
P&N
Postlethwaite & Netterville
CFO Seminar: Northshore
June 14, 2019
assurance - consulting - tax - technology - pncpa.com
Postlethwaite & Netterville, A Professional Accounting Corporation

LEASEQUERY OVERVIEW DECK

LeaseQuery
BUILT BY ACCOUNTANTS FOR ACCOUNTANTS

PRESENTED BY
DEAN TESCHNER, CHANNEL PARTNER MANAGER

WHO WE ARE

LeaseQuery
BUILT BY ACCOUNTANTS FOR ACCOUNTANTS

LeaseQuery helps companies comply with ASC 840, ASC 842, IAS 17, and IFRS 16 through its CPA-approved lease accounting software.

Purpose-built for lease accounting

In-house accountants in sales, development, and support

700+
Number of Customers

☆☆☆☆☆
5-Star Capterra Rating

WHO WE WORK WITH

Small Businesses to Fortune 500s

HAWAIIAN AIRLINES

Coca-Cola Bottling Co. CONSOLIDATED

FLOOR & DECOR

PINNACLE TREATMENT CENTERS

Manitowoc

Industries We Serve

- 21% Retail/Restaurant
- 15% Financial Services
- 15% Manufacturing
- 12% Healthcare
- 10% Service
- 6% Logistics
- 21% Other*

*Includes Media, Technology, Construction, Hospitality/Hotel, Energy/Utility, Insurance, Non-profit, Defense and Aerospace, Architecture and Engineering

LEASEQUERY CAPABILITIES

Accounting Intelligence

- Calculates the ROU Asset & Lease Liability
- Lease And Non-Lease Components Assessment
- Contingent Rent
- Practical Expedient Application
- Borrowing Rate Charts
- Custom Calendar
- Useful Life Charts

Data Integrity

- Data Entry Validation
- Lease Change History Documentation
- Duplicate Prevention
- General Ledger Agnostic

International Considerations

- All Three Options for IFRS Transition Method
- Multi-Currency
- Translation & Re-Measurement

Reporting

- ASC 840: Required Disclosures
- ASC 842: Required Disclosures
- IFRS 16: Required Disclosures
- Ad-hoc Reporting Capabilities

Operational Tools

- Role Based Access by Subsidiary/Location
- Locking Journal Entries
- Central Repository & Ease Of Document Retrieval
- Alert Notifications for Critical Dates

KEY CONTACTS

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- dean.teschner@leasequery.com

Introductions

Krystal Pertuit
Associate Consulting Director

Jeremy Sanders
Consulting Manager

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Agenda

- The Reality of the Finance Leader
- Finance Leader Evolution
- Tools and Methodologies for the Data-Driven Finance Leader

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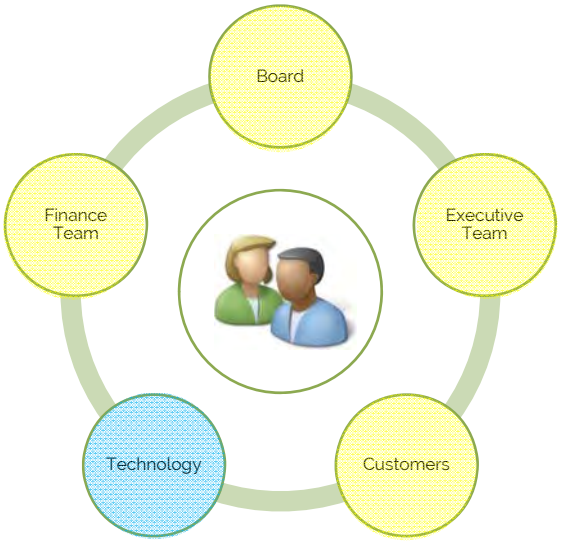
The Reality of the Finance Leader

Finance Leader Reality



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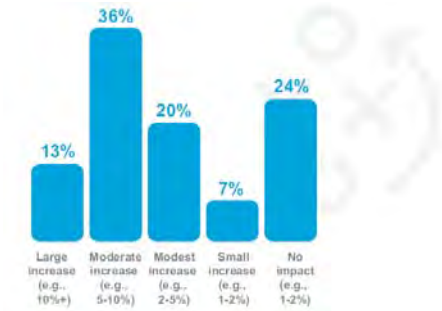
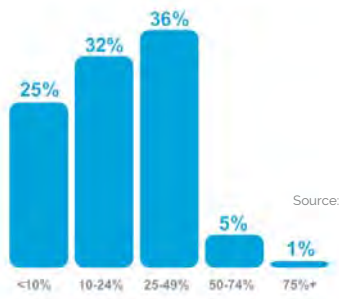
CFOs Believe…

76% of CFOs believe they could have positive impact on enterprise profitability if they devoted more time to strategic initiatives.

If you were able to spend an **optimal percentage** of your time on strategic initiatives or activities, what impact would it have on your organization's profitability?



What **percentage of your time** is currently occupied with strategic initiatives or activities?



Source: Argyle Executive Forum

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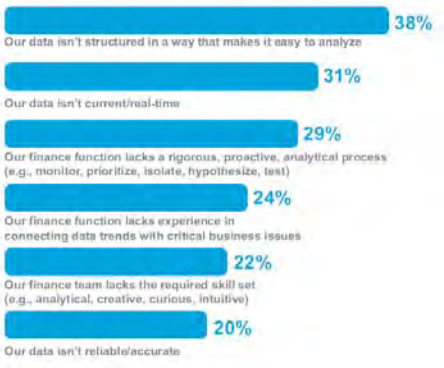
Finance Leaders Admit…

*Finance leaders admit their finance functions need **better visibility** into the state of the business.*

64%

Say their finance function **is not proactive enough in using data/analytics** to identify, prioritize, and address critical issues in the business.

The **biggest challenges** in creating a data-driven finance function



Source: Argyle Executive Forum

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Finance Leaders Know…

*Finance leaders know that their finance functions must be more **"data-driven".***

77%

Say their organization **requires a data-driven finance function** to achieve its strategic and profitability improvement goals.

81%

Say that over the next two years, the pressure on their finance function to **become more data-driven** will increase substantially.

Source: Argyle Executive Forum

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Finance Leaders Can Be…

*Finance leaders can be more data-driven with the right set of **reporting tools**.*

"Performing analytics against big data sets needs **state-of-the-art database and analytics technology** that runs close to the data in the cloud." – Ian Howells, Head of Marketing, Sage Intacct

Source: Argyle Executive Forum

The **report creation feature** that are most important

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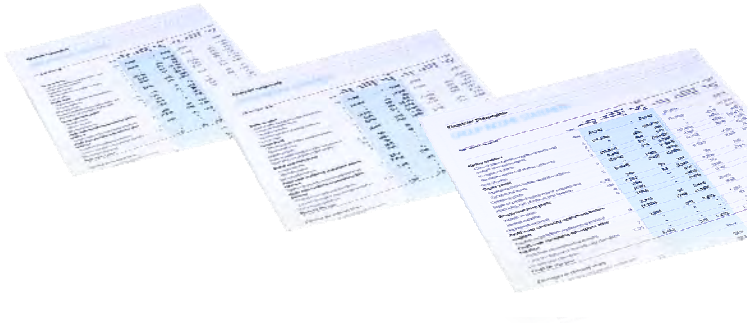
Finance Leadership 1.0

The Historian

You know the information you need



Day-to-Day Efficiency

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Finance Leadership 2.0

The Business Analyst

You know the answer you are looking for

Performance Optimization

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Finance Leadership 3.0

The Data-Driven Scientist

You do not know what questions to ask

See the Future

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Evolving with Your Data

14

Embracing Data Excellence

1700 BC

1550

1790

2010

2019

15

Finance Leadership 1.0

Chart of Accounts of the Past

Acct – Loc – Dept – Project	Account Title
4000 – 001 – 100 – 001	Revenue – Baton Rouge – Corporate – Project 001
4000 – 001 – 200 – 001	Revenue – New Orleans – Engineering – Project 001
4000 – 002 – 100 – 001	Revenue – Houston – Development – Project 001
4000 – 002 – 100 – 002	Revenue – Baton Rouge – Corporate – Project 002

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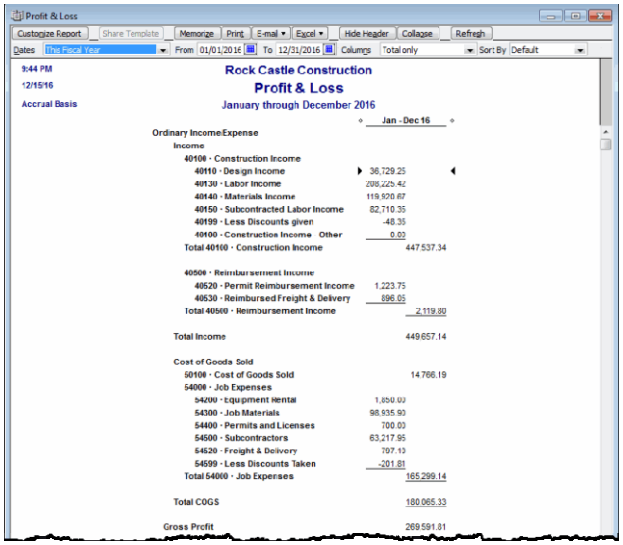
Reporting of the Past



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Reporting of the Past

B6 fx Month

	A	B	C	D	E
1					
2	Geography	(All)			
3	State	(All)			
4	City	(All)			
5					
6		Month			
7	Data	Jan.2009	Feb.2009	Mar.2009	Apr.2009
8	Sales	58,689,000	55,263,800	59,253,700	58,296,000
9	Cost of Goods Sold	43,441,830	41,160,600	44,088,400	43,231,100
10	**Gross Margin**	**15,247,170**	**14,103,200**	**15,165,300**	**15,064,900**
11	***Gross Margin %***	***26.0%***	***25.5%***	***25.6%***	***25.8%***
12	Rent	2,500,300	2,500,300	2,500,300	2,500,300
13	Personnel Cost	4,546,800	4,553,750	4,520,420	4,530,830
14	Utilities	1,909,300	1,945,240	1,946,880	1,946,550
15	Consumables	424,498	416,650	425,330	433,850
16	Misc Exp	1,191,690	1,187,500	1,177,470	1,183,680
17	Operating Expenses	10,572,588	10,603,440	10,570,400	10,595,210
18	**Operating Profit**	**4,674,582**	**3,499,760**	**4,594,900**	**4,469,690**
19	***Operating Profit %***	***8.0%***	***6.3%***	***7.8%***	***7.7%***
20					

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Dimensional Accounting

Natural Account
4000 Revenue

Location	Department	Project	Customer	Employee
001 Baton Rouge	100 Corporate	001	C1000	E1100
002 New Orleans	200 Engineering	002	C2000	E1200
003 Houston	300 Development	003	C3000	E1300
	400 Marketing	004	C4000	E1400
	500 Sales	005	C5000	E1500

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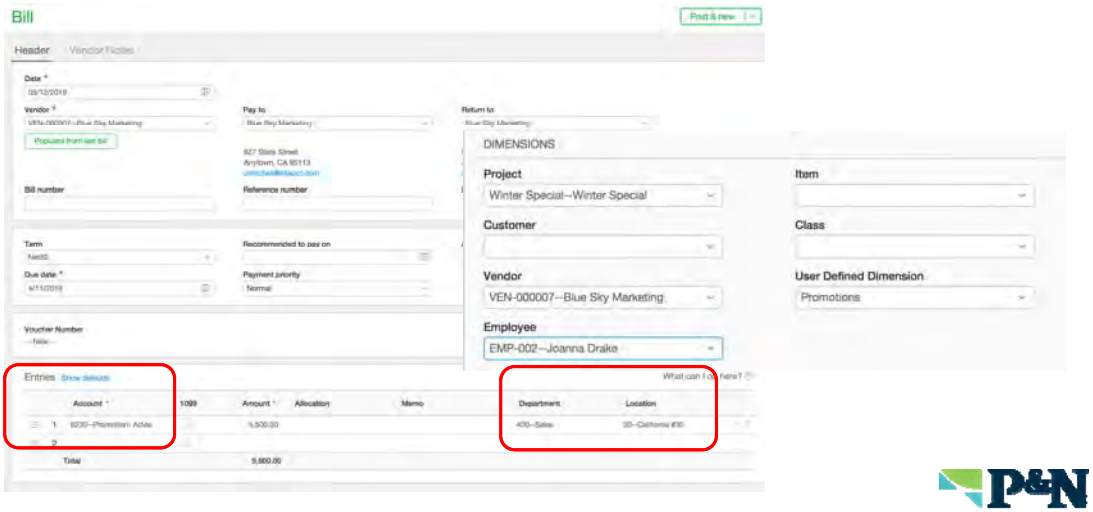
Capturing Dimensional Data



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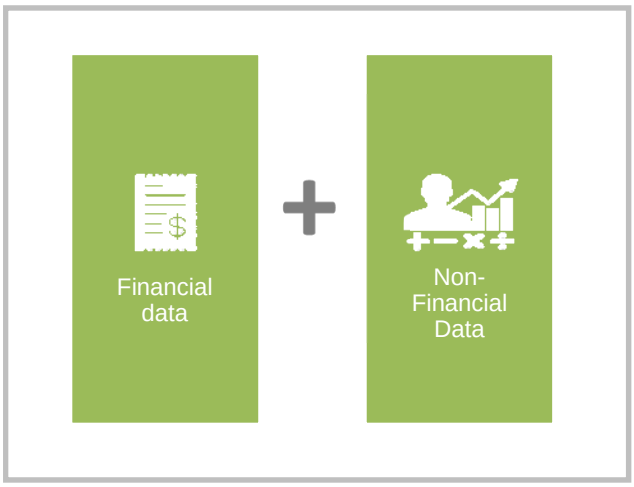
Finance Leadership 2.0

Bringing Relevance to Data



- Income Statement
- Balance Sheet
- Financial Ratios

AND…

- Business specific metrics

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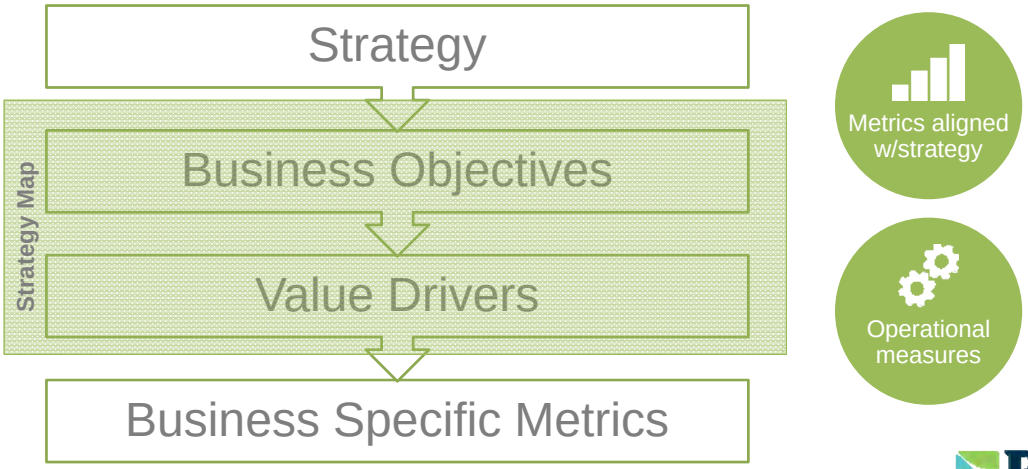
Business Specific Metrics



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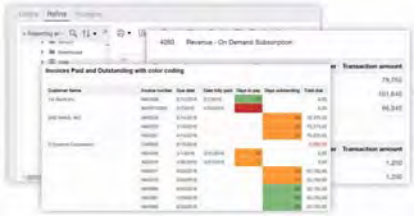
Real Time Analysis Tools

Financial Reports

Ad hoc Reporting/Pivots



One Source of the Truth

Dashboards

Standard Reports

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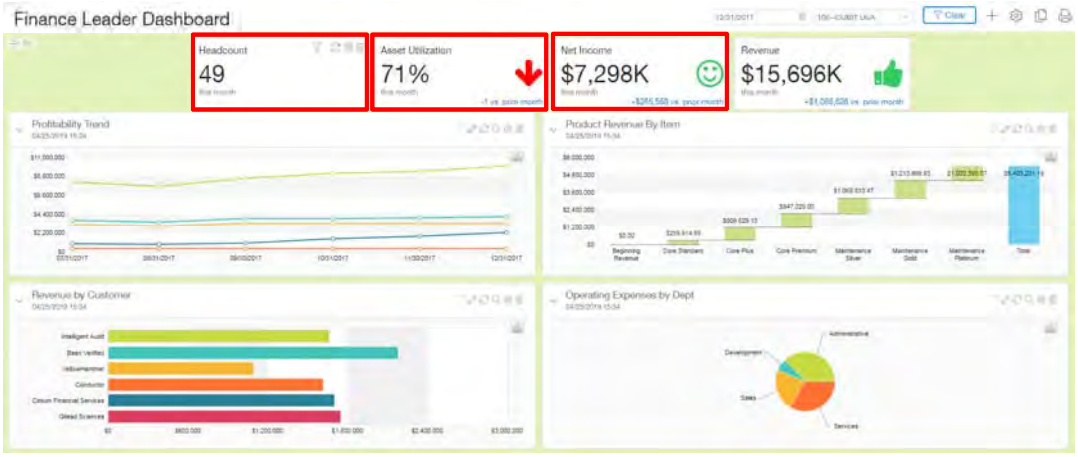
Finance Leader Dashboard



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Overall Net Income

Profit and Loss - Detail (in USD)

	Month Ending 09/30/2013	Month Ending 08/31/2013	Month Ending 07/31/2013
Revenue			
Subscriptions	1,793,745.76	1,611,907.59	1,715,815.10
Maintenance	2,861,516.90	2,570,012.76	2,736,586.57
Services	3,925,168.00	3,462,586.32	3,701,327.92
Total Revenue	8,580,430.66	7,644,506.67	8,153,729.59
Cost of Revenue			
Cost of Consulting Revenue	2,734,742.17	2,433,769.59	2,591,188.84
Cost of Other Revenue	1,152,732.23	1,035,220.69	1,102,370.14
Total Cost of Revenue	3,887,474.40	3,468,990.28	3,693,558.98
Gross Profit	4,692,956.26	4,175,516.39	4,460,170.61
Operating Expenses			
General and Administrative Expenses	521,257.66	466,736.49	497,011.29
Marketing and Advertising Expenses	363,579.23	326,515.34	347,694.70
Depreciation and Amortization Expense	103,879.79	93,290.09	99,341.34
Payroll and Related Expenses	1,489,251.12	1,337,273.70	1,423,892.59
Utilities and Facilities	550,368.86	490,406.87	522,171.80
Operating and Maintenance Expenses	189,380.75	170,074.95	181,106.86
Taxes and Insurance	69,253.19	62,193.40	66,227.56
Total Operating Expenses	3,286,970.60	2,946,490.84	3,137,446.14
Other Income (Expense)	371,669.41	333,780.79	355,431.43
Net Income (Loss)	**$1,034,316.25**	**$895,244.76**	**$967,293.04**

By Location

Profit and Loss - by Location (in USD)

	New York Month Ending 09/30/2013	BIT USA (All) Month Ending 09/30/2013
Revenue	6,193,707.93	8,580,430.66
Cost of Revenue	2,795,004.56	3,887,474.40
Gross Profit	3,398,703.37	4,692,956.26
Operating Expenses	2,368,228.58	3,286,970.60
Other Income (Expense)	267,601.97	371,669.41
Net Income (Loss)	**$762,872.82**	**1,034,316.25**

By Department

Profit and Loss Summary by Department (in

	Net Income (Loss) Month Ending 10/31/2017	Net Income (Loss) Month Ending 11/30/2017
	Actual	Actual
Departments		
Services	654,818.95	645,782.49
Channel	1,198,079.90	1,203,217.60
Direct	600,575.50	506,907.46
Administrative	(1,394,598.23)	(1,380,941.36)
Total Departments	1,344,875.12	1,875,045.99

Profit and Loss Summary by Department/Location (in USD)

Departments	New York Month Ending 12/31/2017	San Jose Month Ending 12/31/2017	CUBIT USA (All) Month Ending 12/31/2017
	Actual	Actual	Actua
Services	250,811.91	578,308.73	829,120.64
Channel	1,582,003.17	884,239.65	2,466,242.82
Direct	1,184,763.19	647,112.71	1,831,875.90
Administrative	(1,064,458.26)	(429,484.69)	(1,493,942.95)
Total Departments	1,953,120.01	1,680,176.40	3,633,296.41

