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SELECTED ISSUES FOR FUTURE SEC FILINGS

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With most public companies having recently completed quarterly filings, their attention can now turn to future guidance or earnings announcements, periodic reports and other SEC filings. Some of the key issues they should consider include:

Updates to Risk Factors

Consider whether any material updates are appropriate, taking into account recent economic, social and political developments, such as

- **Implications of AI,** including rates of utilization and changes to capital budgets. Stay mindful of overstating or understating capabilities or prospects, and potential claims of "AI wishing". Other considerations may include, among others:
  - "A.I. wishing" - company leaders taking actions with unrealistic hopes that A.I. will be able to perform functions it is not currently capable of - and may not be able to do in the near future.
  - Varied compliance risks, such as IP, cybersecurity, data protection or privacy concerns.
  - Increasing pace of technological change and competitive pressures.
  - Employee relations, such as layoffs, staffing, morale or retention.
  - Liability and reputational risks relating to inaccuracies, biases or safety concerns.
- **Economic uncertainties** relating to, among other things:
  - Changing tariffs, sanctions and trade policies.
  - Evolving inflation and interest rate outlooks.
  - Supply chain risks.
  - Labor challenges, including the effect of immigration policies on hiring and retention.

- **International conflicts**, including the Iran and Ukraine wars, the Israel-Hamas conflict, tensions between China and Taiwan, including any direct or indirect effects on a company's business, including supply chain disruptions and cost pressures.
- **Cybersecurity risks**, including vulnerabilities to hostile intrusions, data misuse and ransomware attacks, especially in light of AI developments.
- **U.S. politics**, including implications of mid-term election results on executive branch policies, legislation and potential government shutdowns.

Additional Reminders for Risk Factors

- As a technical matter, when included in Form 10-Qs, risk factors contained in prior 10-Qs should be included and updated, if still relevant, until they appear in a Form 10-K. This means a new risk factor included in a company's first quarter 10-Q may need to also be included in the second quarter filing. See our July 29, 2020 post.
- Stay mindful of the "buried facts" doctrine, under which disclosure may be found to be false and misleading where its significance is obscured or buried. It can be helpful to list risks in general order of significance and filter out trivial or irrelevant information.
- As previously discussed, presenting risks as "hypothetical" or speculative when, in fact, a material adverse event has actually occurred, such as a tariff impact, can be misleading.
- Include a summary (concise, bulleted or numbered, and not more than two pages) where the risk factors section exceeds 15 pages.
- Move risks that are generic in nature and applicable to most companies to a "General Risk Factors" sub-section.

Companies should also review the substance and priority of factors included in their forward-looking statement disclaimers, with careful attention to conforming the listed factors to the specific forward-looking statements in the filing.

Management's Discussion & Analysis

- **Eyes of management.** One of the key objectives of MD&A is to provide a narrative explanation of financial statements that enables investors to see the company through the eyes of management.
- **Known trends or uncertainties.** Item 303 directs companies to disclose in MD&A "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact" on financial performance, liquidity or capital resources. They are also

required to provide "such further material information . . . as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading" pursuant to Rule 12b-20.

- **Non-GAAP financial measures.** Companies should pay attention to the staff's most recent guidance on problematic non-GAAP practices in earnings releases and quarterly or annual reports. PWC notes recent SEC staff comments have focused on:
  - Appropriateness of adjustments to eliminate normal, recurring cash operating expenses or items identified as non-recurring, infrequent, or unusual.
  - Labeling and identification of non-GAAP measures.
  - Presentation with equal or greater prominence of the most directly comparable GAAP financial measure.
  - Use of individually tailored accounting principles.
  - Disclosure of why management believes the non-GAAP presentation provides useful information to investors regarding the financial condition or results of operations of the registrant.
  - Reconciliation from the most comparable GAAP financial measure.

For more information, see our earlier post: SEC staff flashes red and yellow traffic lights on common non-GAAP practices (Dec. 16, 2022).

- **Tariffs. C**ompanies should consider disclosing the impact of tariffs through the eyes of management, including, to the extent material:
  - The effects on operations, liquidity and capital resources.
  - Operational changes, such as changes to suppliers or manufacturing locations or substitutions of parts or raw materials.
  - Known trends, events or uncertainties that are reasonably likely to have a material impact on the company results of operations or financial position.

Evaluate Implications of SEC Proposals on Filings

When preparing future filings, companies should stay mindful of potentially significant future changes to SEC requirements. Its de-regulatory agenda focuses on easing disclosure requirements.

In particular, news outlets report that the SEC semiannual reporting proposal faces fierce opposition — but will likely pass anyway". As discussed in our May 7, 2026 post, companies should consider:

- **Investor Expectations; Peer Practices.** Views of research analysts or large shareholders, including institutional investors, and whether they might be dissatisfied with earnings releases or flash numbers in lieu of 10-Qs, taking into account disclosure practices of peer companies with whom investors or analysts draw comparisons.

- **Debt Covenants.** The possible need to prepare quarterly financial statements for lenders or bondholders under existing or future debt or financing agreements, which could significantly reduce any potential compliance savings from semiannual reporting.

- **Capital Markets Activity; Trading by Insiders.** Any desire or need for current quarterly disclosure in order to conduct capital raises, including at-the-market offerings, or to provide flexibility under insider trading rules for the company to conduct debt or equity repurchase programs or directors or officers to trade in public markets, and whether earnings releases or flash numbers might be viewed as insufficient for those purposes.

Other pending proposals may offer potential to facilitate registered offerings and reduce disclosure requirements, including:

- Registered Offerings Reform, primarily by expanding the availability of Form S-3 and the ability to incorporate by reference into Form S-1.

- Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, primarily by increasing thresholds and lengthening seasoning tests for large accelerated filer status and extending accommodations and scaled disclosures to companies other than large accelerated filers.

The SEC has indicated that it intends to make other key proposals to “rationalize disclosure practices” through amendments to Regulation S-K, including executive compensation rules. However, the timing for the release and adoption of any such proposal remains uncertain.

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