

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

## 2019-2020 Form 10-K and Proxy Statement Updates

The table below summarizes changes in Form 10-K and proxy statements for companies with a December 31 fiscal year and the spring 2020 proxy season. The changes shown are for domestic (U.S.) operating companies. For discussions of changes affecting foreign private issuers, please refer to the client alerts linked below.

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
<b>Form 10-K</b>		<a href="#">SEC Form 10-K (pdf)</a>  There is a complete list of <a href="#">SEC Forms List</a> on the SEC website
Cover Page	<b>Trading Symbol.</b> For each class of securities registered under Section 12(b) of the Securities Exchange Act, the cover page of Form 10-K must include the trading symbol for each class of securities registered on an exchange. This includes listed preferred equity and debt securities.	<a href="#">SEC Release No. 33-10618</a>  <a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a>
Cover Page	<b>Delinquent Section 16(a) Filings Checkbox.</b> The checkbox relating to disclosure of Section 16(a) delinquent filings and the related text ("Indicate by check mark if disclosure of delinquent filers...") has been eliminated. See also "Section 16(a) Compliance" in the section on Proxy Statement changes below.	<a href="#">SEC Release No. 33-10618</a>  <a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Cover Page	<p><b>Inline XBRL Tagging.</b> (Large Accelerated Filers) Large accelerated filers are required to use inline XBRL tagging for essentially all cover page data on Forms 10-K, 10-Q and 8-K. Note that accelerated filers will be required to comply with this requirement for reports for fiscal periods ending on or after June 15, 2020. All other filers will be required to comply with this requirement for reports for fiscal periods ending on or after June 15, 2021.</p>	<p>Cover page tagging:</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p> <p>Inline XBRL:</p> <p><a href="#">SEC Release No. 33-10514</a></p> <p><a href="#">SEC Adopts Mandatory Inline XBRL</a></p> <p>Inline XBRL Staff C&amp;DIs:</p> <p><a href="#">SEC Staff C&amp;DIs</a></p> <p><a href="#">Inline XBRL Interpretations Issued by SEC Staff</a></p>
<b>Prior Cover Page Changes</b>		
Cover Page	<p><b>References to Interactive Data Files.</b> Effective September 17, 2018, the references to website posting of interactive data files were removed from the text accompanying the interactive data files checkbox.</p>	<p><a href="#">SEC Release No. 33-10514</a></p> <p><a href="#">SEC Adopts Mandatory Inline XBRL</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Cover Page	<b>Filer Status Check Boxes.</b> Effective September 10, 2018, the parenthetical “do not check if smaller reporting company” adjacent to the checkbox for nonaccelerated filer was removed.	<a href="#">SEC Release No. 33-10513</a>  <a href="#">SEC Expands Smaller Reporting Company Eligibility</a>
Risk Factors Item 1A	<b>Redesignation of Regulation S-K Item and Elimination of Risk Factor Examples.</b> The disclosure requirement for risk factors, previously Item 503(c) of Regulation S-K, has been re-designated as Item 105. There were no changes in the disclosure requirements but, consistent with the SEC’s principles-based risk factor disclosure requirements, the examples of risk factors previously included in Item 503(c) have been removed.	Regulation S-K Item 105 (formerly Item 503(c))  <a href="#">SEC Release No. 33-10618</a>  <a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC’s New Amendments</a>
Risk Factors Item 1A	<b>Risk Factor Review.</b> The SEC has highlighted the following risks during the past year. SEC focus on risk disclosure in these areas emphasizes the need to review risk factor disclosure in these areas. Companies should also remember that risk factor disclosure of hypothetical risks by itself may be inadequate if the risks have actually occurred. As a relatively recent example, the SEC recently imposed a \$30 million penalty on a company, in part because the SEC alleged that the company’s risk factor disclosure that a governmental authority <i>may</i> take a position contrary to the company’s position on prior Medicaid submissions were misleading because a governmental authority had <i>already</i> informed the company that its submissions were incorrectly classified. See the SEC <a href="#">press release</a> and <a href="#">SEC complaint</a> .	

