CHAPTER 19
8-K FILINGS

BUSINESS BEATS BASICS

8-K FILINGS

INTRODUCTION

When there's news at a publicly traded company, there's probably also an 8-K filing. These are among the filings companies file most often and that many investors watch closely. They're also the filings most likely to generate headlines, yet many business reporters overlook them or fail to use them to their fullest.

That isn't surprising: 8-Ks are easily the most varied of the disclosures commonly filed with the Securities and Exchange Commission (SEC). They don't appear at regular intervals. Companies file them for dozens of reasons, from disclosing the sudden departure or death of a top executive to recording minor changes in an obscure ethics policy.

But don't be intimidated: 8-Ks are also among the most reporter-friendly filings a company can make. They tend to be short and are usually clear about what they disclose. They even come numbered to indicate the general topics they cover, using an SEC-standard coding system.

In this section, we'll look at what companies tend to disclose in 8-Ks and how reporters can use them most effectively, whether to break news, stay on top of a beat, or inform a feature or investigative piece.

THIS JUST IN

Officially, 8-K filings are called "current reports." As the name suggests, they're intended for disclosing timely information.

In fact, they can be used to disclose pretty much any information the company chooses to consider significant and timely enough to put on paper. Some companies, especially small ones, seem to file an 8-K for every press release (and then some).

Still, there are some events or developments that require companies to file an 8-K. These include signing or ending significant contracts (including employment agreements with top executives), filing for bankruptcy, acquiring or selling significant assets, releasing an earnings report, getting kicked off a stock market ("delisting"), changing auditors, revising flawed financial results, the departure of top executives or directors, and disclosing the results of annual meetings.

Below, I'll go into more detail about some of the more useful categories of 8-Ks. In addition, the SEC has its own partial list in its How to Read an 8-K investor bulletin.

Note that several kinds of 8-Ks — including most in the PDF linked above — must be filed within four business days (i.e., weekdays excluding federal holidays) of the event that triggers a disclosure requirement. Companies sometimes miss this deadline though, or push filings to the very last minute, so keep your eyes peeled.

EDGAR KNOWS CURRENT REPORTS

You can find 8-K filings the same way you find proxies and quarterly reports: via the EDGAR database or any of the various services that build on it.

You can also pull up the most recent 8-Ks for all companies by going to the SEC website's Most Recent Filings page and entering "8-K" in the Form Type field. (Note that doing this will automatically capture amended 8-K filings as well as ordinary 8-Ks.) You can also narrow the search by company name or the company's Central Index Key, if you know it.

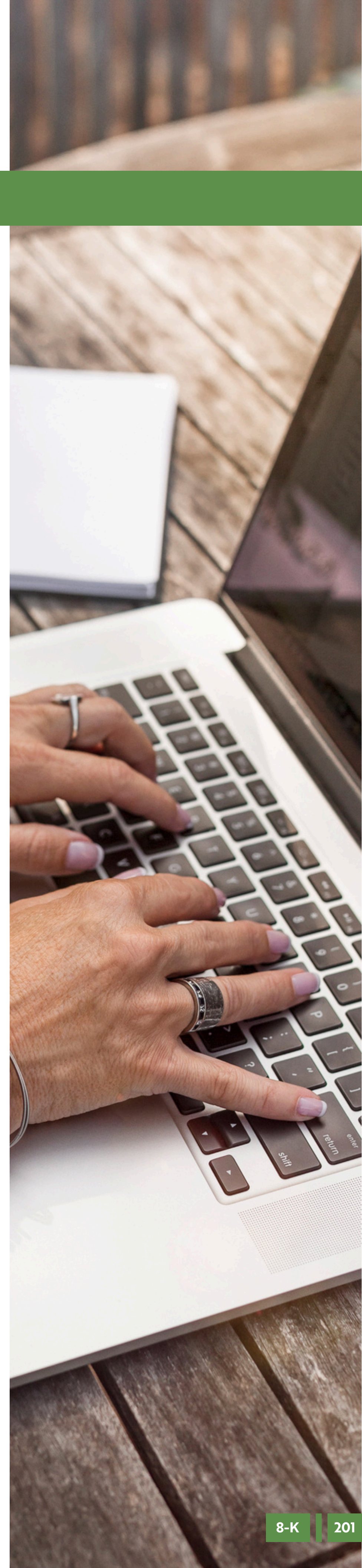
Many 8-Ks include exhibits, listed in the index page ("Filing Detail") in EDGAR. These can be invaluable – don't overlook them.