Net Income (Loss)

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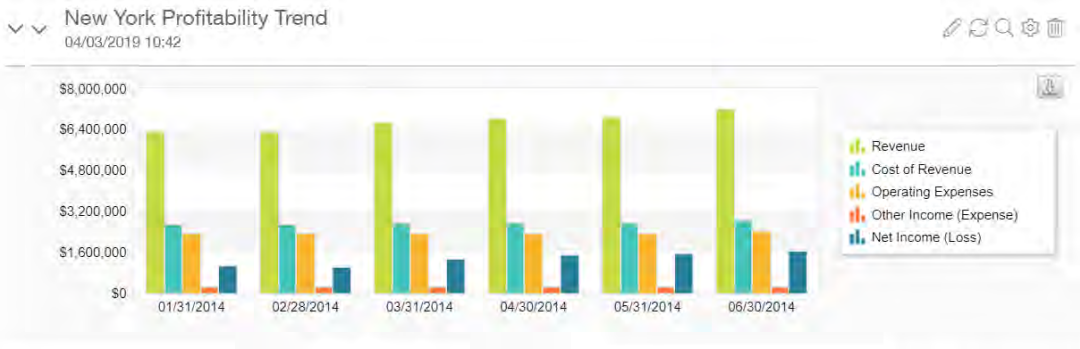
Multi-Dimensional Analysis



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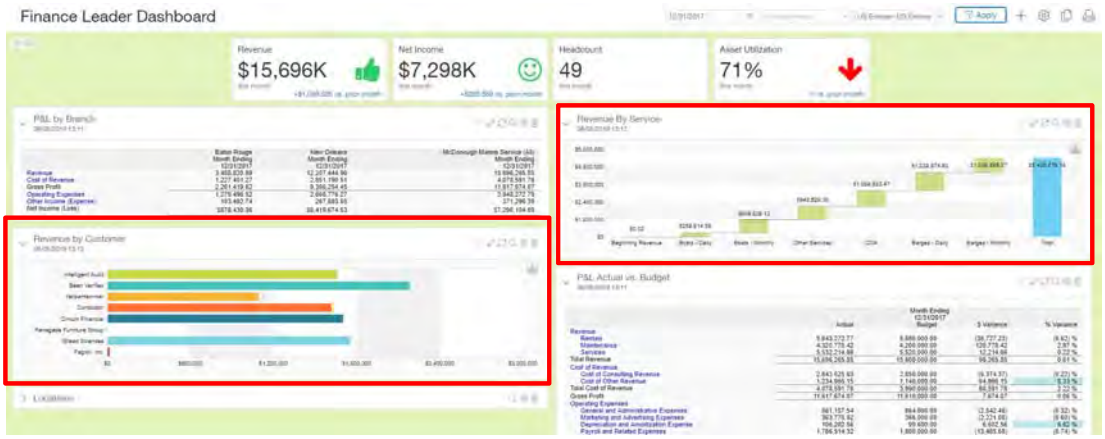
Finance Leader Dashboard



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Revenue by Customer

	Intelligent Audit Month Ending 12/31/2017	Been Verified Month Ending 12/31/2017	YellowHammer Month Ending 12/31/2017	Conductor Month Ending 12/31/2017	Cirium Financial Month Ending 12/31/2017	Renegade Furniture Group Month Ending 12/31/2017	Gilead Sciences Month Ending 12/31/2017	Fagioli, Inc. Month Ending 12/31/2017	All Customers Month Ending 12/31/2017
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
▼ Revenue									
▼ Rentals									
Revenue - Rental	630,447.75	833.33	252,414.59	302,414.59	403,247.92	0.00	452,414.59	1,500.00	5,843,272.77
Total - Rental Revenue	$630,447.75	$833.33	$252,414.59	$302,414.59	$403,247.92	$0.00	$452,414.59	$1,500.00	$5,843,272.77
▼ Maintenance									
Revenue - Maintenance	999,428.40	602,499.09	333.33	568,333.47	900,500.00	6,000.00	500,333.33	15,875.00	4,320,778.42
Total Maintenance Revenue	$999,428.40	$602,499.09	$333.33	$568,333.47	$900,500.00	$6,000.00	$500,333.33	$15,875.00	$4,320,778.42
▼ Services									
Revenue - Services	32,020.00	1,580,453.67	841,011.68	750,000.00	700,000.00	0.00	800,000.00	0.00	5,532,214.66
Total Services Revenue	$32,020.00	$1,580,453.67	$841,011.68	$750,000.00	$700,000.00	$0.00	$800,000.00	$0.00	$5,532,214.66
Total Revenue	$1,661,896.15	$2,183,787.09	$1,093,759.60	$1,620,748.06	$1,703,747.92	$6,000.00	$1,752,747.92	$17,375.00	$15,696,265.85

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Revenue by Service

	Year Beginning 01/01/2017 Actual	Boats - Daily Year Ending 12/31/2017 Actual	Boats - Monthly Year Ending 12/31/2017 Actual	Other Services Year Ending 12/31/2017 Actual	COA Year Ending 12/31/2017 Actual	Barges - Daily Year Ending 12/31/2017 Actual	Barges - Monthly Year Ending 12/31/2017 Actual	All Items Year Ending 12/31/2017 Actual	Year Ending 12/31/2017 Actual
▾ Revenue									
▾ Rentals									
Revenue - Rental	0.00	259,914.59	909,829.13	948,529.00	0.00	0.00	0.00	2,118,272.72	2,118,272.72
Total - Rental Revenue	$0.00	$259,914.59	$909,829.13	$948,529.00	$0.00	$0.00	$0.00	$2,118,272.72	$2,118,272.72
▾ Maintenance									
Revenue - Maintenance	0.00	0.00	0.00	0.00	1,069,833.47	1,229,874.93	1,008,595.07	3,308,303.47	3,308,303.47
Total Maintenance Revenue	$0.00	$0.00	$0.00	$0.00	$1,069,833.47	$1,229,874.93	$1,008,595.07	$3,308,303.47	$3,308,303.47
Total Revenue	$0.00	$259,914.59	$909,829.13	$948,529.00	$1,069,833.47	$1,229,874.93	$1,008,595.07	$5,426,576.19	$5,426,576.19

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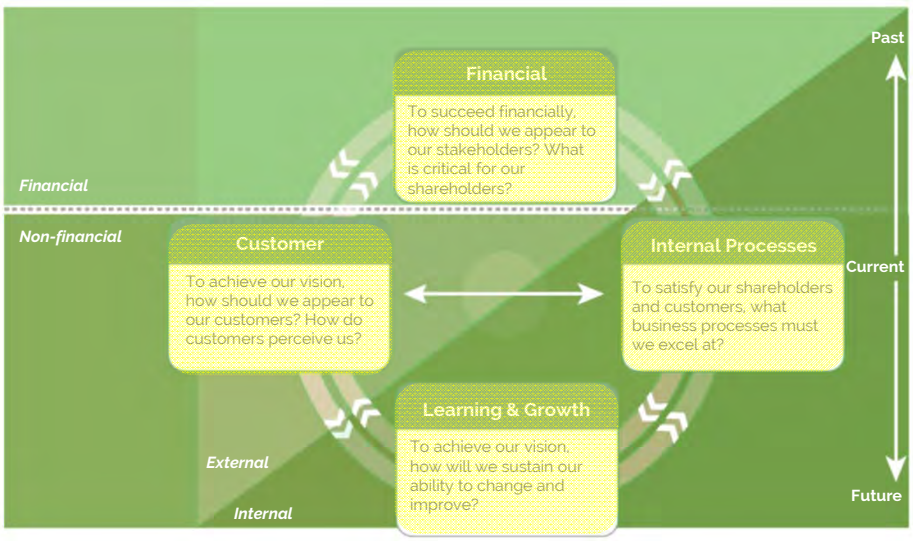
Business Metric Considerations



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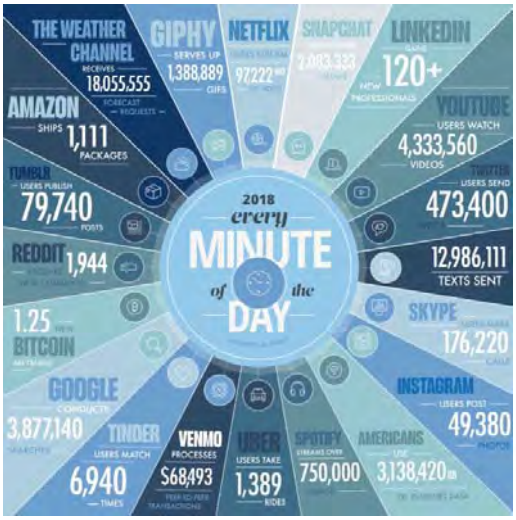
Data Never Sleeps



"90% of data today was created in the last two years."

Source: DOMO

P&N

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It's a New World

- Analyze greater volumes of data
- Embrace power of social media, mobile users, and cloud computing
- Tab into unlimited an ubiquitous connectivity
- Capitalize on databases and analytics
- Adopt new metrics for operations and valuations

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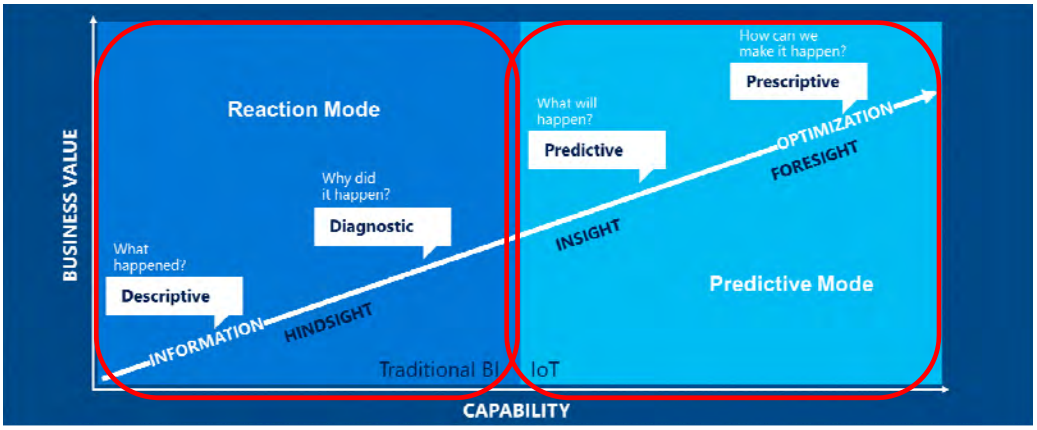
Envisioning the Future



Source: Gartner Analytics Maturity Model

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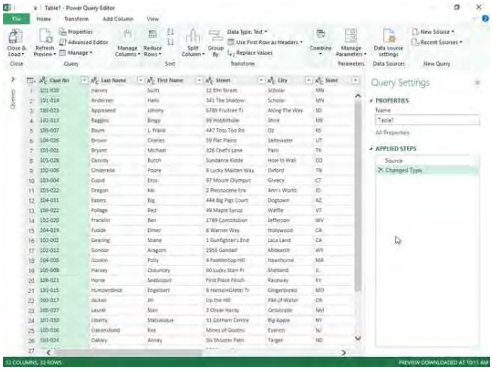
Does It Scale?

Excel is the **single most popular data analytics tool** in the world.



Is it the right tool for the job?

Pros:

- Inexpensive/Available
- Easy to use for ad hoc research, filtering, quick calculations, and sorting
- Savvy users can use formulas to perform complex calculations

Cons:

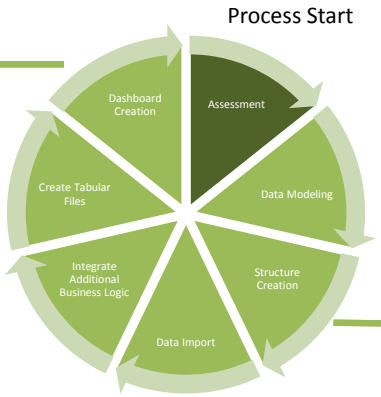
- Easy to make a costly error
- Becomes overly complicated and unwieldly as business data increases in size and complexity
- Security concerns and version control issues

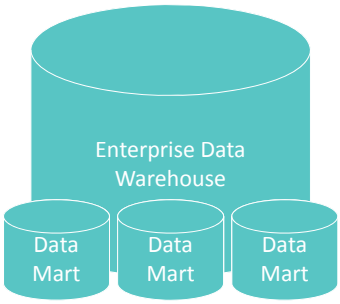
Graduating from Excel

Data needs can quickly outgrow Excel. Where do we go from here?

The Agile Method

Dashboards/Reports





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Are You Ready to be Data Driven?

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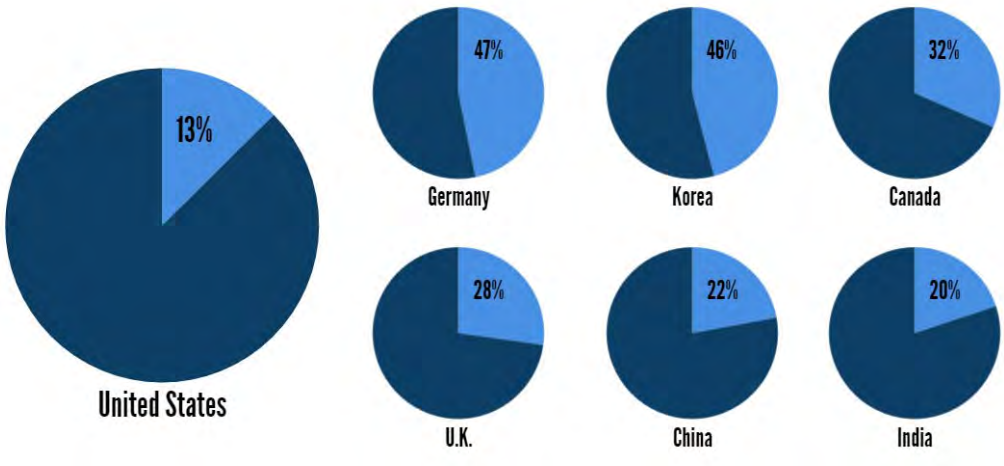
A Professional Accounting Corporation

WHY EXPORTS MATTER

More than **70%** of the world's purchasing power is **outside** of the U.S.

13% of U.S. GDP is generated by exports

Exports of goods & services (% of GDP) Source: Worldbank, 2015



We have ROOM for growth.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

HOW?

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

11.5M JOBS

Source: U.S. Department of Commerce's International Trade Administration, Bureau of the Census, and the Bureau of Economic Analysis

SUPPORTED BY EXPORTS

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

$622,575

Source: U.S. Department of Commerce's International Trade Administration

AVERAGE 12-MONTH REVENUE INCREASE

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

COMPANIES WHO EXPORT GROW FASTER.

8.5% ARE LESS LIKELY TO GO OUT OF BUSINESS.

Source: U.S. Department of Commerce's International Trade Administration

Louisiana Impact

128,623	3732	84%
JOBS	COMPANIES	SMEs

Investing in **exports** means **more** local **jobs**.

Louisiana Impact

$56.5 Billion

Total goods **exports** in 2017.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

Exporting can be **profitable** for businesses of all sizes.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

U.S. COMMERCIAL SERVICE OVERVIEW

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

Our Mission

Grow U.S. exports to **increase** U.S. jobs.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

We are **where you are** and where you **want to be**.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

Leverage the strength of the U.S. government

Market access problems
Unfair contract competition
Meetings with the right partners
Getting paid

Supporting your export **growth** every step of the way.

U.S. Department of Commerce | International Trade Administration | U.S. Commercial Service

Service highlight: In-country **business matchmaking** to connect you with the right **partners**.

- **Customized market and industry briefings**
- **Post-meeting and follow-up strategies**
- **Help with travel & interpreter service**
- **Appointments with prospective partners**

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Upcoming Events

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10-12 SelectUSA Summit (Washington, DC)
5 LDEC Meeting (Conference Call)

August
18-23 Central America Trade Mission

September
30-2 Discover Global Markets – Energy/Africa & the Middle East – Houston, TX

October
9-11 LAGCOE (New Orleans)
24 Louisiana District Export Council meeting (Covington, LA)

November
12-14 PowerGen Europe + European Utility Week (Paris)
11-14 ADIPEC (Abu Dhabi)

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- **Where** is it going?
- **Who** will receive it?
- **How** will they use it?

http://www.bis.doc.gov/index.php/exporter-portal

US-Mexico-Canada Agreement (USMCA)

Key Objective: Modernize NAFTA

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- Automotives
- Rules of Origin
- Digital Trade
- Environmental and Labor

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JONES WALKER

SEC Update: Recent Final and Proposed Rules

June 14, 2019

SEC Update: Recent Final and Proposed Rules
June 14, 2019

Program Materials

Jones Walker Corporate Client Alerts

Supplemental Materials – Available at the Links Below

Final Rule – Inline XBRL

- (https://www.sec.gov/rules/final/2018/33-10514.pdf)
- (https://www.sec.gov/rules/final/2019/33-10618.pdf)

Final Rule – Management's Discussion & Analysis

- (https://www.sec.gov/rules/final/2019/33-10618.pdf)

Final Rule – Exhibits

- (https://www.sec.gov/rules/final/2019/33-10618.pdf)

Final Rule – Disclosure of Hedging Policies

- (https://www.sec.gov/rules/final/2018/33-10593.pdf)

Staff Guidance – Critical Audit Matters

- (https://pcaobus.org/Standards/Documents/Implementation-of-Critical-Audit-Matters-The-Basics.pdf)

Proposed Rule - Modifying Large Accelerated Filer and Accelerated Filer Definitions

- (https://www.sec.gov/rules/proposed/2019/34-85814.pdf)

Proposed Rule - Expansion of "Testing-the-Waters" Communications

- (https://www.sec.gov/rules/proposed/2019/33-10607.pdf)

Proposed Rule - Financial Requirements for Acquisitions and Dispositions

- (https://www.sec.gov/rules/proposed/2019/33-10635.pdf)

Proposed Rule - Financial Disclosure for Registered Debt Offerings

- (https://www.sec.gov/rules/proposed/2018/33-10526.pdf)

Spring 2019 Reg Flex Agenda

- (https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=34&Image58.y=10)

JONES WALKER

SEC Update

Recent Final and Proposed Rules

Dionne M. Rousseau
Partner

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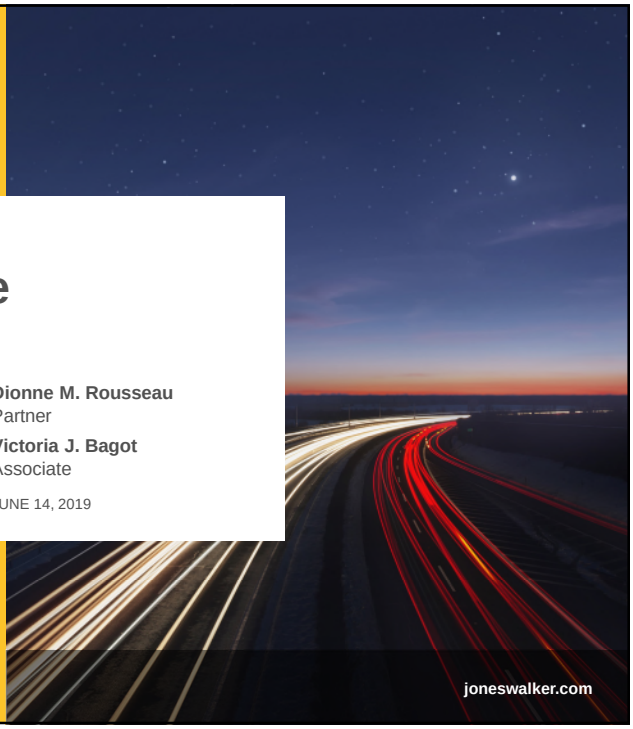
Associate

JUNE 14, 2019



Agenda

- SEC Final Rules
  - Inline XBRL
  - Management's Discussion & Analysis
  - Exhibits
  - Disclosure of Hedging Policies
  - Other
- PCAOB Critical Audit Matters
- SEC Proposed Rules
  - Modifying Large Accelerated Filer and Accelerated Filer Definitions
  - Expansion of "Testing-the-Waters" Communications
  - Financial Requirements for Acquisitions and Dispositions
  - Financial Disclosure for Registered Debt Offerings
- What's Next?

Note: This presentation covers U.S. GAAP domestic issuer operating companies.