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
	<p><b>Risk Factor Review (continued).</b> Companies should consider reviewing and updating their risk factor (and other) disclosures to reflect changes in material business and financial risks, as well as the following areas that have been the focus of recent SEC attention, among others:</p>	
Risk Factors Item 1A	<p><b>Intellectual Property and Technology Risks Associated with International Business Operations.</b> In December 2019 the staff of the SEC Division of Corporation Finance published guidance on disclosure obligations that companies should consider with respect to intellectual property and technology risks that may occur in connection with international business operations.</p> <p>The guidance covers a broad range of potential risks related to conducting business in foreign jurisdictions; maintaining technology, data or intellectual property in foreign jurisdictions; licensing or granting ownership rights to foreign governmental or private sector partners, among others.</p>	<p><a href="#">CF Disclosure Guidance Topic No. 8: Intellectual Property and Technology Risks Associated with International Business Operations</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Risk Factors Item 1A	<p><b>LIBOR Transition Risks.</b> Disclosure about the LIBOR sunset in 2021 has been a topic of concern to the SEC. The SEC staff statement cited here highlights a variety of risks for companies to consider, including specific discussions by the Divisions of Corporation Finance, Investment Management and Trading and Markets, as well as the Office of the Chief Accountant. The Division of Corporation Finance noted that “[a] number of existing rules or regulations may require disclosure related to the expected discontinuation of LIBOR, including rules and regulations related to disclosure of risk factors, management’s discussion and analysis, board risk oversight, and financial statements.” The Office of the Chief Accountant highlighted accounting and financial reporting for modifications of terms within debt instruments; hedging activities; inputs used in valuation models; and potential income tax consequences.</p>	<p><a href="#">SEC Staff Statement on LIBOR Transition</a></p>
Risk Factors Item 1A	<p><b>Brexit Risks.</b> Brexit disclosure has been another topic of concern to the SEC. Among the disclosure considerations for companies are the impact of changes in regulatory risk (especially for financial service, biopharmaceutical and transportation companies); supply chain disruption risks; market risks including loss of customers, sales or revenue losses and increased tariff costs, currency devaluation and forex rate risks; potential impacts on existing material contracts; and financial statement impacts such as inventory write-downs, impairment of long-lived assets, receivable collectability, fair value measurements, foreign currency matters, hedge accounting and income taxes.</p>	<p><a href="#">Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Risk Factors Item 1A</p>	<p><b>Cybersecurity Risks.</b> Cybersecurity and related risk disclosure, as well as timely disclosure of cyber incidents, has been a continuing SEC focus.</p> <p><i>Internal Accounting Controls.</i> In late 2018, the Commission published a <a href="#">Report of Investigation</a> into whether certain public companies that suffered financial losses as a result of cyber-related fraud had violated federal securities laws by failing to have a system of internal accounting controls that provides reasonable assurances that the company’s assets will be protected from cyber-related fraud. The report emphasized that companies may need to reassess and revise their internal accounting controls in light of emerging risks, including risks that arise from cyber-related fraud and “today’s ever expanding digital interconnectedness.” Specifically, companies must “devise and maintain internal accounting controls that provide reasonable assurances that transactions are executed with, or that access to company assets is permitted only with, management’s general or specific authorization.”</p> <p>Earlier in 2018, the SEC published an <a href="#">interpretation</a> that cited the following potential negative impacts from cyber incidents as examples:</p> <ul style="list-style-type: none"> <li>• remediation costs, such as liability for stolen assets or information, repairs of system damage, and incentives to customers or business partners in an effort to maintain relationships after an attack;</li> <li>• increased cybersecurity protection costs, which may include the costs of making organizational changes, deploying additional personnel and protection technologies, training employees, and engaging third party experts and consultants;</li> <li>• lost revenues resulting from the unauthorized use of proprietary information or the failure to retain or attract customers following an attack;</li> </ul>	<p><a href="#">SEC Report Cautions Public Companies on Internal Controls and Cybersecurity Risks</a></p>
---------------------------------	---	--

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
	<ul style="list-style-type: none"> <li>• litigation and legal risks, including regulatory actions by state and federal governmental authorities and non-U.S. authorities;</li> <li>• increased insurance premiums;</li> <li>• reputational damage that adversely affects customer or investor confidence; and</li> <li>• damage to the company's competitiveness, stock price, and long-term shareholder value.</li> </ul>	

