SULLIVAN & CROMWELL LLP

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Key Considerations for Fiscal Year 2019 Form 10-K and 20-F Filings

Disclosure, Accounting and Form Considerations for Issuers Preparing Filings for Fiscal Year 2019

SUMMARY

As issuers prepare their Form 10-K and 20-F filings for fiscal year 2019, they should consider recent changes to Securities and Exchange Commission ("SEC") disclosure rules, trending disclosure topics and the implementation of critical audit matters disclosure in the audit report. This memorandum summarizes several of those disclosure and accounting considerations, and highlights the key changes to SEC rules that will affect Form 10-K and 20-F filings this upcoming reporting season.

GENERAL DISCLOSURE TRENDS

As issuers prepare their annual SEC reports, they should consider a number of disclosure topics that have continued to receive SEC and investor attention over the past year. Although some issuers may not need to make changes at this time, all issuers should evaluate whether their disclosures adequately address these topics. Issuers should also consider whether other issues that have received increasing attention in recent years, such as workplace conduct matters and the way social media is changing reputational risk and the risk of negative publicity, present material risks that should be discussed.

- ***LIBOR Transition.*** Financial regulators, industry groups and issuers continue to work on transition efforts in connection with the anticipated discontinuation of the London Interbank Offered Rate ("LIBOR"). LIBOR transition efforts have included considering and taking steps to address the potential effects of the anticipated discontinuation of LIBOR and developing and using alternative benchmarks. A recent joint statement by SEC senior staff highlights that issuers should continue to assess their LIBOR exposure. This evaluation should include a review of debt and other LIBOR-linked instruments that extend beyond 2021 so issuers can understand their exposure to LIBOR.[1] For their annual disclosure documents, issuers should consider whether to disclose the status of their efforts to evaluate and mitigate risks relating to legacy LIBOR-linked instruments.[2] If an issuer has identified a material

exposure to LIBOR, it should consider disclosing that fact, even if it does not yet know or cannot yet reasonably estimate the expected impact.[3] The SEC has also encouraged market participants to consider whether new contracts should reference an alternative rate instead of LIBOR or at least include effective fallback language if the contract references LIBOR.[4] In addition, issuers will need to consider the effects LIBOR transition will have on their accounting policies and financial statements, including the impact it may have on their hedge accounting and their ability to manage and hedge exposures to fluctuations in interest rates.[5] SEC Chairman Jay Clayton has stated that the SEC will continue to monitor disclosure and risk management efforts related to the LIBOR transition[6] and has identified it as a major market risk that the SEC is monitoring.[7]

- ***Brexit.*** Following the formation of a majority Conservative government in December 2019, the United Kingdom is expected to approve the Withdrawal Agreement and leave the European Union ("Brexit") on January 31, 2020. The relationship between the United Kingdom and the European Union beyond this date remains uncertain, as the United Kingdom and the European Union will enter into a transition period to provide time for them to negotiate the details of their future relationship. The transition period is currently expected to end on December 31, 2020, and, if no agreement is reached, the default scenario would be a "no-deal" Brexit.

  In light of the SEC's focus on the need for more robust disclosure of the potential business and operational impacts of Brexit, issuers should continue to consider whether updates to their Brexit disclosures are warranted, particularly as uncertainties remain unresolved or evolve, and as issuers develop a more informed understanding of the risks and potential effects associated with Brexit. In December 2018, Chairman Clayton indicated that the SEC has an interest in ensuring that issuers provide adequate Brexit disclosure and in March 2019, the Director of the Division of Corporation Finance indicated that the SEC expects to see disclosures that address a variety of matters, including regulatory risks issuers might face as a result of Brexit, potential impact on supply chains, risk of losing customers, exposure to currency devaluation, foreign currency exchange rate risk or other market risks, uncertainties regarding existing contracts and whether or not Brexit might affect financial statement recognition, measurement or disclosure items.

  To the extent issuers have developed plans or adjusted their business and operations in light of Brexit, they should also consider the extent to which such plans will be affected if a "no-deal" Brexit scenario occurs at the end of the transition period. To the extent material, issuers should include more detailed, tailored disclosure around those preparations or, if relevant, risks relating to the status of those preparations, including the risk of a "no-deal" Brexit. For example, issuers may have begun implementing plans to establish operations in other European countries as a way to maintain their "passport" to engaging in business in Europe, or they may have identified the importance of such plans but not made sufficient progress implementing them. Issuers' understanding of the risks and potential effects of Brexit will most likely continue to develop, and issuers' disclosure should evolve accordingly. Importantly, issuers should tailor their disclosure regarding the impact of Brexit to their particular situations and avoid generic disclosures that do not give a clear indication of the anticipated or possible effects of Brexit on their businesses and operations.

