

## PUBLIC COMPANY ADVISORY

### SEC Interpretations on Circumstances that Require a Filing of Form 8-K

#### Our SEC Team

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#### Dear clients and friends:

The Securities and Exchange Commission on January 15 issued an [update to a series of interpretations](#) for public companies to determine when they should file a Form 8-K. In the updated interpretations the SEC answered several Frequently Asked Questions about circumstances under which issuance of earnings releases require filing of a [Form 8-K](#).

#### Clarifications include:

- Issuance of an 8-K is required when a company issues a press release announcing results of operations for a just-completed fiscal quarter, including expected adjusted earnings (a non-GAAP financial measure). The SEC indicated this was because that type of press release contains material, non-public information regarding results of operations for a completed fiscal period.
- Issuance of an 8-K is not required when a company files its quarterly earnings release as an exhibit to Form 10-Q on a morning and that afternoon holds a conference call, provided that it meets all of the other conditions of Item 2.02(b)—specified on page 7 of the Form 8-K instructions.
- Issuance of a Form 8-K is not required when a company presents earnings information orally or by phone, webcast or broadcast provided that required information appears on the company's Web site at the time the presentation is made. Information disclosed unexpectedly during such presentations must be posted promptly on the company's Web site.

If you would like additional information on SEC requirements for circumstances when a Form 8-K must be filed, do not hesitate to contact us at (305) 373-5500.

Sincerely,



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