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Risk Factors Item 1A</p>	<p><i>Cybersecurity Disclosures.</i> In the <a href="#">interpretation</a>, the Commission stated that “[i]t would be helpful for companies to consider the following issues, among others, in evaluating cybersecurity risk factor disclosure:</p> <ul style="list-style-type: none"> <li>• the occurrence of prior cybersecurity incidents, including their severity and frequency;</li> <li>• the probability of the occurrence and potential magnitude of cybersecurity incidents;</li> <li>• the adequacy of preventative actions taken to reduce cybersecurity risks and the associated costs, including, if appropriate, discussing the limits of the company’s ability to prevent or mitigate certain cybersecurity risks;</li> <li>• the aspects of the company’s business and operations that give rise to material cybersecurity risks and the potential costs and consequences of such risks, including industry-specific risks and third-party supplier and service provider risks;</li> <li>• the costs associated with maintaining cybersecurity protections, including, if applicable, insurance coverage relating to cybersecurity incidents or payments to service providers;</li> <li>• the potential for reputational harm;</li> <li>• existing or pending laws and regulations that may affect the requirements to which companies are subject relating to cybersecurity and the associated costs to companies; and</li> <li>• litigation, regulatory investigation, and remediation costs associated with cybersecurity incidents.”</li> </ul>	
---------------------------------	--	--

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Risk Factors Item 1A	<p><b>Hypothetical Risks vs. Actual Events.</b> In drafting these disclosures, companies should avoid the use of boilerplate language. Companies should also remember that they may have a duty to correct or update any prior disclosure that was untrue or omitted necessary material facts that would otherwise make the disclosure misleading. When a material incident occurs, companies should be aware of the need for timely disclosures. Additional guidance can be found in <a href="#">CF Disclosure Guidance: Topic No. 2, “Cybersecurity”</a> (October 13, 2011).</p>	<p><a href="#">SEC Press Release</a></p> <p><a href="#">SEC Complaint</a></p> <p><a href="#">CF Disclosure Guidance: Topic No. 2, “Cybersecurity”</a></p>
Properties Item 2	<p><b>Description of Properties.</b> As amended, Item 102 requires disclosure of physical properties only “to the extent material” to the company, and uses a consistent materiality threshold rather than the mixed standards required by Item 102 prior to the amendments. The amendments also clarify that companies may provide disclosure under Item 102 on a collective basis, if appropriate. The SEC retained the existing instructions that are specific to the real estate, mining, and oil and gas industries without change.</p>	<p>Regulation S-K Item 102</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC’s New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
<p>Part I (No Item or Caption)</p> <p><i>See General Instruction G(3)</i></p>	<p><b>Disclosure About Directors, Executive Officers, Promoters and Control Persons.</b> For clarity, the general instructions for Item 401 now include the former instruction for Item 401(b), which has also been amended to clarify that information about executive officers required by Item 401 is not required in a company's proxy statement if it is included in the company's Form 10-K annual report. The amendments clarify that this instruction applies to all executive officer disclosure required by Item 401.</p> <p>If the company includes this disclosure in its Form 10-K, the amended instruction requires the company to provide this disclosure in a separate section in Part I of the Form 10-K annual report, and changes the caption for this information to "Information about our Executive Officers" from the prior caption, "Executive Officers of the Registrant."</p>	<p>Regulation S-K Item 401 Form 10-K General Instruction G(3)</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Management's Discussion and Analysis Item 7</p>	<p><b>Optional Two-Year Financial Discussion.</b> Instruction 1 to Item 303(a) previously required that MD&amp;A must cover the three-year period covered by the financial statements included in the Form 10-K report. As amended, a company may omit the discussion of the earliest year in the three-year period if the company satisfies specified conditions. Instruction 1, as amended, also states that a company may use any presentation that would, in its judgment, enhance a reader's understanding. The amendments also deleted the reference to five-year selected financial data for trend information in Instruction 1, but other existing requirements continue to require trend disclosure in MD&amp;A.</p> <p><b>Conditions.</b> The conditions for omitting discussion of the earliest year include:</p> <ul style="list-style-type: none"> <li>• the omitted discussion must not be material to an understanding of the company's financial condition, changes in financial condition, and results of operations;</li> <li>• the company must have included the omitted discussion in a prior EDGAR filing; and</li> <li>• the company must clearly identify the location in the prior filing where the omitted discussion may be found (see example text in the right-side cell in this row).</li> </ul> <p><b>Emerging Growth Companies and Smaller Reporting Companies.</b> The amendments do not affect smaller reporting companies (SRCs), which have been able to elect to limit financial disclosures to a two-year period. The amendments also do not affect an emerging growth company (EGC) if the company provides two years of audited financial statements in the Securities Act registration statement for its initial public offering.</p>	<p>Regulation S-K Item 303(a), Instruction 1</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">SEC Staff C&amp;DIs on Instruction 1</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p> <p><b>Sample Disclosure.</b> Instruction 1 does not require any specific form of reference if a company chooses to omit the third year financial discussion, nor does it require any specific location for this disclosure. Incorporation by reference and hyperlinking are not required. The following sample disclosure would satisfy the requirements of Instruction 1 and could be located in a headnote at the beginning of MD&amp;A.</p> <p>Information pertaining to fiscal year [2017] was included in the Company's Annual Report on Form 10-K for the year ended December 31, [2018] [on page __] under Part II, Item 7, "Management's Discussion and Analysis of Financial Position and Results of Operations," which was filed with the SEC [on _____, 2019].</p>
--	--	---