- ***Cybersecurity Disclosure.*** Cybersecurity continues to be a key area of risk for all public companies and the SEC has over the past two years increased its focus on the topic as well. In February 2018, the SEC issued an interpretive release on cybersecurity,[8] providing guidance on disclosure of cybersecurity risks and incidents and on disclosure controls and procedures in the area of cybersecurity. In July 2019, the SEC announced a $100 million settlement with Facebook, Inc. arising from alleged misstatements in its disclosure, which described the risk of misuse of user data as hypothetical, when the SEC alleged that misuse had already occurred.[9] This settlement serves as a reminder to issuers that when a disclosed cybersecurity or privacy risk materializes into an actual event, the issuer should evaluate and, as appropriate, update its disclosures. In light of this settlement, a number of other SEC enforcement actions against issuers for deficiencies in disclosures of cybersecurity risks and incidents and the SEC report of an investigation pursuant to Section 21(a) of the Securities Exchange Act of 1934 (the "Exchange Act") of cyber-related frauds perpetrated against public companies,[10] all issuers should carefully review their existing disclosures about cybersecurity and update them as needed.

The SEC expects issuers to provide cybersecurity disclosure that is "tailored to their particular cybersecurity risks and incidents" and "emphasize[s] a company-by-company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across companies." Key areas of focus for issuers include review of risk factors related to the potential harm of cybersecurity incidents to their business, disclosure about cybersecurity controls and procedures and discussion in the management's discussion and analysis of financial condition and results of operations ("MD&A") where cybersecurity events or compliance costs have had or are expected to have a material effect on the issuer's financial condition or results of operations. Issuers should also consider risks relating to incident response, as well as whether changes in their business and operations—such as entering new lines of business or changing business processes or practices—could have a material effect on their risk exposure to cybersecurity incidents.

- ***IP and Technology Risks from International Business Operations.*** In December 2019, the Division of Corporation Finance issued guidance encouraging companies to assess the risks related to the potential theft or compromise of their technology, data or intellectual property in connection with their international operations, as well as how the realization of these risks may impact their business, including their financial condition and results of operations, and any effects on their reputation, stock price and long-term value. To assist issuers in evaluating these risks, the guidance includes a series of questions to consider relating to the subject matter.[11] Where material, these risks should be disclosed in a manner that is tailored to the issuer's unique facts and circumstances and that would allow an investor to evaluate the risks through the eyes of the issuer's management.

- ***Tariffs and Global Trade Uncertainties.*** Issuers have increasingly disclosed the potential effects of tariffs and global trade uncertainties, and as these issues continue to develop, issuers that face risks associated with these matters should update their disclosure accordingly. In particular, issuers should review their risk factor disclosure, as well as their MD&A, to the extent that tariffs and global trade have been and are expected to remain factors significantly affecting their financial condition or results of operations.

- ***Sustainability.*** Large investors and proxy advisory firms have been evaluating Environmental, Social and Governance ("ESG") practices and rating company performance based on key sustainability metrics. In addition, Chairman Clayton has noted that the SEC's longstanding focus on a materiality-based disclosure regime could assist both investors and issuers in approaching "decision-useful" ESG disclosures. Similarly, in March 2019, William Hinman, Director of the Division of Corporation Finance, stated that although the SEC has not yet made any regulatory prescriptions, the SEC "is watching carefully as market-led approaches develop in the [sustainability] area, and [the SEC] actively compares the information voluntarily provided—typically outside of [issuer's] SEC filings—with the disclosures [filed with the SEC]."[12] In light of these developments and remarks, issuers should develop practices for identifying, monitoring and evaluating ESG disclosures and should include appropriate risk disclosure to the extent that ESG risks could have a material effect on their businesses and operations.

