"From S-1 to 10-K: Avoiding Disclosure Pitfalls"

Tuesday, March 24, 2026

Course Materials

“From S-1 to 10-K: Avoiding Disclosure Pitfalls”

Tuesday, March 24, 2026

2 to 3:30 p.m. Eastern [archive and transcript to follow]

As newly public companies move beyond the S-1 and into the Exchange Act reporting cycle, compliance demands increase and disclosure expectations shift. Join our panel of experts as they review the most frequent disclosure and compliance challenges that newly public companies face and offer insights into how to avoid the common missteps that can trigger SEC comments, investor scrutiny, and unnecessary risk. Plus, they'll answer your burning questions.

Join our panelists:

- **Tamara Brightwell,** Partner, Wilson Sonsini
- **Brad Goldberg,** Partner, Cooley
- **Keith Halverstam,** Partner, Latham & Watkins
- **Julia Lapitskaya,** Partner, Gibson Dunn

Topics include:

1. Entering the Exchange Act Reporting Cycle
2. Risk Factors, Forward-Looking Statements, and Earnings Communications
3. Form 8-K Current Reports
4. Form 10-K and Proxy Statement
5. Mechanics of the First Annual Meeting
6. SOX, Internal Controls, and Disclosure Controls in the First Year

"From S-1 to 10-K: Avoiding Disclosure Pitfalls"

Course Outline

1. Entering the Exchange Act Reporting Cycle

- Upon effectiveness of a registration statement, a company becomes subject to the continuous reporting requirements of the Securities Exchange Act of 1934
  - These obligations are significantly different from the one-time, transaction-focused disclosures required in an S-1
  - Newly public companies must quickly adapt to recurring deadlines (including Form 8-K), evolving disclosure standards, and increased scrutiny from regulators and investors
- Timing of the first Form 10-Q
  - "Under Exchange Act **Rule 13a-13(a)**:

    Quarterly reporting starts with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included interim financial statements subsequent to the most recent fiscal year-end, for the first fiscal quarter subsequent to the quarter reported on in the registration statement.

    The first quarterly report is due within the later of:

    - 45 days following the effective date of the registration statement; or
    - the due date for the report that would otherwise have applied had the company been public.

    For example, if a calendar year-end company's S-1 goes effective on October 15 on the basis of June 30 interim numbers, the first 10-Q would cover the third quarter, ending

September 30. That filing would normally be due by November 14 (*i.e.*, 45 days after September 30). But, under Rule 13a-13(a), you can postpone the first filing to November 29 (*i.e.*, 45 days after October 15)." *US IPO Guide, 2025 Edition*, Latham & Watkins.

- Transition from S-1 disclosures
  - Management's Discussion & Analysis (Regulation S-K Item 303), including KPIs/metrics
  - Non-GAAP financial measures, if used, must comply with Regulation G and Item 10(e) of Regulation S-K
- Consistency across public messaging
  - Public communications — including press releases, websites, and social media — should be treated as part of the company's disclosure ecosystem and coordinated with disclosure counsel

2. Risk Factors, Forward-Looking Statements, and Earnings Communications

- Post-IPO Risk Factors
  - See Item 105 of Regulation S-K
  - Required in 10-Ks
  - Form 10-Q requires disclosure of any material changes from risk factors as previously disclosed in the registrant's Form 10-K
  - Beware of hypothetical risks (particularly for risks that materialized after the IPO)
- Regulation FD in the first earnings cycle
  - Earnings calls are typically a company's first recurring interaction with the public markets

- Scripts, rehearsals, and disciplined Q&A practices for calls, private meetings and investor days help mitigate risk of Regulation FD violation
    - Regulation "Fair Disclosure" prohibits certain selective disclosures of material nonpublic information

- Forward-looking statements safe harbor
    - The Private Securities Litigation Reform Act ("PSLRA") safe harbor for forward-looking statements does not apply to statements made in connection with an IPO
    - After the IPO, the PSLRA safe harbor protects:
        - both oral and written forward-looking statements
        - by most public companies
        - made without knowledge that it is false or misleading
        - accompanied by meaningful safe harbor language
    - The safe harbor does not protect statements of present fact or omissions of material information

- Earnings guidance
    - Not required by SEC or stock exchange rules, but has become a fairly common voluntary practice
    - Guidance practices should be carefully considered in light of litigation risk, peer practices, and internal forecasting reliability

3. Form 8-K Current Reports

- Form 8-K requires timely disclosure of specified material events (*e.g.*, material agreements, restructurings, cybersecurity incidents, officer transitions)

- The typically four-business-day deadline is unforgiving and often overlaps with transaction execution or crisis response