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
	<p><b>SEC Staff C&amp;DIs 1-24-20.</b> On January 24, 2020, the staff of the Division of Corporation Finance published three compliance and disclosure interpretations. The CDIs clarify that:</p> <ul style="list-style-type: none"> <li>• a statement identifying the location of the omitted third year financial discussion does not incorporate the omitted discussion into the current year Form 10-K (Question 110.02)</li> <li>• a company may not omit a discussion of the earliest of three years from its current MD&amp;A if it believes a discussion of that year is necessary (Question 110.03)</li> <li>• if a company omits the third year financial discussion from its current year Form 10-K report and that 10-K report is incorporated by reference into an effective Form S-3 registration statement, the omitted third year financial discussion will not be incorporated by reference into the Form S-3 unless the company expressly incorporates the discussion by reference (Question 110.04)</li> </ul>	<p>Regulation S-K Item 303(a), Instruction 1</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">SEC Staff C&amp;DIs on Instruction 1</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Various	<p><b>Non-GAAP Disclosures.</b> Compliance with SEC rules on disclosure of non-GAAP financial measures continues to be a priority for the SEC staff. In addition to comments issued in the process of SEC Division of Corporation Finance staff review of company filings, the Division of Enforcement brings actions in cases it believes appropriate. As an example, in December 2018 the SEC settled an enforcement proceeding involving the failure to comply with the requirement that companies give equal or greater prominence to comparable GAAP financial measures when disclosing non-GAAP financial measures in SEC filings and in earnings releases furnished under Form 8-K. Companies should review non-GAAP disclosures in both earnings releases and Form 10-K reports to ensure compliance with SEC requirements.</p>	<p><a href="#">SEC Enforcement Action</a></p> <p><a href="#">Non-GAAP “Equal or Greater Prominence” – SEC Enforcement Action Highlights Importance of Compliance</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
<p>Audit Report to Financial Statements and Supplementary Data Item 8</p>	<p><b>Critical Audit Matter Disclosures in Audit Report.</b> (Large Accelerated Filers) Form 10-K reports filed by large accelerated filers for fiscal years ended December 31 will be the first Form 10-K report subject to the requirement that the company's auditor include disclosure in its audit report about critical audit matters (CAMs) that the auditor identified during the audit.</p> <p>Audit Standard 3101 requires the auditor to identify the CAM; describe the principal considerations that led the auditor to determine the matter is a CAM; describe how the CAM was addressed in the audit; and refer to the relevant financial statement accounts or disclosures. PCAOB staff guidance indicates that the PCAOB staff expect that auditors will identify one or more CAMs in connection with each audit.</p> <p>Companies should be discussing potential CAM disclosures with their auditors in advance of filing their Form 10-K reports to avoid unexpected disclosure in the auditor's report on the financial statements. Companies should also ensure that the disclosure of CAMs is not inconsistent with other disclosures, such as MD&amp;A and the footnotes to the financial statements.</p>	<p><a href="#">Audit Standard 3101</a></p> <p><a href="#">PCAOB News Release (June 1, 2017)</a></p> <p><a href="#">PCAOB Staff Guidance: Implementation of Critical Audit Matters</a></p> <p><a href="#">New PCAOB Audit Standard for Audit Reports</a></p>
<p>Exhibits Item 15</p>		<p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Exhibits Item 15</p>	<p><b>Description of Securities.</b> Item 202 requires a company to describe briefly its registered equity and debt securities, warrants, rights, American depository receipts, and other securities in registration statements filed under the Securities Act of 1933, but not in Form 10-K or Form 10-Q periodic reports.</p> <p>Prior to the 2019 disclosure simplification amendments, Item 601(b)(3) required a company to file a complete copy of its charter and bylaws, as amended, as an exhibit to Form 10-K and Form 10-Q. Item 601(b)(4) required a company to file any instrument that defines the rights of equity or debt security holders.</p> <p>As amended, Item 601(b)(4) requires a company to provide the disclosure required by Item 202(a)-(d) and (f) for each class of securities that is registered under Section 12 of the Exchange Act as of the end of the period covered by the report as an exhibit to the company’s annual report on Form 10-K. Note that this is the same classes of securities that are identified on the cover page of Form 10-K as registered under Section 12(b). In many cases, companies may be able to comply with the new exhibit requirement by extracting and adapting the disclosures previously filed in Securities Act or Securities Exchange Act registration statements.</p> <p>To the extent that a company has previously filed an exhibit to a Form 10-K containing the Item 202 disclosure describing these securities (<i>i.e.</i>, in next year’s Form 10-K report), the company can incorporate that exhibit by reference and hyperlink to the previously filed exhibit in future Form 10-K filings, as long as the company’s prior disclosure remains unchanged.</p> <p>Modifications and amendments during a fiscal year should be reflected in the Item 601(b)(4) exhibit filed with the company’s Form 10-K annual report for that year. There is no interim updating requirement, and this exhibit is not required for Form 10-Q reports.</p>	<p>Regulation S-K Item 601(b)(4)</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC’s New Amendments</a></p>
-----------------------------	---	---

