

Making the Decision: Um, Is This “Material” or Not?

Your company has a pretty good risk management department. They're good at bubbling up all sorts of issues to consider. They're providing you with detailed analysis behind each of the risks. But they're not SEC lawyers. That's you. Little – and lonely – you (see [my other blog](#) about the loneliness of making the materiality decision). No one is going to tell you what rises to the level of "let's throw this into the 10-K for the first time." Okay, it's you. So where do you start? It's about looking at the "total mix of information." That makes sense. You're looking at all the information available to you. You consider what the company has publicly disclosed in the past. Not just in SEC filings, but in investor presentations, press releases and so forth. You need to have a good handle on everything posted on your corporate website, as well as other content that's being handed out not captured there. You're looking at the new information against that backdrop, asking yourself what it looks like: a significant departure? A new trend? How does it all fit together? Step back for a moment and consider, "How is it going to be perceived?" That's something to ponder. If your stock price suddenly lurches, that's a signal in hindsight that some considered that information material. Did that information come from outside the company? Or from someone within? If within, maybe it belongs within your SEC filing stream. Obviously, you draw upon your own experiences, your own beliefs. The views of those you ask – both those within the company and outside. But there's no magic here. No real data analysis, just looking to see what other companies are disclosing. Responding to what investors and analysts are looking for. How the stock moved in response to something similar in the past. Responding to incidents that make the news. It's a gut instinct kind of thing. Maybe one day there will be artificial intelligence to help you. But for now, it's a human-driven process.

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