

## How Do the Accountants Fit Into “Materiality” Decision-Making?

In [this blog](#), I noted that documenting your decision is key. That the memo documenting the decision is sometimes called a "SAB 99" memo, based on the SEC accounting guidance in that Staff Accounting Bulletin. Think disclosure controls. So that begs the question? If a piece of SEC Staff accounting guidance is implicated, does that mean the accountants play a big role in the materiality decision? Well, the CFO and the controller normally weigh in, either for a Form 8-K as part of their membership on the disclosure committee – or as part of the normal drafting process for the 10-Qs and 10-Ks. But like the other members of the disclosure committee, they typically defer to the in-house securities lawyer to make the final judgment call. And in most cases, the independent auditor won't weigh in unless it's discussed as part of the normal vetting process for the 10-Qs and 10-Ks. Some companies have their independent auditors sit in on their disclosure committee meetings. If the materiality issue is vetted during one of those meeting, the auditors have a chance to weigh in. But most 8-K issues are quickly decided upon without a disclosure committee meeting – so the auditor isn't asked. When the decision to not disclose is reported out later at a regular disclosure committee meeting, then the auditor can question why an 8-K wasn't filed. At that point, they would be evaluating the materiality issue as part of their internal control assessment – and perhaps in extreme cases, whether the failure to disclose constitutes a "material weakness." So it's a bit odd that the auditor isn't initially consulted – but then is offered the opportunity to second-guess your decision and hit that big red button that blares out "material weakness." That's a huge consequence that can rock your company's stock price. Of course, the odds are that if consulted, your auditor wouldn't have much to say (akin to your law firm's reluctance to get too involved). Auditors aren't close to all the facts. Why take the unnecessary risk? I've checked with my experienced in-house counsel friends and they can recall only a few instances where the auditor was consulted on a materiality issue. You can bet your bottom dollar that the auditors were hesitant to make the actual determination every time. As could be expected, they were more focused on the controls process than on the materiality decision itself.

### Explore more in

[Corporate Law](#)

Blog series

## Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

[View the blog](#)