | [__] |
| **Abstain** | [__] |
| **Broker Non-Votes** | [__] |

Based on these results, the Company's Board of Directors (the "Board") determined that the Company shall hold an annual advisory vote on the Company's named executive officer compensation as disclosed in the proxy statement for the Company's annual meeting of shareholders at which the advisory vote is to be held; provided that, in the future, the Board may determine whether a different frequency for such advisory votes is in the best interests of the Company's shareholders.

Relevant SEC Guidance

The following descriptions summarize certain relevant SEC guidance on Item 5.07 of Form 8-K:

*Trigger Date Is Last Day of Security Holder Meeting*

Under Item 5.07 of Form 8-K, the four–business day filing period begins the day after the shareholder meeting ends. For example, if the meeting ends on Tuesday, day one is Wednesday, and the filing deadline is Monday. Refer to Corporation Finance Interpretations (CFIs), Exchange Act Form 8-K Question 121A.01.

*Voting Results Required to Be Disclosed for All Matters Voted Upon*

The requirement to report voting results applies to any matter submitted to a vote of security holders, whether through proxy solicitation or otherwise — not just director elections. Refer to CFIs, Exchange Act Form 8-K Question 121A.02.

*Broker Non-Votes Not Required for Say-on-Frequency Vote*

For the advisory vote on the frequency of shareholder advisory votes on executive compensation, disclosure must include votes for one-, two-, and three-year options and abstentions. Disclosure of broker non-votes is optional. Refer to CFIs, Exchange Act Form 8-K Question 121A.03.

*Frequency Decision May Be Disclosed in Periodic Report or Form 8-K/A*

A company may disclose its decision regarding the frequency of future say-on-pay votes in a Form 10-Q or Form 10-K filed by the Form 8-K deadline. If the voting results were reported in an Item 5.07 Form 8-K and the company later reports the frequency decision on Form 8-K, the company must report the decision by amendment to the original Form 8-K, not in a new Form 8-K. Refer to CFIs, Exchange Act Form 8-K Question 121A.04.

Related Items to Consider With Item 5.07

When evaluating a triggering event under Item 5.07, companies should consider whether the facts also raise other Form 8-K disclosure obligations. The following items may be triggered in connection with Item 5.07:

- **Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers):** If the meeting results in director or covered officer changes, or the approval of compensatory arrangements that trigger Item 5.02, Item 5.02 disclosure may be required.
- **Item 5.03 (Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year):** If security holders approve amendments to the company's governing documents or a fiscal year change, Item 5.03 disclosure may be required.

Companies should carefully analyze each shareholder meeting to determine all applicable Form 8-K disclosure requirements.

## Item 5.08: Shareholder Director Nominations

<u>When Is Item 5.08 of Form 8-K Triggered?</u>

Item 5.08 of Form 8-K is triggered only if both of the following conditions are met:

- The company is required to include shareholder director nominees in its proxy materials under (i) applicable state or foreign law or (ii) the company's governing documents
- The company either did not hold an annual meeting during the prior year or has changed the date of its annual meeting by more than 30 calendar days from the date of the prior year's annual meeting

If both conditions are met, the company must file a Form 8-K disclosing the deadline by which a nominating shareholder or shareholder group must submit the notice on Schedule 14N required by Rule 14a-18 under the Securities Exchange Act of 1934 (Exchange Act).

The Form 8-K must be filed within four business days after the company determines the anticipated annual meeting date.

<u>Required Disclosure</u>

The Form 8-K must disclose the date by which a nominating shareholder or shareholder group must submit notice on Schedule 14N for inclusion of a director nominee in the company's proxy materials.

Additional disclosure requirements apply to series companies under the Investment Company Act of 1940.

| **Disclosure Example** |
| --- |
| On September 1, 2026, the Board of Directors (the "Board") of ABC Corporation (the "Company") established November 18, 2026, as the date of the Company's 2026 annual meeting of shareholders (the "2026 Annual Meeting"). The Company is required under its bylaws to include shareholder director nominees in its proxy materials if the applicable requirements set forth in the bylaws are satisfied.<br><br>Because the date of the 2026 Annual Meeting has changed by more than 30 calendar days from the date of the Company's 2025 annual meeting of shareholders, the Company is providing the deadline by which a nominating shareholder or shareholder group must submit notice on Schedule 14N pursuant to Rule 14a-18 under the Exchange Act.<br><br>To be timely, a notice on Schedule 14N must be received by the Company's Corporate Secretary at ABC Corporation, 123 ABC Corp Road, New York, NY 10001, no later than 5:00 p.m. Eastern Time on October 5, 2026. Any such notice must comply with Rule 14a-18, Schedule 14N, the Company's bylaws, and applicable law. |

**Items 6.01 Through 6.06: Asset-Backed Securities**

Items 6.01 through 6.06 of Form 8-K apply only to asset-backed securities. These items address asset-backed securities disclosure matters, including informational and computational material, changes in servicer or trustee, changes in credit enhancement or other external support, failures to make required distributions, Securities Act of 1933 updating disclosure, and static pool information.

