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2016 Deloitte Alternative Energy Seminar

Setting new sights

November 14-16, 2016

Deloitte Center *for*
Energy Solutions



SEC reporting
considerations

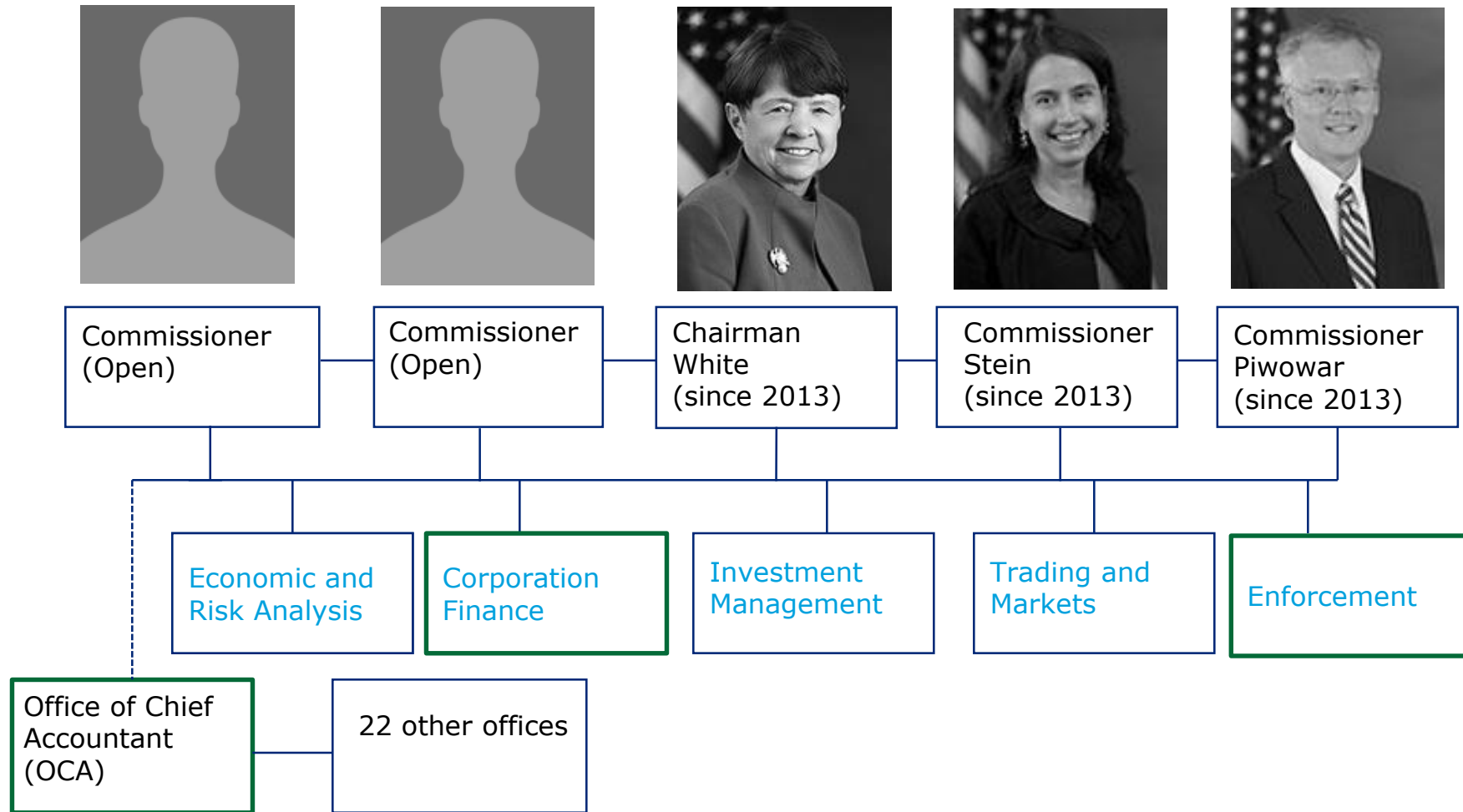
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SEC environment and rulemaking

SEC organizational structure



*Lisa Fairfax and Hester Peirce nominated for open seats by President Obama, subject to Senate confirmation

SEC environment and rulemaking

Significant legislation

Significant legislation impacting SEC filings include:

