

Cross Border Business Law Blog

When Does a Tweet Become a Risk Factor?

on 1.30.17 | Posted in Business, Corporate Matters

It's early days in the administration of President Trump, but already public reporting companies are considering how best to capture potential risks to their businesses as they draft their annual reports on Forms 10-K and 20-F. Risk factors are an important part of an annual report that help a company to communicate potential risks to its shareholders and prospective shareholders. Risk factors can also give a company some protection from suit in the event of unwelcome occurrences or unfavorable market conditions. Generally speaking, broader risk factors can help limit surprises, but the more specific a risk factor, the more protection it is likely to give a company. Although risk factors are required in all annual reports of non-smaller reporting companies, they must also be updated in quarterly reports to reflect any material changes since the last annual report.

At this early stage of the new administration, it is somewhat difficult to say which specific risks might require disclosure for any given company. However, some strong trends are emerging. Companies that are reliant on the Affordable Care Act should certainly consider including a risk factor related to the recent legislation preparing to repeal the Act. Similarly, companies with manufacturing and other supply chains or trade arrangements outside of the United States should likely consider adding or supplementing a risk factor on the potential impacts of new import/export legislation and revisions to existing treaties, particularly with regard to NAFTA. Such current event-driven reporting is not new, and many reporting companies have recently noted Brexit and climate change-related issues in their risk factors. But, given the amount of significant economic changes proposed by President Trump both before and after the election, and the overall uncertainty surrounding how those proposals might be achieved, reporting companies should be extra careful in monitoring and updating their risk factors in 2017.

Tags: Affordable Care Act, annual reports, Brexit, climate issues, Form 10-K, Form 20-F, import/export legislation, manufacturing, market conditions, NAFTA, non-smaller reporting companies, potential business risks, President Trump, prospective shareholders, public reporting companies, shareholders, supply chains, trade arrangements