USING EDGAR

The SEC's EDGAR database is free and relatively simple. Start with the company search page to find a particular company's filings by searching the company name or ticker symbol. The advanced version of the full-text search page lets you filter by company name, date, type of form and other details. Other search options are listed on the EDGAR site.

A variety of paid services makes it easier to zero in on specific filings or find specific words and phrases across filings from multiple companies. All have different features, and some have given news organizations discounted access in the past, for publicity's sake. Among the companies offering SEC filing services are Morningstar Document Research and AlphaSense. If you have LexisNexis access, you may also have access to its very good SEC filings search engine.

SECInfo is a free service provided by Fran Finnegan & Co. It does many of the things that the paid services above will do, although the site's interface can be less intuitive and take more practice to learn and operate.



WHERE TO BEGIN

The 8-K's strong suit for reporters is news. After all, companies use them to disclose (or try to bury) news of their own. Moreover, if you dig a little deeper, you can find stories others are overlooking or details that can add life to your longer-term reporting.

With the biggest companies, it's hard to beat the wire services when it comes to juicy details that can move the markets. But you can at least keep up. And if you work for one of the wire services, some of the tips below may help you beat the competition.

Here are some suggestions to keep in mind while reading 8-K filings:

MORE THAN MEETS THE EYE

As newsworthy as they can be, corporate filings aren't news stories, so don't expect the most important details at the top. In fact, companies sometimes seem to take pains to bury the news, especially if it's bad.

Start by skimming the filing, without necessarily reading it in full. Check the 8-K Filing Event code. In EDGAR, when you click on a filing, you first get an index page or the "Filing Detail." Take special note of the exhibits – they're numbered using the same general 8-Ks Item codes. Often, the exhibits are more detailed than the 8-K itself.

Once you open the actual filing – the first link from the index page in EDGAR – most of the numbered items are broken out individually into separate paragraphs or sections. The text can be repetitive, but each item is rarely more than a few paragraphs. Sometimes the filing itself just refers readers to one or more of the exhibits, especially an earnings release or press release.

DOUBLE DUTY

Multiple item numbers or sections in an 8-K might reflect different disclosure requirements under different regulations for the same real event. But there's no rule that says companies have to stick to one topic in an 8-K – some disclose details about multiple unrelated developments.

So a routine 8-K with an earnings release could include a separate section noting that the CFO or another senior executive is planning to retire at the end of the year. Or an unremarkable update to the company's ethics policies could be followed by a section on a major plant shutdown.

WATCH FOR AMENDMENTS

As with proxies, 10-Qs and other kinds of filings, companies can amend 8-Ks long after they are originally filed. Appropriately, 8-K amendments are coded as 8-K/A filings in EDGAR. It's usually worth checking out. Sometimes the amendment can reflect a serious problem or error with the prior filing. Other times it means the company simply omitted information it was initially supposed to include, perhaps because it wasn't yet available. For example, a newly hired executive might not get an employment agreement immediately – in some cases, the contract isn't signed for weeks or months, at which point a new 8-K or an amendment is usually filed. So if the initial filing doesn't include all the details, keep an eye out.

READ CAREFULLY

Most 8-K filings are written by lawyers, or at least reviewed by lawyers. They aren't just worried about following securities regulations – they also want to avoid lawsuits.

As a result, it can sometimes be tricky to decipher just what happened when, for example, an executive leaves the company. Was he fired or did he quit? Companies rarely say – and typically don't have to – but you can find hints.