CRITICAL AUDIT MATTERS

The requirement for auditors to report critical audit matters ("CAMs") in the audit report became effective for large accelerated filers with fiscal years ending on or after June 30, 2019. The Public Company Accounting Oversight Board ("PCAOB") defines a CAM as "[a]ny matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgment."[13] For each CAM identified, auditors are

required to disclose a description of the matter, the reason(s) such matter was identified as a CAM and a description of how the matter was addressed in the audit.[14]

Only a limited number of audits have been subject to the CAMs disclosure requirement to date, and so, while it is too early to identify any predictive trends among issuers, the initial observations from these audits discussed below provide useful insight for the upcoming annual report cycle. The PCAOB reports that, based on its outreach to issuers who have already had CAMs included in their audit reports, the implementation of CAMs generally did not change audit committees' interactions with the auditor and audit committees have found the CAM review process to be a helpful component of the audit.[15]

- ***Subject Matter:*** The topics which have been most commonly identified as CAMs are business combinations, goodwill, revenue recognition, taxes and contingencies. Other topics which were observed less frequently include valuation, inventory, accounts or loans receivable, accounting changes or errors and deferred and capitalized costs.
- ***Number of CAMs:*** On average, auditors have identified 1.7 CAMs per audit in those reports filed prior to November 30, 2019.
- ***Disclosure:*** The CAMs disclosures have consistently highlighted that the topics most commonly identified as CAMs involve significant management judgment, sensitivity to significant assumptions and/or the use of subjective estimates. Auditors have described the specific procedures and evaluations conducted in order to assess the reasonableness and effectiveness of management's assumptions and procedures, including, in many cases, a generalized list of the materials reviewed or a description of the comparisons made by the auditor during their review. In a subset of cases, auditors report that they engaged outside professionals with specialized skills or knowledge to assist in their assessment of the CAM.

Large accelerated filers should consider the following key items when preparing for the inclusion of CAMs in their upcoming annual reports:

- ***Dialogue and Timing:*** Audit committees should engage in early, ongoing and robust dialogue with the auditor to discuss the CAMs disclosure and to ensure that the final CAM disclosure reflects the correct facts and circumstances of the audit.[16]
- ***Investor Relations:*** Issuers should prepare investor relations personnel to address any questions or investor concerns resulting from the CAMs disclosure. Investor responses should be consistent and, to the extent possible, prepared in advance based on an early identification of likely questions.
- ***Issuer Disclosure:*** Issuer disclosure relating to any matter identified as a CAM should be considered alongside the auditor's early draft of the CAM, most importantly to ensure that the issuer's disclosure is consistent with that of the auditor or to eliminate any investor information gaps which might be created as a result of the auditor's CAM disclosure.

SEC FORM UPDATES

In March 2019, the SEC adopted amendments (the "Disclosure Rules")[17] that changed certain disclosure requirements in Regulation S-K that were intended to improve the readability and navigability of disclosure documents and discourage repetition and disclosure of immaterial information. This memorandum does not cover all changes made to the regulations, but rather focuses on key provisions of the Disclosure Rules applicable to corporate issuers as they prepare their Form 10-K and 20-F filings for fiscal year 2019.[18]

- ***Year-to-Year Comparisons in Management's Discussion and Analysis.*** The Disclosure Rules amended Item 303(a) of Regulation S-K, such that issuers who provide financial statements covering three years in a filing are permitted to omit discussion of the earliest of the three years if any of the issuer's prior filings on EDGAR already contained such discussion. If an issuer elects to omit discussion of the earliest year, it must include a statement that identifies the location in the prior filing where the omitted discussion may be found. The Disclosure Release included a condition that the omitted year of financials must not be "material to an understanding" of the results of operations and financial condition. We anticipate that many issuers will take advantage of this flexibility to omit the third year of financials in order to shorten and simplify the MD&A disclosure, although some may take a hybrid approach of continuing to provide tabular data about the third year while omitting narrative commentary about the third year. Alternatively, an issuer may choose to continue to include the full year-to-year comparison to the extent that this method is familiar and discussion of the third year is appropriate for a discussion of the issuer's business.

  The Disclosure Rules also amended Instruction 1 to Item 303(a) to (1) eliminate the reference to five-year selected financial data for trend information and (2) state that an issuer may use any presentation that, in its judgment, would enhance a reader's understanding of the issuer's financial condition, changes in financial condition and results of operations, and need not use year-to-year comparisons to comply with the requirement. The SEC noted that it did not view any one mode of presentation as preferable to another. We anticipate that in most cases, issuers will continue to use year-to-year comparisons, as this method is the most familiar. To maintain a consistent approach to the MD&A disclosure requirements, the SEC adopted conforming changes to Form 20-F.

