

## Updating 10-K Risk Factors in Your 10-Q: 5 Things to Consider

As our clients are preparing their Form 10-Qs and quarterly earnings updates, a curious thing has arisen this time around. We're getting more questions than usual about whether - and how - to update risk factors from the last Form 10-K in the upcoming 10-Q. Nearly all companies went through this drill in 2020 to add risk factors about the impact of COVID-19 - but new concerns are popping up this year. Here are five things to consider: 1. The SEC's rule is that you should update risk factors from your 10-K in any of the subsequent three 10-Qs for any "material" changes.

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2. One key question to ask yourself here: "Should something that is a driver of results - or a known trend - be disclosed as a risk factor too? Or can the trend be addressed just in the MD&A with some cautionary language?" It depends. The analysis requires you to look at your existing risk factors. If the risk or trend is generally covered by pre-existing risk factor disclosure - meaning that that disclosure adequately describes what is happening now - then you may be fine with the risk factor disclosure you already provided along with an appropriate discussion in MD&A. If a trend is new and material, you will certainly need new disclosure in the upcoming 10-Q in the MD&A about it- but you also may need a risk factor covering it if it presents a material risk. If it's a trend that's been addressed in prior MD&A disclosures - but not as a risk factor - you may need to elevate the disclosure into your risk factors for this 10-Q if the trend is playing out worse than previously disclosed - or the trend is going the wrong way. While MD&A disclosure with a risk bent may be appropriate to address also as a risk factor - sort of like "free insurance" - disclosure as a risk factor can also be interpreted as an admission that the topic is material for your company. So you don't want to address every trend as a risk factor - it's a facts and circumstances consideration that partially depends on the materiality of the topic.

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3. Remember a good risk factor is broad enough to cover the general - and sometimes universal - risk, but adds specificity about the unique impact for your particular company. In other words, generic risk factors that don't highlight what makes the topic a risk for a particular company or that don't cite known examples of how the risk is playing out for your company won't get you full protection.

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4. Remember that once you put the risk factor into a Form 10-Q, you'll want to leave it in subsequent 10-Qs until you get to the next 10-K (since Form 10-Q calls for material changes from what was disclosed in the last 10-K). You may wind up keeping it or an evolved version in your next 10-K too - depending on whether the issue still exists for the company as a material risk.

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5. Sometimes clients ask when they should restate their full slate of risk factors - including an update of the risk factors that have been in prior filings - in a 10-Q rather than just adding in new risk factors. It's fairly rare for a company to decide to include a full new slate, typically triggered by a company's new line of business - perhaps due to a major acquisition - that requires updates across many risk factors.

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