JONES WALKER

SEC Update – General Observations

- The SEC has been focused on amendments designed to modernize and simplify disclosure requirements for public companies.
- Many of the amendments discussed in this presentation are part of the SEC's ongoing examination of its disclosure requirements and follow an earlier round of disclosure simplification amendments adopted in August 2018 and effective in November 2018, which registrants have substantially implemented already.
- In addition, changes in laws and SEC rules have made it easier for companies to go public (*e.g.*, "emerging growth company" status) and for smaller cap companies to stay public (*e.g.*, amendment to definition of "smaller reporting company"; proposed amendments to large accelerated filer and accelerated filer definitions).
- While many of the changes are technical and procedural in nature, companies should pay careful attention to their upcoming filings to ensure compliance with these recent changes and take advantage of the modified requirements, as applicable.

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Final Rule – Inline XBRL

- In June 2018, the SEC adopted amendments requiring the use of Inline XBRL for financial statement information, with a 3-year phase in period *beginning this year*.
  - The amendments do not change the categories of filers or scope of disclosures subject to XBRL requirements.
- In March 2019, the SEC adopted amendments requiring tagging of additional (now all) information on the cover pages of certain forms, including Form 10-K, Form 10-Q and Form 8-K, effective at the same time as the company is required to implement Inline XBRL.
- When must U.S. domestic registrants begin filing using Inline XBRL?
  - ***The first Form 10-Q for the fiscal period ended on or after:***
    - *June 15, 2019 for large accelerated filers*
    - June 15, 2020 for accelerated filers
    - June 15, 2021 for all other filers
- ***Accordingly, large accelerated filers with a calendar year fiscal year must begin using Inline XBRL starting with the upcoming Form 10-Q for the quarter ending June 30, 2019.***

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Final Rule – Inline XBRL

- What is Inline XBRL?
  - Generally, Inline eXtensible Business Reporting Language (XBRL) is a format that allows filers to embed XBRL data directly into an HTML document, so that the document is both human-readable and machine-readable.
  - Currently, companies are required to submit XBRL data within a separate XBRL exhibit.
- See Interactive Data File provisions of Regulation S-K Item 601(b)(101); Rule 405 of Regulation S-T; EDGAR Filer Manual for details.
- Effective September 2018, the amendments also eliminated the requirement to post "Interactive Data Files" on websites. Corresponding changes to the cover pages of Forms 10-K and 10-Q are indicated below:

Indicate by check mark whether the registrant has submitted electronically ~~and posted on its corporate Web site, if any,~~ every Interactive Data File required to be submitted ~~and posted~~ pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit ~~and post~~ such files). Yes No

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Final Rule – Management's Discussion & Analysis

- Effective May 2, 2019, the SEC adopted amendments to Item 303(a) of Regulation S-K (Management's Discussion and Analysis or MD&A), applicable to annual reports.
- **Omission of Earliest of 3-Year Period Discussion**
  - The new rules allow a registrant to eliminate discussion of the earliest of the three-year period presented in their financial statements if such discussion is already included in *any* other of the registrant's prior filings, as long as the registrant identifies the location of the discussion in the prior filing.
- **Tailored Presentations**
  - The new rules also emphasize that registrants may use any presentation that, in their judgment, would enhance a reader's understanding.
    - A year-to-year comparison is not required, although the SEC expects many registrants will continue to use this format.

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Final Rule – Management's Discussion & Analysis

- The purpose of MD&A and other substantive rules governing MD&A have not changed:
  - A registrant must provide all material information "necessary to an understanding of its financial condition, changes in financial condition and results of operations."
  - "Known trends and uncertainties" disclosure is still required.
- Companies should consider revising their MD&A disclosure to improve readability, eliminate repetitive and immaterial disclosure and should consider taking advantage of the new rule to omit discussion of the earliest year of the 3-year period.
- As of June 4, 2019, only 2 of 20 registrants filing Form 10-Ks chose to forego discussion of the earliest year, although it is likely too early to tell how the new flexibility will be incorporated by registrants over time.

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Final Rule - Exhibits

- The SEC has recently adopted a variety of amendments to Item 601 of Regulation S-K (Exhibits), which are all currently effective:
- **Description of Securities Must be Provided as Exhibit to Form 10-K**
  - Previously, a description of securities in accordance with Item 202 of Regulation S-K was required only in registration statements.
  - Companies are now required to file descriptions of their securities registered under Section 12 of the Exchange Act as exhibits to Form 10-K (Item 601(b)(4)).
  - The description may be incorporated by reference to a prior filing, if it remains unchanged.
  - ***Many companies will likely need to update their description of securities in connection with preparing the new exhibit for their next Form 10-K filing.***

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Final Rule - Exhibits

- **No Longer Required to Submit Confidential Treatment Requests**
  - The amendments revise Item 601(b)(10) of Regulation S-K, material agreements, as well as Item 601(b)(2) of Regulation S-K, plans of acquisition, to permit companies to redact from these exhibits confidential information that is not material and would likely cause competitive harm to the company if publicly disclosed, without having to submit an unredacted copy and formal confidential treatment request in advance to the SEC Staff, as previously required.
  - Instead, companies must mark the exhibit index to indicate that portions of the exhibit have been omitted, mark the filed exhibit with brackets to show where information has been omitted and add a "prominent statement" on the first page of the redacted exhibit to indicate that marked information has been omitted from the exhibit because it is both (i) not material and (ii) would likely cause competitive harm to the company if publicly disclosed.
  - Upon request by the SEC Staff, companies will be required to provide, on a supplemental basis, an unredacted paper copy and supporting analyses regarding materiality and competitive harm. If the SEC disagrees with the analyses, it may require the filing to be amended.

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Final Rule - Exhibits

- **Material Contract 2-Year Look-Back Limited to Newly Reporting Registrants**
  - Under revised Item 601(b)(10) of Regulation S-K material contracts not made in the ordinary course of business must be filed
    - For all registrants: if the contract is to be performed in whole or in part at or after the filing
    - Only for "newly reporting registrants": or if the contract was entered into not more than two years before the filing
- **Once Implemented, "Inline" Must be in the Exhibit Title**
  - Once Inline XBRL is implemented by a company, the exhibit index must include the word "Inline" within the title description for any XBRL-related exhibit.

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Final Rule – Exhibits

- **Omission of Immaterial Schedules and Attachments Permitted for all Exhibits**
  - Generally, companies were required to file complete copies of exhibits, including all schedules and attachments, no matter how immaterial or irrelevant, except that Item 601(b)(2) of Regulation S-K expressly allowed acquisition and disposition agreements to be filed without schedules or attachments if they were not material.
  - New Item 601(a)(5) of Regulation S-K permits the omission of schedules and similar attachments to ***all*** exhibits, so long as they do not contain material information and the information is not otherwise disclosed in the exhibit or the disclosure document. Companies are instead required to file with each exhibit a list briefly identifying the contents of the omitted schedules or attachments and to furnish them supplementally upon request by the SEC.
- **Omission of Personally Identifiable Information Codified**
  - New Item 601(a)(6) of Regulation S-K implements current SEC Staff practice of allowing companies to redact certain personally identifiable information from filed exhibits without the need for a confidential treatment request.
  - Personally identifiable information is information the disclosure of which would be "a clearly unwarranted invasion of personal privacy (*e.g.*, disclosure of bank account numbers, social security numbers, home addresses and similar information)."

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Final Rule – Disclosure of Hedging Policies

- In December 2018, the SEC adopted final rules regarding disclosure of hedging policies (as required by the Dodd-Frank Act), which will be effective for most companies for the first time in proxy statements filed in 2020.
- The amendments require a company to describe in its proxy or information statements for the election of directors any practices or policies it has adopted regarding the ability of its employees (including officers) 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 the registrant's equity securities granted as compensation to, or held directly or indirectly by, those persons. (New Item 407(i) of Regulation S-K)
- Phased-in compliance dates:
  - Companies that are not emerging growth companies or smaller reporting companies: proxy and information statements for the election of directors during fiscal years beginning on or after July 1, 2019 (*e.g.* for calendar year-end reporting companies, annual proxy statements filed in 2020)
  - Emerging growth companies and smaller reporting companies: proxy and information statements for the election of directors during fiscal years beginning on or after July 1, 2020 (*e.g.* for calendar year-end reporting companies, annual proxy statements filed in 2021)

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Final Rule – Disclosure of Hedging Policies

- A company may either disclose the practices or policies in full or provide a fair and accurate summary.
  - A summary must include the categories of persons covered and any categories of hedging transactions that are specifically permitted or specifically disallowed.
- If the company does not have any such practices or policies, the company must disclose that fact or state that hedging transactions are generally permitted.
- The new rules do not require companies to disclose any actual hedging transactions by employees (including officers) or directors.
  - Although note that many of these transactions will trigger Section 16 reporting obligations, and companies have been required to disclose pledges of equity securities (which are often components of hedging transactions) by named executive officers and directors.
- ***Many companies already include disclosure of anti-hedging policies in their proxy statements, and these should be revisited to ensure compliance with the new rules. Companies may also want to review their relevant policies in light of the new disclosure requirements.***

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Final Rule – Other – Currently Effective

- **Financial statement cross references:** In financial statements, incorporation by reference to, or cross-referencing to, information outside of the financial statements is not permitted (unless specifically permitted or required by SEC rules or GAAP).
- **Other cover page changes:**
  - Forms 10-K, 10-Q and 8-K must include disclosure of the title of each class of securities registered under Section 12(b) of the Exchange Act, the trading symbol(s) and name of each exchange where registered.
  - Removed checkbox on Form 10-K cover page re: delinquent Section 16 filings.
- **Description of property:** Item 102 of Regulation S-K is amended to limit the description of property to material information.
  - Disclosures specific to mining, oil and gas and real estate industries are outside the scope of the amendment.

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Final Rule – Other – Currently Effective

- **Section 16(a) Compliance:**
  - Eliminated the requirement for insider to furnish Section 16 reports to the company on paper.
  - Company may rely on Section 16 reports filed on EDGAR to assess delinquencies.
  - Eliminated the need to include the caption if there are no delinquencies to report.
- **New headings:**
  - "Delinquent Section 16(a) Reports" instead of "Section 16(a) Beneficial Ownership Reporting Compliance" (in proxy statements)
  - "Information about our Executive Officers" instead of "Executive officers of the registrant" when Item 401 of Regulation S-K disclosure about executive officers included in Form 10-K

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Critical Audit Matters (PCAOB)

- In October 2017, the SEC approved PCAOB revised audit standard AS 3101 governing the form and content of unqualified audit reports for public companies, resulting in the following changes:
  - Disclosure of auditor tenure (effective already)
  - Modifications to the structure of the auditor's report (effective already)
  - Disclosure of "Critical Audit Matters" (CAMs) – phased in effectiveness; emerging growth companies exempt
- A CAM is defined as any matter arising from the (current period) audit of the financial statements that was communicated or required to be communicated to the audit committee and that:
  - Relates to accounts or disclosures that are material to the financial statements; and
  - Involved especially challenging, subjective, or complex auditor judgment.
- Phase-in for disclosure of CAMs:
  - Large accelerated filers (LAFs) – audit reports for fiscal years ending on or after June 30, 2019 **(*i.e.* calendar-year LAFs need to include CAMs in upcoming FY 2019 audit report filed in 2020).**
  - All other public companies (except EGCs) – audit reports for fiscal years ending on or after December 15, 2020.

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Critical Audit Matters (PCAOB)

- Calendar-year LAFs should be discussing draft CAM disclosures with their auditors and audit committees now.
  - Many companies have already participated in dry runs.
- For each CAM communicated in the auditor's report, the auditor must:
  - Identify the CAM
  - Describe the principal considerations that led the auditor to determine that the matter is a CAM
  - Describe how the CAM was addressed in the audit; and
  - Refer to the relevant financial statement accounts or disclosures that relate to the CAM.
- PCAOB expects most audits to have at least one CAM.
  - If none, the audit report must state that the auditor determined there are no CAMs.

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Proposed Rules

- SEC Proposed Rules
  - Modifying Large Accelerated Filer and Accelerated Filer Definitions
  - Expansion of "Testing-the-Waters" Communications
  - Financial Requirements for Acquisitions and Dispositions
  - Financial Disclosure for Registered Debt Offerings

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Proposed Rules – Modifying Large Accelerated Filer and Accelerated Filer Definitions

- Amendments to accelerated filer (AF) and large accelerated filer (LAF) Definitions
  - Proposed: May 9, 2019; Comments due July 29, 2019
- Background – In June 2018 the SEC adopted amendments to the definition of smaller reporting company (SRC) to expand the number of companies that qualified for the scaled disclosure accommodations. Before the amendments, SRCs were generally also non-AFs; after the amendments, it is possible to be both a SRC and an AF (or LAF).
- Background – Main benefits of being a non-AF:
  - ***Not required to have an audit of internal control over financial reporting***
  - Have 90 days to file Form 10-Ks and 45 days to file Form 10-Qs
- The proposed amendments would:
  - Exclude from the AF and LAF definitions an issuer that is eligible to be an SRC and had annual revenues of less than $100 million (or no revenues) in the most recent fiscal year for which audited financial statements are available (and public float less than $700 million or no public float)
  - Modify the transition thresholds so that companies would be less likely to move from one category to another.
- Implications – more SRCs would also be non-AFs, with benefits described above.

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Proposed Rule – Expansion of "Testing-the-Waters" Communications

- Proposed new Rule 163B – Solicitations of Interest Prior to a Registered Public Offering
  - Proposed: February 19, 2019; Comments were due: April 29, 2019
- Summary:
  - The SEC is proposing to extend the "testing-the-waters" accommodation to all issuers, not just EGCs as is currently the case.
  - Would allow all issuers, or any person authorized to act on an issuer's behalf, to engage in oral or written communications with potential investors that are, or that the issuer reasonably believes to be, "qualified institutional buyers" or "institutional accredited investors" either prior to or following the date of filing of a registration statement with the SEC, to determine whether such investors might have an interest in a contemplated registered securities offering.
  - Not limited to IPOs, and would also be available to reporting companies under the Exchange Act. Such issuers would need to consider whether any information in their testing-the-waters communications would trigger any obligations under Regulation FD.
  - While the communications would not need to be filed with the SEC, the SEC's practice is to ask supplementally to see copies of all testing-the-waters communications in connection with its review of an EGC registration statement.

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Proposed Rules – Financial Requirements for Acquisitions and Dispositions

- Amendments to Rule 1-02(w), Rule 3-05 and Article 11 of Reg S-X, primarily
  - Proposed: May 3, 2019; Comments due July 29, 2019
- The proposed (extensive) amendments are intended to reduce the complexity and costs associated with the preparation of historical financial statements and pro forma financial information for businesses that are acquired or disposed of.
- Some highlights:
  - Revise significance calculation under investment test and income test of Rule 1-02(w)
  - Significance threshold for a disposition: raise from 10% to 20%
  - Rule 3-05 financial statements of acquired businesses: No more than 2 years audited financial statements, depending on significance (instead of 3)
  - Article 11 pro forma financial information: Simplified adjustment criteria, in 2 columns:
    - Transaction accounting adjustments
    - Management adjustments
  - Amendments would not apply to target company financial statements required to be included in a proxy statement or registration statement on Form S-4

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Proposed Rules – Financial Disclosure for Registered Debt Offerings

- Amendments to Rule 3-10 and Rule 3-16 of Reg S-X, primarily
  - Proposed: July 24, 2018; Comments were due December 31, 2018
  - Spring 2019 SEC Reg-Flex Agenda indicates these amendments are in the Final Rules Stage.
- The proposed (extensive) amendments would simplify the financial disclosure requirements applicable to registered debt offerings for guarantors and issuers of guaranteed securities, as well as for affiliates whose securities collateralize a registrant's securities.
  - The proposed amendments to Rule 3-10 would make it easier to omit separate financial statements as well as reduce the required alternative supplemental financial and nonfinancial disclosure about the subsidiary issuers and/or guarantors and the guarantees.
    - Under the proposed rules, the disclosures would be required only as long as the issuers and guarantors have an Exchange Act reporting obligation with respect to the guaranteed securities (rather than for as long as the securities are outstanding), which means generally if the security is held by fewer than 300 holders of record, the reporting obligation would be suspended within approximately one year after the offering.
  - The proposed amendment to Rule 3-16 replaces trigger of "constitutes a substantial portion of the collateral" with a requirement to provide certain abbreviated financial and nonfinancial disclosures about the affiliate and the collateral arrangement if material to investors/holders of the collateralized securities.

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What's Next?
SEC Rulemaking Calendar (Spring 2019 Reg Flex Agenda)

- The Spring 2019 Reg Flex Agenda includes these rulemaking projects as among those the SEC plans to address over the coming year:
  - Thresholds for shareholder proposals under Rule 14a-8 *(SEC is generally expected to propose increases in the ownership and resubmission thresholds for shareholder proposals)*;
  - Advisors' reliance on the proxy solicitation exemptions in Rule 14a-2(b);
  - Securities Act Rule 701, the exemption from registration for securities issued by non-reporting companies pursuant to compensatory arrangements, and Form S-8, the registration statement for compensatory offerings by reporting companies *(Concept release July 2018);*
  - Industry Guide 3, Statistical Disclosure by Bank Holding Companies *(Request for comment March 2017);* and
  - Potential concept release on ways to harmonize and streamline private offering exemptions.
- "Long-Term Actions" include (i) clawbacks of executive compensation (Dodd-Frank; rules proposed 2015); (ii) pay vs. performance (Dodd-Frank; rules proposed 2015); (iii) corporate board diversity disclosure; (iv) proxy process amendments ("proxy plumbing"); and (v) universal proxies (rules proposed 2016).
- SEC request for comment December 2018: nature, content and timing of earnings releases/quarterly reports.

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More Information

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About Jones Walker LLP

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Dionne M. Rousseau

Dionne Rousseau is a partner in the Corporate Practice Group. She provides corporate finance, securities, mergers and acquisitions, and other transaction and compliance counsel to public and private entities.

Dionne has served as lead outside corporate and securities counsel for 12 public companies, and as boardroom lawyer for three of these entities. With more than 25 years of experience handling corporate finance and mergers and acquisitions transactions, Dionne has led client service teams and deal teams for clients in the financial services, real estate, oil and gas services, energy exploration and production, marine construction, hard rock mining, death care, distribution, transportation, and technology industries. In 2018, Dionne served as lead counsel to a public offshore drilling company in connection with raising $1.5 billion to emerge from Chapter 11 – named Energy Deal of the Year by The M&A Advisor.

Dionne provides ongoing corporate and securities law advice to public companies and their boards of directors, including compliance with the corporate governance and disclosure requirements of the securities laws and trading markets. She regularly reviews Forms 10-Ks, 10-Qs, 8-Ks, 20-Fs, 6-Ks, proxy statements, and press releases, handles board and executive compensation matters, proxy contests, and activist investors, and implements takeover defenses. Dionne represents domestic issuers and foreign private issuers, as well as companies and funds in connection with private equity transactions.

Prior to practicing law, she was an investment banker with PaineWebber (now UBS) in New York City.

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Victoria J. Bagot

Victoria Bagot is an associate in the Corporate Practice Group. She represents clients on corporate, securities, mergers and acquisitions, and private equity matters.

Victoria advises public and private companies on a range of corporate matters, including finance, capital markets, mergers and acquisitions, and private equity.

Victoria represents issuers and underwriters in a variety of corporate finance transactions, including tender offers, public and private securities offerings of debt and equity securities, and initial public offerings. She also works with private equity investors, their portfolio companies, and other public and private companies in connection with mergers, acquisitions, dispositions, internal reorganizations, and strategic investments. In 2018, Victoria assisted as lead counsel to a public offshore drilling company in connection with raising $1.5 billion to emerge from Chapter 11 – named Energy Deal of the Year by The M&A Advisor.

In the area of corporate governance, Victoria advises clients on disclosure and reporting requirements of securities laws and capital markets, and regularly reviews annual, quarterly, and current reports, proxy statements, and other SEC filings. She coordinates periodic reviews and compliance with internal company policies such as insider trading policies and ethics and business conduct policies.

Prior to joining Jones Walker, Victoria was an associate in the capital markets and mergers and acquisitions practice group at the Houston office of an *Am Law* 100 firm.