- Furnishing vs. filing

  - Earnings releases are furnished under Item 2.02 of Form 8-K

  - Disclosures under Item 7.01 of Form 8-K are also furnished

  - General Instruction B.2. to Form 8-K specifies that information furnished in a Form 8-K (including related exhibits) shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer states explicitly that the information is to be considered "filed" or specifies, under Item 9.01 of Form 8-K (exhibits), which exhibits, or portions of exhibits, are intended to be deemed filed or incorporates the information by reference into a filing under the Securities Act or the Exchange Act

  - Furnishing disclosure and exhibits under Item 2.02 and Item 7.01 avoids potential liability under Section 18 of the Exchange Act as well as Securities Act liability for information incorporated by reference into a registration statement or prospectus

4. Form 10-K and Proxy Statement

- Form 10-K provides a comprehensive annual update of the information contained in the company's Form S-1 registration statement, including risk factors, business description, MD&A, and audited financial information

  - Form 10-K also requires disclosure relating to the background and compensation of executive officers and directors, although this may be incorporated by reference to information contained in a definitive proxy statement filed within 120 days of the end of the company's fiscal year

        - For companies that are non-accelerated filers, the Form 10-K is due 90 days after the end of the fiscal year

    - For accelerated filers, the Form 10-K is due 75 days after the end of the fiscal year

        - Large accelerated filers (*i.e.*, those with a public float in excess of $700 million) must file their Form 10-K within 60 days following the end of their fiscal year

        - Since a company must have filed at least one Form 10-K to qualify as a large accelerated filer, most newly public companies will not be large accelerated filers for their initial Form 10-K

- The CEO and CFO of each public company are required to certify quarterly and annual reports filed with the SEC per Sections 302 and 906 of Sarbanes-Oxley. There are two required certifications:

    - As required by Section 302 of Sarbanes-Oxley, the SEC adopted Exchange Act Rules 13a-14 and 15d-14, requiring that the principal executive officer and principal financial officer of all reporting companies certify each annual and quarterly report filed under Exchange Act Section 13(a) or 15(d)

    - Section 906 also requires a principal executive officer and principal financial officer certification, but the Section 906 certification requirement was enacted under the U.S. criminal laws

        - This certification is regulated by the Department of Justice — not the SEC directly

        - The DOJ has not issued any rules or guidance on this certification, but Section 906 sets forth what is required

- Public companies seeking to elect directors and/or obtain shareholder approval of other matters must generally solicit proxies from their shareholders. They must file a proxy statement containing the

disclosures required by Schedule 14A under the Exchange Act with the SEC prior to soliciting proxies

  - If the company intends to solicit votes on matters other than the election of directors, ratification of auditors, advisory Say-on-Pay and Say-on-Frequency proposals, the authorization or amendment of certain compensation plans, and shareholder proposals, preliminary proxy materials must be filed at least 10 days in advance of the proposed mailing date

  - The SEC may comment on these preliminary materials, and that potential needs to be factored into the timeline for the annual meeting

- Notice and access — also commonly known as e-proxy — refers to a framework of delivery of proxy materials that's an alternative to full-set delivery

  - Rule 14a-16 is a mandatory e-proxy rule that requires all companies to post their proxy materials on a specified, publicly accessible internet website and provide their shareholders with a "Notice of Internet Availability of Proxy Materials" informing them that the materials are available on the specified website and explaining how to access those materials

  - This doesn't mean that companies are forced to electronically deliver proxy materials — a company can still elect to furnish paper copies so long as it includes the required notice

  - For purposes of these rules, the SEC defines "proxy materials" to include:

    - Notices of shareholder meetings

    - Schedule 14A proxy statements and consent solicitation statements

    - Proxy cards

    - Schedule 14C information statements

    - Annual reports to security holders required by Exchange Act Rules 14a-3 and 14c-3
    - Additional soliciting materials
    - Any amendments to such materials that are required to be furnished to shareholders

- Say-on-Pay/ Say-on-Frequency
  - Companies subject to the proxy rules are required to:
    - Provide their shareholders with a Say-on-Pay vote (Exchange Act Rule 14a-21(a))
    - Provide their shareholders with a Say-on-Frequency vote (Exchange Act Rule 14a-21(b))
    - Provide shareholders with a Say-on-Golden Parachutes vote in certain situations (Exchange Act Rule 14a-21(c))
- Plurality/majority standards, broker non-votes, abstentions, and the "math" behind outcomes
  - Item 6 of Schedule 14A requires disclosure of the number of shares outstanding as of the record date for each voting class, cumulative voting rights for investors, the principal securityholders and certain other items
  - Item 21 of Schedule 14A requires a discussion of the specific vote requirement for each proposal in the proxy statement, including the treatment of abstentions and broker non-votes
  - Item 5.07 of Form 8-K requires the reporting of voting results
- Rule 14a-8 shareholder proposal basics
  - Rule 14a-8 governs the process whereby a shareholder may include a proposal along with management's proposals in a company's proxy materials

