When Do Financial Statements Go Stale?

At the close of business on the following dates in 2024 (for issuers with a fiscal year ended December 31, 2023)

- **A “Loss Corporation”** does not expect to report positive income after taxes but before extraordinary items and the cumulative effect of a change in accounting principle for (a) the most recently ended fiscal year and (b) at least one of the two prior fiscal years.

- A **“Large Accelerated Filer”** has an aggregate market value held by non-affiliates of $700m or more as of the last business day of the most recent Q2. Once you are in, you have to fall below $560m to get out.

- An **“Accelerated Filer”** has an aggregate market value held by non-affiliates of $75m or more but less than $700m as of the last business day of the most recent Q2 (unless you were previously a Large Accelerated Filer, in which case the range is $60-560m). Once you are in, you have to fall below $60m to get out.

**DESKTOP STALENESS CALENDAR FOR 2024 OFFERINGS FOR ISSUERS WITH A FISCAL YEAR ENDED DECEMBER 31, 2023**

* Dates reflect a permitted extension to the next business day where dates would have otherwise occurred on a weekend or federal holiday.

- **Q3 financial statements of IPOs, Loss Corporations, and delinquent filers**
  - **Feb 14**
  - **Feb 29**
  - **Mar 15**
  - **Apr 1***
  - **May 8**
  - **May 13**
  - **Aug 7**
  - **Aug 12**
  - **Nov 6**
  - **Nov 12***

- **Q3 financial statements of Large Accelerated Filers** (same date 2023 10-K is due)
  - **Feb 14**
  - **Feb 29**
  - **Mar 15**
  - **Apr 1***
  - **May 8**
  - **May 13**
  - **Aug 7**
  - **Aug 12**
  - **Nov 6**
  - **Nov 12***

- **Q3 financial statements of all other filers** (same date 2023 10-K is due)
  - **Feb 14**
  - **Feb 29**
  - **Mar 15**
  - **Apr 1***
  - **May 8**
  - **May 13**
  - **Aug 7**
  - **Aug 12**
  - **Nov 6**
  - **Nov 12***

- **Year-end financial statements of Large Accelerated Filers and Accelerated Filers** (Q1 10-Q is due May 10)
  - **Jan 1**
  - **Feb 11**: After Dec 31, in-process audits affect the ability to obtain negative assurance for “change period” comfort on periods ending after Sep 30.
  - **Feb 11**: Comfort can be even more problematic after Feb 11 because PCAOB AS 6101 (paragraph 47) permits accountants to give traditional negative assurance only up to 134 days after the end of the most recent period for which the accountant has performed an audit or review, although “pass through” comfort (procedures and findings comfort under PCAOB AS 6101) may still be an option after Feb 11.
  - **SPECIAL ACCOMMODATION FOR TIMELY FILERS**: Staleness dates do not correspond exactly with the Form 10-Q filing deadlines because the 10-Q deadlines run from the end of the most recently ended quarter, whereas the staleness dates run from the end of the preceding quarter. However, the SEC Staff generally provides an accommodation for repeat issuers that have been timely filers for the past 12 months by allowing such issuers’ registration statements to become effective during the gap period between the staleness dates shown above and the nearest 10-Q filing deadline, absent unusual circumstances. As a result, for most repeat issuers, the effective staleness date is the same as the 10-Q filing deadline.

For more information, contact the Latham & Watkins attorney whom you normally consult.

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Financial Statement Requirements in US Securities Offerings: What You Need to Know
Financial Statement Requirements in US Securities Offerings: What Non-US Issuers Need to Know
The Latham & Watkins US IPO Guide

Additional references for navigating the US capital markets:

The American Lawyer again named Latham & Watkins to its prestigious A-List for 2023, marking the firm’s 21st consecutive year of recognition since the list’s inception in 2003. According to The American Lawyer, the annual A-List “aims to highlight those firms that are proving doing well for multiple stakeholders can lead to true success.”

Latham & Watkins resources for definitions and explanations in plain English:

Words of Wisdom Online Staleness Calculator
Book of Jargon®: US Corporate and Bank Finance

Public Company & Board Insights Page
Visit Latham’s go-to hub for public companies and boards, bringing together trending topics, SEC and global regulatory developments, desktop references, guides, articles, and more.