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- Louisiana State University BA, Political Science, minor in Business Administration, *summa cum laude*, 2011

Bar Admissions
- Louisiana
- Texas

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May 16, 2019

SEC Proposal Would Exempt Lower-Revenue Smaller Reporting Companies from Internal Control Attestation Requirement

On May 9, 2019, the Securities and Exchange Commission (SEC) issued proposed regulations that, if finalized, would have the effect of exempting a significant number of smaller reporting companies from the definitions of "accelerated filer" and "large accelerated filer," thereby relieving the companies from the requirement to obtain auditor attestation of management's assessment of internal control over financial reporting (ICFR) along with having to comply with the accelerated filing deadlines. Under the proposed regulations, a company that has less than $100 million in annual revenues would no longer be deemed an accelerated filer or large accelerated filer as long as its public float is less than $700 million as of the applicable testing date. The SEC estimates that over 300 public companies would no longer be deemed accelerated filers or large accelerated filers if the proposed regulations take effect. For banks, this proposed change would likely have the effect of exempting almost all institutions with total assets below $1 billion from the requirement to obtain an auditor's attestation report. Institutions with $1 billion or more in assets are required to obtain this report under FDIC regulations. The SEC is also proposing amendments to the transition thresholds for accelerated filers and large accelerated filers exiting to non-accelerated filer and/or accelerated filer status. The proposed amendments would increase the public float threshold below which a filer would revert to the lower filing status and add a revenue test as well.

Background

Section 404(a) of the Sarbanes-Oxley Act requires almost all issuers subject to the periodic filing requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), regardless of size, to establish and maintain internal control over financial reporting. In addition, management must assess the effectiveness of ICFR annually. Companies that are deemed accelerated filers and large accelerated filers must provide an auditor's attestation report on management's ICFR assessment. Accelerated filers and large accelerated filers must comply with an accelerated filing schedule for their quarterly and annual reports as well.

Prior to June 2018, a company that was deemed a smaller reporting company (SRC) was not obligated to provide an auditor's attestation report and was entitled to use a scaled disclosure system when preparing its periodic and other securities filings. A company could qualify as an SRC if its public float was less than $75 million or it had annual revenues below $50 million and no public float. Prior to the June 2018 amendments, by definition, a company that met the definition of an SRC could not be deemed an accelerated filer or large accelerated filer. In June 2018, the SEC amended the definition of an SRC—increasing the public float maximum to $250 million and changing the revenue test to a maximum of $100 million provided the company had no public float or a public float of less than $700 million. While this change significantly increased the number of companies entitled to use the scaled disclosure accommodations available to SRCs, it did not relieve these companies from providing the auditor's attestation report on ICFR or complying with the accelerated filing deadlines as the SEC

chose to keep the $75 million public float test within the definition of an accelerated filer and deleted the provision in the definition exempting all SRCs. As a result, many companies now qualify as both a smaller reporting company and an accelerated filer (or, in some cases, a large accelerated filer).

Under existing rules, once a company qualifies as an accelerated filer or large accelerated filer, it may exit to a lower filing status—only if its public float has dropped below a transition threshold which is less than the threshold for entering the filing status. A large accelerated filer will be deemed an accelerated filer if its public float has dropped to $500 million as of the last day of its second fiscal quarter, while an accelerated filer will become a non-accelerated filer if its public float has dropped below $50 million as of the last day of its second fiscal quarter.

Proposed Amendments

Proposed Amendments to Exempt Lower-Revenue Companies from Definition of Accelerated Filer and Large Accelerated Filer. The SEC is proposing to exempt from the definition of accelerated filer and large accelerated filer any company that is eligible to be an SRC because it had annual revenues of less than $100 million in the most recent year for which audited financial statements are available and either no public float or a public float of less than $700 million. If these amendments are finalized, the SEC estimates approximately 300 additional reporting companies will be exempt from the auditor attestation requirements and accelerated filer deadlines. However, companies that qualify as an SRC by virtue of the public float test only would remain subject to the ICFR attestation and accelerated deadlines.

While the SEC acknowledged that the ICFR audit may be beneficial in helping management identify material weaknesses in ICFR and thereby enhance investor protection, it notes that with smaller companies, the costs may outweigh the benefits. The costs associated with preparing for the audit may be significant both in terms of dollars and management's time and attention. The SEC estimates that the incremental costs associated with an ICFR audit average in excess of $200,000, which appears to be a conservative number and does not take into account the value of management's time. In addition, the absence of an ICFR audit does not mean that management is not obligated to maintain a system of ICFR and identify and disclose material weaknesses to investors. On the contrary, SEC estimates show that, on average, during the period from 2014 to 2017, approximately 40% of the non-accelerated filers identified at least one material weakness in their management's assessment of ICFR compared to approximately 9% of accelerated filers and 4% of large accelerated filers. This trend continues when statistics about filers reporting material weaknesses in multiple years are examined. While one could interpret this to mean a weaker set of ICFR in the non-accelerated filer class, the rate of restatements resulting from material misstatements is slightly less for non-accelerated companies than for filers in the accelerated filer class.

In addition to the direct costs of the ICFR attestation process, there are other indirect costs that are less able to be quantified. For example, there are companies that will opt not to conduct an IPO or may decide to issue debt rather than common stock in a secondary offering in an attempt to stay below the $75 million threshold. Some companies may take other actions, such as share repurchases or significant dividend payouts, in lieu of actions that may lead to future development also with the goal of staying below $75 million. All of these indirect costs have a negative impact on capital formation. As such, the SEC believes any negatives from reducing the number the ICFR audits are more than outweighed by the improvements to the system overall.

Proposed Amendments to Thresholds. The SEC is also proposing increasing the current thresholds below which the public float of an accelerated filer or accelerated filer must drop in order to move to exit the relevant filing category. The SEC has proposed increasing the threshold from $50 million to $60 million for an accelerated filer to become a non-accelerated filer, and from $500 million to $560 million for a large accelerated filer to become an accelerated filer. These proposed new transition thresholds

each represent approximately 80% of the public float level needed to first enter the respective filing category. In addition, the proposed amendments would add the revenue test included in the definition of an SRC, that is, revenues of less than $100 million. Currently there is no revenue test. In summary, under these proposed revisions, if a large accelerated filer had a public float between $60 million and $560 million as of the last day of its second fiscal quarter and revenues in excess of $100 million during the prior year, it would exit to accelerated status; if its revenues were below $100 million or its public float was less than $60 million, it would become a non-accelerated filer. Accelerated filers with a public float less than $60 million as of the last day of the second fiscal quarter or less than $100 million in revenues in the prior fiscal year would become non-accelerated filers.

Next Steps

The SEC is soliciting comments on all of the proposed changes. The comment period will end 60 days after the release is published in the Federal Register. Companies that would benefit from the proposed rule changes should consider submitting a comment letter to the SEC that details, among other items, the additional expenses incurred in connection with the internal controls audit.

For additional information, please contact Joan S. Guilfoyle.

May 2019

SEC Proposes Changes to Its Financial Statement and Pro Forma Data Requirements in Connection with Acquisitions and Dispositions of Businesses

On May 3, 2019, the Securities and Exchange Commission ("SEC") issued proposed amendments to its rules governing financial statement and pro forma data requirements in connection with certain acquisitions and dispositions of businesses by SEC registrants. Currently, when a registrant has acquired, or is in the process of acquiring, another company or a material business unit, it must evaluate whether the acquisition is significant to its overall business. Regulation S-X has certain financial tests for determining whether the acquisition is material to the registrant. If it is deemed significant under these tests, historical financial statements must be publicly filed so that an investor can evaluate the potential impact of the proposed transaction on the overall company. Depending on the significance of the transaction, as many as three years of audited financial statements may need to be filed. In addition, the registrant must file "pro forma" financial statements that comply with Regulation S-X to show how the acquisition would have impacted the registrant's financial statements if it had occurred at the beginning of the its last fiscal year and any subsequent interim period.

The SEC is proposing significant changes to these requirements. Specifically, the SEC has proposed that, in connection with acquisitions of companies or lines of business that may be deemed significant, the maximum number of fiscal years of historical financial statements for the target that the registrant will be required to publicly file would be two—as compared to three years under current rules. In addition, the SEC is proposing material revisions to the financial tests in Regulation S-X that are used to determine the significance of the acquisition. Significant changes to the preparation of pro forma financial statements have also been proposed in this release. Finally, as there have been no significant changes in these rules in many years, some of the terminology used is not consistent with that in other rules, which has created confusion. Certain of the proposed amendments are meant to address these issues. Primarily, the rules that would be affected are within Regulation S-X and related rules and forms. The proposal also would affect rules relating to the acquisition of real estate businesses and investment companies, but these topics will not be addressed in this memorandum.

This proposal resulted from the SEC's 2015 "Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant." The stated goals of the proposed changes are both to improve the quality of information available to investors in evaluating the impact of such acquisitions or dispositions on the surviving company and to reduce the complexity of complying with the applicable rules, thereby facilitating timely access to capital. In connection with its proposed rule changes, the SEC is soliciting comment on all aspects of its proposal. The comment period will end 60 days after the proposed rule is published in the Federal Register.

Overview of Current Rules

Under current rules, when a registrant acquires a business, it must evaluate the significance of the acquisition to the overall entity in order to determine whether it is required to file financial statements of

the acquired entity. The greater the significance of the acquired entity, the greater the number of periods of financial statements that must be filed. Rule 3-05 of Regulation S-X sets forth the requirements for these financial statements and incorporates three tests from Rule 1-02 to be used to evaluate whether an acquisition is significant:

1. **The Investment Test –** The investment in–or advances to–the acquired business is compared to the total assets of the registrant.
2. **The Asset Test –** The assets of the acquired business are compared to the assets of the registrant prior to the acquisition.
3. **The Income Test –** The registrant's equity in the income from continuing operations of the acquired entity is compared to the same measure for the registrant prior to the acquisition.

Under current Rule 3-05, if none of the tests exceed 20%, the acquisition is not considered significant and no financial statements of the acquired entity are required to be filed. If any exceed 20%, there is a sliding scale as to the number of years of audited financial statements that are required to be filed, up to a maximum of three years (plus any required interim period) if any of the tests exceed 50%. Registrants making acquisitions that are deemed significant under any of the tests must also file pro forma financial statements prepared in accordance with Article 11 of Regulation S-X (or Rule 8-05 of Regulation S-X in the case of smaller reporting companies) that show under prescribed circumstances what the pro forma effect of the acquisition might be. Under current rules, however, these pro forma financial statements do not take into account anticipated synergies or cost reductions that are likely to result due to the completion of the acquisition.

Proposed Changes to Significance Tests and Financial Statement Requirements

Despite the seemingly black-line test for determining significance, in practice, the significance tests are often difficult to comply with, and the SEC has often been called upon to address these practical questions and, in some circumstances, permit the omission of one or more periods of historical information regarding an acquired entity. To address some of these concerns and to reduce the complexity of compliance, the SEC is proposing the following key changes:

Two-Year Maximum on Audited Financial Statements. Under current rules, if any of the significance tests exceed 50%, audited financial statements for the three fiscal years preceding the transaction must be filed except in limited circumstances. Under the proposed rules, the maximum number of years of audited financial statements required to be filed would be reduced to two years. For acquisitions where the significance test is greater than 20%, but less than 40%, only one year would be required along with any interim period. No comparative interim period would be required.

Investment Test to Compare Investments in Acquired Business to Registrant's Aggregate Worldwide Market Value of Common Equity. Rather than compare the registrant's investments in or advances to the entity being acquired against the registrant's total assets, the proposed rule change would compare it against the aggregate worldwide market value of the registrant's voting and nonvoting common stock. This number would be inclusive of shares owned by affiliates, in contrast to the test for determining accelerated filer status, which focuses only shares owned by non-affiliates. The SEC believes this change would better show the economic impact of the transaction on the registrant. In the absence of a market value, the comparison would revert to total assets. The determination of market value would be made as of the last business day of the most recently completed fiscal year prior to completion of the transaction.

While the stated goal of these proposed revisions was to decrease complexity, it is possible that this proposed change could result in an increased number of acquisitions being deemed significant depending on the trading price of the registrant's stock. While commenters on the 2015 release in which these changes were first discussed supported a measure other than total assets, several

suggested using the fair value of assets, which would have likely resulted in more acquisitions not being deemed significant under this test.

Income Test to Add a Revenue Test and to Require Income Test Be Calculated on an After-Tax Basis. Under current rules, the income of the entity to be acquired is compared to the income from continuing operations of the registrant for purposes of calculating the significance test. In many instances, unusual expenses or gains or losses can significantly affect the results of the test. To address this concern, the SEC is proposing to add a new revenue component to the income test in an attempt to reduce the number of circumstances in which a registrant may be forced to file audited financial statements for a small acquisition. For the revenue component, the revenues of the acquired entity would be compared to the revenues of the registrant for its most recently completed fiscal year in cases where both entities have recurring annual revenue. Both the revenue and the income tests would be performed and the registrant would use the lesser of the two for determining how many periods (if any) of audited financial statements must be filed.

The SEC has also proposed to revise the definition of income for purposes of the income test to *after-tax* income from continuing operations rather than *pretax* income from continuing operations under current rules.

Audited Financial Statements of Individually Insignificant Acquisitions Would Not Need to Be Filed. Currently, if a series of individually insignificant acquisitions since the date of the registrant's last balance sheet exceed 50% significance in the aggregate, the registrant must include audited financial statements for at least the substantial majority of these acquisitions in any registration statement or proxy statement. Pro forma financial statements must also be included. As a result, the SEC has noted that financial statements of insignificant acquisitions are often filed in case a subsequent acquisition may trigger this filing requirement. The SEC is proposing to require that pre-acquisition financial statements only be filed for any acquisition that in and of itself exceeds the 20% threshold. Pro forma financial statements depicting the aggregate effects of all such businesses would continue to be required.

Proposed Changes to Pro Forma Financial Statement Preparation

Include Impact of Certain Costs and Synergies. When an acquisition is deemed significant under any of the tests, pro forma financial statements showing the impact of the transaction must also be filed. Article 11 of Regulation S-X (Rule 8-05 of Regulation S-X in the case of a smaller reporting company) sets forth the rules for preparing these pro forma financial statements. Of note, under current rules, the pro forma income statement does **not** reflect either nonrecurring charges that may be incurred in connection with the transaction, which often are material, or the estimated costs or benefits arising from management's actions in connection with the transaction, such as the synergies that may result.

In order to better depict the potential impact of an acquisition, the SEC is proposing to replace this methodology with two sets of adjustments that may be shown in the pro forma income statement: Transaction Accounting Adjustments and Management's Adjustments. Transaction Accounting Adjustments are intended to reflect only the changes resulting from the application of required accounting to the transaction, while Management's Adjustments would reflect more forward-looking adjustments, such as synergies and other transaction effects identified by management, such as the closing of facilities, discontinuing product lines, and severance costs that are both reasonably estimable and have occurred or are reasonably expected to occur. The SEC has stated that to the extent any forward-looking statements are made, they would be entitled to the safe harbor protection for forward-looking information. Any synergies that are not reasonably estimable are to be described in a narrative disclosure accompanying the financial statements. The material assumptions made in calculating these adjustments would have to be explained via footnote and presented in a separate

column after presentation of the pro forma financial statements reflecting Transaction Accounting Adjustments only.

Smaller Reporting Companies. Pro forma financial statement preparation for smaller reporting companies is governed by Rule 8-05 of Regulation S-X. Unlike Article 11, Rule 8-05 provides little guidance on the preparation, presentation and disclosure of pro formas other than a preliminary note that suggests that smaller reporting companies may want to look at Article 11. The SEC has proposed that Rule 8-05 be amended to require that smaller reporting companies substantially comply with the requirements set forth in Article 11.

Other Proposed Changes and Clarifications

The SEC is also proposing to codify a number of accepted reporting practices in connection with the preparation of financial statements for acquired businesses in the oil and gas industry, to provide guidance on the preparation of financial statements when only a line of business and not a separate entity is acquired, and to permit the filing of financial statements prepared in accordance with IFRS-IASB without reconciliation to US GAAP in certain circumstances. The SEC has also proposed raising the threshold for requiring pro forma financial statements in the case of significant dispositions from 10% to 20%, utilizing the same significance tests for acquisitions. Lastly, the SEC has proposed numerous terminology changes to improve consistency within Regulation S-X and with other generally accepted meanings of the terms.

For additional information, please contact Joan S. Guilfoyle.

JONES WALKER

Corporate Client Alert

April 2019

SEC Adopts Further Amendments to Modernize and Simplify Disclosure Requirements Pursuant to the FAST Act

On March 20, 2019, the Securities and Exchange Commission (SEC) adopted amendments to modernize and simplify certain disclosure requirements in Regulation S-K, and related rules and forms, consistent with the SEC's mandate under the Fixing America's Surface Transportation (FAST) Act. These amendments, first proposed in October 2017, are effective May 2, 2019, with certain exceptions discussed herein. These amendments will affect Regulation S-K and, among other forms, annual, quarterly, and current reports on Form 10-K, Form 10-Q, and Form 8-K, respectively, as well as registration statements and prospectuses.

Overview

Many of the changes are designed to reduce burdens on registrants due to duplicative or outdated requirements. For example, the SEC has eliminated the requirement that a registrant's Management's Discussion and Analysis ("MD&A") cover the earliest year if three years of financial statements are included in a filing, *provided* certain requirements are met. Further, registrants will no longer be required to file confidential treatment requests in connection with the redaction of exhibits. To modernize the requirements, the SEC eliminated certain requirements that originated from the pre-EDGAR filing regime and made technical updates to several disclosure requirements.

According to the SEC, a second purpose of the amendments is to increase the readability and ease of access to information *provided* to investors in disclosure documents. As a result, some of the rule changes impose new obligations on registrants, including the addition of a new Form 10-K exhibit and additional obligations governing hyperlinking and XBRL tagging. The major effects of the changes are described below. In addition, a chart summarizing the amendments is attached for reference as Annex A.

The SEC made similar changes to the rules governing investment companies, investment advisors, and foreign private issuers, which are not discussed in this client alert.

Management's Discussion and Analysis (Item 303 of Regulation S-K)

No Need to Discuss Earliest of Three Years When Three Years of Financial Statements Are Presented. In the MD&A, registrants are required under Item 303 of Regulation S-K to discuss all periods presented in the audited financial statements included in the filing. For most companies, this requires a discussion of the three most recent fiscal years. Because in many instances the discussion of the earliest of the three years is duplicative of that which was included in the prior year's filing, the SEC amended Item 303 to permit the omission of such discussion, *provided* (i) discussion of the earliest year was included in a prior EDGAR filing under either the Securities Act or the Exchange Act that required MD&A disclosure and (ii) the current filing includes a statement identifying the location in

the prior filing where the discussion may be found. This marks a significant expansion of the amendment set forth in the 2017 proposing release, which would have only permitted the omission of discussion of the earliest year if the registrant first determined that the discussion was not material to an understanding of the current period results. Further, the amendment proposed in 2017 would have limited the applicable "prior filing" to only the prior year's Form 10-K.

Nonetheless, registrants may continue to provide discussion of the entire previous three-year period if it's material to an understanding of a registrant's financial condition, changes in financial condition, and results of operations. In fact, the SEC "encourage[s] registrants to take the opportunity to reevaluate their [MD&A] disclosure[s] in light of these amendments to determine whether a discussion of the earliest year's information remains material." Smaller reporting companies and certain emerging growth companies are not affected by the revisions, as they are only required to include two years of audited financial statements in their filings.

No Mandated MD&A Format. The SEC also eliminated an instruction to Item 303 that required the MD&A be in a year-to-year format. Under the revisions, the registrant may use any presentation that "enhances a reader's understanding." Practically speaking, the SEC anticipates that many registrants will continue to provide the MD&A in year-to-year format, as this is a "familiar and, in many cases, appropriate method of presentation." However, the SEC recognizes that this presentation may not be the most effective format for every registrant, and accordingly has amended the rule to provide greater flexibility.

Confidential Treatment Requests

No Longer Required to File Confidential Treatment Requests. Prior to the amendments, a filer seeking to omit confidential information from a publicly filed exhibit must have first submitted a detailed confidential treatment application to the SEC identifying both the confidential information and the legal grounds under the Freedom of Information Act pursuant to which the information may remain confidential. Additionally, the registrant must have marked where in the filed exhibit confidential information had been omitted.

Under the amended rules, registrants may omit confidential information from material contracts filed under Item 601(b)(10) of Regulation S-K, as well as from plans of acquisition, reorganization, arrangement, liquidation, or succession filed under Item 601(b)(2), without first requesting confidential treatment from the SEC, *provided* the redacted information (i) is not material and (ii) would be competitively harmful, if publicly disclosed. As with the pre-amendment rule, the exhibit must be clearly marked to indicate that confidential information has been omitted. The SEC will continue to selectively review filings to assess whether redactions are compliant with this new rule and has retained the ability to require a registrant to file an amended version of the exhibit if it is unable to support its claim for confidential treatment. The SEC adopted parallel amendments to certain other forms, including Item 1.01 of Form 8-K, so as to maintain a consistent approach to the exhibit filing requirements across forms. **Unlike the majority of the amendments, this amendment is effective immediately upon publication in the Federal Register on April 2, 2019**.

