

## RISK FACTOR REMINDERS FOR UPCOMING 10-QS

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As companies prepare upcoming periodic reports, they should focus on carefully reviewing and updating their risk factors. Some of the considerations may include:

- *COVID Risks.* As a number of business sectors improve, it may be advisable to revise COVID-related risk factors to reflect the changing economic climate. In some cases, the focus may need to shift to address challenges in increasing production, managing supply chains, hiring workers or otherwise responding to increasing customer demand. In other cases, companies that benefited from dramatic changes in the economy during the pandemic peak may need to address potential risks associated with a return to normalcy. For example, consider whether recent growth trends are viewed as sustainable in light of the MD&A requirement to discuss “known trends or uncertainties” that the company “reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income.” At the same time, it may be appropriate to continue to caution investors as to uncertainties as to the future course of the pandemic – particularly as concern with the impact of variants evolves.
- *Labor Markets.* Many sectors and regions are experiencing labor shortages. To the extent material, companies should consider disclosing in MD&A the effect of labor market conditions on their results of operations, and discussing possible future impacts in risk factors.
- *Hypothetical Risks.* Risk factors typically include a wide range of topics intended to warn investors of potential adverse events, most of which may not have not ever materialized. These are included with a view to providing legal protection – an “insurance policy” – against claims that companies failed to apprise investors of a material risk. However, recent court and, as previously [noted](#), SEC decisions make clear that companies can also face liability for presenting risks as “hypothetical” when, in fact, a material adverse event has actually occurred, such as a material cybersecurity breach. In those cases, stating that there have been “no material changes” could be viewed as problematic.
- *Current Events.* While keeping abreast of news developments can be challenging, companies should be mindful of potential implications that could have material effects on their businesses, customers, suppliers, employees or prospects. Recent headlines have included the heat wave and wildfires, ransomware attacks, cyberbreaches, social justice protests or

boycotts, [the Presidential Executive Order on consolidation and competition](#), and international conflicts, among others. To the extent existing risk factors touch on any of these subjects, consideration should be given to updating the discussion to clarify that the risk is not merely hypothetical.

As previously noted in an [earlier blog post](#), the instructions to Form 10-Q call for disclosure of any material changes from risk factors included in the last 10-K. Accordingly, companies should carefully review existing 10-K (or 10-Q) risk factors to consider whether new risks have emerged, hypothetical ones have become real or existing risks have changed.

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## MEET THE TEAM



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