- ***Confidential Information.*** Issuers are now permitted to omit confidential information from material plans and contracts filed as exhibits under Item 601(b)(2) and Item 601(b)(10) of Regulation S-K, without submitting a confidential treatment request, where such information is both not material and would likely cause competitive harm to the issuer if publicly disclosed. An issuer is instead required to (1) mark the exhibit index to indicate that portions have been omitted; (2) include a prominent statement on the first page of each redacted exhibit that certain information in the marked sections of the exhibit has been omitted from the filed version; and (3) indicate with brackets where the information has been omitted from the filed version of the exhibit. Upon SEC request, the issuer will be required to provide to the SEC a copy of any omitted confidential information and an analysis of why competitive harm would be likely if publicly disclosed.[19] To maintain a consistent approach to the exhibit disclosure requirements, the SEC adopted conforming changes to Form 20-F.

- ***Schedules.*** Pursuant to Item 601(a)(5) of Regulation S-K, issuers are now permitted to omit entire schedules and similar attachments to exhibits required by Item 601 of Regulation S-K unless they contain material information and unless that information is not otherwise disclosed in the exhibit or the disclosure document, and so long as the issuer provides with each exhibit a list identifying the contents of any omitted schedules and attachments. The issuer is not required to prepare a separate list of the omitted information if that information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. Upon SEC request, the issuer will be required to provide a copy of any omitted schedules or attachments to the SEC. To maintain a consistent approach to the exhibit disclosure requirements, the SEC adopted conforming changes to Form 20-F.

- ***Personally Identifiable Information.*** New Item 601(a)(6) of Regulation S-K allows issuers to omit personally identifiable information ("PII") without submitting a confidential treatment request and without providing an analysis supporting redactions of PII from exhibits. To maintain a consistent approach to the exhibit disclosure requirements, the SEC adopted conforming changes to Form 20-F.

- ***Description of Securities.*** Issuers are now required by Item 601(b)(4)(vi) of Regulation S-K to provide, as exhibits, the information required by Item 202(a)-(d) and (f) (a brief description of their registered capital stock, debt securities, warrants and rights, other securities and American Depository Receipts) for all classes of securities registered under Section 12 of the Exchange Act. To the extent an issuer has a number of securities registered, the issuer should begin drafting this new exhibit well in advance of the 10-K/20-F filing deadline. Descriptions of an issuer's securities contained in prior SEC filings, such as prospectus supplements for the registered securities, can serve as a useful starting point. To

maintain a consistent approach to the exhibit disclosure requirements, the SEC adopted conforming changes to Item 12 and to Form 20-F.

- ***Material Contracts.*** The Disclosure Rules also limited the two-year look back period for filing material contracts not made in the ordinary course of business to newly reporting issuers. To maintain a consistent approach to the exhibit disclosure requirements, the SEC adopted conforming changes to Form 20-F.
- ***Description of Property.*** Previously, Item 102 required disclosure of "the location and general character of the principal plants, mines and other materially important physical properties of the issuer and its subsidiaries." To eliminate the mixture of disclosure standards in this language, the Disclosure Rules clarified that issuers must only disclose physical properties under Item 102 to the extent such physical properties are material to the issuer. This disclosure may be provided on a collective basis if appropriate.
- ***Risk Factors.*** The Disclosure Rules relocated the "Risk Factors" requirement under Item 503(c) to a new Item 105 of Regulation S-K to clarify that risk factors are required in both registration statements on Form 10 and periodic reports. The Disclosure Rules also eliminated the specific risk factor examples currently enumerated in Item 503(c) in order to encourage issuers to focus on their own risk identification process.
- ***Cover Page Requirements.*** Issuers are now required to include on the cover page of any Form 10-K, Form 10-Q, Current Report on Form 8-K and Form 20-F the ticker symbol for each class of securities registered under Section 12(b) of the Exchange Act.
- ***Incorporation by Reference.*** The Disclosure Rules eliminated the Item 10(d) prohibition on incorporating by reference documents that have been on file with the SEC for more than five years. The Disclosure Rules also expand the existing exhibit hyperlinking requirement to cover all information that is incorporated by reference into a periodic report.