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Exhibits Item 15	<p><b>iXBRL Exhibits (101 and 104).</b></p> <ul style="list-style-type: none"> <li>The exhibit index must include the word “inline” in the title description for each Inline XBRL exhibit, including Exhibit 101.* and Exhibit 104. (<a href="#">SEC Staff C&amp;D</a> Question 101.01)</li> <li>Interactive Data Files (i.e., those related to financial and other information, not including the tagged cover page data for the report or registration statement) should be identified as an Exhibit 101 in the exhibit index. (Question 101.01)</li> <li>The Cover Page Interactive Data File should be identified as Exhibit 104 in the exhibit index, but the requirement to submit a Cover Page Interactive Data File should be satisfied using an Inline XBRL Document Set with EX-101.* attachments other than EX-101.INS. Accordingly, the exhibit index should include a cross-reference to the EX-101.* attachments for the Cover Page Interactive Data File. (Question 101.01)</li> </ul>	<p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p> <p><a href="#">SEC Staff C&amp;D</a>s</p> <p><a href="#">Inline XBRL Interpretations Issued by SEC Staff</a></p>
Exhibits Item 15	<p><b>Personally Identifiable Information in Exhibits.</b> Item 601(b)(6) codifies existing SEC staff practice permitting companies to omit personally identifiable information such as bank account numbers, social security numbers, home addresses, and similar information from an exhibit without submitting a confidential treatment request.</p>	<p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Exhibits Item 15	<p><b>Two-Year Lookback Eliminated for Most Companies.</b> Item 601(b)(10)(i) requires every company to file every material contract not made in the ordinary course of business if the material contract met either of two conditions:</p> <ul style="list-style-type: none"> <li>• the contract is to be performed in whole or in part at or after the filing of the registration statement or report; or</li> <li>• the company entered into the contract not more than two years before the filing date, even if fully performed before the filing date.</li> </ul> <p>As amended, Item 601(b)(10)(i) and new Instruction 1 will apply the two-year lookback requirement only to “newly reporting registrants,” as defined below. All companies will remain subject to the requirement to file material contracts to be performed in whole or in part at or after the filing date of the registration statement or report.</p> <p>The amendments define “newly reporting registrant” as:</p> <ul style="list-style-type: none"> <li>• A company that is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act at the time of filing;</li> <li>• A company that has not filed an annual report since the revival of a previously suspended reporting obligation; and</li> <li>• Any company that was a shell company and has not filed a registration statement or Form 8-K Item 2.01 or 5.06 current report, subject to certain exceptions.</li> </ul>	<p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC’s New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Exhibits Item 15	<p><b>Omit Schedules and Attachments to Exhibits.</b> As amended, Item 601(a)(5) provides that a company may omit entire schedules and similar attachments to exhibits if the omitted portions (1) do not contain material information and (2) are not otherwise disclosed in the exhibit or the disclosure document.</p> <p>The filed exhibit must contain a list that briefly identifies the contents of any omitted schedules and attachments, but the SEC clarified that Item 601(a)(5) does not require a company to prepare a separate list if that information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. The amendment to Item 601(a)(5) expands the existing accommodation of Item 601(b)(2) to all exhibits filed under Item 601.</p> <p>Unlike Item 601(b)(2), Item 601(a)(5) does not require a company to include an explicit agreement to furnish a supplemental copy of any omitted schedule upon request of the SEC staff, although other SEC rules require companies to comply with such a request.</p>	<p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Exhibits Item 15</p>	<p><b>Omit Confidential Information in Exhibits.</b> Item 601(b)(10) requires companies to file certain material contracts as an exhibit to various SEC reports and registration statements. Before the 2019 amendments, the only way to omit immaterial but competitively sensitive information was for a company to request confidential treatment of sensitive information; if the SEC granted the request, companies were permitted to redact specific information from the material contract exhibit publicly filed on EDGAR.</p> <p>Effective April 2, 2019, the amendments permit companies to omit confidential information from material contracts exhibits filed under Item 601(b)(10) and certain other exhibits without submitting a confidential treatment request to the SEC if the information satisfies specified conditions. Conditions include, among others: the information (1) must not be material and (2) must be likely to cause competitive harm to the company if publicly disclosed. Companies must limit redactions to no more information than necessary to prevent competitive harm to the company.</p> <p>SEC rules continue to require companies (1) to indicate omitted information with brackets in the filed version of the exhibit, (2) to mark the exhibit index to indicate that portions of the exhibit have been omitted, and (3) to submit marked copies of exhibits for review by SEC staff and provide supplemental materials to the SEC staff promptly upon request. The SEC staff may request that the company file an amendment that includes some or all of the previously redacted information.</p> <p><b>Important note:</b> Companies that have previously obtained a confidential treatment order which is about to expire must file an application under Rules 406 or 24b-2 to continue to protect the confidential information from public release. <b>Filing the redacted exhibit on EDGAR following the procedures specified by the 2019 amendments to Item 601(b) of Regulation S-K <i>will not</i> provide renewed confidential treatment for the previously filed information.</b></p>	<p>Regulation S-K Item 601(b)(10) and 601 (b)(2)</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a></p> <p><a href="#">CF Disclosure Guidance: Topic No. 7: Confidential Treatment Applications Submitted Pursuant to Rules 406 and 24b-2</a></p>
-----------------------------	--	---

