

Sunshine Inc.

The basics of covering business organizations



As recent history shows us, few stories are more important to the every day lives of Americans than those that deal with life-and-death struggles of the business community. For those reporters who have made a career of business news coverage, this guide describes the tip of the iceberg of knowledge. But for those just beginning, or reporters who cover business only occasionally, this guide to business records and proceedings hopefully will serve as a basic “how-to” guide that helps you get started.

Companies are affected and regulated by local, state and federal laws. A city may license and tax a business — for example, by requiring a liquor store to have a liquor license. State laws usually regulate who the store can sell to, the alcohol content of beer and its ownership structure. Federal laws can also come into play — a brewing company may be publicly traded and subject to Securities and Exchange Commission regulations.

“Any company of any significant size has almost an unlimited number of contacts with the government in one form or another,” says *Wall Street Journal* reporter Ben Casselman, who covers the energy industry. Those contacts will lead to hundreds of government records that are generally accessible to the public.

Weeding through filings and documents from government sources can be tedious, but it also can be productive for a diligent business reporter.

This guide should help you navigate the complex world of business reporting. It contains basic information about how companies are structured and regulated. Throughout the guide, you will find tips from veteran business reporters as well as descriptions of public records that they rely on.

As always, the Reporters Committee for Freedom of the Press is standing by to help.



Birth of a Company: Types of businesses

The way a business is set up affects how it works and determines whether it must file records with the government. A company's initial filings can reveal important biographical details about a company — who created it, when and for what purpose. They're akin to birth certificates for people.

Sole proprietorship

A sole proprietorship is a business owned and run by a single person. The owner is personally responsible for all of the company's debts and losses. Typically, no paperwork must be filed with a state to begin operating as a sole proprietorship. But some might require licenses, depending on the type of work performed. A small store might fall into this category.

General partnership

A general partnership is a business with more than one owner that has not filed with a state to receive a status as a corporation, LLC or LLP. This arrangement leaves all partners equally liable for debts or court judgments against the business. Similar to a sole proprietorship, a general partnership is not usually required to register its creation with a state. All forms of partnerships are entitled to tax benefits that corporations don't have, because a partnership's income is only taxed as the income of the individual partners.

Medical practices and small law firms are common examples of general partnerships.

Limited partnership

A limited partnership involves two types of partners: general and limited. General partners manage the company and are responsible for its debts. Limited partners are liable only up to the amount they have invested in the partnership. The partnership is usually required to file a certificate of formation with a state's secretary of state. Limited partnerships are often used for short-term projects such as filmmaking and real estate developments.

Limited liability partnership (LLP)

In a limited liability partnership, each partner shares the organization's management responsibilities but is shielded from liability arising from another partner's wrongdoing or negligence. Because of this protection, this is a popular organizational form for professionals in law and accounting firms.

Not all states allow the formation of LLPs, and some states limit



the types of business that can be LLPs. An LLP is required to file organization forms, including a certificate of limited liability partnership, with the state.

Limited liability company (LLC)

The members of a limited liability company are not personally responsible for the company's debts. LLCs also offer flexibility for taxation and reporting purposes. They are taxed like a partnership and don't have to follow the same corporate governance rules as do major corporations.

In order to be legally recognized, LLCs are required to file documents with a state similar to articles of incorporation. For example, Delaware LLCs are required to file a certificate of formation with the secretary of state. LLCs are used by businesses in a wide range of industries.

Corporations

A corporation exists separately from the individuals who formed it. This structure, which most major companies use, allows shareholders to limit potential losses because they will not be liable for any of the corporation's debts beyond what they have invested. For most legal purposes, a corporation is treated like an individual person. For example, you can file a lawsuit against a corporation.

A publicly traded corporation has shareholders. The corporation's "shares" are traded on stock exchanges, such as the New York Stock Exchange or the NASDAQ. A publicly traded corporation is subject to the reporting requirements of the Securities and Exchange Commission. A wealth of public information is available regarding publicly traded corporations.

A privately held corporation does not have publicly traded shares. Rather, its shares are frequently owned by the company's founders and their families. A privately held corporation is not required to give information to the SEC.

Sunshine Inc.: The Basics of Covering Business Organizations

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Understanding corporate structures

A corporation's board of directors (LLCs will have a similar board) oversees the corporation. The board is initially designated by the person or people who set up the corporation. Board members then must be elected by shareholders. More information about a board, including the election process and terms, can be found in the corporation's publicly accessible SEC filings.

A corporation's officers run a company's operations and report to the board of directors. Their titles typically include chief executive officer, chief financial officer and chief operating officer. It is common for officers to serve on the board of directors.

Shareholders own a portion of the corporation. States typically require corporations to hold annual shareholder meetings including elections for the board of directors. These meetings can last several days and can be quite elaborate, in the case of large corporations like Wal-Mart, or can be short and simple for smaller companies. In most situations, only shareholders may attend the meetings. But even one share in a corporation will give a shareholder the right to be there. Special meetings might be required to obtain shareholder approval for a re-organization, amendments to the articles of incorporation or the sale of assets.

Articles of incorporation

Articles of incorporation, or any incorporating documents, are public documents that provide basic information about the birth and structure of a corporation. The filing of this document, generally with the secretary of state, brings a corporation into existence.