  However, issuers are prohibited from incorporating by reference or cross-referencing in their financial statements information from outside of the financial statements, except when otherwise specifically permitted by the SEC's rules or by the applicable accounting rules.

On August 8, 2019, the SEC announced proposed rule amendments to modernize the description of business, legal proceedings and risk factor disclosures that issuers are required to make pursuant to Regulation S-K in order to make these disclosures more principles-based and to update certain requirements for disclosure of legal proceedings. No changes have been adopted at this time, but issuers should consider whether some of the guidance provided in the proposed rules should be considered in their annual disclosure, such as the SEC's focus on discouraging repetition, the requirement to include a description of the issuer's human capital resources in the description of the business and the reorganization of risk factors under relevant headings.[20]

XBRL Updates

Although many issuers have already started making changes in their machine-readable eXtensible Business Reporting Language ("XBRL"), as large accelerated filers preparing U.S. GAAP financials were subject to new requirements for fiscal periods ending on or after June 15, 2019, it is worth noting the XBRL updates as other filers may comply early, or will not be required to comply until a later point in time in accordance with the phased-in compliance period.[21]

- ***Inline XBRL.*** All issuers that prepare financial statements in accordance with U.S. GAAP or International Financial Reporting Standards as adopted by the International Accounting Standards Board ("IFRS") are required to comply with the SEC's XBRL requirements, which entail providing information from financial statements in XBRL format. Specifically, issuers are required to utilize Inline XBRL, which integrates the XBRL information into the issuer's filings. Previously, the issuer would submit XBRL information to the SEC through its EDGAR filing system and then the EDGAR system would create the interactive data files. Although the SEC began accepting Inline XBRL filings in June 2016, the vast majority of issuers did not use the functionality. Large accelerated filers that prepare financial statements in accordance with U.S. GAAP were required to use Inline XBRL for quarterly fiscal periods ending on or after June 15, 2019.[22] Accelerated filers that prepare financial statements in accordance with U.S. GAAP will be required to comply with the requirements for fiscal periods ending on or after June 15, 2020, and all others (including foreign private issuers that prepare financial statements in accordance with IFRS) for fiscal periods ending on or after June 15, 2021.
- ***Tagging Requirements***. Once an issuer is required to use Inline XBRL, it will need to tag in XBRL all information on the cover page of Form 10-K, Form 10-Q, Current Reports on Form 8-K and Form 20-F. To implement these tagging requirements, issuers are required to file with each of the specified forms a "Cover Page Interactive Data File" (i.e., machine readable computer code that presents the information required by Rule 406 of Regulation S-T in Inline XBRL format). Non-operating companies, such as "business development companies" for purposes of the Investment Company Act, will not be subject to these requirements. The compliance dates for the tagging of cover page information in XBRL are identical to those for compliance with Inline XBRL requirements.

Proxy Changes

Certain changes under the Disclosure Rules will likely have greater relevance for issuers' annual proxy statements but will still have implications for their Form 10-Ks.

- ***Compliance with Section 16(a) of the Exchange Act.*** The Disclosure Rules amended Item 405 of Regulation S-K, which requires issuers to disclose each reporting person who failed to file Section 16 reports on a timely basis. Issuers are now permitted to rely solely on electronically filed reports in determining whether there are any delinquencies required to be reported; however, issuers are not required to limit their inquiry to those filings. The Disclosure Rules also eliminated the requirement for Section 16 reporting persons to furnish to the issuer duplicates of reports filed by them. Finally, the Disclosure Rules (1) added an instruction to change the disclosure heading "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports" to more precisely describe the required disclosure; (2) encouraged issuers to exclude that heading if there are no delinquencies to report; and (3) eliminated the Form 10-K cover page's check box relating to Item 405 disclosures and the related instruction in Item 10 of Form 10-K.
- ***Directors, Executive Officers, Promoters and Control Persons.*** The Disclosure Rules amended Item 401 of Regulation S-K to (1) clarify that the information regarding executive officers described in Item 401 is not required in proxy statements if the information is otherwise provided in the issuer's Form 10-K and (2) change the required caption to "Information about Our Executive Officers" (instead of the current "Executive officers of the registrant").

Apart from the changes under the Disclosure Rules, at a December 2019 AICPA conference, Mr. Hinman recommended that, where relevant, issuers should include additional disclosure in the compensation discussion and analysis section of the proxy describing how stock buybacks are considered by the compensation committee, noting concerns that stock buybacks are often perceived as a way for management to unfairly increase executive compensation that is tied to stock price.

