

CLIENT ALERT

Preparing Your Form 10-K – 2019 Updates

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As part of its ongoing disclosure modernization program, the Securities and Exchange Commission has simplified certain disclosure requirements under Regulation S-K, including some applicable to the upcoming Annual Report on Form 10-K.¹ While the majority of the amendments reduce required disclosure, certain changes, such as the new exhibit describing an issuer's registered securities, add new mandates. In addition, as further described below, audit reports with respect to 2019 financial statements for large accelerated filers must now include disclosures regarding Critical Audit Matters ("CAMs").²

Below is a brief summary of these changes applicable to Form 10-K:

Cover Page and XBRL Tagging

- As with previous Form 10-Qs, on the Form 10-K cover page, companies must list the trading symbol and the primary trading exchange or U.S. market (as applicable) for each class of their registered securities.
- The checkbox denoting expected disclosure regarding a delinquency in Section 16 filings has been eliminated (but not the underlying disclosure requirement).
- Companies using inline XBRL (currently large accelerated filers, with other companies still subject to transition rules) must tag the cover page, which must be filed as a new exhibit with the word "Inline" in the exhibit index title description.

¹ See SEC Release No. 33-10532, *Disclosure Update and Simplification*, August 17, 2018, available [here](#), and our related client memorandum *SEC Adopts Disclosure Simplifications*, available [here](#); and SEC Release No. 33-10618, *FAST Act Modernization and Simplification of Regulation S-K*, March 20, 2019, available [here](#), and our related client memorandum *SEC Adopts Additional Amendments to Modernize and Simplify Disclosure*, available [here](#).

² See Public Company Accounting Oversight Board Release No. 2017-001, June 1, 2017, available [here](#).

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Description of Property

- Companies need only provide disclosure about their physical properties to the extent material. In considering this requirement, companies may describe properties on an individual or collective basis, or may determine that no disclosure is required.

Risk Factors

- As always, companies should review their risk factors to make sure they are up-to-date, as applied to their particular circumstances, eliminating risks that are no longer material. The SEC has encouraged companies to consider disclosure regarding risks, to the extent applicable, relating to the impending U.K. exit from the European Union, cybersecurity and the transition from LIBOR.

Management's Discussion and Analysis of Financial Condition and Results of Operations

- Companies may now include a discussion of only the most recent year-to-year comparison (2019 vs. 2018 results), omitting the earlier comparison (2018 vs. 2017) previously required. If a company chooses to omit the earlier comparison, it must include a statement identifying the location of the omitted discussion in the prior filing.

Financial Statements

- Companies are no longer permitted in their financial statements to incorporate by reference or cross-reference information outside of the financial statements unless specifically permitted or required by SEC rules, GAAP or IFRS.

New Exhibit Describing Registered Securities

- Companies are now required to provide an exhibit describing their registered securities, consistent with the current requirement in Item 202 of Regulation S-K applicable to registration statements. This *cannot* be done through incorporation by reference.

Redaction of Confidential Information and Personally Identifiable Information in Exhibits

- Companies may redact confidential information in material contracts filed under Item 601(b)(10) of Regulation S-K as well as plans of acquisition filed under Item 601(b)(2) without submitting a Confidential Treatment Request ("CTR"), where the company determines that the information (1) is not material and (2) would likely cause competitive harm if publicly disclosed.
- Companies should continue to mark the exhibit index to indicate that portions of the exhibit have been omitted, include a prominent statement on the first page of the redacted exhibit to indicate that certain information has been omitted because it (1) is not material and (2) would likely cause competitive harm if publicly disclosed, and indicate with brackets where information has been omitted in the version of the exhibit filed on EDGAR.
- Companies may now omit personally identifiable information from exhibits without submitting a CTR.

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Other Amendments Related to Exhibits

- Companies may omit schedules and attachments for all exhibits filed under Item 601, provided that (1) the omitted schedules or attachments do not contain material information, (2) the information is not otherwise disclosed in the exhibit or disclosure document, and (3) the filed exhibit contains a list briefly identifying the contents of any omitted schedules or attachments.
- Only “newly reporting registrants” are now required under Item 601(b)(10)(i) to file material contracts not made in the ordinary course of business that were entered into not more than two years before the filing. All companies will continue to be required to file material contracts not made in the ordinary course that are to be performed at or after the filing of the report.
- Companies must include a hyperlink to information incorporated by reference if it is available on EDGAR. The prohibition on incorporating by reference documents that have been filed for more than five years has been eliminated.

Critical Audit Matters

- In likely the most significant change to auditor reports in many years, the Public Company Accounting Oversight Board has added a requirement that auditors provide disclosures regarding CAMs in their audit reports. The new auditing standard defines a CAM as “any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgment.”
- The most common CAMs reported to date include those relating to goodwill and other intangible asset impairment, revenue recognition and income taxes.
- The auditor is required to identify each CAM, describe the principal considerations that led the auditor to determine that the matter is a CAM, describe how the CAM was addressed in the audit and refer to the relevant financial statement accounts or disclosures that relate to the CAM.
- This new requirement applies to audits of fiscal years ending on or after June 30, 2019 for large accelerated filers, and to audits of fiscal years ending on or after December 15, 2020 for accelerated filers, non-accelerated filers and smaller reporting companies. Emerging growth companies are exempt from this requirement.

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If you have any questions regarding this client alert, please contact the following attorney or the Willkie attorney with whom you regularly work.

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