

2017-2018 Year-End Tool Kit

For 2017 Year-End Reporting and 2018 Annual Meetings

Form 10-K: Five Changes for 2018 (and a Bonus)

Federal securities regulation in 2017 continued the relatively modest pace of change of 2016. When preparing annual reports on Form 10-K for calendar year 2017, public companies should review the following five points that have changed during the past year. The sixth point is a reminder of a change that was effective for Form 10-K reports filed in 2017 but was in some cases omitted. The paragraph captions below in most cases contain hyperlinks to the related Goodwin client alert.

EGC “check boxes”. Form 10-K (and Form 10-Q and Form 8-K) reports now require (1) a check box for EGC status and (2) a check box to indicate whether the company has made an irrevocable election *not* to use the extended transition period for complying with any new or revised financial accounting standard provided pursuant to Section 7(a)(2)(B) of the Securities Act of 1933. The required check boxes and text are shown in the latest version of [Form 10-K](#) posted on the SEC website.

CEO pay ratio disclosure. The SEC adopted the CEO pay ratio rule in 2015. In spite of many questions about whether the CEO pay ratio rule would survive efforts to rescind the rule or further defer its compliance date, this disclosure will be required in 2018 for most companies with a December 31 fiscal year end. Although CEO pay ratio disclosure is likely to appear in most companies’ proxy statements and to be incorporated by reference into their Annual Reports on Form 10-K from the proxy statement, it is part of the executive compensation disclosure required by Form 10-K for most companies. This means that, among other impacts, companies that do not file a definitive proxy statement within 120 days after the end of the company’s fiscal year must file an amendment to their Form 10-K report to include this and other Part III information within the 120 day period provided by SEC rules. The rule does not apply to smaller reporting companies, emerging growth companies, U.S.-Canadian multijurisdictional disclosure system filers, foreign private issuers or registered investment companies.

Tax Cuts and Jobs Act disclosure. The SEC issued guidance on ASC 720 and accounting for the effects of the Tax Cuts and Jobs Act on December 22, 2017. In addition to the interpretive guidance on disclosure provided by the SEC staff in [SAB 118](#) and [C&DI 110.02](#), companies should consider a variety of other related disclosure impacts, such as disclosure of known trends and uncertainties in MD&A, Regulation FD disclosure, and other matters discussed in [this client alert](#).

Exhibit hyperlinks and HTML filing format. Form 10-K reports must now include active hyperlinks to exhibits before the signature page (Item 15(a)(3) of [Form 10-K](#)). This includes exhibits incorporated by reference from other filings. In the case of exhibits originally filed as part of a single ASCII (text) format file, the company should provide a hyperlink to the filing that contains the exhibit and provide a reference that clearly identifies which exhibit is incorporated by reference. Item 601 of Regulation S-K has been amended to require that the exhibit index must appear *before* the signature page, which is another change from Form 10-K reports filed by calendar year-end companies in 2017. Further, in most cases, companies must also now make SEC filings in HTML, rather than ASCII, format. These

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requirements also apply to quarterly reports on Form 10-Q and current reports on Form 8-K, as well as most registration statements filed under the Securities Act of 1933, among others.

Changes in audit reports (AS 3101). Audit reports filed with Form 10-K reports filed by companies with a December 31 fiscal year end must include the [substantive and formal changes](#) required by AS 3101. AS 3101 will also require disclosure of “critical audit matters” in audit reports, but does not require this disclosure until audit reports are filed for fiscal years ending on or after June 30, 2019 for large accelerated filers (and later for other filers), but auditors may voluntarily include this disclosure earlier. The [December 2017 guidance](#) from the PCAOB staff contains an annotated example of an audit report that complies with the new requirements on page 2.

Bonus: Item 16. Form 10-K Summary – In 2016, the SEC added a new Item 16 to [Form 10-K](#) to permit companies to provide an optional summary of the Form 10-K report, subject to certain requirements. Even if they choose not to provide a summary, companies should include the caption for this item (“Item 16. Form 10-K Summary.”) and indicate “not applicable” (and update the table of contents).

Other Disclosure Topics for Review. In addition to the many substantive areas that require focus each year, companies should review two specific disclosure areas as they prepare their 2017 Form 10-K annual reports.

New Revenue Recognition Standard. ASC 606, Revenue From Contracts With Customers, was issued jointly by the FASB and IASB on May 28, 2014. ASC is effective for most public companies for the first interim period within annual reporting periods that begins after December 15, 2017. Senior SEC representatives have repeatedly commented on implementation of ASC 606 and related disclosures, such as the statements in [this speech](#) by Wesley Bricker, the SEC Chief Accountant. Companies that adopt ASC 606 on the full retrospective method may need to reissue 2016 and 2017 financial statements, which could be costly and time-consuming, and has the potential to delay an offering if not anticipated with enough time to deal with financial statement issues.

Recent Trends in Potential Risk Factors. In addition to risk factor disclosure concerning the impacts and uncertainties of the Tax Cuts and Jobs Act, companies should review topics that have become newsworthy during 2017 such as Brexit; severe weather impacts; sustainability/climate change; shareholder activism; and political/regulatory change.