

# 2018 US Public Company Helpful Checklists

## FILING TIMELINES

Category Name	Public Float (Value held by non-affiliates)	Form 10-K Deadline (calendar days)	Form 10-Q Deadline (calendar days)
Large Accelerated Filer	\$700 million or more	60	40
Accelerated Filer	\$75 – \$699.9 million	75	40
Non-accelerated Filer	Less than \$75 million	90	45

### EXTENSIONS:

Form 12b-25 (NT 10-K or NT 10-Q) due by business day after filing due. Extends 10-K by 15 calendar days from actual due date. Extends 10-Q by 5 calendar days from actual due date.

### FORM 8-K:

Due 4 business days after day of occurrence of reportable event. Thus, if event occurs on business day 1, Form 8-K must be filed no later than business day 5.

### SECTION 16 REPORTING:

Form 3: 10th calendar day after day on which individual becomes subject to Section 16.

Form 4: No later than second business day after the day of the transaction. If third party administers transaction, third party has three business days after to notify filer after which filer has two business days after to making filing.

Form 5: 45 calendar days after fiscal year end.

### SCHEDULE 13-G:

45 calendar days after year end.

### EDGAR HOURS:

6am-10pm Eastern. Filings received before 5:30pm Eastern receive same day filing date.

### EDGAR HOLIDAYS:

- New Year's Day: Mon, Jan 1
- Martin Luther King, Jr. Day: Mon, Jan 15
- Washington's Birthday: Mon, Feb 19
- Memorial Day: Mon, May 28
- Independence Day: Wed, Jul 4
- Labor Day: Mon, Sep 3
- Columbus Day: Mon, Oct 8
- Veterans Day: Mon, Nov 12
- Thanksgiving Day: Thu, Nov 22
- Christmas Day: Tue, Dec 25

## FORM 8-K TRIGGERING EVENTS

- 1.01** Entry into a Material Definitive Agreement
- 1.02** Termination of Material Definitive Agreement
- 1.03** Bankruptcy or Receivership
- 1.04** Mine Safety
- 2.01** Completion of Acquisition or Disposition of Assets
- 2.02** Results of Operations and Financial Condition
  - To avoid filing a Form 8-K for material non-public information after an earnings call: Call must be within 48 hours after filing Item 2.02 Form 8-K; Publicly accessible by conference call or webcast; Financial and other statistical information is on website; Presentation and instructions previously announced through press release
- 2.03** Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant
- 2.04** Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement
- 2.05** Costs Associated with Exit or Disposal Activities (Restructuring)
- 2.06** Material Impairments
- 3.01** Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing
- 3.02** Unregistered Sales of Equity Securities

- 3.03** Material Modification to Rights of Security Holders
- 4.01** Changes in Registrant's Certifying Accountants
- 4.02** Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review
- 5.01** Changes in Control of Registrant
- 5.02** Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers
- 5.03** Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year
- 5.04** Temporary Suspension of Trading Under Registrant's Employee Benefit Plans
- 5.05** Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics
- 5.06** Change in Shell Company Status
- 5.07** Submission of Matters to a Vote of Security Holders
- 5.08** Shareholder Director Nominations
- 6** Asset Backed Securities (Sub-Sections Omitted)
- 7.01** Regulation FD Disclosure
- 8.01** Other Events
- 9.01** Financial Statements and Exhibits

Disclaimer: These truncated checklists are for convenience only prior to consulting legal counsel, are not legal advice, do not create an attorney-client relationship and the reader should consult legal counsel about any information contained herein.

## ANNUAL MEETINGS

**Annual Meeting:** Should not occur more than 13 months after last annual meeting (Delaware).

**Record Date:** No less than 10 calendar days and no more than 60 calendar days prior to meeting (Delaware). NYSE requires 10 days notice.

### Deadlines for Stockholder Proposal Inclusion in Company Proxy Statement:

- 120 calendar days prior to anniversary of mailing date of last annual meeting proxy statement.
- If date has been changed more than 30 calendar days from prior year's meeting, then a "reasonable time" after public announcement of meeting date and before filing of proxy statement.
- To exclude proposal, request must be submitted to SEC at least 80 calendar days prior to filing of definitive materials.
- Notice of defects: Must be sent to stockholder within 14 calendar days of proposal and response from stockholder due within 14 calendar days after receiving notice of defect.
- Statement of opposition: Must be sent to stockholder no later than 30 calendar days before filing proxy, unless proposal must be revised by stockholder, in which case due 5 calendar days after receipt by the company of the revised proposal.