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
Exhibits Item 15	<p><b>Elimination of Five-Year Limitation – Item 10(d).</b> Prior to the 2019 amendments, Item 10(d) generally prevented a company from incorporating a document by reference if the document had been on file with the SEC for more than five years and did not fall within one of the exceptions provided. Amendment. The amendments eliminate the five-year limitation on incorporation of exhibits by reference in Item 10(d), eliminating the need to file “stale” exhibits.</p>	<p>Regulation S-K Item 10(d)</p> <p><a href="#">SEC Release No. 33-10618</a></p> <p><a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC’s New Amendments</a></p>
iXBRL	<p><b>Scaling Errors in Public Float.</b> According to the SEC, the staff of the SEC Division of Risk, Strategy and Financial Innovation (DERA) has observed that some filers are inconsistently reporting public float values. For example, one filer reported a public float of \$800 million in its HTML filing but reported a public float of \$8 billion in its XBRL data. Companies should carefully review their XBRL data to ensure scaling accuracy. Furthermore, the SEC staff have advised that companies should verify that information in their HTML filing is consistent with their XBRL data.</p>	<p><a href="#">Scaling Errors in Public Float</a></p> <p>See <a href="#">Staff Observations and Guidance</a> for other data quality reminders</p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Incorporation by  
Reference/Hyperlinks

**Hyperlinks to Information Incorporated by Reference.** As discussed in an [earlier Goodwin alert](#), in 2017 the SEC adopted rules requiring hyperlinks to most exhibits filed pursuant to Item 601 and Form 20-F. The 2019 amendments expand the requirement that companies include hyperlinks to information on EDGAR if it has been incorporated by reference into a registration statement or prospectus by amending Rule 411 and Rule 12b-23. The SEC indicated in the Adopting Release that the amendments are “solely meant to introduce a navigation feature and do not impose additional or modified requirements regarding what information may be incorporated by reference.”