For example, if the 8-K says the executive is receiving severance, or that their departure was a termination "without cause," it usually means they were shown the door. Termination "with cause" is even rarer to find – it generally means they were fired for wrongdoing; expect the lawsuits to fly. Even if a departure is described as "voluntary" or a "retirement," check the terms of any payments against the executive's employment agreement: It may match the severance for involuntary termination.

COMPARE DIFFERENCES

Exhibits filed with 8-Ks can be lengthy, whether revised bylaws or stock-option plans, and often little changes from one version to the next, despite years in between. But even small changes can be significant.

Sometimes, companies will mention when the previous version was filed; otherwise, check the Exhibit Index in the company's annual report, or 10-K filing, which should list any prior version and say where to find it. To spot changes in phrasing, you can use a compare documents feature offered in many word processors (do a quick "how-to compare documents" Google search if you have never used this feature). For shorter passages, check out tools like TextDiff.com.

COUNTING VOTES

For decades, annual meetings were dull affairs, and the 8-Ks disclosing their results were rarely noteworthy. That's changing as activist shareholders and new regulations combine to make both more interesting. When a company issues an 8-K detailing the results of its annual meeting, look closely. Most companies provide the bare minimum of information: Sparse tables showing the number of votes cast or abstained. The tables usually include numbers for "broker non-votes," which are essentially shares that don't count as voted or abstained.

Different kinds of questions have different standards for passing: Some require a majority of share votes, meaning an abstention counts as "no" but non-votes don't count. Other questions require a majority of shares eligible to vote, or even a super-majority of 60% or 80%. As a result, a shareholder question that receives a majority of votes cast may still not officially pass and a director who receives a minority of votes may well keep their seat.

Still, it may be newsworthy that a majority of shareholders favor a change that management opposes, whether or not the measure technically succeeded. Similarly, if directors have a significant percentage of votes withheld or cast against them, it's probably worth a story.

For many large companies, the votes involve huge numbers – a company might have billions of shares outstanding, so a dissenting vote of a few tens of millions of shares looks big but remains a drop in the bucket. Be sure to calculate the percentages yourself. Only a few companies show percentages, and even then, sometimes they don't add up.

Companies sometimes disclose annual meeting results in 10-Q filings instead. However, the contents are usually the same.

THE 8-K CODE

One often-overlooked feature of the 8-K is the code number that designates which 8-K item is being reported by a particular filing. These numeric codes appear in the EDGAR filing database's list of results. They often appear in alert emails or results lists for third-party filing services, and some such services also let you use the categories to narrow your searches. This can let you quickly zero in on, say, director departures and related events. Below are some of the most common code types that reporters may find the most useful.

ITEM 1.01

ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

A company must file an 8-K any time it enters into a "material definitive agreement," which is any agreement that is not made in the ordinary course of business. Sometimes the company only needs to file a description of the agreement, rather than the document itself, with the 8-K – but then the document often must be included in a subsequent 10-Q or 10-K filing.

Companies may seek a confidential treatment order from the SEC, allowing them to redact key elements of a contract, usually for competitive reasons. At the same time, this category does include unwritten (oral) agreements, which must be described, and any agreement to compensate senior executives (since according to regulators, those fall under the definition of "material"). Even when disclosed, material agreements won't always be coded under Item 1.01 thanks to a provision that lets companies skip the designation as long as they include the same information under a different item number.

ITEM 1.02

TERMINATION OF A MATERIAL DEFINITIVE AGREEMENT

Similar to item 1.01, this is for the termination of any agreement that is not in the normal course of business. If a top executive's contract term simply expires, rather than is canceled, that termination would not need to be reported.

ITEM 1.03

BANKRUPTCY OR RECEIVERSHIP

This is pretty self-explanatory. If you see an 8-K listing information under Item 1.03 for a company not already in bankruptcy proceedings, pay attention. This filing outlines the company's plan for reorganization or liquidation.

ITEM 1.05

CYBERSECURITY INCIDENTS

Any "material" cybersecurity incident or breach must be disclosed along with the actual material impact on the company's operations or financial condition.