Chartering authority

The laws governing the formation of a corporation are found in state statutes. This includes the requirements for becoming a corporation, the information that must be included in the articles of incorporation and where the papers must be filed.

Usually, a state's secretary of state is responsible for handling incorporation records. In some states, a specific office exists to handle corporate records. For example, Delaware's Division of Corporations is a part of the Department of State.

State of incorporation

Corporations select their state



of incorporation based on a variety of factors; there is nothing unusual about incorporating in a state where a company does not do much business.

Delaware is an especially popular site for companies incorporating, including many of America's largest corporations. Delaware's appeal is attributed to flexible corporate laws, a business-friendly government and a court system that is experienced in corporate matters. In litigation, a corporation's state of incorporation can be a factor in determining whether a court has jurisdiction to bring it into court and deciding which state's laws apply.

Despite the benefits or drawbacks of incorporating in a particular state, some corporations prefer to simply incorporate in the state of their headquarters or a state where they actively do business.

For publicly traded corporations, which are required to report to the SEC, the state of incorporation is listed in the corporations basic profile on EDGAR. EDGAR (found at www.sec.gov/edgar) is a free online database of all SEC filings, searchable by company name and stock ticker.

Information in articles of incorporation

The public information that a corporation must give in order to incorporate varies by state, but typical requirements include:

- business name
- names of people forming the corporation
- names of members of the board of directors
- the purpose for which the corporation is being established
- whether it is for-profit or non-profit
- amount of stock to be issued, if any
- location of headquarters
- registered agent in state to whom legal papers can be delivered.

A registered agent is anyone or any business that a corporation designates to receive its legal papers when being sued — something most states require corporations to do to make it easier for plaintiffs to sue them.

Amendments to articles of incorporation

Corporations are allowed to amend their articles of incorporation. While the original articles are useful, they might not give an accurate picture of the company's current structure. Amendments will show changes in the company's basic structure.

Accessing articles of incorporation

Access to articles of incorporation differs by state. In some states, the public can view scans of the original documents online. Other states post some or all the information from the articles online, but not the actual documents. In other states, you might need to make a formal request, pay a fee or visit the secretary of state's office to view the full document.



Relationships in company structures

In practice, companies are frequently owned by other companies. Intertwined ownership structures can make it difficult to understand how a company operates, what parts of it are regulated by which government entities, and what part may be of particular interest in a news story. There are parent companies, holding companies, and shell companies, to name a few.

Parent companies are those that own enough stock in another company (called a subsidiary) to control it.

A holding company is a corporation that owns stock in other companies. A pure holding company is established only to hold shares in other companies. A large holding company can control many individual companies. For example, Sears Holdings Corp. has among its subsidiaries Kmart Corp., Lands' End, Inc. and Sears, Roebuck and Co.

A shell company is a business entity that is not actively engaged in business and has no or few assets. Although some have been abused in money laundering and tax avoidance schemes, shell companies have legitimate uses. For example, publicly traded shell companies are used in reverse mergers, when a private company buys the shell, allowing it to be traded on the market without going through the required initial public offering.

Finding relationships between companies

For a quick reference, Yahoo! Finance's ownership information (<http://finance.yahoo.com/>; search for your corporation and select "major holders") will show whether a company has

a parent. For example, it shows that 80 percent of The Student Loan Corp.'s outstanding shares are held by Citigroup Inc.

Yahoo! Finance's page for Citigroup's ownership shows no owners with more than 5 percent of outstanding shares, meaning Citigroup Inc. has no parent company.

You can glean from a publicly traded corporation's SEC filings whether it is held by a parent company and whether it has any subsidiaries of its own.

For example, take the Student Loan Corporation. Using EDGAR, one can click "Search for Company Filings," then "Company or fund name." A search for "Student Loan Corp." should bring up a long list of documents the corporation has filed with the SEC. The corporation's most recent annual report, Form 10-K, reveals that Student Loan Corp. is "an indirect, wholly owned subsidiary of Citigroup."

It is possible to trace this relationship the other way, as well. Citigroup Inc.'s 2008 annual report shows, in addition to the actual 10-K form, more documents, called exhibits. One of those exhibits is titled "Subsidiaries of the company." In this case, the list includes 65 pages of subsidiaries and their state or country of incorporation, including The Student Loan Corp. Sometimes the list of subsidiaries is not clearly labeled in the file name, so it might have to be found among the unlabeled exhibits.

Hoovers.com, a private Web site that tracks company information, sorts businesses into several directories including one for subsidiaries and one for holding companies.

Reporter's tip: If you frequently cover a specific company in your community, be sure to have that company's public affairs office on speed-dial. Never be afraid to ask them whether anything has changed since the last public filing made by the company. Local business analysts will also be helpful to you.



Licensing

States require many businesses to obtain licenses, separate from any requirements regarding their formation. For example, the state of Washington requires all businesses to submit a Master Business Application. In addition, the state requires specialty licenses for a variety of businesses, including cigarette retailers, limousines and shopkeepers who sell non-prescription drugs. Washington business licenses can be searched on the state's Department of Licensing

Web site at: <https://fortress.wa.gov/dol/dolprod/bpdLicenseQuery/>. Many states have similar web sites.

