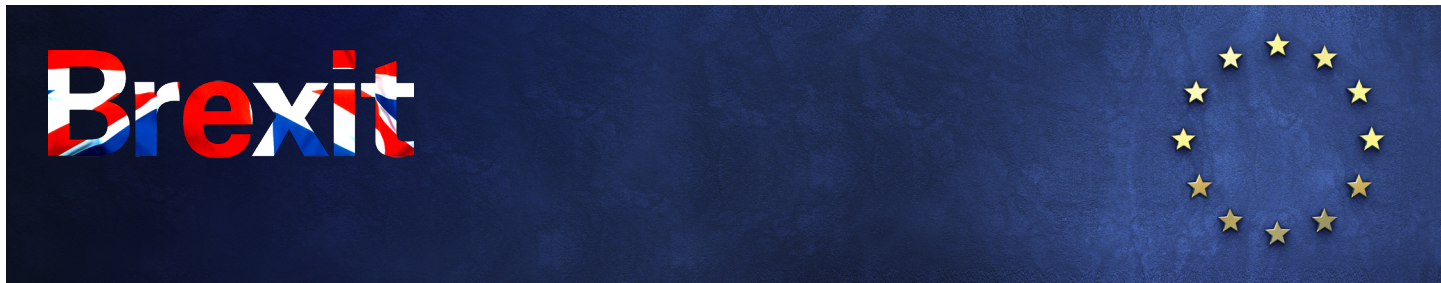


10/03/16



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Three months after the United Kingdom voted to exit the European Union, the timing and scope of Brexit remain unclear. Until such details are determined with specificity, there is and will continue to be increased economic and political uncertainty in the UK and EU, which could impact the wider global economy. As companies ascertain what effect Brexit could have on their business, some have begun to include Brexit-related disclosure in their filings with the U.S. Securities and Exchange Commission (SEC).

In the two-month period following the referendum, approximately 400 SEC-registered public companies disclosed Brexit-related risk factors in their quarterly reports, while at least 35 companies disclosed Brexit-related risk factors in registration statements filed with the SEC (which number does not include disclosure that may have been included in confidential registration statements submitted to the SEC). The significant number of companies including Brexit-related disclosure in the “Risk Factors” section of their periodic reports and registration statements highlights that many companies are concerned about the impact Brexit could have on their business.

This note reviews the public disclosure SEC reporting companies have made following the referendum and provides guidelines for companies considering including Brexit-related disclosure in their periodic reports, offering documents and other public disclosure.

## Risk Factors in SEC Filings

SEC reporting companies are required to include a “Risk Factors” section in their annual reports to describe significant risks investors in the company may face. “Domestic” U.S. companies also are required to update the “Risk Factors” section of their quarterly reports for any material changes. Companies registering an offering of securities with the SEC are required to include a “Risk Factor” section in the prospectus relating to the offering.

In all these filings, companies are required to disclose risks that are specific to their company or industry and “explain how [a] risk affects the company or the securities being offered.” Companies are not required to “present risks that could apply to any company or any offering.”

## Common Brexit Risk Factors

Based on our review of selected SEC filings from the date of the referendum through the end of August 2016, we have identified the following frequently disclosed Brexit-related risks.



## SEC Disclosure Brexit Trends

Public companies whose business may be affected by Brexit should consider including similar disclosure, to the extent applicable, in their public reports or offering documents.

**Exchange Rate.** The day after the referendum, the pound sterling fell by more than 10 percent against the U.S. dollar, to its lowest level in more than 30 years. The fall in the pound sterling relative to the U.S. dollar and euro, and the strengthening of the U.S. dollar relative to a number of currencies including the pound sterling and euro, could have significant impacts on the business and financial results of both companies in the UK and companies in other countries that conduct significant business with the UK. The majority of companies that disclosed Brexit-related risks cited exchange-rate risks, and we encourage companies to consider the impact currency volatility may have on their business. Companies that disclose risks related to the exchange rate should consider disclosing their specific exposure to post-Brexit currency effects, including by disclosing what percentage of their revenues, net income and/or debt is denominated in pounds sterling and how their results are affected by fluctuations in exchange rates.