- Dodd-Frank Act
 - Pay versus performance
 - Enhance compensation disclosures and clawbacks
 - Whistleblower program
- JOBS Act
 - Specific eligibility guidelines
 - Reduced disclosure requirements
 - Confidential submission process
- FAST Act
 - Shortens roadshow period
 - Allows for omission of financial information if an EGC reasonably believes that such information will not be required to be included at the time of the contemplated offering
 - Broadens EGC eligibility



Notable areas of focus for SEC rulemaking activities:

- Disclosure effectiveness
- Non-GAAP measures - Updated compliance & disclosure interpretations (C&DIs)

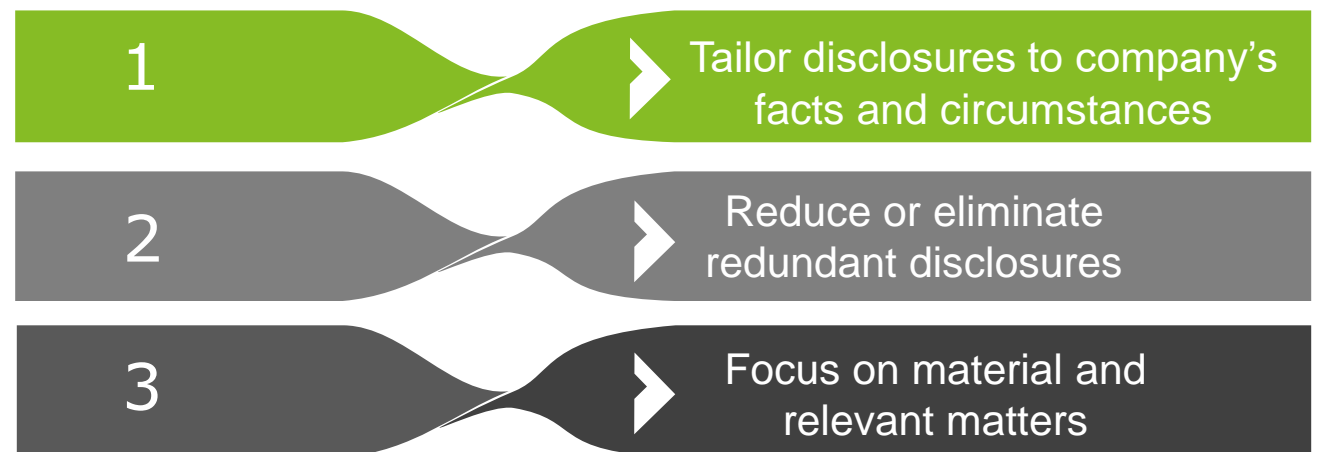
Disclosure effectiveness

What is it?

- Providing better information to investors – more understandable, more useful and eliminating excessive disclosure
- Could result in additional disclosures

What has the SEC staff done lately?

- Request for comment on financial disclosures about entities other than the registrant – September 2015
- S-K concept release – comments closed July 21, 2016
- Disclosure Update and Simplification proposed rule – issued July 13, 2016



Disclosure effectiveness (cont.)

Regulation S-K concept release

Background on Regulation S-K and the Release

What's in?

- The overall disclosure framework
- Disclosures for investment and voting decisions –
Specific business and financial disclosure requirements in Regulation S-K

-
- | | |
|--|--|
| • Core company business information | • Public policy and sustainability matters |
| • Company performance, financial information, and future prospects | • Exhibits |
| • Risk and risk management | • Scaled requirements |
| • Securities of the registrant | • Frequency of interim reporting |
| • Industry guides | • Presentation and delivery |

Disclosure effectiveness (cont.)

Regulation S-K concept release

What's out?

Public-company disclosure issues that are not a focus of the release

-
- Proxy info – Compensation and governance information
 - Non-GAAP measures
 - Inline XBRL
 - Modernization of the EDGAR system
 - Disclosures required for foreign private issuers
 - Business development companies
-

These topics may be considered in future stages of the SEC's disclosure effectiveness project

SEC is encouraging comments on any disclosure topic



Disclosure effectiveness (cont.)