Professionals in many fields ranging from attorneys and doctors to firearms instructors and funeral directors are subject to state licensing. Some of these states post this information on Internet sites. For example, Florida's is available at <http://www.myflorida.com/licensee/cat/>.

States also handle complaints, investigations and discipline of licensed professionals. Records of sanctions are often available from the appropriate state board or agency.

For example, Pennsylvania posts online monthly updates (available at <http://www.dos.state.pa.us/bpoa/>) on sanctions issued by its 27 licensing bodies.

However, complaints and investigative materials are likely to be confidential. For example, Arizona law says "any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public." Ariz. Rev. Stat. Ann. § 32-1451.01(C) (2009).



Covering lawsuits involving businesses in the civil court system

A reporter covering a company's legal battles will encounter different access obstacles than he or she would while reporting on a criminal case. While many courts have held that the public has a First Amendment-based right of access to civil proceedings and records, parties will often seek to close proceedings or seal records on the basis that they would reveal trade secrets or confidential business information. Details of civil settlements are also frequently sealed.

Discovery

During discovery — the phase before a trial when each side has a chance to get information and evidence from the other — either party may ask the court to issue a protective order restricting the release of the information. For a judge to agree to that in federal court, a party must show “good cause” that the release would be harmful.

Closure orders

Often, when businesses sue or are sued, the dominant concern is the disclosure of trade secrets or other confidential business information. The federal court rules specifically provide for orders “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.” State court rules are generally modeled on those of federal courts.

At trial, when this type of information is entered as evidence or discussed in an open court proceeding, the parties can ask that the record be sealed or the hearing be closed. The standard for doing so places the burden on the party seeking confidentiality to show why the First Amendment or common law presumption of access to the information should be overcome.

Trade secrets are protected because they are considered property rights whose value is rooted in the information not being widely shared. For example, the formula for Coca-Cola is one of the most famously protected trade secrets. These are given a significant weight when balanced against the First Amendment right of public access. *Level 3 Comm. v Limelight Networks*, 611 F.Supp.2d 572 (E.D. Va. 2009).

Courts also consider whether the testimony or documents relate to any government or political questions or controversies.

When they do, the balance will tilt in favor of access, but where they don't the trade secrets will likely be protected. Confidential business information, a broader category of information that trade secrets fits within, can also be protected by a court. The party seeking protection will have to show “how the disclosure would inflict harm on the business and establish that the harm is sufficient to justify withholding court records from public examination.” *Thompson v. Thompson*, 2008 WL 902092 (Conn. Sup. Ct. 2008); *H.B. Fuller Co. v. Doe*, 151 (Cal.App. 2007); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir.1985). Thus, courts require that the party point to each specific statement that would harm a business interest and articulate exactly the harm that will be caused, rather than just making a generalized statement.

Common lawsuits

Closure issues can come up in any type of litigation, but they are especially likely to arise in shareholder derivative suits. Such a suit is brought by shareholders on behalf of a corporation when they have questions about the management or direction the board is taking the company. The suit will be against a third party; often an employee of the corporation who the shareholders contend has not fulfilled legal duties.

These suits are also often class actions brought on behalf of all shareholders. Most of the litigation will generally surround the certification of a class under federal court rules. Once the class is certified, the defendants will often settle as certification is typically seen as the biggest hurdle in the case. Once a case is certified, it is unlikely the defendants will be able to win at trial.

Another common type of corporate case, particularly in a recession or economic downturn, is a suit to enforce a merger or acquisition agreement. When a corporate party refuses to close a deal, it is common for the other party to sue to enforce an agreement. Such suits will generally occur against a backdrop of intense, ongoing negotiations between the parties over the terms of the agreement. Common arguments for refusing to close are that the conditions of the merger or purchase agreement have not been met, that the lenders funding the purchase have backed out, and that going forward would essentially bankrupt a company.

Reporter's tip: Don't forget to be skeptical of information in a party's own court filings and of what a law firm says. They're always advocating for their client's side. Be sure to check assertions in a plaintiff's complaint against a defendant's answer, or if unavailable, ask for comment.

Covering a company's compliance with regulations

Every business faces some level of regulatory scrutiny. How much will depend on the type of business it is, the type of business activities it is participating in and the local and state rules. No matter what the business though, records held by regulating agencies can be a great source of information about a company. This guide discusses the major regulations in most locales.

Local

The most common regulation at the local level is the requirement that many cities and counties have for businesses to hold a business license. It may be referred to as a peddler's license or a privilege license. This license is generally a public record and can be obtained from the issuing body. It should contain the name and an address for the business's principal owner.

At the city or county level there may also be other regulations based on the type of business. For example, many communities require door-to-door salespeople to have a special license. Restaurants typically have to comply with local health department codes and are subject to random inspection by the health department. The reports of those agencies are public records.

Reporter's tip: Many good stories come from comparing what businesses tell local officials and customer versus what they tell investors. Compare press releases with reports on file with the SEC.

State

At the state level there are two main areas where reporters might find public records about a specific business.

The first is at the state agency that oversees corporations. When a business partnership is formed — whether it's publicly or privately held — the principals have to file incorporation papers with the state. (More information on incorporation can be found above.) In addition, out-of-state companies are sometimes required to file with the secretary of state if they set up shop in another state.