**Economic Environment.** Following the referendum, the UK's credit rating was downgraded by Standard & Poor's. Meanwhile, the National Institute of Economic and Social Research warned that the British economy faced a 50 percent chance of recession in the next 18 months and that 320,000 jobs could be lost by the third quarter of 2017. For companies in the UK or those with significant exposure to the UK, the prospect of an economic slowdown in the wake of the referendum could represent a substantial risk. Accordingly, the majority of the companies that disclosed Brexit-related risk factors cited concerns about the macroeconomic environment. Companies whose financial performance is related to macroeconomic conditions, particularly in the UK, should consider disclosing how Brexit-related economic uncertainty may affect their business and industry. Furthermore, companies that import or exports goods from the UK, particularly into or out of the EU, should consider the effect that increased trade barriers may have on their business. A number of companies that disclosed Brexit-related risk factors identified the possibility of increased trade barriers as a potential risk.

**Legal and Regulatory Uncertainty.** While the full scope of implementation of the referendum decision is still unclear, companies exposed to the UK may face significant regulatory changes as a result of Brexit implementation, and complying with such new regulatory mandates may prove challenging and costly. In particular, significant portions of the UK's regulatory regime related to intellectual property and data protection are derived from or harmonized with wider EU directives, and significant change is possible should the UK withdraw from the

EU. A number of companies that disclosed Brexit-related risks cited risks relating to regulatory changes or regulatory uncertainty. Companies that operate in heavily regulated industries (such as pharmaceuticals, telecommunications and financial services) or that rely on UK patents and trademarks should consider disclosing the effect regulatory changes may have on their business.

**Political Uncertainty.** In the weeks following the referendum result, David Cameron resigned as the prime minister of the UK and was succeeded by Teresa May, who made sweeping changes to the Cabinet. As the UK moves toward triggering Article 50 of the Lisbon Treaty (Article 50), which will commence the official EU withdrawal process, there likely will be further political uncertainty, both in the UK and EU. Both France and Germany have upcoming elections in 2017, and the UK referendum result also has given rise to calls for other EU member states to consider withdrawal from the EU. Each of these events, along with any political changes that may occur as a result of Brexit implementation (including triggering Article 50), could substantially alter the political landscape in Europe. Many companies that disclosed Brexit-related risks mentioned political uncertainty in their risk factors, with several focusing on the risk of potential referendums on EU membership in other EU member states. Companies should monitor the political situation in the UK and Europe and consider whether they may face material exposure to further Brexit-driven political events that may occur in the UK or EU.

**Other Potential Risks.** There are a number of more specific Brexit-related risks that companies should consider when drafting disclosure. For example, financial services firms with significant operations in the UK and EU should consider the effect a loss of passporting rights may have on their business. Some companies that disclosed Brexit-related risks cited concerns relating to cross-border labor and freedom of movement in their risk factors. Companies that operate in the UK and rely on employees from outside the UK or on freedom of movement within the EU should consider disclosing the business impact of increased restrictions on the free movement of people and labor.

### Guidance for Future Filings

Based on our review of publicly available SEC staff comment letters, we have found limited instances of Brexit-related SEC comments. In these letters, the SEC staff encouraged companies to consider disclosing the risks Brexit poses to their business. We expect that the SEC staff will provide further comments and guidance on Brexit-related disclosure as it continues to review and comment on periodic reports and registration statements.



## SEC Disclosure Brexit Trends

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We advise SEC reporting companies and other companies preparing disclosure in connection with offering documentation or its public reports whose business may be affected by Brexit to consider the following guidelines when considering Brexit-related disclosure moving forward:

- continuously evaluate the exposure of the company to the UK and EU markets, and exposure to currency movements relative to the pound sterling and euro;
- monitor any guidance that may be provided by the SEC on Brexit disclosure;
- carefully monitor the economic and political situation surrounding the referendum as well as any decisions made by the UK government, other European governments, the Bank of England and the European Central Bank;
- periodically review, amend and update Brexit-related risk factors to ensure that such disclosure is not out of date, misleading or overly generic;

- review disclosure in Management's Discussion and Analysis of Financial Condition and Results of Operations for Brexit impact on the company's liability and sources of capital;
- ensure that there is a clear link between Brexit and any discussion of the risks or effects of Brexit on operating or financial performance;
- ensure that the company's forward-looking statements disclosure is harmonized with its discussion of Brexit-related risks and other forward-looking Brexit disclosure; and
- tailor any risks disclosed to the risks specific to the company and industry, and avoid any boilerplate risk factor disclosure.

The impact of Brexit on the financial, economic and political environment will be felt for many years to come, and it would be prudent for all reporting companies whose business may be affected by Brexit to identify and consider disclosing in public filings the effects the UK leaving the EU could have on their business and industry moving forward.

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*Associates Rahul Desai and Hakim A. Effiom-Dauw assisted in the preparation of this alert.*