

2025 SEC Annual Reporting Workshop – Tackling the Hot Spots in Periodic Reports and Earnings Releases

Key takeaways for Session 1

Top 10 tips for drafting periodic reports and earnings releases:

1. Don't miss the technical stuff.
 - Reconfirm your filer status, conduct a careful compliance check and be mindful of any disclosure undertakings you have made in connection with the Securities and Exchange Commission (SEC) comment process. Pay particular attention to controls and procedures language, both in the body of the report and in the related (Sarbanes-Oxley Act) SOX certifications.
2. Get up to speed on recent rule changes.
 - Remember this is the first year requiring inclusion of annual insider trading disclosures and the filing of your insider trading policy as an exhibit. Double check compliance with the clawback rules – i.e., cover checkboxes, disclosure (if applicable) and filing the policy as an exhibit – and cybersecurity disclosure requirements – including reviewing recent SEC comments on Item 1C disclosure.
3. Keep your risk factors current.
 - Carefully review and update risk factors with a particular eye toward:
 - Avoiding hypothetical language where inappropriate.
 - Adding tailored disclosure on any applicable “hot topics.”
 - Ensuring risks identified in other areas of the report – e.g., management discussion and analysis (MD&A) – are adequately addressed.
4. Watch your use of non-GAAP financial measures.
 - Review non-GAAP (generally accepted accounting principles) disclosures with a fine-tooth comb, including for compliance with 10(e) and/or Regulation G, as applicable. Review compliance and disclosure interpretations (C&DIs) and comment letters to ensure non-GAAP presentation does not run afoul of equal or greater prominence requirements or otherwise constitute misleading disclosure in the eyes of the SEC.
5. Draft effective forward-looking statements and disclaimers.
 - Craft fulsome and tailored disclaimers to accompany all periodic reports, press releases, presentations and investor calls where forward-looking statements are presented.
6. Stay coordinated so you don't miss material disclosures and updates.

- Establish a plan to stay coordinated among internal functions to ensure consistency of disclosure across all sections of the periodic report and related documents, especially in key disclosure sections, such as business and MD&A. Draft clear, concise and balanced disclosure, and confirm you have adequate support (internal or third-party) for factual statements (e.g., industry/market data and other business statistics).
7. Update your macroeconomic conditions and geopolitical disclosures.
 - Think carefully about the impact of macroeconomic and geopolitical factors on your business, and update your disclosures accordingly. Review the sample SEC comment letter concerning the Russia/Ukraine conflict for additional context and guidance.
 8. Ensure your earnings script and earnings release materials disclosures are consistent with your 10-K and 10-Q disclosures.
 - Keep a very close eye on the consistency of disclosure across periodic reports, earnings releases, presentations and call scripts, because the SEC certainly will! If hosting a conference call, make a plan to ensure compliance with the requirements of Item 2.02(b) of Form 8-K.
 9. Keep an eye on the exhibit index.
 - Do a sweep of all 8-Ks and 10-Qs to ensure your exhibit index is up to date, and don't forget to file immaterial amendments to material agreements that were entered into during the period. Double (and triple!) check SOX certification language for compliance, and confirm auditor consent(s) cover all active registration statements.
 10. Get up to speed on recent trends in SEC comment letters.
 - Pay particular attention to areas of frequent SEC comments, including:
 - Non-GAAP financial measures
 - MD&A
 - Segment reporting
 - Revenue recognition
 - Business combinations