There are a number of regulatory agencies at the state level that can provide public documents about particular businesses. Many are industry specific, such as licensing boards for attorneys, doctors, architects, accountants, nurses and barbers. (More on this is also above.) There are broader regulatory agencies at the state level, too, that may contain information about specific companies, such as whichever department over-

sees rules issued by the federal Occupational Safety & Health Administration.

Additionally, the Uniform Commercial Code has resulted in the most significant state laws relating to commercial transactions. The UCC is a model code created by noted business attorneys at the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Like all "model codes," its purpose is to provide guidance for state legislatures and to create consistency in the law from state to state. The UCC has been passed, with some slight variations, in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

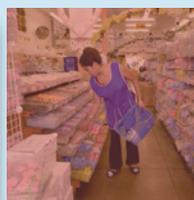
Understanding the UCC can be useful for business reporters because the states' UCC laws make several documents publicly accessible when companies take certain actions, regardless of whether the business is public or private. When one business sells something to another business on credit, a UCC filing is typically filed at the secretary of state's office. Some states also maintain searchable online databases for them.

The filing will show what has been put up for collateral and how much credit has been extended. Filings are also created when terms of a loan agreement are changed, whether it's terminated, extended or altered. These documents allow businesses to understand the financial health of other businesses. So if Company A is considering giving Company B a loan, it can find out how much debt Company B already has before entering the agreement.

Federal

The type of federal regulation a business encounters depends on the type of work it does. Agencies such as the Environmental Protection Agency, the Occupational Safety and Health Administration, Equal Employment Opportunity Commission and Patent and Trademark Office can all have public records on specific companies. There are also numerous industry-specific regulatory agencies, such as the Mine Safety and Health Administration for mining, the Federal Communications Commission for broadcasting, and the Federal Railroad Administration for railways.

Reporter's tip: Sometimes federal regulators are unhappy with lax state regulators. This can be a great chance to get them to talk about industry problems.



Federal regulation of publicly traded companies

The Securities and Exchange Commission oversees publicly traded companies. Following the market collapse that precipitated the Great Depression, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934. Together, they created reporting requirements and a mechanism for the public to examine reports about publicly traded companies. Both acts contain voluminous regulations on businesses. They commonly use the term “security” to refer to the stocks a company issues. Derivatives, swaps, bonds, debentures and futures are all types of securities too, but are more complicated financial instruments. The basics that are generally most useful to business reporting are explained below:

1933 Act

The Securities Act of 1933 (codified at 15 U.S.C. § 77a) is designed to prevent fraud in the sale of securities. It requires initial disclosures about securities, such as stocks, that are going to be sold to the public. Most securities that are to be sold have to be registered. The registration documents have to describe the securities that are being sold, provide financial statements and describe the management structure of the company.

1934 Act

The Securities Exchange Act of 1934 (codified at 15 U.S.C. § 78a) created an enforcement mechanism for the 1933 Act in Securities and Exchange Commission. It also added more reporting requirements for securities that are being sold on a secondary market, such as a stock exchange, and it set thresholds for how large a company has to be in order to fall under the reporting requirements.

The size of companies that fall under the 1934 Act has been amended over the years; currently, the Act applies to publicly traded companies that have more than 500 shareholders and \$10 million in assets. It also requires companies to provide annual and quarterly reports, called 10-K's and 10-Q's, which are publicly available on EDGAR, the SEC's electronic filing system. The SEC also may require some businesses to file additional reports.

What's available and where to go

The Securities and Exchange Commission maintains EDGAR, the database of all corporate filings. The database takes some getting used to, but every public filing of publicly traded companies is in it. There are other Web sites that often include SEC documents, such as www.secinfo.com, www.marketwatch.com, www.freeedgar.com, and www.10kwizard.com, with varying degrees of completeness and access costs that range from nothing to several hundred dollars a year. Some of the pay services allow searches for keywords across SEC filings.

There are numerous documents that appear in SEC filings, and they're named after the corresponding SEC rule number that caused the document to be filed. The most important documents for a business reporter are the 10-K (annual report), 10-Q (quarterly report), and 14-A (proxy statement). Other important forms to keep an eye on are the 8-K, which lists material changes

that occur between quarterly and annual reports, Form 4 (insider trading) and 13-G (trading by large shareholders).

10-K (annual report)

The 10-K is a lengthy report filed annually that includes a wealth of information about the company. Management will provide a statement on what worked well for the company the previous year and what didn't, and what moves the company expects to take that might affect its performance. Perhaps the most important item in the 10-K is the balance sheet, which reveals the financial bottom line for a company.

Also noteworthy in the 10-K is its section on liabilities, where management has to disclose any pending litigation involving the company, and its footnotes containing story tips.

Reporter's tip: Compare 10-K's from different companies across the same industry. For example, is one company making more aggressive disclosure than others in the industry? Is one company more conservative? More vulnerable?

10-Q (quarterly report)

The quarterly report is similar to the annual report, only smaller. Its balance sheet contains comparisons of financial information for the quarter being reported and for the same quarter in previous years. It is often referred to as an earnings report, and comes with a year-to-date summary. Like the 10-K, it will have statements from management about any major factors affecting the company's bottom line. Often, it will also have discussions of ongoing litigation under a section titled “contingencies.”