May Omit Personally Identifiable Information. The amended rules also allow registrants to omit personally identifiable information without first submitting a confidential treatment request to the SEC. This amendment codifies current SEC practice.

Other Exhibit Filing Changes

Schedules and Attachments to Exhibits May Be Omitted in Most Cases. Under the amended rules, registrants may omit schedules and similar attachments to all exhibits filed under Item 601, *provided* the omitted schedules and attachments (i) do not contain material information and (ii) were

not otherwise disclosed in the exhibit or the disclosure document. Registrants must also file a list briefly describing the contents of any omitted attachment or schedule.

Material Contracts Two-Year Look-Back Period Limited to Newly Reporting Registrants. Once effective, the amended rules will require only "newly reporting registrants" (as that term is defined in the rule) to file material agreements not made in the ordinary course of business and that were entered into during the two years prior to the filing. Registrants with established reporting histories will be required to file only those material contracts not made in the ordinary course of business that will be performed in whole or in part at or after the filing of the registration statement or report.

Description of Property (Item 102 of Regulation S-K)

Registrants are no longer required to provide descriptions of the location and general character of the registrant's physical properties, unless the disclosure is material to the registrant. As a result, registrants may now describe property on an individual basis or on a collective basis, or provide no disclosure at all, based on the registrant's determination of which, if any, of its physical properties warrant discussion based on materiality, in light of the registrant's particular circumstances. Importantly, the SEC explicitly noted that disclosures specific to the mining, oil and gas, and real estate industries are outside the scope of this particular amendment. The SEC has separately adopted revisions for these industries in other rules and in industry-specific guides.

New Form 10-K Exhibit Requirement

Registrants must now include a description of all securities registered pursuant to Section 12 of the Exchange Act (required by Item 202 of Regulation S-K) as a new exhibit to Form 10-K. Although the SEC acknowledges that this disclosure will necessarily overlap with disclosures that may be found in publicly available registration statements, the SEC believes that this new requirement will facilitate investors' access to information without imposing significant additional costs. All registrants with a class of securities registered under Section 12 of the Exchange Act will be required to file an initial exhibit with their first Form 10-K after the amendments are effective. Registrants should note that this amendment does not relieve existing obligations to disclose material modifications to the rights of security holders, as well as amendments to the registrant's articles and bylaws, on Form 8-K and in proxy statements under Schedule 14A throughout the year. The Form 10-K exhibit will need to be updated only annually to reflect all material and immaterial changes made during the year.

Section 16 Reporting Compliance

Companies May Rely on EDGAR Filings. Directors, executive officers, and 10 percent or more beneficial owners are required to file reports with the SEC to report transactions in the securities of the registrant that are registered pursuant to Section 16 of the Exchange Act. Electronic filing of these forms (Forms 3, 4, and 5) was mandated by the Sarbanes-Oxley Act of 2002; however, Item 405 of Regulation S-K was never updated to reflect this requirement and still spoke of determining late filings by a review of copies of reports provided to the registrant by the filing persons. In recognition of this change, the SEC amended Item 405 to clarify that registrants may determine delinquent Section 16 filings for purposes of proxy statement disclosure solely by a review of reports filed on EDGAR and any written representation from a reporting person that no Form 5 was required to be filed. Registrants will also be permitted, though not required, to consider facts outside of the EDGAR filings to determine whether any late filings need to be reported. For example, if a registrant knows of a transaction that has not been reported, it may consider disclosing this fact in its disclosure regarding delinquent filings.

Amended Required Caption for Disclosure of Late Filers; Late Filer Disclosure Box Removed from Form 10-K Cover Page. Registrants are required to disclose in annual meeting proxy statements whether there have been any late filings under the caption "Section 16(a) Beneficial Ownership

Reporting Compliance." The SEC amended the heading required by Item 405 to "Delinquent Section 16(a) Reports." The SEC encourages registrants to exclude the heading and disclosure altogether when it has no Section 16(a) delinquencies to report. Consistent with these amendments, the SEC removed the checkbox from the cover page of Form 10-K whereby the registrant would indicate that it has no disclosure of Section 16(a) delinquencies.

Management and Corporate Governance (Items 401 and 407 of Regulation S-K)

Information about Executive Officers. The SEC amended Item 401 to clarify that the executive officer disclosures required by the item may be provided in either the registrant's annual report on Form 10-K or in the registrant's definitive proxy statement or information statement, but need not be provided in both. Additionally, the SEC revised the caption of this disclosure (if and when included in Form 10-K) to "Information about our Executive Officers." A registrant that provides this disclosure on Form 10-K should update this caption accordingly.

No Compensation Committee Report for Emerging-Growth Companies. The SEC clarified that emerging-growth companies, in addition to smaller reporting companies, are exempt from the requirement to include a Compensation Committee Report in which the members of the compensation committee recommend inclusion of the company's Compensation Discussion and Analysis ("CD&A") in the proxy statement, since emerging-growth companies are not required to prepare a CD&A. The existing exemption only referenced smaller reporting companies.

Updated Text for Audit Committee Report. The SEC also updated Item 407 to remove the outdated reference to AU Section 380, *Communications with Audit Committees*, replacing it instead with a reference to "the applicable requirements of the Public Company Accounting Oversight Board ('PCAOB') and the [SEC]." Though many registrants have already updated this reference in relevant forms, reports, and statements, companies that have not yet made this change should now do so.

Registration Statement and Prospectus Provisions

Risk Factors. The SEC amended Item 503(c), requiring disclosure of the most significant risk factors of the offering, by removing the enumerated example risk factors from the instructions. The SEC has noted that inclusion of this "boilerplate" list of examples in its instructions is inconsistent with the SEC's "principles-based" approach to risk factor disclosure, and for that reason has amended the rule in this way.

Market for Securities. The SEC expanded the scope of the cover page requirement regarding disclosure of the trading symbols and any national securities exchanges on which the registrant's securities are traded. Specifically, the SEC now requires registrants to also disclose any United States markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation, such as an over-the-counter market and the applicable trading symbol.

Preliminary Prospectus Legend. The "red herring" legend that must be placed on any preliminary prospectus may now exclude the statement that the prospectus is not an offer to sell or a solicitation of an offer to buy securities in states where the offer or sale is not permitted, if the offering is not prohibited by state blue sky laws, as many such state laws are now preempted by federal law in various offerings.

Potentially Misleading Name. The SEC removed the requirement that a registrant with a name similar to that of a "well-known company" change its name, if disclosure of additional information is insufficient to eliminate any confusion. As a result, a registrant with a name that is the same as or similar to a well-known company need only provide additional clarifying disclosure to mitigate the potential for any confusion.

Undertakings. The SEC eliminated a number of undertakings in registration statements that are either no longer necessary or have become obsolete.

Expanded Obligation to Hyperlink; Incorporation by Reference (Item 10(d) of Regulation S-K, Rule 411 of the Securities Act, Rule 12b-23 of the Exchange Act and Certain Forms)

Must Hyperlink Documents Incorporated by Reference; Expanded Ability to Incorporate by Reference. The SEC sought to harmonize the various rules under the Securities Act and the Exchange Act that permit filers to incorporate previously filed information by reference into their filings. In order to facilitate greater investor access to disclosure, the SEC has amended its rules to require registrants to include hyperlinks to information incorporated by reference into a registration statement, prospectus, or Exchange Act report pursuant to Rule 411 and Rule 12b-23 as the case may be, if that information is available on EDGAR.

Additionally, in recognition of the general availability of documents on EDGAR, the SEC amended Item 10(d) of Regulation S-K to eliminate the prohibition on incorporating a document by reference if the document has been on file with the SEC for more than five years. However, under the amended rule, a registrant may not incorporate by reference a document that has been destroyed, as the SEC believes this would render the disclosure incomplete, unclear, or confusing.

Prohibition Against Cross-References and Incorporation by Reference into Financial Statements in Most Instances. Pursuant to the rule amendments, registrants may no longer, in the audited financial statements, incorporate by reference into or cross-reference to information outside of the financial statements, unless specifically permitted or required by SEC rules or by US Generally Accepted Accounting Principles, International Financial Reporting Standards or the International Accounting Standards Board. The SEC amended the rules in this way to address concerns that referencing information outside the audited financial statements could create confusion about which information was audited or reviewed by the independent auditor.

Amendments to the Cover Pages of Certain Forms

Tagging of Cover Page Data. All data points on the cover pages of Forms 10-K, 10-Q, and 8-K must now be filed in HTML format and tagged in Inline XBRL. Compliance with these requirements will be phased in according to the following schedule:

Operating Companies	Compliance Date
Large accelerated filers	Reports for fiscal periods ending on or after June 15, 2019
Accelerated filers	Reports for fiscal periods ending on or after June 15, 2020
All other filers	Reports for fiscal periods ending on or after June 15, 2021

Trading Symbols. Additionally, registrants filing reports on Forms 10-K, 10-Q, and 8-K must now include the trading symbol for each class of its registered securities on the cover page of the reports.

For further information, please contact **Alexandra C. Layfield**, **Joan S. Guilfoyle**, or **Hogan Paschal**.

ANNEX A

Amended Rules	
Rule	**Summary of Amendment**
Management's Discussion and Analysis ***Regulation S-K, Item 303***	Registrants will generally be able to exclude discussion of the earliest of three years in MD&A if they have already included the discussion in a prior filing under the Securities Act or Exchange Act that required MD&A disclosure and they disclose where the discussion may be found.
Description of Property ***Regulation S-K, Item 102***	Registrants are no longer required to provide descriptions of physical properties, if immaterial. This amendment does not apply to registrants in the mining, oil and gas, and real estate industries.
Management, Security Holders, and Corporate Governance ***Regulation S-K; Items 401, 405, and 407***	Information about executive officers may be provided in either a registrant's annual report on Form 10-K or in its definitive proxy statement or information statement under the revised caption "Information about Our Executive Officers." New required caption for disclosure of late filers: "Delinquent Section 16 Reports"; disclosure only required if there are late filings to report. Registrants may rely only on Section 16 reports filed on EDGAR in determining Section 16(a) compliance. The SEC clarified that emerging-growth companies are exempt from the requirement to provide a compensation committee report.
Registration Statement and Prospectus Provisions ***Regulation S-K; Items 501, 503, 508, and 512***	Registrants with names similar to "well-known companies" are no longer required to change their names. In addition to the national exchanges, registrants must now include the principal US markets where, through the engagement of a broker-dealer, quotation of their securities was actively sought and achieved. Preliminary prospectuses are no longer required to include a reference to state law in the "red herring" legend on the cover page if the offering is not prohibited by state blue sky laws. The SEC amended its rule governing risk factor disclosures to remove the boilerplate examples from the instructions. This change is unlikely to impact current risk factor disclosures, but serves to underscore the SEC's "principles-based" approach to risk factor disclosures. The SEC removed several undertakings disclosure requirements that are no longer necessary or have become

	obsolete.
Exhibits ***Regulation S-K, Item 601***	Registrants will not be required to file attachments to their material agreements if such attachments do not contain material information or were not otherwise disclosed. Only newly reporting registrants will be required to file material contracts that were entered into within the two years prior to the filing of the applicable registration statement or report. Registrants may omit personally identifiable information without first submitting a confidential treatment request to the SEC. Registrants will be able to omit confidential information in material contracts and certain other exhibits without submitting a confidential treatment request to the SEC, so long as the information is (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed, subject to the SEC's selective review for compliance. Registrants must include the description of securities (required under Item 202) as an exhibit to annual reports filed on Form 10-K.
Incorporation by Reference ***Regulation S-K, Item 10(d);*** ***Securities Act Rule 411(b)(4);*** ***Exchange Act Rules 12b-23(a)(3)***	Registrants will no longer be required to file as an exhibit any document or part thereof that is incorporated by reference in a filing, but instead will be required to provide hyperlinks to documents incorporated by reference. Generally, registrants may no longer, in the audited financial statements, incorporate by reference into or cross-reference to information outside of the financial statements. The SEC eliminated the five-year limit on documents incorporated by reference.
Cover Pages of Certain Forms ***Forms 8-K, 10-Q, and 10-K***	Registrants will be required to tag all cover page data in Inline XBRL, subject to a phase-in period beginning June 15, 2019, for large accelerated filers. Registrants will be required to disclose on the cover page the national exchange or principal US market for their securities, the trading symbol, and title of each class of securities.

JONES WALKER

Corporate Client Alert

January 2019

SEC Amendments to Streamline and Simplify Disclosure Requirements

With year-end financial reporting coming up for most public companies, we want to ensure that you are aware of recent amendments to the U.S. Securities and Exchange Commission ("SEC") disclosure rules, which impact annual reports on Form 10-K and, to a lesser extent, quarterly reports on Form 10-Q.

Effective November 5, 2018, the SEC adopted amendments to Regulation S-K, Regulation S-X, and other forms and regulations to eliminate duplicative, overlapping, and outdated reporting requirements. The amendments are intended to reduce the time and cost of public reporting. However, because the amendments principally serve to eliminate existing redundancies in the disclosure requirements, the ultimate effect of the amendments on *what* is disclosed is minor, as many of the eliminated disclosures are still required elsewhere in the applicable regulations. For example, though the amendments eliminate Item 101(d) of Regulation S-K requiring discussion of geographic areas, this disclosure is now required under Item 303 instead. In fact, in its final rule, the SEC explicitly stated that the amendments are not intended to "significantly alter[] the total mix of information provided to investors."

Instead, the greater effect of the amendments is on *where* the disclosures are made within a particular report, which can have significant ramifications that reporting companies must consider. For example, the effect of some amendments is to relocate disclosures into the financial statements, in which case (1) the disclosure is now subject to audit and interim review, (2) XBRL tagging requirements now apply to the disclosure, and (3) the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act of 1995 (PSLRA) no longer applies (as the PSLRA safe harbor does not apply to financial statements). As a result, reporting companies should carefully consider whether to relocate any forward-looking statements into the financial statements, as a result of amendment-based relocation of disclosures. Issuers maintain the option to include forward-looking information outside the financial statements.

Though most of the amendments did not substantively alter the reporting requirements of registrants, at least one reporting requirement was expanded by the amendments. Specifically, registrants are now required to disclose (1) changes in stockholders' equity and (2) the amount of dividends per share for each class of shares (as opposed to common stock only, as previously required) in Form 10-Q in addition to Form 10-K. Before the amendments, this disclosure was required only in Form 10-K.

With these considerations in mind, reporting companies should update reporting procedures and checklists to maintain compliance with the SEC's amended disclosure requirements. In addition to the discussion of more significant changes below, a chart further summarizing notable changes from the amendments is attached for reference as Annex A.

Outdated or Superseded Requirements

The more significant amendments to eliminate certain obsolescent disclosure requirements include:

- Public Reference Room – Issuers are no longer required to disclose information regarding the SEC's Public Reference Room, although issuers must provide the SEC's website where electronic filings can be located. (Item 101)
- Disclosure of Internet Addresses – An issuer is required to disclose its internet address(es) (Item 101)
- Market Prices – With respect to its listed securities, an issuer is no longer required to disclose the high and low sales prices and sales price as of the latest practicable date. However, an issuer still must provide the trading symbol for each class of common equity and the principal market where traded. (Item 201)
- Updated Reference to Statements of Comprehensive Income – Throughout Regulation S-K, references to "income statement" were replaced with "statement of comprehensive income" to be consistent with updates to Financial Accounting Standards Board ("FASB") standards. The statement of comprehensive income may be presented as either (1) a single statement of comprehensive income or (2) two separate but consecutive statements, composed of the income statement and a separate statement, which begins with net income and separately presents the components of other comprehensive income, a total of other comprehensive income, and a total of comprehensive income. (FASB ASU No. 2011-05)

Overlapping Requirements

The more significant amendments to eliminate certain disclosure requirements that are related to, but not identical to, U.S. GAAP or other SEC disclosure requirements include:

- Segments – Issuers are no longer required to provide segment financial information in their business description, since this information is already required to be presented in the notes to the financial statements pursuant to U.S. GAAP and in the MD&A. (Item 101)
- Geographic Areas – Issuers are no longer required to provide financial information by geographical area in their business description, since this information is already required in the notes to financial statements. (Item 101)
- Dividends – Issuers are no longer required to disclose the frequency and amount of cash dividends declared, as this information is required to be presented in the notes to the financial statements by Regulation S-X (as amended). (Item 201)
- Seasonality – Issuers are no longer required to disclose information on seasonality under Instruction 5 to Item 303(b), because it is sufficiently covered by U.S. GAAP and the remainder of Item 303. (Item 303)

Redundant or Duplicative Requirements

In order to simplify compliance efforts, the amendments eliminate certain disclosure requirements set forth in Regulation S-X that are redundant or duplicative of other disclosure requirements that provide substantially the same information to investors. These revisions to Regulation S-X relate to related party transactions; earnings per share; financial statement consolidation; debt obligations; income tax disclosures; warrants, rights and convertible instruments; contingencies; and certain other provisions. Issuers should discuss these changes with their external auditors.

In addition to the above changes, the SEC referred several amendments to the FASB for further comment, before deciding whether to retain, modify, or eliminate the following requirements from applicable SEC regulations, or for incorporation into U.S. GAAP. These referrals include the SEC's decision to retain:

- Disclosures related to repurchase and reverse repurchase agreements under Regulation S-X;
- Disclosures related to securities authorized under equity compensation plans under Item 201(d) of Regulation S-K;
- Discussion of major customers under Item 101(c)(1)(vii) of Regulation S-K;

- Disclosure of the amount of revenue from products and services under Item 101(c)(1)(i) of Regulation S-K; and
- Disclosure of legal proceedings under Item 103 of Regulation S-K. Note, however, the SEC has referred this item to the FASB for potential integration into the U.S. GAAP-mandated loss contingencies disclosure.

For further information, please contact **Alexandra C. Layfield** or **C. Hogan Paschal**.

Annex A

Disclosure	Amendment	Effect	10-K	10-Q
REGULATION S-K				
Financial Information by Segment Item 101(b)	Eliminated	Still required under GAAP.	X	
Amount Spent on R&D Item 101(c)(1)(xi)	Eliminated	Still required under GAAP and MD&A, if material.	X	
Financial Information by Geographic Area Item 101(d)(1)-(4)	Eliminated	Still required under GAAP and/or Risk Factors. Further, the SEC added "geographic areas" disclosures to MD&A (Item 303), when appropriate for understanding the business.	X	
Identification of SEC Public Reference Room Item 101(e)(2)	Updated	Requirement to identify physical location and phone number of reference room is eliminated, since investors rarely visit physical reference room anymore. New requirement to disclose company's website added.	X	
Market Price Item 201(a)(1)	Eliminated	Companies are now required only to provide ticker symbol, since market price data is widely available on the internet and through other sources.	X	

Disclosure	Amendment	Effect	10-K	10-Q
Dividend History and Restrictions Item 201(c)(1)	Eliminated	Still required under Rules 3-04 and 4-08(e)(3) of Regulation S-X, as amended.	X	
Disclosure of "income (loss) before extraordinary items and cumulative effect of a change in accounting" in supplemental quarterly financial information Item 302(a)(1)	Revised	Item 302(a)(1) now requires disclosure of "income (loss) from continuing operations" and "per share data based upon income (loss) from continuing operations" and "per share data based upon net income (loss)," to be consistent with GAAP.	X	
Discussion of Seasonality in the MD&A Item 303(b)	Eliminated	Still required under GAAP and in the in description of business, if material (Item 101(c)(1)(v)).	X	X
Computation of Earnings per Share (Exhibit) (Item 601(b)(11))	Eliminated	Still required under GAAP and Regulation S-X.	X	X
Ratio of Earnings to Fixed Charges (Exhibit) 601(b)(12)	Eliminated	Eliminated in connection with the elimination of Item 5.03(d) of Regulation S-K.	X	
Published Report Regarding Matters Submitted to Vote of Security Holders (Exhibit) (Item 601(b)(22))	Eliminated	Still required by Item 5.07 of Form 8-K.	X	X

June 2018

SEC Approves Amendments to Modernize Definition of Smaller Reporting Company

On June 28, 2018, the Securities and Exchange Commission (SEC) announced its approval of amendments to the definition of a "smaller reporting company" (SRC). These amendments are expected to expand the number of companies that qualify for the SRC scaled disclosure accommodations by approximately 950 companies. The SRC scaled disclosure requirements permit a SRC to include generally less extensive narrative disclosure than is required of other reporting companies, particularly in the description of executive compensation (for example, no pay ratio disclosure is required) and to provide audited financial statements for two fiscal years, in contrast to other reporting companies, which must provide audited financial statements for three fiscal years. The SEC has not revised this definition since 2008. The final rules will become effective 60 days after publication in the Federal Register.