ITEM 2.01

SIGNIFICANT ACQUISITIONS OR DISPOSITIONS

This usually reflects the final stage of a merger, sale, or lease, of a significant part of the company. One widely cited threshold is about 10% of the company's total assets, but there are other ways a deal can qualify as significant. Internal transactions aren't included. Generally, you'll hear about major agreements to make these sales or acquisitions well before the deal is finalized.

ITEM 2.02

QUARTERLY EARNINGS, MONTHLY SALES, ETC.

This includes earnings reports and related disclosures, such as a retailer or auto company's monthly sales results. The 8-K itself often contains little detail but refers readers to an accompanying press release and sometimes a document with supplemental financial information. These disclosures generally come out with, or even after, the company's press release on the subject.

ITEM 2.05

RESTRUCTURINGS & WRITE-OFFS

These 8-Ks can include announcements of big layoffs or the dollar amounts associated with restructuring.

ITEM 3.01

DELISTING

The company is about to leave one of the exchanges or electronic markets on which its stock is traded – either voluntarily or because it no longer satisfies the requirements to be listed. Any reprimand from the exchange must be included or summarized, and the filing is required even if there's a grace period to fix any problems identified by the company or the exchange. Note that an 8-K typically isn't required in connection with listings on such over-the-counter exchanges as the Over-the-Counter Bulletin Board (operated by FINRA), or on the Pink Sheets.

ITEM 3.02

UNREGISTERED STOCK SALES

These 8-Ks are triggered by the sale of 1% (or, for smaller companies, 5%) of the company's shares in a private transaction. It can be a signal that a big outside investor is buying a significant stake in the company – sometimes a white knight for a company in trouble. At the height of the financial crisis, for example, Warren Buffett's Berkshire Hathaway invested $5 billion in Goldman Sachs, leading to an 8-K filing and press release.

ITEM 3.03

MATERIAL MODIFICATION TO RIGHTS OF SECURITY HOLDERS (AKA: POISON PILLS)

This item is triggered if a company reduces the rights of its shareholders (or debtholders). One common way companies do this is through a so-called poison pill measure, designed to make hostile takeovers more difficult. Simply adopting a "shareholder rights plan" generally triggers Item 1.01, not this item.

ITEM 4.01

CHANGE OF ACCOUNTANT

This can be a big red flag. Companies sometimes change audit firms to save money – and sometimes to hire a more pliant accountant. Read carefully to determine if the auditor resigned, declined to stand for reappointment by shareholders, or was dismissed by the company. Once the replacement is announced – it might be in the same 8-K, or in a subsequent one – note whether the company went from a big brand-name firm to one few investors have heard of. Technically, an 8-K filed under this item is required to disclose any adverse audit opinion from the audit firm during the last two years, as well as any ongoing disagreement with the auditors. The filing also generally includes a letter from the accounting firm to the same effect.

But be careful: Just because both sides say there's no disagreement doesn't mean it's always so. Auditors and clients have ways of dancing around an issue without formally disagreeing, just to avoid telling the world. This is one of the few 8-Ks that must be filed even if the triggering event (an auditor's dismissal) happens within four days of filing a 10-K or 10-Q.

ITEM 4.02

RESTATEMENTS & FLAWED FINANCIALS

This kind of 8-K is triggered when past financial statements are so flawed that investors should no longer rely on them. That's serious. Read carefully to see whether the company or its auditor identified the problem, the description of the problem, and whether the problem affects one quarter or many years. Sometimes a company files multiple 8-Ks over several months before the full extent of the problem becomes public.

ITEM 5.01

CHANGE IN CONTROL

The company has been bought or taken over. There's usually some warning before one of these is filed, whether it is triggered by a hostile takeover, planned merger, or an investor buying up just over 50% of the company's shares. Still, there may be some interesting details in it to include in a story.

