

## How “Materiality” Will Ruin Your Life

"Ms. In-House Lawyer, can you tell me whether this is material?" If I hear that one more time (\*shakes fist\*). [This is one more in a series of blogs about "materiality" - here's the [last one](#).] Determining whether something is "material" seems to dominate every question in every form. It shows up in a wide range of questions that you'll receive from your work colleagues when you're in-house, ranging from insider trading to disclosure in SEC filings. It even extends to interactions with other parties. For example, is this contract with this other company "material" and does it need to be disclosed? Include dealings with customers, vendors, and suppliers on your list. The list is endless. Unfortunately, there is no neat answer. It's elusive. It's a facts and circumstances determination. The definition of materiality depends on the context. For example, it's a lower "reasonably likely to occur" threshold for MD&A (the disclosure in your SEC filings about known trends and uncertainties & certainties) compared to the "probability/magnitude" materiality test of *Basic v. Levinson* and other caselaw for other disclosures. Then the SEC has materiality guidance in the Rule 10b5-1 plan area. On the whole, "materiality" is challenging to grasp because there are no bright line tests. It can be maddening. Your co-workers aren't happy when you tell them that the answer is that there's essentially no answer. They want a checklist. Yet, they constantly ask you over and over again whether something is material. They never learn, and they can't grasp, that the answer is "I'm not sure."

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