Disclosure update and simplification proposed rule

Type of Requirement and Goal

Redundant or duplicative requirements	Eliminate requirements that result in disclosure of substantially the same information as that required under other Commission rules, U.S. GAAP, or IFRSs. Example Debt obligation
Overlapping requirements	<p>Eliminate requirements that convey reasonably similar information, or information that is not materially incremental to that required under other SEC requirements, U.S. GAAP, or IFRSs and that may no longer be useful to investors. Example segments</p> <p>Integrate certain disclosure requirements with other related Commission disclosure requirements. Example dividend restrictions</p> <p>Modify or eliminate overlapping disclosures or refer them to the FASB for potential incorporation into U.S. GAAP. Example income taxes</p>
Outdated requirements	Amend requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. Example Market price disclosures
Superseded requirements	Amend requirements that are inconsistent with new accounting, auditing, disclosure requirements, and more recently updated Commission disclosure requirements. Example extraordinary item.

Non-GAAP measures

Considerations

- Cannot be misleading
 - Nature of adjustments (elimination of normal recurring operating expenses, “cherry picking”, non-GAAP revenue)
 - Liquidity per share amounts
- Not more prominent than GAAP measure
- Appropriately defined, described, labeled and reconciled
- Substantive disclosure about why useful and purpose
- Income tax effects of adjustments
- Consistency between periods and comparable to peers
- Disclosure controls and procedures
- Audit Committee oversight



Roadmap to Non-GAAP financial measures



- Devoted to non-GAAPs
- Assess appropriateness of non-GAAP measures
- Combines SEC guidance with interpretations and examples
- Appendixes also includes
 - Questions to ask when disclosing non-GAAPs
 - Highlights and remarks from recent SEC officials
 - Example comments on non-GAAPs

SEC comment letter trends and hot topics

Overview of the SEC filing review process

Filing reviews



About 9,000 registrants

Focus on 2,500 registrants that comprise 98% of market cap

All issuers reviewed at least 1 out of every 3 years

Percentage of issuers reviewed:

FY 10	FY 11	FY 12	FY 13	FY14	FY15
44%	48%	48%	52%	52%	51%

Staff is listening to analyst/earnings calls, reviewing press releases, Web sites, social media, and issuing comments








Comments are posted to EDGAR 20 days after completion of review

SEC comment letter trends

Insights into areas the SEC staff has focused on in recent comment letters including:

- Financial statement accounting and disclosure topics
- SEC disclosure topics
- Disclosure topics in initial public offerings
- Industry-specific topics
 - Consumer & Industrial Products
 - Energy & Resources
 - Financial Services
 - Health Sciences
 - Technology & Telecommunications

SEC comment letter trends: overall summary

Topic	12 Months- 12/31/15		12 Months- 12/31/14		
	Rank	Frequency*	Rank	Frequency*	
MD&A:					
• Results of operations		24%		24%	
• Liquidity issues	1	11%	1	13%	
• Critical accounting policies, estimates		8%		11%	
Fair value measurement, estimates					
		2	22%	2	23%
Non-GAAP measures		3	16%	5	13%
					
Revenue recognition		4	14%	3	16%
					
Income taxes		5	11%	7	12%
					
Segment reporting		6	11%	9	11%
					
Signatures, exhibits, agreements		7	11%	4	15%
Intangible assets and goodwill		8	10%	8	11%
Acquisitions, mergers, business combinations		9	9%	6	12%
					
Commitments, contingencies, and litigation		10	8%	11	10%
					

* Percentage of all 10-Ks and 10-Q comment letter-yielding reviews that included at least one comment on the respective topic.

Source: Derived from data provided by Audit Analytics.

SEC comment letter trends

Areas of focus

Non-GAAP Measures

- Transparency & Consistency
- Can't be used in misleading way
- Recent press and SEC focus

Metrics

- Clearly define metrics and explain how calculated
- Explain how used by management and why important to investors
- Describe how a metric is related to current or future results of operations



SEC comment letter trends

Areas of focus

Revenue recognition

- Accounting for PPA's
- Renewable energy credit accounting and disclosure
- SAB 74 disclosures on new revenue ASU

Income taxes

- Valuation allowance
- Rate reconciliation
 - Appropriate breakout (and descriptions of) adjustments
- Impact of foreign operations
- Repatriation of foreign cash



SEC comment letter trends

Areas of focus

Segments

- SEC staff's focus is evolving:
 - Chief Operating Decision Maker (CODM) package- no longer determinative
 - Staff will consider total mix of information
- Aggregation of operating segments still a focus - consider both quantitative and qualitative factors
- Consider whether CODM is someone other than CEO
- Both SEC and PCAOB are focusing on segments