The topics reviewed above reflect recent trends and disclosure updates that all issuers should consider as they prepare for the Form 10-K and 20-F season. However, each issuer's disclosure is unique, and therefore needs to be tailored to its particular facts and circumstances.

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ENDNOTES

1 "Staff Statement on LIBOR Transition" (July 12, 2019), *available at* https://www.sec.gov/news/public-statement/libor-transition.

2 A joint statement by SEC Chairman Clayton, Sagar Teotia, Chief Accountant, and William Hinman, Director, Division of Corporation Finance, dated December 30, 2019 (the "December 30, 2019 Joint Statement"), encourages audit committees to understand management's plan to identify and address the risks associated with LIBOR reform and the expected impact on accounting and financial reporting and any related issues associated with financial products and contracts that reference LIBOR. For further discussion of the guidance contained in the December 30, 2019 Joint Statement, please see our Memorandum to Clients, "Audit Committee Oversight of Financial Reporting" (Jan. 7, 2020), *available at* https://www.sullcrom.com/files/upload/SC-Publication-Audit-Committee-Oversight-of-Financial-Reporting.pdf.

3 "Staff Statement on LIBOR Transition" (July 12, 2019), *available at* https://www.sec.gov/news/public-statement/libor-transition.

4 In a June 2019 speech, Randal Quarles, Vice Chair for Supervision of the Federal Reserve Board of Governors, also encouraged market participants to move away from using LIBOR and, if they continue to use LIBOR, to use more effective fallback language. Speech *available at* https://www.federalreserve.gov/newsevents/speech/quarles20190603a.htm.

5 In September 2019, the IASB amended certain IFRS standards with respect to certain hedge accounting requirements to provide relief from the potential uncertainties of the LIBOR transition. The amendments require issuers to provide additional information to investors about their hedging relationships which are directly affected by these uncertainties. IASB, "Interest Rate Benchmark Reform (Amendments to IFRS 9, IAS 39, and IFRS 7)" (September 26, 2019). That same month, the Financial Accounting Standards Board ("FASB") issued a proposed Accounting Standards Update to provide temporary optional guidance designed to ease the potential burden in accounting for the LIBOR transition and related reference rate reforms. The proposed update contains additional disclosure requirements that issuers will need to take into account. FASB, "Exposure Draft: Proposed Accounting Standards Update" (September 5, 2019), *available at* https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176173289025&acceptedDisclaimer=true.

6 Securities and Exchange Commission Press Release, "SEC Staff Publishes Statement Highlighting Risks for Market Participants to Consider As They Transition Away from LIBOR" (July 12, 2019), *available at* https://www.sec.gov/news/press-release/2019-129.

7 Jay Clayton, Chairman, Securities and Exchange Commission, "SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks" (Dec. 6, 2018), *available at* https://www.sec.gov/news/speech/speech-clayton-120618.

8 "Commission Statement and Guidance on Public Company Cybersecurity Disclosures," SEC Release Nos. 33-10459, 34-82746 (Feb. 20, 2018), *available at* https://www.sec.gov/rules/interp/2018/33-10459.pdf.

9 Securities and Exchange Commission, "Facebook to Pay $100 Million for Misleading Investors About the Risks It Faced From Misuse of User Data" (July 24, 2019), *available at* https://www.sec.gov/news/press-release/2019-140.

10 "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding Certain Cyber-Related Frauds Perpetrated Against Public Companies and Related Internal Accounting Controls Requirements," Release No. 34-84429 (Oct. 16, 2018), *available at* https://www.sec.gov/litigation/investreport/34-84429.pdf. The 21(a) Report states that internal controls over financial reporting may need to be reassessed in light of risks arising from cyber-related frauds and other emerging risks.

ENDNOTES (CONTINUED)

11 For the full text of the Disclosure Guidance, see, "Intellectual Property and Technology Risks Associated with International Business Operations", *available at* https://www.sec.gov/corpfin/risks-technology-intellectual-property-international-business-operations.

12 William Hinman, Director, Division of Corporation Finance, "Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks" (Mar. 15 2019), *available at* https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519.

13 PCAOB, "Implementation of Critical Audit Matters: The Basics" (Mar. 18, 2019), *available at* https://pcaobus.org/Standards/Documents/Implementation-of-Critical-Audit-Matters-The-Basics.pdf.