Reporter's tip: Companies that postpone projects will disclose this in a 10-Q. Asking about postponements can lead to a great story. For example, one business reporter asked about a private prison company that was postponing expanding facilities, according to a 10-Q. It led to a story about states couldn't afford to house more prisoners.

14-A (proxy statement)

The proxy statement comes out before an annual meeting of shareholders. It contains important information that shareholders are expected to discuss. If any seats are up for election on the board of directors, the proxy will include biographies of management's proposed candidates for those seats. It also discloses executive compensation (though this information can be scattered throughout the form in different places.) Finally, it will include any proposals that are up for a shareholder vote.

Reporter's tip: There are private proxy advisory firms that recommend how shareholders should vote. Knowing their recommendations is key to knowing how a vote will go. The big ones are RiskMetrics Group, PROXY Governance, Inc., Glass Lewis & Co., and Egan-Jones Proxy Services.





A corporation's annual meeting may not be open to the public. Some companies will open at least a portion of the meeting to the press or public. They might also make top executives available to the press before or after the meeting. If a company is not planning to allow a reporter access to the annual meeting as a member of the press, one way to gain access is to purchase one share of stock in the company before the record date at which the company creates the list of shareholders of record for the meeting. Corporate "gadflies" use this approach frequently, but never do it before asking your editor whether company policy allows it.

Reporter's tip: Annual meetings can be quick and are often one-sided affairs presenting the company in the best light. Do your homework beforehand. Know what's going on and who is going to be there. Read the most recent quarterly report and the proxy statement, which may point you to dissident shareholders and their concerns beforehand, and look for recent reports about the company by analysts and in newsletters.

8-K (interim report)

The 8-K gets filed whenever there is a material change in the business that investors need to know about. The SEC has a list of events that trigger a mandatory 8-K filing, such as a change of chief executive officers, a bankruptcy or mergers and acquisitions. The information in the 8-K will vary based on whatever triggering event has caused its filing.

Reporter's tip: Always check out the 8-Ks. Older 8-K's may have information on lines of credit and what entity is ultimately responsible if a borrower defaults. Credit lines can help sort out the ownership structure of a company.

Form 4 (insider trading)

When certain people associated with a company — including the top management and members of the board of directors — purchase or sell shares of the company's stock, a Form 4 has to be filed. The purpose is to let investors know when "insiders" to the company are making decisions about their own stakes in the business. It can be useful to keep track of when the CEO or other top-level management members are cashing in options they have on stock, because it can be an indicator of how those people view the financial value of the company. They're likely to cash in options and sell stock for a quick profit when they think the stock is high. Similarly, when executives allow options to expire without

cashing them in, it might indicate how far the current stock price falls below expectations.

13-D and 13-G (major shareholders)

The rules that create forms 13-D and 13-G are similar to the insider trading rule, except they apply to large stakeholders instead of company insiders. Anyone who acquires more than 5 percent of the common stock in a company has to file one of these forms. Keeping track of what the large shareholders are doing with the company stock is important because it can indicate a number of things. Increases in ownership can be a precursor to a hostile takeover or a proxy fight. Decreases can indicate how an investor feels about the health of a company.

Form S-1

These forms are filed with the SEC when a private company wants to become publicly traded and sell stock. When the economy is not doing well, fewer companies will go public, making these filings all the more interesting. The company will also have to disclose information about its finances including recent profits and losses. A key detail on the form might be who is underwriting the stock sale.

Form S-4

When a company seeks to issue new shares of stock to increase its capital — sometimes because it wants to use the money to buy another company — it will typically need shareholder approval and have to file a Form S-4 with the SEC.

Regulation Fair Disclosure (Reg FD)

No form is necessarily filed with the SEC under this rule, but it is an important one for access to company information. Before the fair disclosure rule took effect in 2000, most individual investors relied on institutional brokers for trading advice, or they looked for information in the quarterly and annual reports that were mailed to them and published in newspapers. With the rise of Internet-based brokerage services in the 1990s, there was also an increased demand by investors for access to information that companies had historically shared with institutional investors but not the general public.

This led to Regulation Fair Disclosure, which requires companies to release "material information" to the public at the same time it is disclosing it to institutional investors. If the disclosure to the institutional investor is accidental, the company has to quickly inform the public. But if the disclosure is planned, such as a quarterly conference call with analysts to discuss earnings, then public disclosure must be simultaneous.

Companies can meet that requirement in a number of ways, such as by filing a Form 8-K with the SEC that contains the information to be disclosed, or by opening the conference call to the public.

Reporter's tip: You should be able to get the telephone number or Webcast address for the conference call from the company's investor relations or media relations officers. These conference calls often coincide with the release of a company's quarterly and annual reports.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549-1004

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) June 1, 2009

GENERAL MOTORS CORPORATION

(Exact Name of Registrant as Specified in its Charter)

DELAWARE
(State or other jurisdiction
of incorporation)

38-0572515
(I.R.S. Employer
Identification No.)

