

Dabbling With a New Business Line? First Steps for the SEC Disclosure Lawyer

There's nothing as constant as change. Like a company's decision to try something new to offer to customers. This type of thing pops up eventually for every company. And it can happen often, too. Maybe even once or twice per year. Disclosure lawyers can get pretty comfortable. Perhaps too much so. We can get lazy when we review nice, clean redlines, with few significant updates and changes from one quarterly filing to the next. But then the business team starts to innovate, and you start seeing something new: an investment in a new technology, a press release about an exciting new product, or an acquisition of a company that might seem at first like a square peg in a round hole. Where do you start as the disclosure lawyer? Sometimes the change in operations is subtle. Starts very small. There's no press release. There's no acquisition or merger. But the new business has very different characteristics from the company's existing business - different industry, different margins, and different seasonality. And sometimes there's a seemingly big change that makes you stop and ask whether it's truly a new line of business. Because it really isn't. It's a new feature or add-on product - developed internally or acquired through M&A - that becomes an integral part of the existing line of business and fits squarely within the company's existing financial model and go-to-market strategy. As the securities lawyer, you obviously should check what the auditors are saying about this new line of business – how close is it to becoming a "segment" under the accounting literature? That can become quite an involved conversation and determination – but it often transpires down the line from auspicious beginnings. You may need to dig further by checking out recent board minutes, materials, and presentations. Talk to those who might have a good perspective on what is happening on the ground. It's a total mix of information, akin to the "materiality" determinations that sometimes can be quite subjective. If you don't start thinking hard about this new business from the start – and how you want to introduce it in your periodic filings – you may be surprised by how quickly it's gone from a minor blip to a significant driver of the company's strategy. This topic leads me back to another role in my life—that prized one that I treasure as a mom. It feels like yesterday that my kids would squeeze into my bike trailer together for a big "adventure" to inspect crabs at low tide. And now my oldest kid commutes by bike to school all on her own, and my youngest will be joining her to ride to kindergarten in the fall. How in the world did that happen?

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