

PUBLICATION

Consider Refreshing Your Existing SEC Disclosure

October 30, 2015

As the fiscal year wraps up and SEC registrants begin to think about their 10-K and proxy, this is a good time for businesses to refresh their disclosure and to consider whether language that reappears annually still accurately reflects the current state of the company and the risks it faces. Here are some suggestions on updating disclosure:

- **Model disclosure after investor presentation.** The key business strengths and strategies set forth in an IPO registration statement, which was then turned into the first 10-K, may be outdated for companies after a few years. Review the most recent investor presentations and ensure the company presents itself in its disclosure just as it presents itself to its investors.
- **Reconsider risk factors.** As strengths and strategies change, so do risks. Reconsider the order in which risks factors are presented, so as to reflect the actual risk to the company; ensure they are up to date and sufficiently specific (include examples if helpful); shorten them to include one risk per caption; and avoid generic risks or mitigating language.
- **Shorten disclosure.** 10-K drafting tends to add to existing disclosure, and after a few years, disclosure can become unwieldy (and thus unhelpful) to investors. Aim to reduce disclosure by 10-15%. Old and repetitive disclosure should be the first to go, details about past acquisitions can often be scaled back and cross-references eliminate repetition. Reconsider whether existing disclosure that was material when drafted remains material today. Reviewing the SEC's 1998 "Plain English" guidance is helpful as well.
- **Consider graphic disclosure.** General Electric Company's recent 10-K and proxy disclosure demonstrates that "out of the box" thinking can allow investors a better understanding of an issuer. GE, after consultation with the SEC, included numerous graphs, flow charts and graphic images that allowed them to overcome investor complaints of dense disclosure and helped explain their business plan. GE rightfully noted that although disclosure documents get longer, investors' attention spans are shortening, and a thoughtful presentation tailored to the audience provides higher quality disclosure.

As companies continue to "right size" their disclosure, the SEC is currently reviewing disclosure requirements in order to improve both the content and presentation of business and financial information in registration statements and in periodic and current reports. Although the SEC's goal is to lower time, effort and expense of SEC registrants while continuing to provide material information to investors, the review actually may result in additional disclosure requirements. SEC staff indicated the results of this initiative will be coming out "soon," likely before year end.