300 Renaissance Center, Detroit, Michigan
(Address of Principal Executive Offices)

48265-3000
(Zip Code)

(313) 556-5000
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17-CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.03 Bankruptcy or Receivership

ITEM 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

On June 1, 2009, General Motors Corporation ("GM") and its direct and indirect subsidiaries Saturn LLC ("Saturn LLC"), Saturn Distribution Corporation ("Saturn Distribution") and Chevrolet-Saturn of Harlem, Inc. ("Harlem", and collectively with GM, Saturn LLC and Saturn Distribution, the "Debtors") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (Case Nos. 09-50026 (REG), 09-50027 (REG), 09-50028 (REG) and 09-13558 (REG), respectively). The reorganization cases are being jointly administered under Case No. 09-50026 (REG) and the Debtors continue to operate their business as "debtors-in-possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

In connection with the bankruptcy filings, the Debtors entered into a Master Sale and Purchase Agreement (the "Purchase Agreement"), dated as of June 1, 2009, between the Debtors and Vehicle Acquisition Holdings LLC ("New GM"), an entity formed by the United States Department of the Treasury (the "U.S. Treasury"), pursuant to which New GM would purchase substantially all of the assets of the Debtors pursuant to Section 363(b) of the Bankruptcy Code (the "363 Sale") from GM (following the 363 Sale, GM is referred to as "Old GM"). The purchase price to be paid by New GM to Old GM shall be equal to the sum of (i) a credit bid in an amount equal to the amount of indebtedness owed as of the closing date of the 363 Sale by GM and its subsidiaries pursuant to GM's existing credit agreement with the U.S. Treasury and an amount equal to the amount of indebtedness owed as of the closing date of the 363 Sale by GM and its subsidiaries under GM's debtor-in-possession credit agreement with the U.S. Treasury and the Canadian and Ontario governments (as discussed below), less approximately \$8.0 billion of debt expected to be owed to the U.S. Treasury following the confirmation of the 363 Sale, representing \$7.1 billion of debt expected to be assumed by New GM (\$6.7 billion under GM's debtor-in-possession credit agreement and approximately \$0.4 billion of debt related to the warranty program created to ensure the performance of certain of GM's warranty obligations during GM's restructuring period) and \$950 million of debt (as discussed below) expected to be owed by Old GM to the U.S. Treasury, (ii) the warrants previously issued to the U.S. Treasury by GM, (iii) the issuance by New GM to Old GM of (a) 10% of New GM's common stock and (b) warrants to acquire newly issued shares of New GM equal to 15% of New GM common stock on a fully diluted basis, and (iv) the assumption by New GM or its designated subsidiaries of certain specified liabilities. Pursuant to Sections 363(b) and 365 of the Bankruptcy Code, upon the closing of the 363 Sale, (a) the Debtors will sell to New GM substantially all of the assets of the Debtors (other than certain specified assets, including certain real property, GM's equity interests in certain of GM's subsidiaries, and certain of GM's

An 8-K is a form filed with the SEC to list material changes that occur between quarterly and annual reports. They could be disclosing anything from a bankruptcy filing to resignation of board members. Chances are that, almost by definition, what is disclosed is new information worth a quick glance.

This 8-K explains that General Motors filed for bankruptcy. It includes information such as the names of all of GM's other companies — like Saturn — the court case numbers of the bankruptcy petitions, what court the filing occurred in, and a brief summary of what is going to happen to the company as it goes into Chapter 11 reorganization.

Beyond the SEC: other key regulators

Commodity Futures Trading Commission

The Commodity Futures Trading Commission regulates the trading of futures, which are contracts to sell or buy commodities in the future at a set price. Futures trading includes the practice of selling derivatives — commodities with fluctuating values dependent on an underlying contract such as oil or corn — a hot topic in the recent financial crisis. At www.cftc.gov the commission maintains case status reports on legal cases brought against specific traders as well as a searchable tool for finding industry filing reports.

Banking Regulators

There are several bank regulators within the federal system: The Federal Reserve; the Office of Comptroller of Currency; the Federal Deposit Insurance Corporation; National Credit Union Administration; and the Office of Thrift Supervision. Which agency regulates a bank depends on the bank's type and size. Each state also has its own entity that regulates banks.

• Federal Deposit Insurance Corporation

The FDIC regulates state-chartered commercial banks and insures the deposits, currently up to \$250,000, of account holders. At www.fdic.gov, the FDIC maintains searchable databases of enforcement actions against banks as well as insider trading filings by bank executives. The FDIC makes available information about banks that have been seized by state regulators and those that have been closed. There is also an outward link to the Federal Financial Institutions Examination Council's searchable database of "call reports," which contain information about a bank's financial stability. Like the other regulatory agencies, FDIC also makes available its regulations and policies. Since it plays some role in the regulation of all types of depository institutions by insuring them, it typically houses the most information on the most entities.

• Federal Reserve Board

The Federal Reserve is the central bank for the U. S. monetary system. In addition to setting broad monetary policies — primarily through the control of interest rates — the Federal Reserve regulates the overseas activities of U.S. banks and bank holding companies generally. These are the state-chartered banks that are not part of the FDIC. At www.federalreserve.org, information about specific bank enforcement actions can be found under the "Banking Information & Regulation" section. The site also contains information about Federal Reserve efforts to effect policy change in government.

The Board of Governors of the Federal Reserve is based in Washington, D.C., and performs most of these regulatory functions. There are also 12 regional Federal Reserve banks across the country, each of which has some degree of special-

ized role and knowledge. These banks are not considered government agencies, and thus are not subject to the Freedom of Information Act. However, the Federal Reserve Board in Washington is an agency subject to FOIA.