Because these items apply only to asset-backed securities, they are omitted from this guide.

## Item 7.01: Regulation FD Disclosure

Item 7.01 of Form 8-K is used when a company furnishes information to satisfy its disclosure obligations under Regulation Fair Disclosure (FD). Regulation FD generally requires public disclosure when the company, or a person acting on its behalf, discloses material nonpublic information to certain securities market professionals or security holders under circumstances in which it is reasonably foreseeable that the recipient will trade on the basis of the information.

Information furnished under Item 7.01 is not deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934 (Exchange Act) and is not incorporated by reference into Securities Act of 1933 (Securities Act) or Exchange Act filings unless the company specifically states that the information is to be considered filed or expressly incorporates it by reference.

The timing for disclosure under Item 7.01 follows Regulation FD requirements:

- Intentional disclosures must be made simultaneously with the selective disclosure
- For non-intentional selective disclosures, public disclosure must be made promptly, meaning as soon as reasonably practicable, but in no event later than the later of 24 hours after a senior official of the company learns of the disclosure or the commencement of the next day's trading on the New York Stock Exchange

Companies commonly use Item 7.01 to furnish investor presentations, investor conference materials, business updates, or other Regulation FD disclosure when they do not intend the information to be treated as filed or incorporated by reference. If the company intends the information to update a prospectus or to be incorporated into a registration statement, it should consider whether Item 8.01 or another filed disclosure item is more appropriate.

| Disclosure Example — Investor Presentation |
|---|
| On September 1, 2026, ABC Corporation (the "Company") posted an investor presentation on the Investor Relations section of the Company's website. A copy of the presentation is furnished as Exhibit 99.1 to this Current Report on Form 8-K.<br>The information furnished under this Item 7.01, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing. |

| Disclosure Example — Press Release |
|---|
| On September 1, 2026, ABC Corporation issued a press release announcing its strategic partnership with XYZ, Inc. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.<br>The information furnished under this Item 7.01, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing. |

**Item 8.01: Other Events**

Item 8.01 of Form 8-K is a voluntary item that allows a company, at its option, to disclose events or information not otherwise required by Form 8-K that the company considers important to security holders.

A company may use Item 8.01 to satisfy Regulation Fair Disclosure (FD), and if it does so, the Form 8-K must be filed within the time required by Regulation FD. A report under Item 8.01 that is filed solely to satisfy Regulation FD is not deemed an admission as to the materiality of the disclosed information.

Because Item 8.01 is voluntary, failure to file an Item 8.01 Form 8-K does not affect a company's eligibility to use Form S-3. However, if the company is using Item 8.01 to satisfy Regulation FD, untimely disclosure may result in a Regulation FD issue.

Information disclosed under Item 8.01 is generally treated as filed, not furnished. Companies often use Item 8.01 when they want disclosure to be available for incorporation by reference into an effective registration statement or prospectus, subject to the terms of the applicable registration statement and securities law requirements.

| **Disclosure Example** |
|---|
| On September 1, 2026, ABC Corporation issued a press release announcing its strategic partnership with XYZ, Inc. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. |

**Item 9.01: Financial Statements and Exhibits**

<u>When Is Item 9.01 of Form 8-K Triggered?</u>

Item 9.01 of Form 8-K applies when financial statements, pro forma financial information, or exhibits are filed or furnished as part of a Form 8-K.

<u>Required Disclosure</u>

*Financial Statements of Acquired Businesses*

For any business acquisition or fund acquisition required to be described under Item 2.01, the company must file the financial statements and any applicable supplemental information required by Rule 3-05, Rule 3-14, or Rule 6-11 of Regulation S-X, or Rule 8-04 or Rule 8-06 for smaller reporting companies, as applicable.

The financial statements must be prepared in accordance with Regulation S-X, except that supporting schedules need not be filed unless required by Rule 6-11. A manually signed accountant's report should be provided pursuant to Rule 2-02 of Regulation S-X.

The required financial statements may be filed with the initial Form 8-K or by amendment no later than 71 calendar days after the date the initial Form 8-K is required to be filed. If the financial statements are not included in the initial Form 8-K, the company should state that the financial statements will be filed by amendment and indicate when they will be filed. The company may include unaudited financial statements in the initial Form 8-K at its option. The 71-day amendment period is not available for dispositions.