The new SRC definition includes any company with less than $250 million of public float, as compared to the $75 million threshold under the prior definition. The final rules also expand the definition of SRC to include any company with less than $100 million in annual revenues if such company also has either (i) no public float or (ii) a public float that is less than $700 million. This reflects a change from the revenue test in the prior definition, which allowed companies to provide scaled disclosure only if they had less than $50 million in annual revenues and no public float. The final rules also revise the public float and revenue tests for subsequent determinations.

Of importance, however, the final rules maintain the threshold in the "accelerated filer" definition, which means that, among other things, certain SRCs will remain subject to the requirements that apply to accelerated filers, including the timing of the filing of periodic reports, and the requirement that accelerated filers provide the auditor's attestation of management's assessment of internal control over financial reporting.

What is a smaller reporting company?

The SEC provides certain scaled disclosure accommodations for companies that qualify as a "smaller reporting company." To determine whether a company qualifies as a smaller reporting company, the SEC rules provide: (i) a public float test and (ii) a revenue test. Only one of the tests need be satisfied to qualify as a SRC. Companies make an initial determination of their status, and then reassess annually.

What is the benefit of being a smaller reporting company?

Smaller reporting companies benefit from reduced disclosure requirements in a number of key areas. See the appendix to this alert for the SEC's summary of these scaled disclosure accommodations.

How do the final rules change the definition of a smaller reporting company?

Under the final rules, the definition of a SRC includes any company with a public float[1] of less than $250 million and any company with annual revenues of less than $100 million if it also has either (i) no public float[2] or (ii) a public float that is less than $700 million. Under the current rules, by contrast, the public float test included a threshold of $75 million, and the revenue test required annual revenues of less than $50 million and no public float.

Further, consistent with the current definition, the final rules provide that if a company determines that it does not qualify as a SRC under the initial qualification thresholds, the company will not qualify as a SRC at any subsequent determination, unless and until it determines that it meets one or more lower qualification thresholds.[3] A company that does not initially qualify as a SRC may do so at a subsequent measurement date under the final rules, in one of the ways demonstrated in the following chart.

	Prior Public Float	
Prior Annual Revenues	**None or less than $700 million**	**$700 million or more**
Less than $100 million	N/A (already a SRC since neither threshold exceeded)	*Public Float:* less than $560 million; and *Revenues:* maintain less than $100 million.
$100 million or more	*Public Float:* maintain either none or less than $700 million; and *Revenues:* less than $80 million.	*Public Float:* less than $560 million; and *Revenues:* less than $80 million.

Under the current rules, by contrast, a company that did not initially qualify as a SRC could subsequently qualify only if its public float dropped below $50 million or its revenues dropped below $40 million, if it did not have any public float.

Will the revised definition have an impact on companies with a second fiscal quarter ending prior to the effectiveness of the final rules?

Yes. In the final release, the SEC stated that for the first fiscal year ending after the effectiveness of the final rules, a registrant will qualify as a SRC if it meets one of the initial qualification thresholds in the revised definition as of the date it is required to measure its public float or revenues, even if it did not previously qualify as a SRC. For example, a calendar year-end company with a 2018 second fiscal quarter ending on June 30, 2018, would look to the $250 million public float test threshold or the $100 million revenue test threshold (assuming no public float or public float of less than $700 million) when determining its reporting status for the remainder of 2018.[4]

If a company qualifies as a smaller reporting company, does that automatically mean it is no longer an "accelerated filer"?

No. The final rules do not change the threshold in the "accelerated filer" definition. Therefore, any company that has a public float of $75 million or more will continue to be required to comply with the accelerated filing deadlines, even if the company qualifies for the SRC scaled disclosure accommodations. Note that an accelerated filer is required, among other things, to provide the auditor's attestation of management's assessment of internal control over financial reporting. However, the SEC stated in its press release and the adopting release for the final rules that the Chairman has directed the staff to formulate recommendations regarding possible additional changes to the "accelerated filer" definition that would have the effect of reducing the number of companies that qualify as accelerated filers in order to further reduce compliance costs for those companies.

If a company qualifies as a smaller reporting company, should the company only check the "smaller reporting company" box on the cover page of its periodic reports?

No. Once the final rules are in effect, a company should check all applicable boxes on the cover page addressing, among other things, filer status (i.e., non-accelerated filer, accelerated filer, or large accelerated filer), SRC status, and emerging growth company status. For example, a company may be a SRC, an emerging growth company, and

an accelerated filer, in which case all three relevant boxes on the cover page of its periodic reports would be checked.

The SEC also noted in its adopting release that it was even theoretically possible that a company could be both a smaller reporting company and a large accelerated filer. Such companies would be existing reporting companies (1) that previously qualified as large accelerated filers because at one time their public float was $700 million or more, (2) whose revenues for the most recent fiscal year were less than $100 million, and (3) whose public float as of the end of the most recent second quarter was less than $560 million, such that they now qualify as a SRC under the revised thresholds, but not less than $500 million, such that they are not eligible to exit large accelerated filer status.

Do the final rules also increase the public float threshold to be eligible to use Form S-3?

No. The Form S-3 public float threshold remains at $75 million.

* * * * *

For more information, please contact **Joan S. Guilfoyle** or **Alexandra C. Layfield**.

Appendix

Regulation S-K	
Item	**Scaled Disclosure Accommodation**
101 – *Description of Business*	• May satisfy disclosure obligations by describing the development of the registrant's business during the last three years rather than five years. • Business development description requirements are less detailed than disclosure requirements for non-SRCs.
201 – *Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters*	• Stock performance graph not required.
301 – *Selected Financial Data*	• Not required.
302 – *Supplementary Financial Information*	• Not required.
303 – *Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)*	• Two-year MD&A comparison rather than three-year comparison. • Two-year discussion of impact of inflation and changes in prices rather than three years. • Tabular disclosure of contractual obligations not required.
305 – *Quantitative and Qualitative Disclosures About Market Risk*	• Not required.
402 – *Executive Compensation*	• Three named executive officers rather than five.[5] • Two years of summary compensation table information rather than three. • The following are not required: ○ Compensation discussion and analysis.

	○ Grants of plan-based awards table. ○ Option exercises and stock vested table. ○ Pension benefits table. ○ Nonqualified deferred compensation table. ○ Disclosure of compensation policies and practices related to risk management. ○ Pay ratio disclosure.
404 – *Transactions With Related Persons, Promoters and Certain Control Persons**[6]*	• Description of policies/procedures for the review, approval, or ratification of related party transactions not required.
407 – *Corporate Governance*	• Audit committee financial expert disclosure not required in first annual report. • Compensation committee interlocks and insider participation disclosure not required. • Compensation committee report not required.
503 – *Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges*	• No ratio of earnings to fixed charges disclosure required. • No risk factors required in Exchange Act filings.
601 – *Exhibits*	• Statements regarding computation of ratios not required.

Regulation S-X	
Rule	**Scaled Disclosure**
8-02 – *Annual Financial Statements*	• Two years of income statements rather than three years. • Two years of cash flow statements rather than three years. • Two years of changes in stockholders' equity statements rather than three years.
8-03 – *Interim Financial Statements*	• Permits certain historical financial data in lieu of separate historical financial statements of equity investees.
8-04 – *Financial Statements of Businesses Acquired or to Be Acquired*	• Maximum of two years of acquiree financial statements rather than three years.
8-05 – *Pro Forma Financial Information*	• Fewer circumstances under which pro forma financial statements are required.
8-06 – *Real Estate Operations Acquired or to Be Acquired*	• Maximum of two years of financial statements for acquisition of properties from related parties rather than three years.
8-08 – *Age of Financial Statements*	• Less stringent age of financial statement requirements.

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[1] Public float is the market value of shares held by non-affiliates. Generally, a reporting company calculates its public float as of the last business day of its most recently completed second fiscal quarter.

[2] A company has "no public float" if it has no shares outstanding or there is no market price for the shares.

[3] The subsequent qualification thresholds are set at 80% of the initial qualification thresholds, consistent with the current definition.

[4] Note that a company entering SRC status under the final rules should check the "smaller reporting company" box on the cover page of the first quarter Form 10-Q for the following fiscal year; however, a company may avail itself of

the scaled disclosure accommodations for any filings made after the measurement date (once the final rules are effective).

[5] The chief executive officer and the two other most highly compensated individuals must be included, which means that the chief financial officer is included only if such individual is one of the two other most highly compensated officers.

[6] Item 404 also contains the following expanded disclosure requirements applicable to SRCs: (i) rather than a flat $120,000 disclosure threshold, the threshold is the lesser of $120,000 or 1% of total assets, (ii) disclosures are required about underwriting discounts and commissions where a related person is a principal underwriter or a controlling person or member of a firm that was or is going to be a principal underwriter, (iii) disclosures are required about the issuer's parent(s) and their basis of control, and (iv) an additional year of Item 404 disclosure is required in filings other than registration statements.

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- These slides are for educational and discussion purposes only, and are not intended, and should not be relied upon, as accounting advice.
- Any US tax advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

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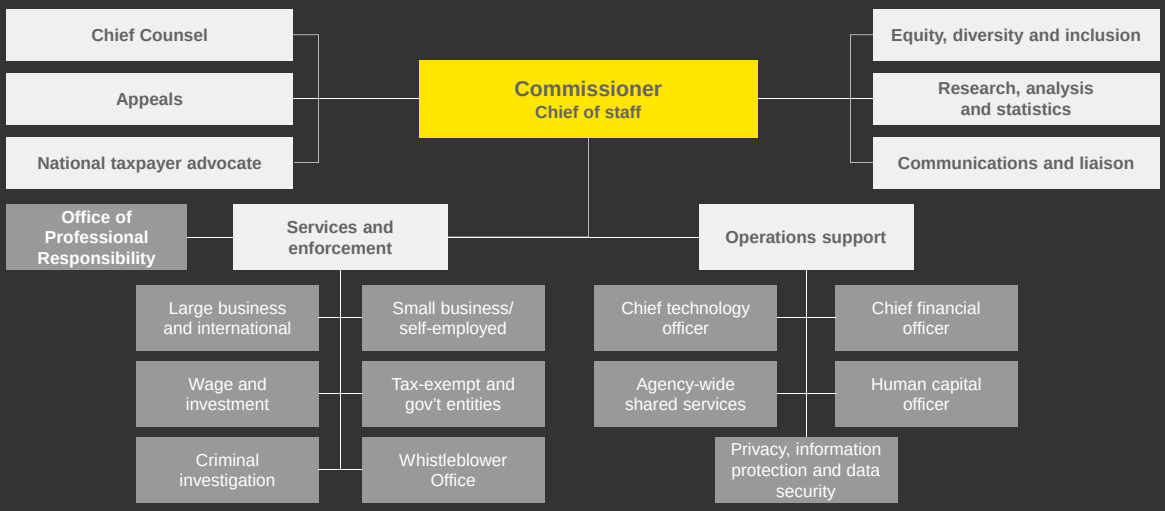
Agenda

- Understanding the IRS organization and operations
  - Impact of organizational changes
  - Campaigns
- Trends in Appeals
- BBA partnership rules
- LB&I webcast

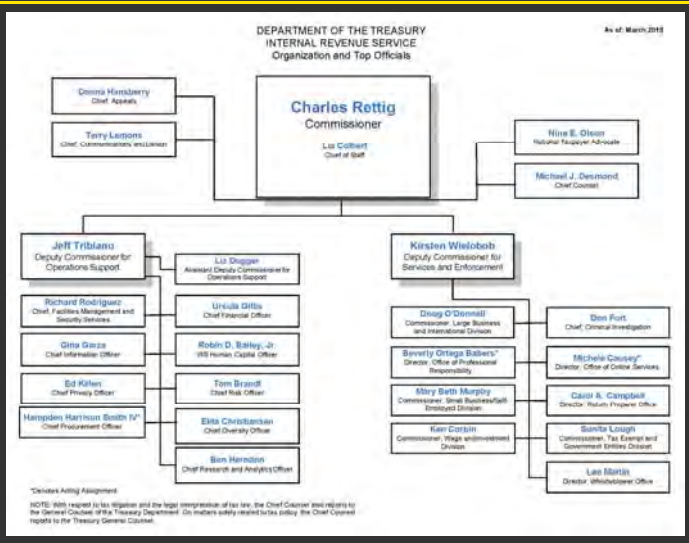
Understanding the IRS organization and operations

Impact of organizational changes

IRS organization



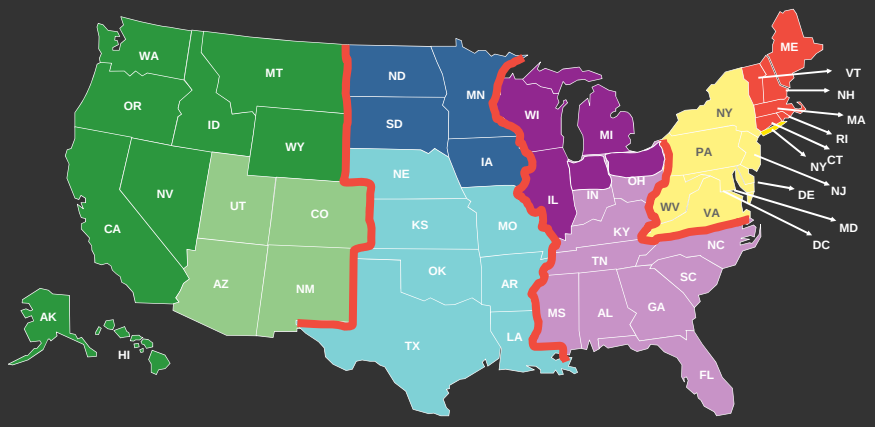
LB&I high-level org. chart – March 2019



IRS organizational and budget update

- Commissioner confirmed – Charles Rettig
- Chief Counsel confirmed – Michael Desmond
- IRS FY 2019 budget - $11.1 billion
  - $320 million for tax reform implementation
- IRS FY 2017 statistics update
  - Number of employee 72,803 down from 94,346 in FY 2010
  - Large corporate audits coverage – 7.9% down from 9.5% in FY 2016
  - $ 1 million > Individuals audits - 4.4% down from 5.8% in FY 2016

Geographic practice area map



LB&I campaigns

LB&I campaigns
Background

- 53 campaigns announced to date.
  - Large Business and International Division (LB&I) announced 13 campaigns in a January 31, 2017, news release.
  - Eleven new campaigns were announced November 3, 2017.
  - Five additional campaigns were announced March 13, 2018.
  - Six new campaigns were announced May 21, 2018.
  - Five additional campaigns were announced July 2, 2018.
  - Six new campaigns were announced September 10, 2018.
  - Five campaigns were announced on October 30, 2018
  - Most recent three campaigns were announced on April 16, 2019
- Campaigns have different treatment streams, including soft letters.
- First campaigns are not necessarily issues with the highest compliance risk.
- LB&I plans more campaigns in the future.
- Cornerstone of campaigns is internal and external feedback.

LB&I campaigns – scope

- Campaigns are a return selection tool. Not all LB&I activity will be in the form of campaigns.
- An audit can start solely as a campaign and then move into a more comprehensive audit.
- A campaign issue can be included in a CIC audit. Different campaign treatment streams can be used in that audit.
- Campaign issues can also be applied to Compliance Assurance Process (CAP) taxpayers.
- Mid-market taxpayer is defined as any taxpayer not under CIC audit.

LB&I campaigns – soft letters

- The following campaigns list soft letters as a treatment stream:
  - IRC Section 48C Credit
  - Land Developers CCM
  - S Corp Losses Claimed in Excess of Basis
  - Form 1120F Non-Filer
- A soft letter is not an examination.
- A taxpayer is not required to respond to a soft letter.
- If a taxpayer does not respond, IRS may start exam or take other appropriate action.

Trends in Appeals

Appeals Judicial Approach and Culture (AJAC)

- AJAC is generally effective for cases received in IRS Appeals on or after September 2, 2014
- Appeals will not raise new issues.
- If taxpayer raises a new issue, the case will be released to Exam for examination of the issue.
- If taxpayer provides new information related to an issue in Appeals, the case will be returned to Exam for review of the new information.
- If taxpayer raises a new theory or argument related to an issue in Appeals, the new theory or argument will be shared with Exam for review within a specified time frame.
- Appeals will attempt to settle an issue on factual hazards where the issue submitted by Exam was not fully developed.
- There must be one year remaining on the statute of limitations prior to the case being accepted by Appeals.

Appeals – Rapid Appeals Process

Rapid Appeals Process

- Mediation-like process with Appeals applying mediation techniques
- Parties: Exam, Appeals and taxpayer
- Optional participation
- Decision-makers: Exam, Appeals and taxpayer
- Case remains in Appeals' jurisdiction

In-Person Conferences

- **FIELD CASES**
  - In October 2017, Appeals expanded availability of in-person conferences for field cases.
  - Upon request, Appeals will use its best efforts to schedule an in-person conference on a date and in a location that is **reasonably convenient for taxpayer and Appeals.**
  - Limits apply (e.g., workload, availability of subject matter experts, Collection Due Process regulations).
- **CAMPUS CASES**
  - Present unique challenges.
  - Appeals is reviewing procedures for Campus conferences.
  - For now, if a taxpayer requests an in-person conference on a Campus case, we will use case assistance procedures.
    - Case assistance procedures provide for the assigned Appeals Officer to team with a local Appeals Officer. The taxpayer travels to the local Appeals Office and a telephone conference is conducted with the assigned Appeals Officer. The Appeals Officers confer on the case and the assigned Appeals Officer renders a decision. In FY 2017, 15 cases were closed using this program.
  - Most Campus cases today are handled through telephone conferences.

Participation in Appeals Conferences

- IRM Section 8.6.1.4.4 was revised in October 2016 and states
  - Appeals has the discretion to invite Counsel and/or Compliance to the Appeal's conference.
  - The prohibition against ex parte communications must not be violated.
  - Appeals may also request that other experts attend conferences.
- Taxpayers have raised a number of concerns about this policy.
- Appeals has undertaken a pilot to test the policy

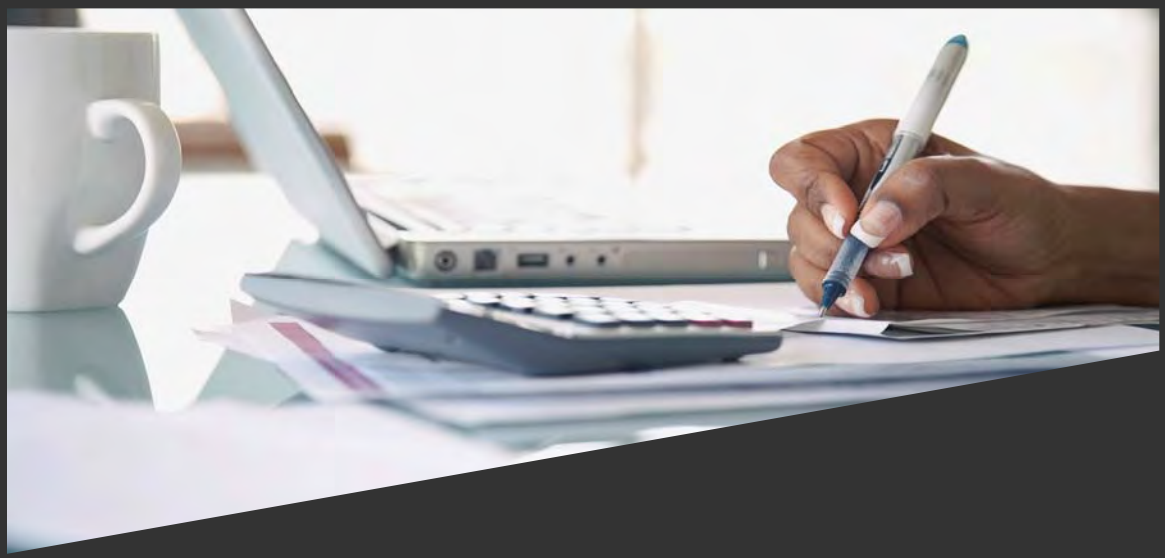
Participation in Appeals Conferences - Pilot

- Pilot underway
  - Certain Number of Appeals Team Case Leaders (ATCLs) are participating in pilot.
  - Pilot will run [?] years
  - Participating ATCL's will invite Compliance and Counsel to participate in all cases assigned to that ATCL.
  - Taxpayer cannot opt out of the pilot

Participation in Appeals Conferences - Pilot

- Questions about the Pilot
  - Will ATCL's not in pilot have the ability to invite compliance and Appeals to participate?
  - How is this different from the Rapids Appeals Process (RAP)?
  - Does the Appeal Officer acts a mediator or exercise independent judgment?
  - Do Compliance and Counsel personnel participate in settlement discussions?
  - When do settlement discussions begin?