• Office of the Comptroller of Currency

The Treasury Department's Office of the Comptroller of Currency regulates nationally chartered banks and federal branches of foreign banks within the United States. At www.occ.treas.gov the agency maintains a searchable database of enforcement actions against banks under the "Enforcement Actions" portion of the "Legal and Regulatory" section. Like the Federal Reserve site, the OCC page also includes a great deal of information about banking policy and regulations. The page also links to the FDIC's beneficial ownership database (<http://www2.fdic.gov/efr/>) where one can search for records of insider trading of bank executives.

• National Credit Union Administration

As the name suggests, the National Credit Union Administration regulates credit unions. It functions similarly to the FDIC, insuring deposits at the credit unions it covers, currently up to \$250,000. At www.ncua.gov, the agency provides links to "letters of understanding and agreement" between NCUA and specific credit unions, and administrative orders. Reporters can also search financial performance reports of specific institutions, which like the call reports at the FDIC provides a look at the credit union's balance sheet.

• Office of Thrift Supervision

The Treasury Department's Office of Thrift Supervision is the regulatory agency for federal savings banks and for federal savings and loans. It was created in the wake of the savings and loans scandals of the 1980s, when lax regulation and deregulation led to speculation in the housing market, insider transactions and risky loans being made on deposits. Now, because of the greatly reduced number of thrifts, this may be eliminated by Congress as part of the financial services industry regulatory reforms. At www.ots.treas.gov you can search savings and loans by name and find enforcement actions as well as balance sheets.

Small Business Administration

The SBA, an independent government agency that helps small businesses with lending programs and training, has public documents on file that provide a wealth of information. Many businesses are registered and have profiles in the Central Contractor Registration as part of their receipt of SBA funds. Sometimes there is information on a business's major clients and revenue.





Evolving companies: mergers

Mergers of major companies are usually reviewed by the Federal Trade Commission or another federal government agency that regulates the field at issue. For example, the Federal Communications Commission approves of mergers between businesses it regulates. These reviews are designed to ensure the mergers and acquisitions of companies don't violate various anti-trust laws, such as the Sherman Act and the Clayton Act, that guard against monopolies.

The FTC and a handful of other federal agencies will often put conditions on mergers as part of the review process. Documents in these internal agency proceedings, including final orders of the FTC that set conditions, are generally available on the FTC Web site.

Many of the other documents the FTC has that were relied on in making final decisions on mergers will be covered by Exemption 5 to the federal Freedom of Information Act, however. That provision protects from public release attorney work product, documents that are part of the decision-making process and other information that would normally be privileged in litigation.

Likewise, information that is provided to the FTC before a merger is protected by the Clayton Act, 15 U.S.C. § 18a(h), and cannot be released to the public unless it's part of an administrative or judicial action. *Lieberman v. F.T.C.*, 771 F.2d 32 (2nd Cir. 1985). Administrative law judges, who hear cases involving the agency's laws and regulations, can also issue protective orders sealing documents. *Exxon Corp. v. F.T.C.*, 65 F.2d 1274 (D.C. Cir. 1981).

Reporter's tip: One company is always buying another — it's never truly a merger of equals. Each company will spin a merger announcement differently, so even comparing both press releases can lead to some good stories.

Reporter's tip: The value-per-share is a crucial number in a merger deal, and it's important to know how much stock and how much cash are involved in a deal. Cash deals will almost always be better for a company than stock deals. Stories about mergers generally answer questions on what the deal will do to earnings, what executives will come and go, whether the board has approved the deal, and when it's expected to close.



Financially troubled companies: bankruptcy

Corporate bankruptcy proceedings and records include a wealth of information. To file for bankruptcy, an individual or company must disclose detailed financial information with the court. Bankruptcy court is a special separate court within the federal system, organized in the same districts as other federal courts. Access to the proceedings and documents filed in connection with bankruptcy filings are governed by federal law, but state law affects what property can be exempt from a bankruptcy proceeding, which can be especially important for reporting about personal bankruptcies.

Types of Proceedings

There are three main types of bankruptcy proceedings — Chapter 7, Chapter 11 and Chapter 13 — as well as a few less-used types. The law governing access to the proceedings and documents is the same for each one. The Bankruptcy Basics guide (<http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html>) published by the bankruptcy court system explains the details of each of the proceedings, including who can qualify for each proceeding.

Chapter 7

This is the most drastic form of bankruptcy because it requires all of a filer's property to be sold or liquidated, and their creditors to be paid off from the sales. Companies generally do not file for Chapter 7 bankruptcy because they essentially become unable to continue operating.

Chapter 13

This type of bankruptcy is also less common for businesses, but some types of small businesses with limited debt can qualify for it in addition to individuals. Rather than requiring all of a filer's property to be sold, it allows the filer to create a plan to pay back debt.

Chapter 11

This is the most common type for businesses to use. It allows a business to propose a reorganization plan that will allow the company to pay back its creditors over a long period of time. The company typically will sell some assets as part of its reorganization.

Other

Chapters 9, 12 and 15 of the bankruptcy code are far less commonly used and are designed for family farmers, fisherman, local governments and international bankruptcy cases.

