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Auditors: What to Disclose When You Break Up



Recently, I [blogged](#) about what to do when you disagree with your auditor. Now I cover what to do when you break up. There are many reasons a company may find itself disengaging with its external auditor. For example, (1) the parties could face an irreconcilable disagreement, requiring the auditor to resign; (2) the auditor may decide not to seek appointment for the next year; (3) a company may fire the auditor (for a myriad of reasons); or (4) the company could simply be changing auditors to preserve the appearance of an independent auditor. Regardless of the reason, a change in auditors triggers certain disclosures.

When an auditor is fired, resigns, or declines to stand for re-appointment, the company must file an Item 4.01 Form 8-K within four business days and disclose the information required by Item 304 of Regulation S-K. Generally, Item 304 of Reg S-K requires disclosures regarding whether:

1. The auditor was fired, resigned or declined to stand for re-appointment and the date thereof;
2. During the past two fiscal years, the auditor's financial statement reports contained an adverse or disclaimer of opinion, qualification or modification (and description, if applicable);
3. The decision to change accountants was recommended or approved by the audit committee or the board of the directors; and
4. During the past two fiscal years, there were disagreements with the auditor, which if not resolved to the auditor's satisfaction, would have been included in the audit report.

The company must also:

1. Provide the former auditor with a copy of the above discussed disclosures no later than the day they are filed with the SEC;
2. Request the former auditor to provide a letter addressed to the SEC indicating whether the auditor agrees with the characterization of the disengagement; and

3. File the auditor's letter with the SEC (1) as an exhibit to the Form 8-K; or (2) as an amendment to such filing no later than 10 business days thereafter and within 2 days of receipt of the letter.

Additionally, there are a slew of other required disclosures under Item 304 of Reg S-K which address issues such as the (1) lack of internal controls over financial reporting; (2) inability of auditors to rely on management's representations or associate with financial statements prepared by the company; (3) significant expansion of the scope of past audits; and (iv) new information that materially affects the fairness or reliability of previously issued audit reports (which issue hasn't been resolved). The SEC has a helpful set of [Compliance and Disclosure Interpretations](#) regarding the various disclosures required under Item 304 of Reg S-K.

Importantly, the disengagement of one auditor is a separate reportable event from the engagement of a new auditor. Thus, whenever the company hires a new auditor, a second Item 4.01 Form 8-K is required.

In addition to disclosing the change of auditor on Form 8-K, disclosure may be required in the company's Form 10-K and proxy statement. Disclosure is required under Item 9 of Form 10-K when a change in auditor was previously reported on Form 8-K and involved "disagreements or reportable events" that continue to affect the company's financial statements and the company's new auditor disagrees with the prior auditor's assessment. Thus, if there was no disagreement with the prior auditor, no Form 10-K disclosure is required. Regardless of the nature of the change in auditors, this change must be reported in the company's next two annual proxy statements.

Keep in mind that exchanges such as NYSE and Nasdaq also require advance notice of any public disclosure (e.g., the Item 4.01 Form 8-K filing) regarding an auditor change. Thanks to Alea Chatman for her assistance with this one!

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