SEC comment letter trends

Areas of focus

Business combinations

- Purchase price allocation
- Determination of fair values and key assumptions

Goodwill and intangibles impairment

- Valuation assumptions and sensitivity (FRM 9510)
- Specific events that caused the impairment – “why now”
- Early warning disclosures



SEC comment letter trends

Areas of focus

Tax equity transactions

- Clearly explain the nature and significant terms of the arrangement
- Accounting for changes in ownership during the period
- Method for allocation of gains and losses to the tax equity investor
- Basis for consolidation conclusions
- Attribution of tax effects to tax equity investors



SEC comment letter trends

Areas of focus

Immaterial restatements and ICFR

- Material weaknesses typically identified in conjunction with a material restatement or audit adjustment
- Impact of immaterial restatements on ICFR
 - The “could” factor
 - Not limited to the size of the error identified
 - Level of deficiency should be based on potential error
 - Must disclose material changes in ICFR
- Significant focus of SEC and PCAOB



Other SEC reporting matters

Basic regulation S-X rules related to acquisitions and equity method investments

The SEC rules provide significance thresholds for determining whether an SEC registrant is required to provide full separate financial statements relating to either a newly acquired consolidated subsidiary or to provide summarized financial information or full separate financial statements relating to an unconsolidated subsidiary or equity method investee. The relevant rules are as follows:

- Acquisitions of businesses - Rule 3-05 of regulation S-X
- Equity method investments
 - Rule 3-09 of regulation S-X
 - Rule 4-08(g) of regulation S-X
 - Rule 10-01(b)(1) of regulation S-X

General requirements – S-X 3-05

Under S-X 3-05

- When an SEC registrant (acquirer) consummates or it is probable that it will consummate a significant business acquisition, Rule 3-05 may require the filing of certain financial statements for the acquired or to be acquired business (acquiree).
- The significance tests are based on S-X 1-02(w)
- For any acquired entity that is deemed significant, the registrant is required to provide audited annual financial statements

General requirements – S-X 3-09

Under S-X 3-09

- A registrant is required to determine whether an equity method investee is significant based on certain tests that are performed as of the registrant's year end ("significance tests")
- The significance tests are based on S-X 1-02(w) with certain modifications
- For any equity method investee that is deemed significant, the registrant is required to provide audited annual financial statements

General requirements – S-X 4-08(g)

Under S-X 4-08(g)

- A registrant is required to determine whether an equity method investee is significant based on certain tests that are performed as of the registrant's year end ("significance tests")
- The significance tests are also based on S-X 1-02(w) but are applied differently than under S-X 3-09
- The registrant is required to include summarized financial information of the equity method investee(s) in the notes to its financial statements if the significance tests are met

General requirements – S-X 10-01(b)(1)

Under S-X 10-01(b)(1)

- A registrant is required to determine whether an equity method investee is significant based on certain tests that are performed as of the registrant's interim period end ("significance tests")
- The significance tests are based on S-X 1-02(w) with certain modifications
- For any equity method investee that is deemed significant, the registrant is required to include summarized income statement information in the notes to its interim financial statements

Comparison/interaction of rules

	S-X 3-09	S-X 4-08(g)	S-X 10-01(b)(1)
Applicable to:	Annual reporting	Annual reporting	Interim reporting
Individual equity method investees	Yes	Yes	Yes
All equity method investees in the aggregate	No	Yes	No
Significance threshold	> 20%	> 10%	>20%

Comparison/interaction of rules

	S-X 3-09	S-X 4-08(g)	S-X 10-01(b)(1)
Income test applicable	Yes	Yes	Yes
Investment test applicable	Yes	Yes	Yes
Asset test applicable	No	Yes	No
Separate financial statements required	Yes	No	No
Summarized financial information required	No	Yes	Yes – income statement information only

Common questions & issues

1. Periods to be presented and audit requirements
2. Requirements in year of acquisition or disposition, or change in accounting for the investment
3. Determining when reassessment of significance is required (excluding 3-05)
4. Computations in the significance test
5. Due dates for financial statements required

Cybersecurity

Cybersecurity – the landscape

With the global increase in the frequency and severity of cyber attacks and breaches, cybersecurity continues to be a focal point for the Securities and Exchange Commission (SEC) staff. While the SEC has provided a framework for registrants to consider in evaluating whether to disclose information about risks and incidents involving cybersecurity, there is no clear “standard” by which to measure cybersecurity compliance

The SEC views on the importance of cybersecurity can be seen in the May 2016 communication:

“...as I have said before, it is one of the greatest risks facing the financial services industry. Cyber risks can produce far-reaching impacts, and robust and responsible safeguards for funds and for their investors must be maintained...”