Access generally

Section 107 of the bankruptcy code, 11 U.S.C. § 107, governs access to court documents and proceedings. It provides that the proceedings are open unless a party requests closure to "protect an entity with respect to a trade secret or confidential research, development, or commercial information; or protect a person with respect to scandalous or defamatory matter contained in a paper filed" in bankruptcy court.

A document is scandalous "if a reasonable person could alter his or her opinion of the subject based on the statements in the papers filed, taking those statements in the context in which they appear. Several cases also point out that the statements must also be more than just embarrassing or prejudicial." *In re Deborah Alice Neal*, 336 B.R. 421 (W.D. Mo. 2005).

Similarly, confidential business information may be sealed in bankruptcy proceedings. Unlike in other court proceedings, the

“paramount goal in the sale of assets in a bankruptcy proceeding is to obtain the best price possible for the ultimate benefit of the unsecured creditors of the bankruptcy estate.” *In re Farmland Industries*, 290 B.R. 364 (W.D. Mo. 2003). Thus, where confidential business information may exist in bankruptcy court filings, courts will consider whether its disclosure would result in an unfair advantage to competitors by giving them crucial information about the bankrupt company and whether disclosure of the information would be reasonably be expected to cause the company commercial injury. *In re Alterra Healthcare Corp.* 353 B.R. 66 (D. Del. 2006).

News organizations have often successfully intervened in bankruptcy proceedings when documents have been sealed under §107(b). In most circumstances, courts favor public access to these documents.

Settlement agreements

Creditors often enter into settlement agreements with a company filing for bankruptcy under Chapter 11. In these cases, the company will reorganize and settle with its creditors for less money than what is owed. The settlement agreements, filed with the court, are public records. However, they can always be redacted under the standards above. *In re J. Fife Symington, III*, 209 B.R. 678 (D. Md. 1997).

Hearings

The most common type of hearing in a bankruptcy case is a meeting of the creditors, which the U.S. Office of Trustees will

preside over. The Federal Rules of Bankruptcy, Rule 2003, governs these hearings. They are open to the public.

Investigations

In some situations, a bankruptcy judge may order that an examiner from the Trustees’ Office be appointed to investigate parties or creditors. The resulting examination report is also a public record. *In re Fibermark, et al.* 330 B.R. 480 (D. Vt. 2005). However, that report may be redacted if it contains privileged attorney-client information or information that would otherwise be withheld.

Public companies

When a publicly traded company files for bankruptcy, the effects on shareholders can be severe. The Securities and Exchange Commission has an investor’s guide (<http://www.sec.gov/investor/pubs/bankrupt.htm>) that explains what will happen, such as whether outstanding shares will be canceled, the types of new shares a company will issue and how they will be traded, and the SEC’s involvement in the bankruptcy. For example, in cases of reorganization, shareholders must vote to approve the company’s plan and the SEC must review the disclosure made to them to ensure it has all the necessary information.

A public company’s reorganization plan may call for it to reform as a private company after it emerges from bankruptcy, as the General Motors bankruptcy plan did in 2009. Quarterly financial statements aren’t generally released by private companies, nor will a private company’s annual report have significant details about management and the direction of the company.

Reporter’s tip: When sorting through bankruptcy filings, figure out what phase a company is at in the process, what the next step is, who will own what when a reorganization is over, and what all of it means for common shareholders — essentially the readers — and then for the bondholders and creditors.

Reporter’s tip: In the initial filings, details like total debt, total assets, the financing in place and the top creditors are important. Bankruptcy court filings are available on PACER, the electronic court records system for federal courts and can be easily accessed for a fee.

Layoffs: The WARN Act

The Worker Adjustment and Retraining Notification (WARN) Act is a federal law that requires companies to make disclosures to local and state government as well as employees affected by large layoffs or plant closings. The law requires 60 days’ notice before a mass layoff or plant closing.

There are three things that can trigger a WARN Act notice: First, closure of a work site that will leave 50 or more workers out of a job. Second, a mass layoff that doesn’t close a plant, but affects, during any 30-day period, 500 or more employees or between 50 and 499 employees if they make up one-third or more of the workforce. Finally, it can be triggered when job losses during a 30-day period wouldn’t meet the first two requirements, but losses of two or more groups during a 90-day period would break the threshold if counted together, with some exceptions.

WARN Act filings must be made with the affected employee or his or her representative, such as a union boss, the state labor office and the local government. These filings are typically open records under state freedom of information laws.

Useful Resources

- EDGAR. EDGAR (found at www.sec.gov/edgar) is a free online database of all SEC filings, searchable by company name and stock ticker. The filings include 8Ks, 10Ks, 10Qs and other documents helpful to reporters.
- Other sites with SEC filings include www.secinfo.com, www.marketwatch.com, www.freeedgar.com and www.10kwizard.com
- Hoovers.com is a private Web site that tracks company information.
- Yahoo! Finance (<http://finance.yahoo.com>) provides a wealth of information including share ownership to determine whether a company has a parent company, subsidiaries, is a holding company or a shell company — search the name of your corporation, then click on “Major Holders” along the left-hand side.
- *Understanding Financial Statements: A Journalist’s Guide*, by Jay Taparia, aids business reporters unfamiliar with balance sheets.
- *Show Me the Money: Writing Business and Economic Stories for Mass Communication*, by Chris Roush, is another basic business reporting guide.