An SEC mystery: What's the deal with voluntary filers?

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Companies tend not to clamor for more regulatory oversight, as a general rule. One remarkable exception would be the relatively small group of companies that voluntarily file with the Securities and Exchange

Commission (SEC). Although not required to file due to their small size or private ownership, these companies do so willingly, at considerable time and expense.

About 1,600 companies have made this choice since 2006, when the SEC introduced mandatory disclosure of voluntary-filer status.

Bret Johnson, associate professor of accounting at the Donald G. Costello College of Business at George Mason University, explains, "Voluntary filing seems to be a very transitory status. Generally, we see companies that are preparing to become a mandatory filer, or that are delisted temporarily but are hoping to get back into the public markets again."

Johnson's paper, in *Accounting Horizons* (where he also serves as an editorial review board member), looks at how the SEC handles the added responsibility of reviewing voluntary filings. Given limited resources, the SEC's mandate to prevent investor harm could theoretically result in the agency overlooking volunteers, because they are less economically impactful on the whole. (The paper was co-authored by Richard A. Cazier of the University of North Texas.)

With a focus on voluntary filers between 2006 and 2021, the paper dives into the SEC's monitoring process and explores the reasons behind companies' voluntary SEC filing decision. The evidence suggests a lower likelihood of SEC review for voluntary filers, on average. However, financial statements and related disclosures are reviewed just as frequently for voluntary filers as for mandatory filers, and if a comment letter is ultimately issued, the resolution process is similarly rigorous for both groups.

Johnson states that, "The voluntary SEC filers are less likely to get a comment letter overall, which implies a lower level of scrutiny. But when we split on different types of scrutiny, we did not find a significantly different level of scrutiny for the voluntary filers within that category."

When it came to comment letters specifically related to Regulation S-X issues—in other words, the audited portion of the filings, including financial statements and associated disclosures—there was no notable difference in frequency between voluntary and mandated filers. Therefore, in Johnson's view the SEC's approach to voluntary filers is "very tailored or customized to focus on what are arguably the most important parts of those filings".

Despite this targeted oversight, voluntary filers had roughly the same level of subsequent restatement risk as the mandated cohort. This suggests that for voluntary filers, less comprehensive oversight did not equate to lower reporting quality.

The researchers also hypothesized that voluntary filers were motivated by a desire to boost investor confidence by "bonding" to a stronger regulator. Their hunch was confirmed by the finding that companies with a weaker native regulatory environment, such as those headquartered in foreign countries with less investor protections or U.S. states with looser merit review, were more likely to be voluntary filers than an otherwise comparable subset of companies.

In addition to bonding, Johnson speculates that voluntary filers may benefit from SEC guidance, as they prepare to assume or reassume mandated-filer status. He says many of them tend to be "messy filers," meaning that, "they have a lot of potential problems, a lot of issues with their accounting, their disclosure, they don't have sophisticated internal processes because they're small on average."

These smaller companies rely on the SEC staff when they have these issues. Johnson states that they sometimes have to "hold their hand" since "the disclosure requirements are complex, there's a lot of SEC specific regulations that don't apply to other private companies so it's a learning curve to a lot of these smaller companies."

From the SEC's point of view, applying strategic scrutiny to voluntary filers helps fulfill the agency's societal mandate. As Johnson says, "The SEC feels compelled to dedicate some resources to the oversight of voluntary filers even if the number of investors is smaller on average compared to a mandatory filer."

"The SEC cares about the little people just as they do the big, more sophisticated, institutional investors that can take care of themselves."

More information: Richard A. Cazier et al, Regulatory Oversight of Voluntary SEC Filers, *Accounting Horizons* (2024). DOI: 10.2308/HORIZONS-2023-124

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