Note that:

- The amendments do not require a company to file an amendment to a document solely to correct an inaccurate hyperlink unless that hyperlink was included in a pre-effective registration statement
- The amendments do not require a company to correct inaccurate hyperlinks to information incorporated by reference in an effective registration statement by including a corrected hyperlink in a subsequent periodic report or a post-effective amendment
- Filings that are subject to the amended hyperlinking requirements in Rules 411 and 12b-23 must be filed in HTML format
- Companies that use hyperlinks to incorporate information by reference in a Form 10-K should include the hyperlink itself together with a statement that clearly identifies the document where the incorporated information was originally filed or submitted and the location of the information within that document

[SEC Release No. 33-10618](#)

[Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments](#)

See also [SEC Adopts Mandatory Exhibit Hyperlinks and HTML Format Rules](#)

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Section/Item of SEC Form	Summary of Changes	Reg S-K/Other Citation SEC Release/Website Reference Goodwin Alert
	<p><b>Financial Statements.</b> The amendments prohibit cross-references to disclosure in other parts of a filing, and incorporation by reference of information from other filings, in financial statements unless specifically permitted or required by other SEC rules, by GAAP, or by IFRS; for examples of permitted or required incorporation by reference, see footnote 79 in the <a href="#">Adopting Release</a>.</p>	
<p><b>Prior Changes</b></p>		
	<p>The Goodwin alerts in this section highlight previously effective changes from 2018 and 2017 that affect Form 10-K reports. Companies should confirm that prior changes have been reflected in current reports.</p>	
		<p><a href="#">SEC Adopts Mandatory Exhibit Hyperlinks and HTML Format Rules</a></p>
		<p><a href="#">Reminder: SEC Exhibit Hyperlink and HTML Format Rules Become Effective September 1</a></p>
		<p><a href="#">SEC Adopts First Steps in Disclosure Simplification</a></p>
		<p><a href="#">SEC Publishes Guidance on Form 10-Q and Disclosure Simplification</a></p>

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

## Proxy Statement

<p>Schedule 14A (Proxy Statement) Item 7(b)</p>	<p><b>Hedging Disclosure.</b> SEC rules adopted in December 2018 that require new hedging disclosure apply to proxy or consent solicitation materials with respect to the election of directors, without regard to whether the materials relate to an annual or special meeting of shareholders or action to be taken by written consent, during fiscal years that begin on or after July 1, 2019 (July 1, 2020 for EGCs and SRCs). The final rules also apply to information statements filed on Schedule 14C.</p>	<p>Regulation S-K Item 407(i) <a href="#">SEC Release No. 33-10593</a> <a href="#">Updated Hedging Disclosure Rules</a></p>
	<p><b>Disclosure Required.</b> The final rules require a company to describe any practices or policies that the company has adopted regarding the ability of the company’s employees (including officers) or directors, or any of their designees, to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds), or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of registrant equity securities (a) granted to the employee or director by the company as part of the compensation of the employee or director; or (b) held, directly or indirectly, by the employee or director.</p> <p>If the company does not have any practices or policies regarding hedging, the company must disclose that fact or state that the transactions described above are generally permitted.</p>	