14 For a more detailed description of the CAMs requirement and related PCAOB guidance, please see our Client Memorandum, "Critical Audit Matters Guidance" (Mar. 25, 2019), *available at* https://www.sullcrom.com/files/upload/SC-Publication-Critical-Audit-Matters-Guidance.pdf.

15 *See* PCAOB "Critical Audit Matters Spotlight", *available at* https://pcaobus.org/Documents/CAMs-Spotlight.pdf.

16 The December 30, 2019 Joint Statement encourages audit committees to engage in a substantive dialogue with the issuer's auditor regarding the audit and expected CAMs to understand the nature of each CAM, the auditor's basis for the determination of each CAM and how each CAM is expected to be described in the auditor's report. For further discussion of the guidance to audit committees contained in the December 30, 2019 Joint Statement, please see our Client Memorandum, "Audit Committee Oversight of Financial Reporting" (Jan. 7, 2020), *available at* https://www.sullcrom.com/files/upload/SC-Publication-Audit-Committee-Oversight-of-Financial-Reporting.pdf.

17 "FAST Act Modernization and Simplification of Regulation S-K," SEC Release No. 33-10618; 34-85381; IA-5206, *available at* https://www.sec.gov/rules/final/2019/33-10618.pdf.

18 For a more detailed description of the changes included in the Disclosure Rules, please see our Client Memorandum, "SEC Adopts Amendments to Modernize and Simplify Disclosure Requirements" (Mar. 22, 2019), *available at* https://www.sullcrom.com/files/upload/SC-Publication-SEC-Adopts-Amendments-to-Modernize-and-Simplify-Disclosure-Requirements.pdf.

19 Information may be redacted under the new streamlined process only if the information would likely cause competitive harm if disclosed. Issuers may also file traditional confidential treatment requests following the procedures under Exchange Act Rule 24b-2 without a showing of competitive harm. Earlier this year, the Supreme Court held that information submitted to the federal government qualifies as "confidential" for purposes of Exemption 4 under the Freedom of Information Act when the information is customarily and actually treated as private and the information is provided to the government under an assurance of privacy. For a more detailed discussion of this decision, please see our Client Memorandum, "*FMI* v. *Argus Leader Media* – Supreme Court Broadens Scope of FOIA Exemption: Court Holds That, Under FOIA, the Federal Government May Not Disclose Commercial Information That a Corporation Has Kept Private and Provided to the Government Under an Assurance of Privacy" (June 25, 2019), *available at* https://www.sullcrom.com/files/upload/SC-Publication-FMI-v-Argus-Leader-Media-Supreme-Court-Broadens-Scope-of-FOIA-Exemption.pdf. In December 2019, the Division of Corporation Finance issued guidance describing the process and additional considerations for issuers that wish to protect confidential information using the traditional confidential treatment application process, *available at* https://www.sec.gov/corpfin/confidential-treatment-applications.

20 For a more detailed description of the proposed rule changes, please see our Client Memorandum, "SEC Proposes Amendments to Regulation S-K Disclosure Requirements" (Aug. 12, 2019), *available at* https://www.sullcrom.com/files/upload/SC-Publication-SEC-Proposes-Amendments-to-Regulation-S-K-Disclosure-Requirements.pdf.

ENDNOTES (CONTINUED)

[21] "Inline XBRL Filing of Tagged Data," SEC Release Nos. 33-10514, 34-83551, IC-33139 (June 28, 2018), 83 FR 40846 (Aug. 16, 2018), *available at* https://www.govinfo.gov/content/pkg/FR-2018-08-16/pdf/2018-14365.pdf. For more information, see our Client Memorandum, "SEC Adopts New Rules Affecting Public Company Reporting: SEC Requires Use of Inline XBRL for Public Companies Including Funds, Eliminates XBRL Website Posting Requirement, Expands Companies Eligible for 'Smaller Reporting Company' Scaled Disclosure and Modifies Rules for Financial Statements of Smaller Acquired Businesses" (July 5, 2018), *available at* https://www.sullcrom.com/sec-adopts-new-rules-affecting-public-company-reporting.

[22] Issuers subject to Form 10-K filing requirements will not be required to submit Inline XBRL files for a Form 10-K until they have already submitted Inline XBRL files for at least one 10-Q.

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