*Pro Forma Financial Information*

For any transaction required to be described under Item 2.01, the company must file any pro forma financial information required by Article 11 of Regulation S-X, or Rule 8-05 for smaller reporting companies, unless the transaction involves the acquisition of a fund subject to Rule 6-11 of Regulation S-X.

The same 71-day amendment period applies to pro forma financial information relating to an acquired business.

*Shell Company Transactions*

The 71-day amendment period does not apply to financial statements or pro forma financial information required for a transaction described under Item 2.01 if the company was a shell company, other than a business combination related shell company, immediately before the transaction. In that case, the required financial statements and pro forma financial information must be filed in the initial Form 8-K.

If any required financial statement or financial information has been previously reported, the company may identify the prior filing that includes the disclosure instead of including the disclosure in the initial Form 8-K.

*Current Reporting and Offering Limitations*

During the period after a company reports an acquisition under Item 2.01 and before the required Item 9.01 financial statements are due, the company is deemed current for purposes of its Section 13(a) or 15(d) Securities Exchange Act of 1934 reporting obligations.

However, Securities Act of 1933 registration statements and post-effective amendments generally will not be declared effective until the required financial statements are filed. In addition, offerings generally should not be made under effective registration statements, or under Rule 506 of Regulation D when any purchasers are not accredited investors, until the required audited financial statements are filed. Certain offerings may proceed, including offerings upon conversion of outstanding convertible securities or exercise of outstanding warrants or rights, dividend or interest reinvestment plans, employee benefit plans, secondary offerings, and Rule 144 sales.

*Exhibits*

Exhibits are deemed filed or furnished depending on the Form 8-K item requiring the exhibit, in accordance with Item 601 of Regulation S-K and General Instruction B.2 to Form 8-K.

*Cover Page Interactive Data File*

For Form 8-K filings subject to Inline XBRL cover page tagging, the Cover Page Interactive Data File should be identified as Exhibit 104 in the exhibit index. The standard description is typically “Cover Page Interactive Data File (embedded within the Inline XBRL document).” If the Form 8-K exhibit index would include only Exhibit 104 and no other exhibit, SEC (U.S. Securities and Exchange Commission) staff guidance provides that the staff will not object if the company does not add an exhibit index solely to identify Exhibit 104. Refer to Corporation Finance Interpretations, Interactive Data, Inline XBRL Question 101.04.

**Disclosure Example — Financials to Be Filed by Amendment**

(a) Financial Statements of Businesses Acquired

ABC Corporation (the "Company") intends to file the financial statements required by Item 9.01(a) of Form 8-K by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information

The Company intends to file the pro forma financial information required by Item 9.01(b) of Form 8-K by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date this Current Report on Form 8-K is required to be filed.

(d) Exhibits

| Exhibit No. | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated January 5, 2026, by and among the Company, Merger Sub, and Seller (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on January 5, 2026) |
| 99.1 | Press Release issued September 1, 2026, by the Company |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

**Disclosure Example — Amendment Including Financials**

This Form 8-K/A amends the Current Report on Form 8-K filed on February 2, 2026, to include the financial statements and pro forma financial information required by Items 9.01(a) and 9.01(b) of Form 8-K.

(a) Financial Statements of Businesses Acquired

ABC Corporation (the "Company") consolidated financial statements for the years ended December 31, 2025 and 2024, and related notes are filed as Exhibit 99.1 to this Current Report on Form 8-K/A and are incorporated herein by reference.

(b) Pro Forma Financial Information

The unaudited pro forma condensed combined financial information of the Company, giving effect to the acquisition, including an unaudited pro forma condensed combined balance sheet as of December 31, 2025, and an unaudited pro forma condensed combined statement of income (loss) for the year ended December 31, 2025, is filed as Exhibit 99.2 to this Current Report on Form 8-K/A and is incorporated herein by reference.

(d) Exhibits

| Exhibit No. | Description |
|---|---|
| 23.1 | Consent of XYZ Auditor LLP, independent auditors of the Company |
| 99.1 | The Company's consolidated financial statements for the years ended December 31, 2025 and 2024, and related notes |
| 99.2 | Unaudited pro forma condensed combined financial information and related notes |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

**Signatures**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 21, 2026

GOODWIN PROCTER LLP PUBLIC COMPANY ADVISORY PRACTICE

| | |
|---|---|
| By: | /s/ David Lynn |
| Name: | David Lynn |
| Title: | Chair, Goodwin Procter LLP Public Company Advisory Practice |