BBA partnership rules



Background

- New partnership rules and procedures enacted by the Bipartisan Budget Act of 2015 (“Budget Act” or “BBA”)
- Budget Act partnership rules affect
  - Who pays tax
  - How much tax is paid
  - Procedures
- JCT estimates the provisions will raise almost $10 billion over a 10-year period

Effective date

- Applies to partnership tax years beginning after December 31, 2017
- A partnership may elect to apply the new procedures to earlier years

Overview – who pays?

- General rule: Partnership pays tax
  - Partnership pays an “imputed underpayment” (equivalent of tax at highest rate)
  - Costs borne by current partners; no effect on prior year partners
- Hybrid – modifies amount partnership pays
  - Partner attributes may reduce imputed underpayment amount (e.g., tax-exempt partners)
  - Legacy partner may amend its return to pay its share of adjustment
  - Pull-in Method
- Alternative: Legacy partners pay tax
  - Partnership forces partners in year item arose to pay tax owed
  - Legacy partners pay; partnership does not

Partnerships subject to Budget Act rules

- Mandatory when partnership:
  - Has more than 100 partners, or
  - Any partner is other than an individual, C corp, S corp or estate
    - A flow-through partner (other than S corps) is an ineligible partner under proposed regulations.
- For partnerships eligible to elect out:
  - Default rule is that the BBA rules apply.
  - Election out of BBA rules must be made each year.
    - Thus a partnership could be subject to different audit regimes in different years.
- If the BBA rules do not apply, IRS would make adjustments for each partner in separate proceedings.

Partnerships not governed by Budget Act rules

- Eligible partnerships must file an election to elect out of the Budget Act rules
- Election has to be made by the partnership separately for each tax year
- If partnership elects out, each partner would be audited separately in separate proceedings

Partnerships not governed by Budget Act rules

- A partnership is eligible to elect out of the BBA regime if there are:
  - 100 or fewer partners, and
  - All partners are “eligible partners”
- An S-corp partner plus each S-corp member is counted in determining if there are 100 or fewer partners.
- Form 1065, Schedule B-2, “Election out of the Centralized Partnership Audit Regime” may be used to make the election out of the BBA regime

Centralized audit

- Partnership items generally determined in an audit of the partnership
  - Audit may adjust partnership's income, gain, loss, deduction, or credit, or any partner's distributive share thereof
  - Penalties determined at partnership level
  - Interest may be determined at partnership or partner level; 2% higher rate of interest under Push-Out approach.

IRS partnership audits

- A partnership's tax year audited by the IRS is the "**reviewed year**".
- The year that the audit or any judicial review is completed is the "**adjustment year**"
- Default rule for taking into account audit adjustments (Section 6225):
  - For underpayments, partnership pays tax in adjustment year on income it omits or misallocates (the "imputed underpayment")
  - For overpayments, partnership reduces income in the adjustment year
- Push-Out election (Section 6226):
  - Partnership-level obligation is eliminated and reviewed year partners are required to pay additional tax owed based on their allocable share of the adjustment.
  - Election made after final notice of partnership adjustment issued
- Extremely broad scope: not limited to items on partnership return

Reductions of Tax Liability

- A partnership understatement can be reduced in several ways:
  - Partner(s) amend returns under modification procedures
  - Partners follow "pull-in" procedure to pay tax owed
    - Equivalent to amended returns without full scope refiling
  - Partner attributes reported to partnership
    - e.g., tax-exempt partners.
- These reductions can apply whether the partnership pays tax under section 6225 or the push out method under section 6226 is adopted.

Partnership Representative

- The "Partnership Representative" (or "PR") is the sole person with authority to act on behalf of the partnership and its partners
  - Replaces the TMP or tax matters partner under TEFRA
  - More powerful than the administrative role held by the TMP under TEFRA
  - Partners have no statutory right to participate in an audit or litigation
    - Does not matter whether partner has adopted an inconsistent position
  - Partnership Representative has authority to bind all partners to audit adjustments
  - Partners will not separately sign IRS audit settlement agreements

Notice to partners

- Neither the IRS nor the Partnership Representative has to give notice of audit or litigation proceeding to the partners
- Audit can be resolved with the partnership and partners bound by a settlement (or audit resolution) and without any partners being aware that the partnership was under audit

LB&I webcast

LB&I webcast

- EY is hosting a webcast on June 19, 2019 moderated by former IRS LB&I Commissioner Heather Maloy
- Guests will be Nikole Flax, current LB&I Deputy Division Commissioner, and Nancy Wiltshire, Director, Field Operations Mid-Atlantic
- Discuss how the TCJA and LB&I's strategic goals will affect taxpayers
- Link to register: IRS LB&I update

Contact information

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Questions

Appendix – LB&I campaigns

IRS LB&I campaigns – issues

Campaign	Description	Treatment stream	Exec champ
IRC Section 48C Credit	Whether DOE allocated credits properly claimed	Soft letter Issue-based exams	Mark Nyman
OVDP Declines-Withdrawals	Denied or withdrawn qualified applicants should reapply	Variety, including issue-based exams	Pam Drenthe
199 Multi-Channel Video	Whether groups of channels or films are qualified films and software is for customers' direct use	Practice unit Published guidance Issue-based exams	Gloria Sullivan
Micro Captive Insurance	Transaction of Interest Notice 2016-66	Training Issue-based exams	Gloria Sullivan
Related Party Transaction	Related party transactions in the mid-market	Issue-based exams	Peter Puzakuilcs
Deferred Annuity Life Insurance	Life insurance reserve issues	Industry Issue Resolution	Gloria Sullivan
Basket Transactions	Structured financial transactions under Notices 2015-73, 74	Issue-based exams Soft letters to material advisor Practitioner outreach	Peter Puzakuilcs

IRS LB&I campaigns – issues

Campaign	Description	Treatment stream	Exec champ
Land Developers CCM	Developer improperly deferring gain until projects complete	Practice unit Soft letters Issue-based exams	Peter Puzakuilcs
TEFRA Linkage	Revise linkage strategies	Internal guidance on linkage	Cliff Scherwinski
S Corp losses claimed in excess of basis	S Corp SHs claim losses and deduction in excess of stock or debt basis	Issue-based exams Soft letters/self-correction Outreach New basis form	Holly Paz
Repatriation	Repatriation strategies resulting in tax-free repatriation – mid-market	Improved issue selection Issue-based exams	John Hinding
Form 1120F Non-Filer	Use external data to identify 1120F non-filers	Soft letters Issue-based exams	John Hinding
Inbound Foreign Distributors	Inbound transfer pricing	Training 1. Issue-based exams	Sharon Porter

LB&I campaigns – issues

Campaign	Description	Treatment stream	Exec champ
Swiss bank program campaign	Under the US Department of Justice Swiss Bank Program, verify compliance by identified US persons with beneficial ownership of foreign financial accounts.	Variety, including exams	John Cardone
Foreign earned income exclusion campaign	Individuals who did not meet the requirements to qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction.	Variety, including exams	John Cardone
Verification of Form 1042-S credit claimed on Form 1040NR	Before a refund is issued or credit is allowed, verify the withholding credits reported on the Form 1042-S.	Variety, including exams	John Cardone
Individual foreign tax credit (Form 1116)	Individuals who incorrectly compute the foreign tax credit limitation on Form 1116.	Variety, including exams	Paul Curtis
International (corporate) Form 1120-F Chapter 3 and Chapter 4 withholding campaign	Verify withholding at source for Form 1120-Fs that claim refunds, before the claim for refund or credit is allowed.	Variety, including exams	John Cardone
Corporate direct (Section 901) foreign tax credit (FTC)	Domestic corporate taxpayers that are in an excess limitation position for credits for foreign taxes paid or accrued in lieu of a deduction.	Issue-based exams Future FTC campaigns may address indirect credits & IRC 904(a) FTC limitation issues	John Hinding
Section 956 avoidance	A Controlled Foreign Corporation (CFC) that makes a loan to its US parent, but does not include a Section 956 amount in income.	Issue-based exams	John Hinding

LB&I campaigns – issues

Campaign	Description	Treatment stream	Exec champ
Agricultural chemicals security credit campaign	For the section 45O agricultural chemicals security credit, verify that there are qualified expenses and eligible taxpayers, and that facilities are properly defined.	Issue-based exams	Judith McNamara
Deferral of cancellation of indebtedness (COD) income campaign	Verify that taxpayers who properly deferred COD income in 2009/2010 properly report it in subsequent years beginning in 2014.	Issue-based exams with the use of soft letters under consideration.	Delon Harris
Energy efficient commercial building property campaign	Verify compliance with the requirements of the Section 179D energy efficient commercial building deduction.	Issue-based exams	Scott Ballint
Economic development incentives campaign	Taxpayers that improperly treat government incentives (e.g., tax credits, grants) as non-shareholder capital contributions, exclude them from gross income and claim a tax deduction without offsetting it by the tax credit received.	Issue-based exams	Paul Curtis

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Costs that Facilitate an IRC Section 355 Transaction	Ensure that taxpayers are not deducting costs to facilitate a tax-free corporate distribution under IRC Section 355.	Issue-based exams	Scott Ballint
Self-Employment Contributions Act (SECA) Tax	Verify that limited partners and limited liability company (LLC) members who render services to clients on behalf of the partnership or LLC pay SECA tax.	Issue-based exams Outreach to practitioners, professional service provider associations, and software vendors	Cliff Scherwinski Darlena Billops-Hill
Partnership Stop Filer	Verify that partnerships that have stopped filing returns do not continue have economic transactions that are not being reported to their partners.	Issue-based exams Soft letters Stakeholder outreach	Cliff Scherwinski Eric Slack
Sale of Partnership Interest	Partners must report the sale of a partnership interest on their tax return.	Issue-based exams Soft letters	Cliff Scherwinski Joseph Banks
Partial Disposition Election for Buildings	Ensure taxpayers accurately recognize the gain or loss on the partial disposition of a building, including its structural components in accordance with Treas. Reg. Section 1.168(i)-8).	Issue-based exams Potential changes to IRS forms and the supporting instructions and publications	Judith McNamara

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Interest Capitalization for Self-Constructed Assets	The goal of this campaign is to ensure taxpayer compliance by verifying that interest for certain production activities is properly capitalized under Section 263A for designated property and the computation to capitalize that interest is accurate.	Issue-based exams Education soft letters Educating taxpayers and practitioners to encourage voluntary compliance	Scott Ballint
F3520/3520-A Non-Compliance and Campus Assessed Penalties	The goal of this campaign is to improve compliance with respect to the timely and accurate filing of information returns reporting ownership of and transactions with foreign trusts	Issue-based exams Penalties assessed by the campus when the forms are received late or are incomplete.	John Cardone
Forms 1042/1042-S Compliance	This campaign is designed to ensure taxpayers who make payments of certain U.S.-source income to foreign persons comply with the related withholding, deposit, and reporting requirements. Specifically, this campaign will address Withholding Agents who make such payments but do not meet all their compliance duties	Issue-based exams	John Cardone
Nonresident Alien Tax Treaty Exemptions	This campaign is intended to increase compliance in nonresident alien (NRA) individual tax treaty exemption claims related to both effectively connected income (ECI) and Fixed, Determinable, Annual Periodical (FDAP) income.	Issue-based exams Taxpayer outreach/education	John Cardone

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Nonresident Alien Schedule A and Other Deductions	This campaign is intended to increase compliance in the proper deduction of eligible expenses by nonresident alien (NRA) individuals on Form 1040NR Schedule A.	Issue-based exams Taxpayer outreach/education	John Cardone
NRA Tax Credits	This campaign is intended to increase compliance in nonresident alien individual (NRA) tax credits who either have no qualifying earned income, do not provide substantiation/proper documentation, or do not have qualifying dependents may erroneously claim certain dependent related tax credits.	Issue-based exams Taxpayer outreach/education	John Cardone
Restoration of Sequestered AMT Credit Carryforward	LB&I is initiating a campaign for taxpayers improperly restoring the sequestered Alternative Minimum Tax (AMT) credit to the subsequent tax year. Refunds issued or applied to a subsequent year's tax, pursuant to IRC Section 168(k)(4), are subject to sequestration and are a permanent loss of refundable credits. Taxpayers may not restore the sequestered amounts to their AMT credit carryforward. Taxpayers will be monitored for subsequent compliance. The goal of this campaign is to educate taxpayers on the proper treatment of sequestered AMT credits and request that taxpayers self-correct.	Soft Letters Taxpayer Outreach	Gloria Sullivan

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
S Corporation Distributions	S Corporations and their shareholders are required to properly report the tax consequences of distributions. We have identified three issues that are part of this campaign. The first issue occurs when an S Corporation fails to report gain upon the distribution of appreciated property to a shareholder. The second issue occurs when an S Corporation fails to determine that a distribution, whether in cash or property, is properly taxable as a dividend. The third issue occurs when a shareholder fails to report non-dividend distributions in excess of their stock basis that are subject to taxation.	Issue-Based Examinations Tax Form Change Suggestions Stakeholder Outreach	Holly Paz Cliff Scherwinski
Virtual Currency	The Virtual Currency Compliance campaign will address noncompliance related to the use of virtual currency through multiple treatment streams including outreach and examinations. The compliance activities will follow the general tax principles applicable to all transactions in property, as outlined in Notice 2014-21. The IRS will continue to consider and solicit taxpayer and practitioner feedback in education efforts, future guidance, and development of Practice Units. Taxpayers with unreported virtual currency transactions are urged to correct their returns as soon as practical. The IRS is not contemplating a voluntary disclosure program specifically to address tax non-compliance involving virtual currency.		John Cardone

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Repatriation via Foreign Triangular Reorganizations	In December 2016, the IRS issued Notice 2016-73 ("the Notice"), which curtails the claimed "tax-free" repatriation of basis and untaxed CFC earnings following the use of certain foreign triangular reorganization transactions. The goal of the campaign is to identify and challenge these transactions by educating and assisting examination teams in audits of these repatriations.		John Hinding Barbara Harris
Section 965 Transition Tax	Section 965 requires United States shareholders to pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. Taxpayers may elect to pay the transition tax in installments over an eight-year period. For some taxpayers, some or all of the tax will be due on their 2017 income tax return. The tax is payable as of the due date of the return (without extensions).		John Hinding
IRC Section 199 – Claims Risk Review	This campaign addresses all business entities that may file a claim for additional DPAD under IRC Section 199. The campaign objective is to ensure taxpayer compliance with the requirements of IRC Section 199 through a claim risk review assessment and issue-based examinations of claims with the greatest compliance risk.	Issue-Based Examinations	Scott Ballint
Syndicated Conservation Easement Transactions	This campaign is intended to encourage taxpayer compliance and ensure consistent treatment of similarly situated taxpayers by ensuring the easement contributions meet the legal requirements for a deduction, and the fair market values are accurate.	Issue-Based Examinations	Joseph Banks Scott Ballint

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Foreign Base Company Sales Income: Manufacturing Branch Rules	The goal of this campaign is to identify and select for examination returns of U.S. shareholders of CFCs that may have underreported subpart F income based on certain interpretations of the manufacturing branch rules.	Issue-Based Examinations	Orrin Byrd
1120F Interest Expense/Home Office Expense	The campaign compliance strategy includes the identification of aggressive positions in these areas, such as the use of apportionment factors that may not attribute the proper amount of expenses to the calculation of effectively connected income. The goal of this campaign is to increase taxpayer compliance with the interest expense rules of Treasury Regulation Section 1.882-5 and the Home Office expense allocation rules of Treasury Regulation Section 1.861-8.	Issue-Based Examinations	Orrin Byrd
Individuals Employed by Foreign Governments & International Organizations	Foreign embassies, foreign consular offices and international organizations operating in the U.S. are not required to withhold federal income and social security taxes from their employees' compensation nor are they required to file information reports with the Internal Revenue Service. This lack of withholding and reporting results in unreported income, erroneous deductions and credits, and failure to pay income and Social Security taxes. Because this is a fluid population, there may be a lack of knowledge regarding tax obligations. This campaign will focus on outreach and education by partnering with the Department of State's Office of Foreign Missions to inform employees of foreign embassies, consular offices and international organizations	Soft Letters Examinations	John Cardone

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Individual Foreign Tax Credit Phase II	Section 901 of the Internal Revenue Code alleviates double taxation through a dollar-for-dollar credit against U.S. tax on foreign-sourced income in the amount of foreign taxes paid on that income. Individuals who meet certain requirements may qualify for the foreign tax credit. This campaign addresses taxpayers who have claimed the credit but do not meet the requirements.	Issue-Based Examinations	John Cardone
Offshore Service Providers	The focus of this campaign is to address U.S. taxpayers who engaged Offshore Service Providers that facilitated the creation of foreign entities and tiered structures to conceal the beneficial ownership of foreign financial accounts and assets, generally, for the purpose of tax avoidance or evasion.	Issue-Based Examinations	John Cardone
FATCA Filing Accuracy	The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 as part of the HIRE Act. The overall purpose is to detect, deter and discourage offshore tax abuses through increased transparency, enhanced reporting and strong sanctions. Foreign Financial Institutions and certain Non-Financial Foreign Entities are generally required to report the foreign assets held by their U.S. account holders and substantial U.S. owners under the FATCA. This campaign addresses those entities that have FATCA reporting obligations but do not meet all their compliance responsibilities.	Termination of FATCA Status	John Cardone

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
1120-F Delinquent Returns Campaign	The Delinquent Returns Campaign is to encourage foreign entities to timely file Form 1120-F returns and address the compliance risk for delinquent 1120-F returns. This is accomplished by field examinations of compliance risk delinquent returns and external education outreach programs. The campaign addresses delinquent-filed Forms 1120-F. Form 1120-F is generally considered to be timely filed if it is filed no later than 18 months after the due date of the current year's return. The filing deadline may be waived, in situations based on the facts and circumstances, where the foreign corporation establishes to the satisfaction of the commissioner that the foreign corporation acted reasonably and in good faith in failing to file Form 1120-F per Treas. Reg. Section 1.882-4(a)(3)(ii). LB&I Industry Guidance 04-0118-007 dated 2/1/2018 established procedures to ensure waiver requests are applied in a fair, consistent and timely manner under the regulations.	Issue-Based Examinations	Orrin Byrd
Work Opportunity Tax Credit	The IRS has agreed to accept the Work Opportunity Tax Credit (WOTC) year of credit eligibility issue into the Industry Issue Resolution (IIR) program (pursuant to Rev. Proc. 2016-19). Due to delays associated with the WOTC certification process, taxpayers are often faced with the burdensome requirement of amending multiple years of federal and state returns to claim the WOTC in the year qualified WOTC wages were paid. This requirement, coupled with any resulting examinations of this issue, is an inefficient use of both taxpayer and IRS resources.	Industry Issue Resolution	Gloria Sullivan

LB&I campaigns
Issues

Campaign	Description	Treatment stream	Exec champ
Captive Service Provider Campaign	Section 482 regulations and the OECD Transfer Pricing Guidelines provide rules for determining arm's length pricing for transactions between controlled entities, including transactions in which a foreign captive subsidiary performs services exclusively for the parent or other members of the multinational group. Excessive pricing for these services would inappropriately shift taxable income to these foreign entities and erode the U.S. tax base. The goal of this campaign is to ensure that U.S. multinational companies are paying their captive service providers no more than arm's length prices.	Issue-Based Examinations Soft Letters	Jennifer Best John Hughes
Offshore Private Banking Campaign	U.S. persons are subject to tax on worldwide income from all sources including income generated outside of the United States. The IRS is in possession of records that identify taxpayers with transactions or accounts at offshore private banks. This campaign addresses tax noncompliance and the information reporting associated with these offshore accounts.	Issue-Based Examinations Soft Letters	John Cardone
Loose Filed Forms 5471	Some taxpayers are incorrectly filing Forms 5471 by sending the form to the IRS without attaching it to a tax return. If a Form 5471 is required to be filed and was not attached to an original return, an amended return with the Form 5471 attached should be filed. The goal of this campaign is to improve compliance with the requirement to attach a Form 5471 to an income tax, partnership or exempt organization return.	Correspondence	John Cardone

State Income Tax Post-TCJA and Louisiana Legislative Update

14 June 2019

EY
Building a better working world

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Today's Presentation

1. Top 10 SALT Developments 2018
2. State Responses to Tax Cuts and Jobs Act (TCJA)
3. Louisiana 2019 Regular Session

Key takeaways

States continue to interpret and react to the Tax Cuts and Jobs Act. Conformity is key, including understanding the impact of the Federal consolidated return regulations.