**Board and executive compensation and related disclosure:** If to be included in proxy statement, due no later than 120 calendar days after fiscal year end. Otherwise, must file Form 10-K/A with equivalent Part III information within such period.

**Preliminary Materials SEC Waiting Period:** 10 calendar days.

**Rule 14a-8 Stockholder Proposals:** Stockholder must have continuously held at least \$2,000 in market value or 1% of issuer's securities entitled to be voted on the proposal at the meeting for at least one year by the date the proposal is submitted and such shares must be continuously held through the date of the meeting.

### Proxy Advisory Firms

Glass Lewis: [www.glasslewis.com/guidelines](http://www.glasslewis.com/guidelines)

ISS: [www.issgovernance.com/policy-gateway/latest-policies](http://www.issgovernance.com/policy-gateway/latest-policies)

## DELAWARE VOTING STANDARDS

	Plurality	Majority of Votes Cast	Majority of Votes Present and Entitled to Vote	Majority of Outstanding Shares
For	√	√	√	√
Withhold	√			
Against		√	√	√
Abstain		Not Counted	Counted as 'Against'	Counted as 'Against'
Broker Non-Vote	Not Counted	Not Counted	Not Counted	Counted as 'Against'

Under Delaware law, Broker Non-Votes are not deemed as present and entitled to vote. However, Broker Non-Votes are counted towards a quorum so long as a "routine" matter (e.g. approval of independent public accounting firm) is on the ballot.

## LIST OF SELECTED BYLAWS / CHARTER PROVISIONS

- State of Incorporation
- Classified Board
- Stockholder Rights Plan (trigger %)
- Blank Check Preferred Stock
- Exclusive Venue Provision
- Liquidation Preference
- Director Election Standard (Majority/Plurality)
- Bylaws Requiring Derivatives Disclosure
- Director Removal for Cause Only
- Prohibition on Cumulative Voting
- Supermajority to Amend Charter
- Supermajority to Amend Bylaws
- Stockholders Ability to Call a Special Meeting
- Stockholders Ability to Act by Written Consent
- Advance Notice Bylaws Provision
- Board Nominees Through Stockholder Proposal
- Board Fills All Board Vacancies
- Freeze-out Provision/Control Share Statute
- Exclusive Forum for Litigation
- Proxy Access

## OFFERING INFORMATION

### EDGAR FILING FEE (as of 1 Oct 17):

\$124.50 per \$1,000,000 (prorated for amounts less than \$1,000,000): Multiply the aggregate offering amount by .0001245.

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## FINANCIAL STATEMENT STALENESS

[www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf](http://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf)

Category of Registrant	Quarterly statements required if calendar day gap since date of last filed financial statements exceeds:	Annual statements required if calendar day gap after last fiscal year end exceeds:
Large Accelerated Filer	129	60
Accelerated Filer	129	75
Non-accelerated Filer	134	90
Initial Filer or Loss Corporation or Delinquent Filer	134	45

## SUBSTANTIVE BASES FOR EXCLUSION OF STOCKHOLDER PROPOSALS

[www.sec.gov/interps/legal/cfs14.htm](http://www.sec.gov/interps/legal/cfs14.htm)

Rule	Shortened Basis for Exclusion
14a-8(i)(1)	Not proper for action under the laws of place of organization.
14a-8(i)(2)	Would cause violation of state, federal or foreign law.
14a-8(i)(3)	Contrary to SEC rules, including Rule 14a-9, which prohibits materially false or misleading statements
14a-8(i)(4)	Redress of a personal claim or grievance not shared by the other stockholders at large.
14a-8(i)(5)	Affects operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.
14a-8(i)(6)	The company would lack the power or authority to implement the proposal.
14a-8(i)(7)	Deals with a matter relating to the company's ordinary business operations.
14a-8(i)(8)	Relates to election of the company's board of directors (different rules).
14a-8(i)(9)	Conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.
14a-8(i)(10)	Company already substantially implemented the proposal.
14a-8(i)(11)	Duplicates another proposal to be included in the company's proxy materials for the same meeting.
14a-8(i)(12)	If rejected by stockholders previously, may be excluded if in the last 5 full calendar years the proposal was already considered: <ul style="list-style-type: none"> <li>• Once and received less than 3% of the vote;</li> <li>• Twice and on the last vote received less than 6% of the vote; or</li> <li>• More than twice and on the last vote received less than 10% of the vote.</li> </ul>
14a-8(i)(13)	The proposal relates to specific amounts of cash or stock dividends.