- *SEC Chair Mary Jo White*

Similar sentiment has continued to build with other regulators and stakeholders regarding cybersecurity and the need for transparency.

Cyber security hot topics – SEC enforcement actions



The screenshot shows the U.S. Securities and Exchange Commission (SEC) website. At the top left is the SEC logo. To its right is the text "U.S. SECURITIES AND EXCHANGE COMMISSION". Further right is a search bar with the word "Search" and a "COMPANY FILINGS" link. Below this is a dark blue navigation bar with white text for "ABOUT", "DIVISIONS", "ENFORCEMENT", "REGULATION", "EDUCATION", "FILINGS", and "NEWS". On the left side, there is a vertical menu with the following items: "Newsroom", "Press Releases" (highlighted in dark blue), "Public Statements", "Speeches", "Testimony", "Spotlight Topics", "Media Kit", "Press Contacts", and "Events". The main content area is titled "Press Release" and features a large headline: "SEC Charges Investment Adviser With Failing to Adopt Proper Cybersecurity Policies and Procedures Prior To Breach". Below the headline, it says "FOR IMMEDIATE RELEASE" and "2015-2012". The text of the press release begins: "Washington D.C., Sept. 22, 2015 — The Securities and Exchange Commission today announced that a St. Louis-based investment adviser has agreed to settle charges that it failed to establish the required cybersecurity policies and procedures in advance of a breach that compromised the personally identifiable information (PII) of approximately 100,000 individuals, including thousands of the firm's clients."

“[R.T Jones] failed to establish the required cybersecurity policies and procedures in advance of a breach that compromised the personally identifiable information (PII) of approximately 100,000 individuals, including thousands of the firm’s clients.”

Cyber security hot topics – SEC enforcement actions

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MARKETS

Morgan Stanley Fined \$1 Million for Client Data Breach

SEC bars Galen Marsh from working in securities industry for at least five years



Morgan Stanley on Wednesday said no fraud had been reported involving client accounts as a result of a data breach by a former employee. The firm neither admitted nor denied findings by the Securities and Exchange Commission in the case. PHOTO: BLOOMBERG NEWS

By **ARUNA VISWANATHA**
June 8, 2016 3:49 p.m. ET

3 COMMENTS

Morgan Stanley agreed to pay a \$1 million penalty to resolve charges that it didn't properly protect customer records after a former employee took data from about 730,000 customer accounts, the Securities and Exchange Commission said Wednesday.

Recommended Videos

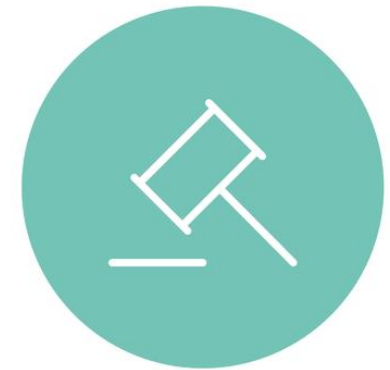
1. WSJ's Moonshine Taste Test
2. How the Orlando Shootings Unfolded

“[Morgan Stanley] failed to conduct any auditing or testing of the authorization modules for the Portals [to databases] at any point since their creation at least 10 years ago,” the SEC states in the enforcement action. “Such auditing or testing would likely have revealed the deficiencies in these modules.”

