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cutting through complexity

LATHAM & WATKINS LLP

DESKTOP STALENESS CALENDAR FOR 2012 OFFERINGS

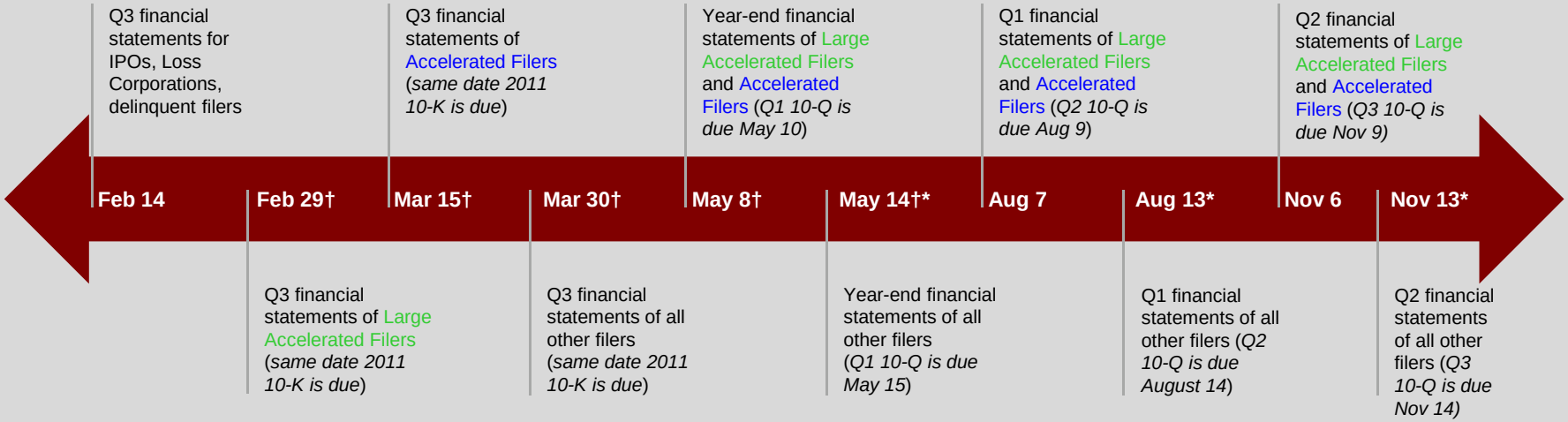
FOR ISSUERS WITH A FISCAL YEAR ENDED DECEMBER 31, 2011

Jan 1 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 SAS 72 (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 SAS 72) may still be an option after Feb 11

When do financial statements go stale?

At the close of business on the following dates in 2012 (for issuers with a fiscal year ended December 31, 2011)



* Dates reflect a permitted extension to the next business day where staleness dates (May 13, Aug 12, and Nov 11) would have otherwise occurred on a weekend or federal holiday

† Dates reflect the effects of the 2012 leap year

- 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 $500m to get out
- An "**Accelerated Filer**" has an aggregate market value held by non-affiliates of $75-700m 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 $50-500m). Once you are in, you have to fall below $50m to get out

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

The information contained herein shall not be construed as legal advice. Should further analysis or explanation of the subject matter be required, contact the Latham & Watkins attorney whom you normally consult.

For more detailed information on SEC requirements for financial statements, see our related publications at

- "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"

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