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Schedule 14A (Proxy Statement) Item 7(b)</p>	<p><b>Disclosure Required (continued).</b> The adopting release clarifies that the final rules apply to all company policies and practices, without regard to whether they are in written form or not.</p> <p>A company can satisfy the disclosure requirement by either providing a fair and accurate summary of the applicable practices or policies, including the categories of persons they cover and any categories of transactions that are specifically permitted and/or specifically disallowed. Alternatively, companies can satisfy this requirement by disclosing their practices or policies in full.</p> <p>The final rules do not require any specific location for the disclosure required by the final rules. Companies should note that including the new disclosure with the company's existing CD&amp;A hedging disclosure will result in the new disclosure being covered by the annual say-on-pay shareholder advisory vote.</p>	
	<p><b>Employees and Directors Covered.</b> The final rules apply to all employees of the company, including officers, and to the company's directors. The final rules also apply to any company practices or policies regarding designees of the company's employees or directors. Determinations of whether someone is a designee depends on the specific facts and circumstances; neither the final rules nor the adopting release provide any guidance on this determination.</p>	
<p>Schedule 14A (Proxy Statement) Item 7(b)</p>	<p><b>Securities Covered.</b> The final rules apply to equity securities issued by the company, as defined in Section 3(a)(11) of the 1934 Act, without regard to how the securities were acquired. The new rules also apply to equity securities of any parent or subsidiary of the company, or any subsidiary of any parent of the company. The final rules do not limit disclosure to equity securities of the company registered under Section 12 of the 1934 Act.</p>	

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

<p>Schedule 14A (Proxy Statement) Item 7(b)</p>	<p><b>Hedging Transactions Covered.</b> The final rules apply to policies that affect the ability of employees or directors to purchase financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of company equity securities. The final rules do not define the term “hedge,” and require companies to make clear what categories of transactions the company’s policy permits and/or prohibits. The final rules do not require disclosure of specific hedging transactions, although other disclosure requirements (such as beneficial ownership disclosure) may result in disclosure of hedging transactions.</p>	
<p>Schedule 14A (Proxy Statement) Item 7(b)</p>	<p><b>Relationship to Current CD&amp;A Disclosure.</b> In order to avoid duplicative disclosure, the final rules amend the existing requirement that companies that are not large accelerated filers or accelerated filers that do not qualify as EGCs and/or SRCs disclose material policies regarding hedging of economic risk of company securities ownership by a company’s named Executive Officers in the CD&amp;A section of proxy and information statements under Item 402(b) of Regulation S-K.</p> <p>The final rules add an instruction stating that if the information disclosed in response to the final rules would satisfy Item 402(b)(2) of Regulation S-K, the company may refer to the information disclosed pursuant to the final rules.</p> <p>Because SRCs and EGCs are not required to include CD&amp;A disclosure in their proxy statements, many SRCs and EGCs may be disclosing hedging policies for the first time after the final rules become applicable to them.</p>	

# 2019-2020 10-K AND PROXY UPDATE GOODWIN YEAR-END TOOL KIT

Schedule 14A (Proxy Statement) Item 7(b)	<b>Section 16(a) Compliance.</b> The amendments change the required caption for disclosure of delinquent filers under Item 405 to “Delinquent Section 16(a) Reports” and encourage companies to exclude this heading and any related disclosure completely if there are no Section 16(a) delinquencies to disclose.	Regulation S-K Item 405 and Form 10-K cover page  <a href="#">SEC Release No. 33-10618</a>  <a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a>
Schedule 14A (Proxy Statement) Item 7(b)	<b>Audit Committee Discussions With Independent Auditor.</b> Item 407(d)(3)(i)(B) requires a company’s audit committee to state whether it has discussed with the company’s independent auditor the matters required by AU Section 380, Communications with Audit Committees. The prior reference to AU Section 380 has been outdated for several years. As amended, Item 407(d)(3)(i)(B) replaces the reference to AU Section 380 with “the applicable requirements of the Public Company Accounting Oversight Board and the Commission.”	Item 407(d)(3)(i)(B)  <a href="#">SEC Release No. 33-10618</a>  <a href="#">Disclosure Simplification, Round Two: A Deep Dive Into The SEC's New Amendments</a>

This document is provided with the understanding that it does not constitute the rendering of legal or other professional advice by Goodwin Procter LLP or its attorneys. This document has been prepared for use by domestic public companies with common stock listed on a U.S. stock exchange, and is not appropriate for companies subject to different SEC or stock exchange requirements, including but not limited to asset backed issuers, foreign private issuers or investment companies. This document is intended to be used in connection with preparation of the company’s Annual Report on Form 10-K and proxy statement and does not address additional SEC requirements relating to preparation of registration statements. This document is not a substitute for advice of qualified attorneys. We recommend that you consult with your regular Goodwin Procter LLP attorney prior to using this document.

ACTIVE/101991680.8  
01/30/20