

SEC STAFF RELEASES NEW INTERPRETIVE GUIDANCE ON CYBERSECURITY INCIDENT DISCLOSURE

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SUMMARY

Effective December 18, 2023, SEC registrants (“registrants”) other than smaller reporting companies¹ are required to disclose material cybersecurity incidents on Form 8-K within four business days from the date they determine the incident is material.

The SEC staff released Compliance and Disclosure Interpretations (C&DIs) on the due date to disclose material cybersecurity incidents when registrants request to delay disclosure in the interest of national security or public safety. Additionally, the C&DIs clarify that registrants may consult with the Department of Justice (DOJ) or other national security agencies regarding their cybersecurity incidents, including before their materiality assessments are completed.

MATERIAL CYBERSECURITY INCIDENTS GUIDANCE

Item 1.05(c) of Form 8-K permits registrants to delay disclosing a material cybersecurity incident when the U.S. Attorney General (“Attorney General”) notifies the SEC in writing that such disclosure poses a substantial risk to national security or public safety.

The SEC staff issued the following guidance on the deadline to disclose material cybersecurity incidents when registrants request a delay:²

SCENARIO	FORM 8-K FILING DUE DATE
The Attorney General does not respond to the registrant’s request or declines to make a determination (104B.01)	Within four business days from the date the registrant determined the cybersecurity incident is material
The Attorney General notifies the SEC in writing that such disclosure poses a substantial risk to national security or public safety, and: <ul style="list-style-type: none">▶ The registrant requests an additional delay but the Attorney General does not respond to the request or declines to make a determination (104B.02).▶ During the delay period, the Attorney General notifies the registrant and SEC that disclosure no longer poses a substantial risk to national security or public safety (104B.03).	Within four business days from the date: <ul style="list-style-type: none">▶ The delay period ends▶ The Attorney General notifies the registrant and SEC

¹ Smaller reporting companies have until June 15, 2024, to comply with the new disclosure requirement.

² The DOJ released [guidance](#) that registrants should follow to obtain a delay, which includes information about the Attorney General’s process to determine whether a delay is appropriate

The C&DIs also clarify that consulting with the DOJ regarding the availability of a delay does not indicate that the registrant has concluded the incident is material ([104B.04](#)).

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Link to BDO Bulletin: [The SEC's New Cybersecurity Disclosure Rules are Here](#)

Link to [C&DIs](#)

Link to Statement by Erik Gerding, Director of the Division of Corporation Finance: [Cybersecurity Disclosure](#)³

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³ This speech offers helpful background information on the SEC's new cybersecurity disclosure rules.