ITEM 5.02

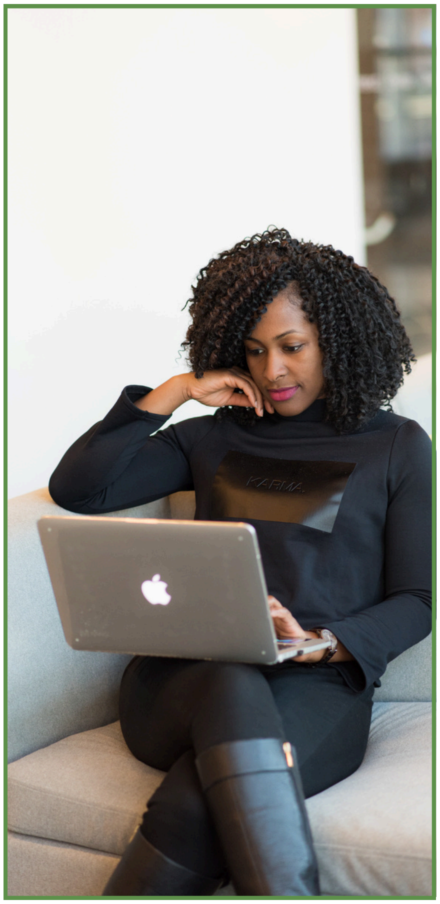
DEPARTURE OR APPOINTMENT OF TOP OFFICERS OR DIRECTORS

These 8-Ks are a big source of news. You'll see one when a member of the corporate board, the CEO, chief financial officer (CFO), chief operating officer (COO), or another high-level executive either is appointed to – or departs from – a position. It is filed only once the appointment or departure is definite, so you won't get a heads-up about impending changes. But the 8-K often includes details that aren't in the company's press release, so it's worth taking a look.

Officially, this 8-K covers only directors and "principal officers" (CEO, CFO, COO, chief accounting officer, etc.), whether temporary or permanent, as well as named executive officers, but some companies file them for other executives as well. Read the 8-K and accompanying material carefully to see whether the individual is retiring, resigning, or being let go; it isn't always easy to tell, and for executives, no reason is required – but sometimes there are clues.

Departing directors get a chance to sound off – they rarely do – but if one writes a letter expressing disagreement with fellow directors or dissatisfaction with the company, it must be included in the 8-K. Companies sometimes respond, and, very rarely, there's a heated back-and-forth. Keep in mind, when a company says there were no disagreements, it doesn't necessarily mean what you'd expect. Yahoo! co-founder Jerry Yang quit the company's board in 2012 after widely reported spats with management; yet, as footnoted.com reported at the time, the company could still say he left "to pursue other interests, and not due to any disagreement with the Company on any matter related to the Company's operations, policies or practices." New appointments, whether for directors or executives, generally include a brief professional bio and a paragraph or more on the individual's compensation.

Companies can hold off filing an 8-K disclosing executive appointments until making a public announcement, but that's not the case for departures. Moreover, the four-day clock to disclose starts once a director or officer gives (or gets) notice, not as of the actual date of departure.



ITEM 5.02

COMPENSATION OF TOP OFFICERS

New or modified pay details for top executives are filed with the same code as the appointment or departure of directors and officers. Here, companies have some leeway in describing the new or changed pay, but they can choose whether to include the actual employment agreement or another contract. If they don't include it with the 8-K, they must do so with the 10-Q or 10-K covering the quarter in which it was signed. Some companies report changes to director compensation arrangements in an 8-K as well, though it isn't always required. In that case, check the next proxy, or the 8-K filed the next time a new director is named.

Companies don't have to file a compensation 8-K when an executive's employment agreement renews automatically, but terminating their agreement would trigger a filing. Broad-based compensation plans – e.g., a 401(k) or health-care plan – don't have to be disclosed just because an executive also benefits.