- In a plain English "Q&A" format, the rule sets forth procedural and substantive requirements that a shareholder proposal proponent must meet
- Companies that receive shareholder proposals can seek to prevent them from being included in their proxy materials if they believe that the proponents did not meet these requirements
- Companies intending to omit a proposal pursuant to this provision must notify the SEC of their intention to do so, and send a copy of that correspondence to the proponent

– Major changes may be coming

- The latest Reg Flex agenda stated that:

  "The Division [of Corporation Finance] is considering recommending that the Commission propose rule amendments to modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended"

5. Mechanics of the First Annual Meeting

- The first annual meeting is a milestone event that combines federal securities law, state corporate law, and stock exchange requirements

  – State law and a company's organizational documents govern:

  - Notice requirements
  - Record date requirements
  - Format of meeting
  - Quorum requirements
  - Adjournment requirements

- Voting standards
- Inspector of elections

- In-person vs. virtual vs. hybrid meeting considerations
  - Consider whether to allow access by media and other non-shareholders
  - Rules of conduct
  - Preparation and handling of shareholder Q&As
- 8-K reporting of voting results under Item 5.07: Timing, completeness, and amendment triggers

6. Stock Exchange Compliance: Governance Deadlines & Ongoing Standards

- Stock exchange listing standards include board independence and committee composition requirements (Nasdaq Rule 5605 and NYSE Listed Company Manual Section 303A; see also SEC Rule 10A-3 for audit committees and Rule 10C-1 for compensation committees)
  - They permit phase-in periods (Nasdaq Rule 5615 and NYSE Listed Company Manual Section 303A), but these deadlines arrive quickly
- Stock exchange listing standards also contain requirements regarding committee charters, annual evaluations, executive sessions, and shareholder approval requirements for certain equity issuances (Nasdaq Rule 5635 and NYSE Listed Company Manual Section 303A.08)

7. SOX, Internal Controls, and Disclosure Controls in the First Year

- Companies need to develop their internal controls and disclosure controls before becoming a public company, though the company's obligations to report on the effectiveness of its internal control over financial reporting ("ICFR") are deferred

- Management's annual report on ICFR is required to be disclosed in each Form 10-K that is filed after the company had either been required to file a Form 10-K for the prior fiscal year or previously had filed a Form 10-K for the prior fiscal year

- See Instruction 1 to Item 308 of Regulation S-K stating that a company need not comply with this requirement until it either has been required to file a Form 10-K under Section 13(a) or 15(d) of the Exchange Act for the prior fiscal year or had filed one for the prior fiscal year

- Auditor attestation of ICFR required by Section 404(b) of Sarbanes-Oxley ("SOX")

  - The Jobs Act added a carve out to SOX Section 404(b)'s auditor attestation requirement for emerging growth companies

  - Dodd-Frank added Section 404(c) to SOX, which provides that the auditor attestation requirement shall not apply to a company that is not an accelerated filer or large accelerated filer

  - The SEC has an exception to the "accelerated filer" definition (and its requirements) that carves out smaller reporting companies that had less than $100 million in annual revenues in their most recent fiscal year or don't have audited financials, which means that qualifying SRCs are not required to have an auditor attestation under SOX Section 404(b)

- ICFR vs. Disclosure Controls and Procedures ("DCPs")

  - **ICFR**: Exchange Act Rules 13a-15(f) and 15d-15(f) define "internal control over financial reporting" as:

    > [A] process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance

regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements

- **DCPs**: Exchange Act Rule 13a-15(e) defines "disclosure controls and procedures" to mean controls and procedures designed to ensure that information required to be disclosed in Exchange Act reports is recorded, processed, summarized and reported within the SEC-specified time periods
    - Disclosure controls and procedures include controls and procedures designed to ensure that the information required to be disclosed in Exchange Act reports is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions about required disclosure

8. Thoughts on Best Practices

- Monitoring tools: compliance calendar, certifications, and board education cadence
    - Build disclosure calendars that integrate quarterly SEC filings, earnings releases and other investor communications and stock exchange requirements
        - The annual reporting cycle requires early coordination among legal, finance, compensation, and investor relations teams
        - Annual calendars help financial reporting teams plan ahead
- Train executives on Regulation FD and Q&A discipline early
- Treat public company readiness as an ongoing process, not a one-time IPO exercise
- Invest early in training executives and employees on disclosure obligations
- Foster collaboration among legal, finance, investor relations, communications, and IT teams