Cyber security hot topics – Proposed legislation

Proposed Legislation

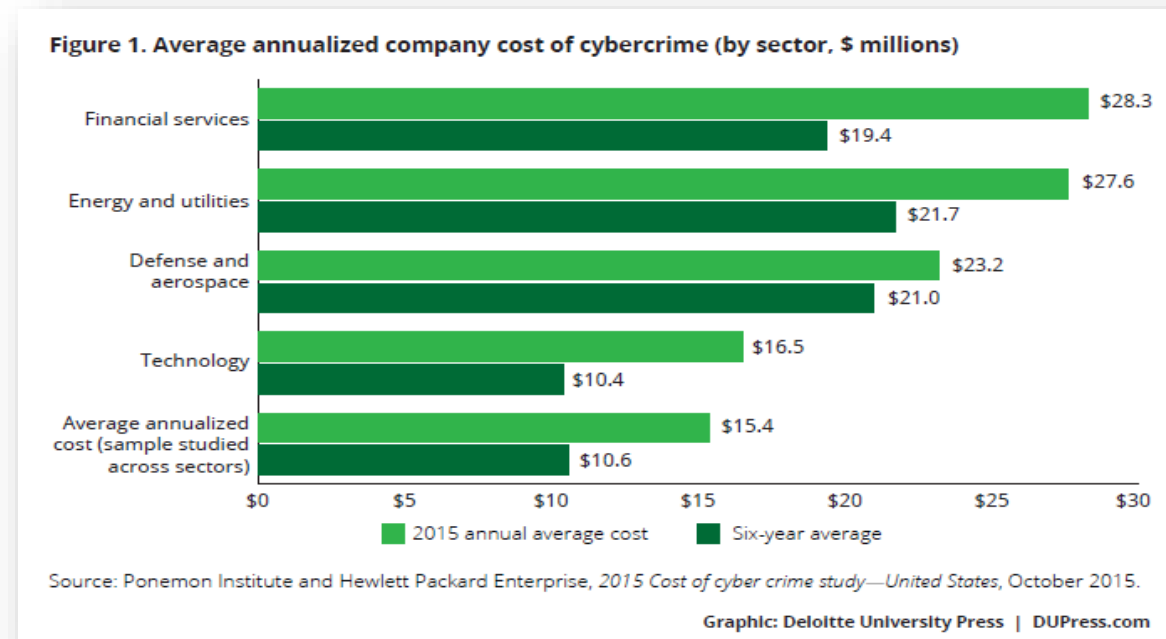
- Variety of proposed legislation related to cybersecurity reporting and disclosures: McDermott bill introduced by Rep. Jim McDermott (D-Wash) and the Cybersecurity Systems and Risks Reporting Act ([H.R. 5069](#)) [co-sponsored](#).
- Bills vary on the specific requirements, but if either bill is enacted, it would add cybersecurity to the list of disclosures required by reporting companies.



Growing need for greater stakeholder transparency and assurance

As a result of recent activity, news, and focus on cyber risk, organizations are now receiving more questions and allocating significant resources to respond to requests related to the effectiveness of their cyber risk management programs from both internal and external stakeholders. Examples of recent events include the following:

- The growing number of cyber-related attacks and breaches (e.g., recent bank breaches)
- The average cost of cybercrime incurred by companies across major industries continues to grow (refer to the graphic below)
- A variety of proposed legislation in recent months related to cyber reporting and disclosures
- New attestation guidance being developed by the American Institute of Certified Public Accountants (AICPA), specifically focused on reporting on an entity's cyber risk management program



Proposed AICPA cybersecurity examination engagement

Currently, there is no single approach for performing and reporting on an entity's cyber risk management program and related controls designed to meet the needs of a broad range of users (i.e., boards, existing and prospective clients, regulators, investors, analysts).

In response to this need, the AICPA is currently formulating a **cybersecurity examination engagement** intended to expand cyber risk reporting to address the marketplace need for greater stakeholder transparency by providing a broad range of users with information about an entity's cyber risk management program that would be useful in making informed decisions. This proposed reporting mechanism would consist of the following:

- A **description of the entity's cyber risk management program**
- An **assessment of the effectiveness of the controls** that are part of that program



Improved cyber risk reporting providing:

- Flexibility in the control criteria used
- Appropriate for general use
- Applicable to all entities (i.e., not limited to only service organizations)

Some of the benefits organizations can realize from the proposed AICPA Cybersecurity Examination engagement

- **Greater transparency** around the effectiveness of the entity's cyber risk management program
- **Independent and objective reporting** providing **the highest level of assurance** to report users (i.e., an independent third-party audit firm expressing an opinion on the effectiveness of an entity's cyber risk management program and related controls)
- **Greater economic value for report users** of the report by obtaining information about an entity's cyber risk management program that would be **useful in making informed and strategic decisions**
- **A strategic competitive advantage** and enhancement of the entity's **brand and reputation** in the marketplace
- **Operational efficiencies** through the utilization of **a single reporting mechanism** that addresses the information needs of a broad range of users
- **A comprehensive set of criteria** covering COSO internal controls as well as commonly used cyber frameworks (e.g., NIST, ISO 27001, AICPA's Trust Services Criteria)

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