ITEM 5.03

CHANGES TO BYLAWS OR ARTICLES OF INCORPORATION

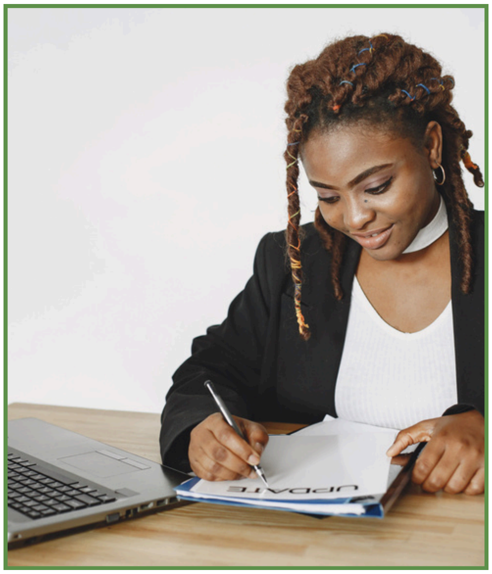
These 8-Ks can be exceedingly dull, with jargon-intensive text and massive exhibits, but they can be important if a company is disclosing changes that make it easier to acquire the company (un-staggering board elections, for example, or allowing a majority of shareholders to act by petition) or harder to do so (poison pills, staggering board elections, etc.). An 8-K is also filed under Item 5.03 if a company changes its fiscal year, which can make it tougher to compare one year's financial results to another's.

ITEM 5.05

CHANGES TO ETHICS & RELATED POLICIES

Rarely signaling a major development, these 8-Ks can nonetheless make for an amusing story. For example, in late October 2010, Apple quietly cut the phrase "conduct business in a way that benefits the communities in which we operate" from its list of Principles of Business Conduct in its revised Business Conduct Policy.

Companies are supposed to file an 8-K under this item when granting a top executive a waiver from the company's ethics code; however, such filings appear to be extremely rare.



ITEM	
ITEM 5.07	**RESULTS OF A SHAREHOLDER VOTE** Most commonly filed after an annual meeting, these 8-Ks tell you just how well or badly the company fared. Typically, companies will announce preliminary results at the meeting, but that isn't always the case – and if you can't make the meeting, you may have to wait for the 8-K anyway.
ITEM 7.01 & 8.01	**REGULATION FD | OTHER** These are the catch-all 8-K filings. Regulation FD (for "fair disclosure") prohibits companies from disclosing significant details to select investors. Regulation FD 8-Ks generally disclose some piece of previously undisclosed information that was inadvertently shared with a smaller group of investors, perhaps at an analyst's conference. The 8.01 category is used for any manner of press releases, announcements and other developments that don't fit other codes.
ITEM 9.01	**FINANCIAL STATEMENTS & EXHIBITS** This code is usually used in conjunction with others, such as Item 2.01 (acquisition and disposition of assets), to include reworked financial statements reflecting the impact of the acquisition or sale.

USEFUL GUIDES AND REFERENCES

The SEC provides a variety of guides on reading different kinds of SEC filings. For an overview on how to use EDGAR, check out Investor.gov, created by the agency's Office of Investor Education and Advocacy. It has a helpful PDF on How to Read an 8-K and offers an overview of the securities laws governing SEC filings. Information on more unusual types of 8-Ks can be found at sec.gov/files/form8-k.pdf.

A number of websites offer tutorials or references on accounting and reading financial statements. Some of the more accessible ones include AccountingCoach, which has multi-part explainers on the income statement, balance sheet, and more, as well as an accounting dictionary.

In addition to its extensive financial glossary, Investopedia offers a guide to reading an earnings report as well as an introduction to reading financial statements. JournalistsResource.org offers a thumbnail sketch of what to look for in various SEC filings.

CHALLENGES AND PITFALLS

Most 8-K filings are pretty straightforward, but some can still prove confusing. Some companies bury important information or emphasize the rosy and downplay the gloomy. Further complicating matters are widespread misconceptions about what companies are required to do and what kinds of developments are significant enough to appear in an 8-K. Below, we tackle some of these sticking points. As always, if something in the filings doesn't make sense, start by asking the company and then ask a couple outside experts to make sure you're getting all angles.

DETAILS TO COME

If an 8-K summarizes or refers to significant documents, but doesn't include them, don't give up. Check the next quarterly or annual report that the company files, especially if the missing document is an employment contract or other major agreement. Companies often don't have to file exhibits with 8-Ks, but do have to file it eventually, and the deadline is usually the 10-Q or 10-K for the quarter in which the agreement was signed.

MATERIAL WORLD

Remember how we said materiality isn't sharply defined? Keep that in mind when you hear about a company failing to disclose something that a source says is "clearly" material.

The SEC says something is "material" when "there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision." You can see the wiggle room: "substantial," "reasonable," "important."

By the same token, however, this is a good question to raise when companies appear not to have disclosed information that proves to be significant – or at least, that does move the market when it comes to light. In April 2010, for example, the SEC charged banking giant Goldman Sachs with fraud, raising questions about whether the company should have disclosed litigation warnings from the SEC that came months earlier.

HIDE THE DISCLOSURE

Companies have a variety of techniques to minimize the chance that investors will notice or act on an unflattering disclosure. Some are alluded to previously: Filing detailed exhibits after the 8-K or including significant elements in the 8-K but not in accompanying press releases or information sheets.

One common tactic is to file the information in an 8-K after the markets close (4 p.m.) on a Friday, or the day before a holiday or long weekend. Filings guru Michelle Leder calls this the "Friday night dump" – when companies take out the trash – and it's a tried-and-true way to bury bad news. Sometimes companies cut it too close, however, and file the document after the SEC's electronic filing window closes at 5:30 p.m. Then it shows up in EDGAR first thing Monday morning.

Companies can also include a significant, negative disclosure in the same 8-K as an unrelated, routine event, like an earnings report. That's another reason to always skim the entire filing, rather than just the top, and to check the item numbers listed for 8-K.

The reverse also works: If a company files a widely read 8-K – an earnings report, for example – or a humdrum one, like a boring bylaws change, a second 8-K later in the day can often escape notice. Reporters and investors who get an alert for the document may mistakenly think they've already seen it, or already read the headlines. Be sure to look in case it's more important than the first filing.

TIMING ISN'T EVERYTHING

Among investors, it's widely believed that companies are supposed to file an 8-K within four days of any significant event. That's partly true: When an 8-K is explicitly required, it generally must be filed within four days of the event triggering it. However, as with so much in the world of disclosure, it's more complicated than that.

First, if something happens within four days of filing a 10-Q (quarterly report) or 10-K (annual report), a company can often include the information in that filing instead and skip the 8-K altogether. Exceptions include a change of auditors and the disclosure that previous financial statements are unreliable.

Moreover, much of what companies choose to put into 8-K filings doesn't have to be disclosed in an 8-K at all. This is particularly true of disclosures coded under Item 8.01. In some cases, these disclosures can seem so big and so significant – multimillion-dollar regulatory settlements, for example – that they must surely be material to the company.

But materiality isn't sharply defined. And even where a development is indisputably material, companies often have an alternative to disclosure: simply not trading in its own securities. Fundamentally, when a company knows about a development that is material but not yet public, it has a choice: disclose the information, or refrain from trading in its shares to eliminate any possibility of trading on inside information. That means no share buybacks, private offerings, etc. And the restriction applies not just to the company, but also to executives and others at the company who know of the undisclosed development.

This discretion typically ends when a company's quarterly or annual-report deadline rolls around, though not always. Before then, big companies often choose to disclose, but they don't have to, and smaller ones might choose not to. There's even an exception to the no-trading rule: so-called pre-established trading plans, or 10b5–1 plans, in which executives set up automatic purchases or sales that can continue regardless of underlying developments. These have been controversial, however.

This chapter is based on material originally written in 2013 for businessjournalism.org by Theo Francis, a financial and investigative reporter for The Wall Street Journal.

FIND EXPERTS

Many major business law firms have securities-law experts who help companies draft their filings and who can answer questions about them. Similarly, business and law schools at major universities generally have at least one professor who studies these issues.

The SEC's public affairs office (202-551-4120) can help put you in touch with people able to answer technical questions about EDGAR, filings, and filing requirements. However, they tend to shy away from company-specific questions and controversial issues.