The 2019 Regular Session of the Louisiana legislature ended on June 6th. While certainly less turbulent than recent years, several key tax items passed.

Jeremy McMullin
Tax Manager, Indirect Tax

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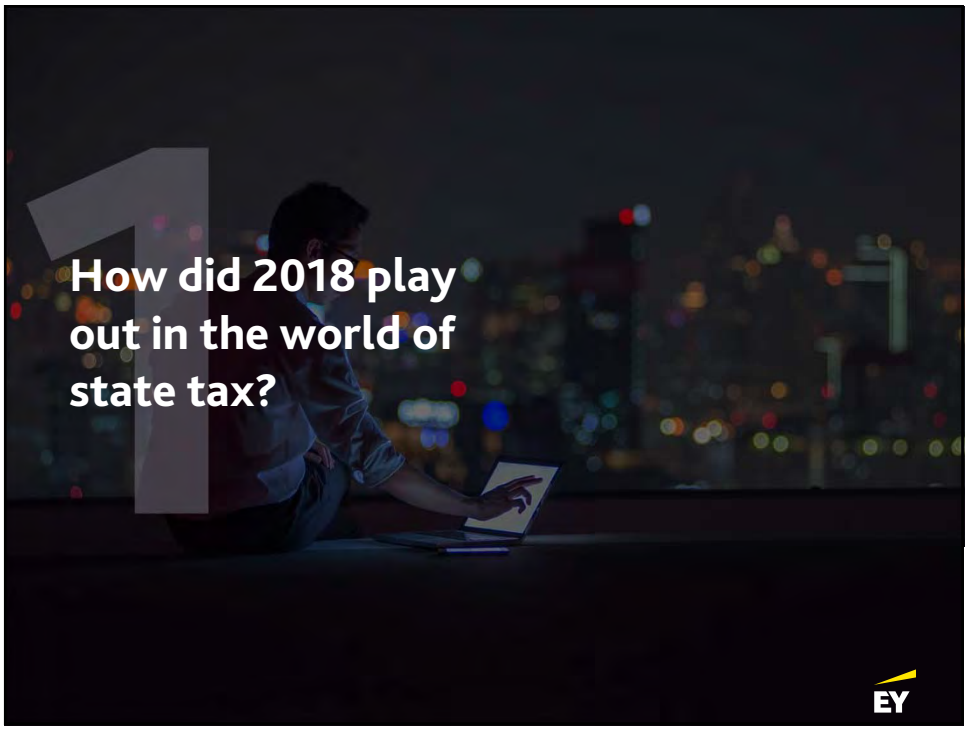
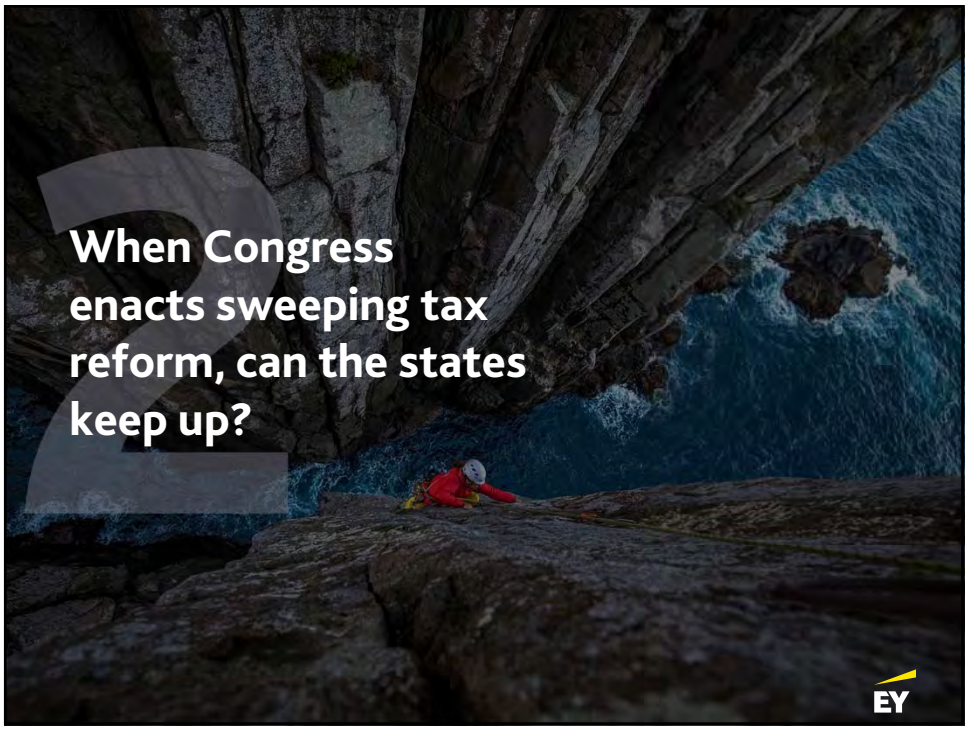


Top 10 state tax developments of 2018

1. US Supreme Court ruling in *South Dakota v. Wayfair* — time to say goodbye to the *Quill* physical presence test
2. State responses to the TCJA
3. State level tax reform in New Jersey and Kentucky
4. 20 new governors … how many new tax commissioners?
5. The new "sin" taxes — sports betting and marijuana
6. Utah Supreme Court affirmance of *See's Candy* and the focus on transfer pricing
7. San Francisco voters approve two new gross receipts taxes and economic nexus
8. Income and sales tax rate changes
9. Louisiana's 2015 statutory limit on credit for taxes paid to other states is unconstitutional
10. The short life of Seattle's employer payroll tax



Key domestic provisions of the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97)

- Corporate tax rate and corporate alternative minimum tax
- Interest expense deduction (§163(j))
- Qualified property expensing (§168(k))
- Net operating losses (§172)
- Contributions to capital (§118)
- Domestic production deduction repealed (§199)

**The code section references are to the current Internal Revenue Code.*

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State conformity to federal tax law changes

- **Conformity is key!**
  - Which states conform? When did they conform? How did they conform?
- **Federal taxable income (FTI) calculated under the Internal Revenue Code (IRC) typically is the starting point for determining state taxable income:**
  - When the IRC changes (e.g., base expansion, elimination of deductions, modifications of credits), the state tax base typically changes as well.
- **States have different approaches in conforming to the IRC:**

"Fixed"	"Rolling"	"Selective" **
• Conformity generally not automatic (state conforms to the IRC as of a specific date) • Legislature can consider whether and when to conform to IRC changes	• Conformity generally automatic (state automatically conforms to the IRC as enacted) • Legislature must affirmatively consider whether to decouple from IRC changes	• Conformity generally depends • Legislature can consider whether and when to conform to IRC changes • Or other circumstances warrant this separate designation

** Note: "Selective" states generally adopt only certain specific provisions of the IRC (typically, but not always, as of a specific fixed date), or there are other circumstances that warrant a separate designation (for example, New Jersey and Pennsylvania have unique approaches in that they do not have general IRC conformity statutes like other states but generally default to the IRC as in effect for the applicable tax year via their statutory FTI starting points).

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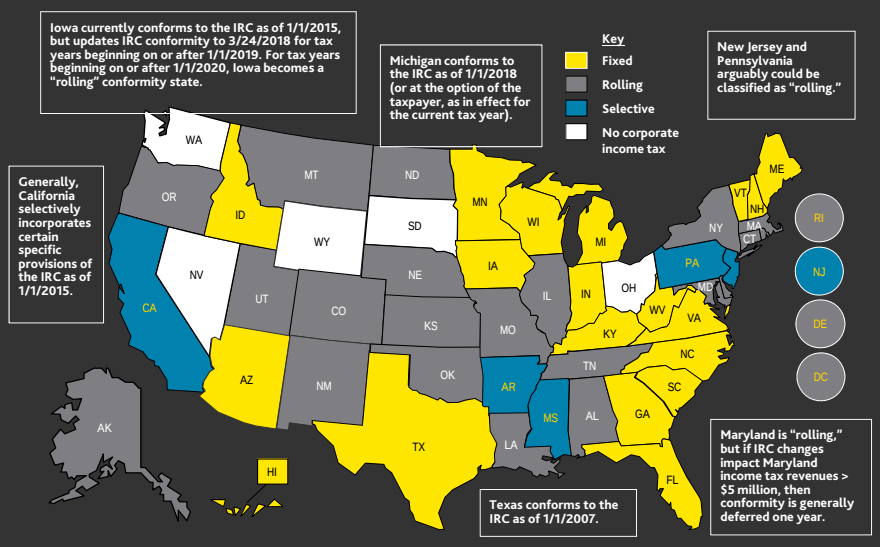
Approach to IRC conformity (corporate)
"Fixed" vs. "rolling" vs. "selective" – as of April 8, 2019



State Responses to TCJA
Business interest expense limitation (Section 163(j))

Federal provision

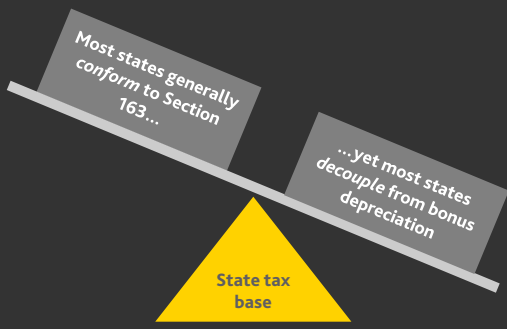
- Limits deduction to net business interest expense that exceeds 30% of adjusted taxable income (ATI):
  - Determination of ATI generally will be made at the consolidated tax-filer level (except partnerships).
  - This new limitation applies to both related- and unrelated-party debt (foreign or domestic).
- Initially, ATI computed without regard to depreciation (including depletion) and amortization, but beginning in 2022, ATI is decreased by those items
- Unlimited carryforward of any disallowed interest expense

Key state implications

- Since this new interest expense deduction limitation will be part of the computation of a deduction used to determine FTI, and most states use FTI as the starting point to determine state taxable income, absent legislative decoupling, the states generally will follow the provision, presumably including its carryforward period:
  - How the rule applies in specific states will depend upon how the state conforms to the IRC and, in particular, Section 163(j).
  - In addition, the creation of a new carryforward attribute for disallowed interest creates uncertainty as to whether states will apportion it and whether they will impose limitations under Sections 381 and 382.
- Since most states don't follow the federal consolidated return regulations, and since the state filing group typically doesn't match the federal filing group, the states might deviate from the federal treatment and seek to determine any limitation at the individual entity level.
- Moreover, to the extent that a state already provides for the addback of interest paid to related parties, the intersection of that state's related-party interest expense addback rule could introduce increased complexity that may need to be addressed by the state's legislature.

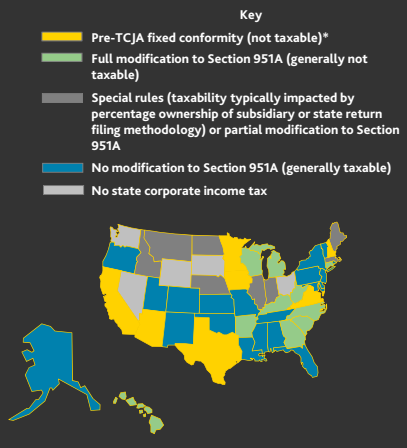
Tax impacts of debt and acquisition of capital assets

Recall that, from a federal policy standpoint, the Section 163(j) business interest deduction limitation and full expensing of qualified property under Section 168(k) go hand-in-hand. However, in the state tax base an imbalance may exist.



State Responses to TCJA Section 951A

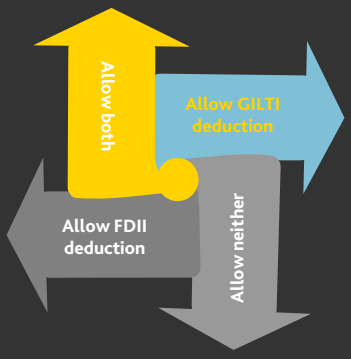
- A majority of states imposing income tax may potentially tax at least some component of a US corporate shareholder's Section 951A Global Intangible Low-taxed Income (GILTI) inclusion in the 2018 tax year.
- How a state treats GILTI may not necessarily depend upon how the state treats existing subpart F income under Section 951(a). It requires careful analysis of state statutory conformity to the federal determination of taxable income and presumably the subpart F regime.
- How GILTI will be reported on the federal income tax return could impact the state income tax treatment in some states.
- It is uncertain how GILTI will be treated for state apportionment factor purposes.
- State taxation of GILTI raises numerous US constitutional issues, particularly in separate reporting states.



* Iowa generally conforms to post-TCJA IRC beginning in tax year 2019.

Source: Ernst & Young LLP analysis of state laws as of October 23, 2018 (exceptions may apply)

State and local impacts
Section 250 deduction for GILTI and FDII



- How this new deduction will be reported on the federal income tax return could impact the state income tax treatment in some states.
  - If the deduction is reported as a Line 29b "special deduction" for federal purposes, the analysis and resulting state impact could be different in certain states.
- States may find that the new deduction amount does not correspond to their effective tax rate and thus may want to decouple from the deduction.
  - States may go in any direction — they may decouple from all or just a component of Section 250.
- Might the federal taxable income limitation operate differently for state purposes?

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State Responses to TCJA
SALT Cap Deduction "Workarounds" (Section 164)

Federal provision

- Limits the amounts of state and local taxes an individual can deduct for regular federal income tax purposes.
  - Amended to cap the deduction to:
    - $10,000 for most individuals and married couples filing a joint return;
    - $5,000 for married individuals filing separately.
- There were no changes to the provision in I.R.C. § 164 that allows for the deduction for taxes paid in connection with a trade or business.
- There were no additional limitations to I.R.C. § 170 on the deductibility of charitable contributions.
  - TCJA Sec. 1103 actually increased the AGI limitation for individual donors' cash contributions to operating charities from 50% to 60%.

Key state implications

- This is not *really* a state tax issue
  - Interpretation is matter of ***FEDERAL*** tax law
  - Two general approaches
- Tax shift approach
  - New York's Employer Compensation Expense Tax (ECET)
    - Let's shift the personal income tax to an employer payroll tax!
  - New York, New Jersey, and Connecticut government sponsored "charities"
    - Make contributions to a "charity" and you get a tax credit against your state or local tax liabilities! (New York, New Jersey, Connecticut)
    - IRS Proposed Regulations (REG-112176-18) (Fed. Reg. Aug. 27, 2018)
      - Finalized on Tuesday June 11th
- Pass-through entity ("PTE") tax
  - Connecticut, Wisconsin, Oklahoma, Louisiana
  - Concerns?
    - Will the IRS respect these new state laws?
    - The federal SALT deduction limitation expires in 2025 unless Congress renews it. Will the states eliminate these PTE taxes? Or do they become a permanent fixture in the state's tax system?
    - Are PTE's "pass-throughs" for state tax purposes anymore?
      - Can a partner offset income in one PTE by losses in another?
    - Will nonresident taxpayers receive an "other state tax credit" in their resident state for their share of the PTE tax paid to the nonresident state?
      - New Jersey credit for NYC UBT.
      - California denies credit for share of Texas margins tax imposed on PTE.
      - Maine denies credit for New Hampshire BPE tax on PTE.

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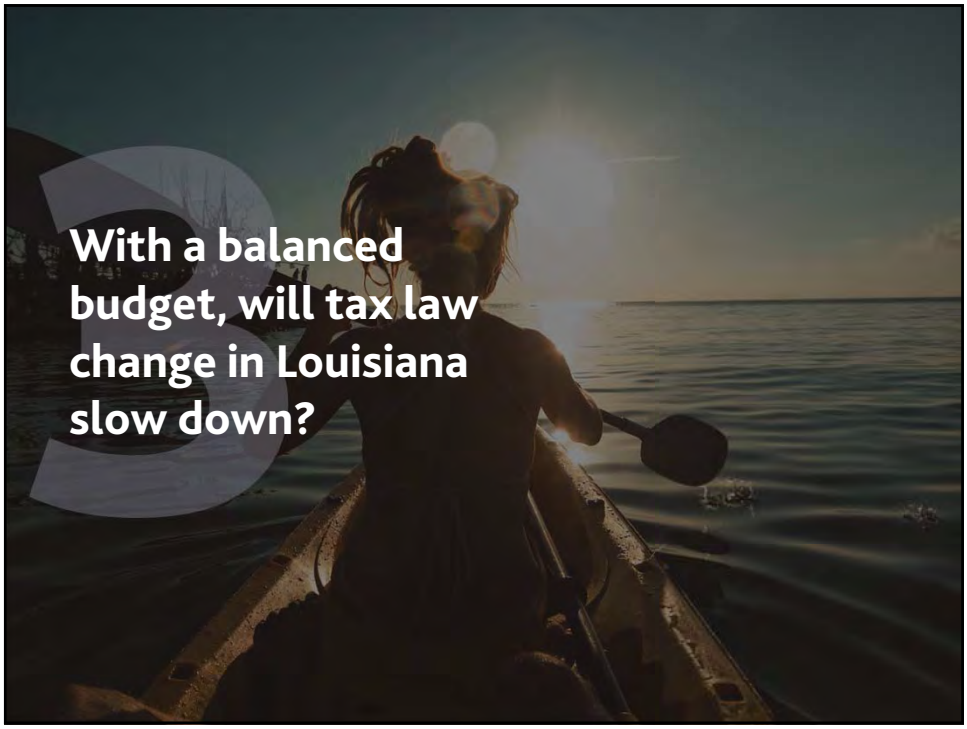


Louisiana Tax Legislative Update
Income Tax

HB 263, Louisiana Regular Session 2019, Provides Relative To Loss Years for Purposes of the Net Operating Loss Deduction for Corporate Income Tax

- This legislation reverts the treatment of NOL utilization back to a FIFO method
  - Act 24 (HB 116) Louisiana First Extraordinary Session 2016 reversed the order from the FIFO method to a LIFO method of utilization.
- Effective upon governor's signature, and applicable to all tax years beginning on and after January 1, 2020.
- 72% utilization limitation remains in place

Louisiana Tax Legislative Update
Income Tax

SB 223, Louisiana Regular Session 2019, Provides Relative to State Income Taxation of Subchapter S Corporations and Other Flow Through Entities

- This legislation provides an election that authorizes S corporations and other flow through entities to file and pay tax on their Louisiana income as if they were C corporations.
  - The electing entities would pay state tax at the entity level as opposed to the shareholder/partner level.
  - The individual shareholders / partners / members would be allowed a federal income tax deduction equal to the federal income tax they would have paid on their LA net income if they had filed a C-corp return at the federal level.
  - The state tax rates these entities would be subject to are set at the rates tax of individuals filing married jointly: 2% on the first $25,000, 4% on the next $75,000, and 6% on income above $100,000.
  - Effective for tax periods beginning on and after January 1, 2019
- The law is intended to be a workaround of the federal state and local tax deduction cap.
  - Will it achieve its intended goal?

Louisiana Tax Legislative Update
Sales and Use Tax

HB 547, Louisiana Regular Session 2019, Provides for the Administration of Tax Collection Related to Remote Seller Transactions

- This legislation requires dealers to collect and remit state and local sales and use taxes on a monthly basis on all taxable sales into Louisiana until the LA Sales & Use Tax Commission for Remote Sellers ("commission") enforces the collection and remittance by remote sellers.
- This law provides for administrative rules that require remote sellers to register with the commission no later than July 1, 2020, and clarifies that local taxes are remitted to state or local collectors.
- This legislation also changes the applicability provisions in current law relative to the Commission from a final ruling in *South Dakota v Wayfair, Inc.* to any federal law that authorizes requiring remote sellers to collect and remit or U.S. Supreme Court decision that overrules the physical presence requirement.
- Proposed law also expands the jurisdiction of the Louisiana Board of Tax Appeals (BTA) to all matters related to the Louisiana Sales and Use Tax Commission for Remote Sellers.

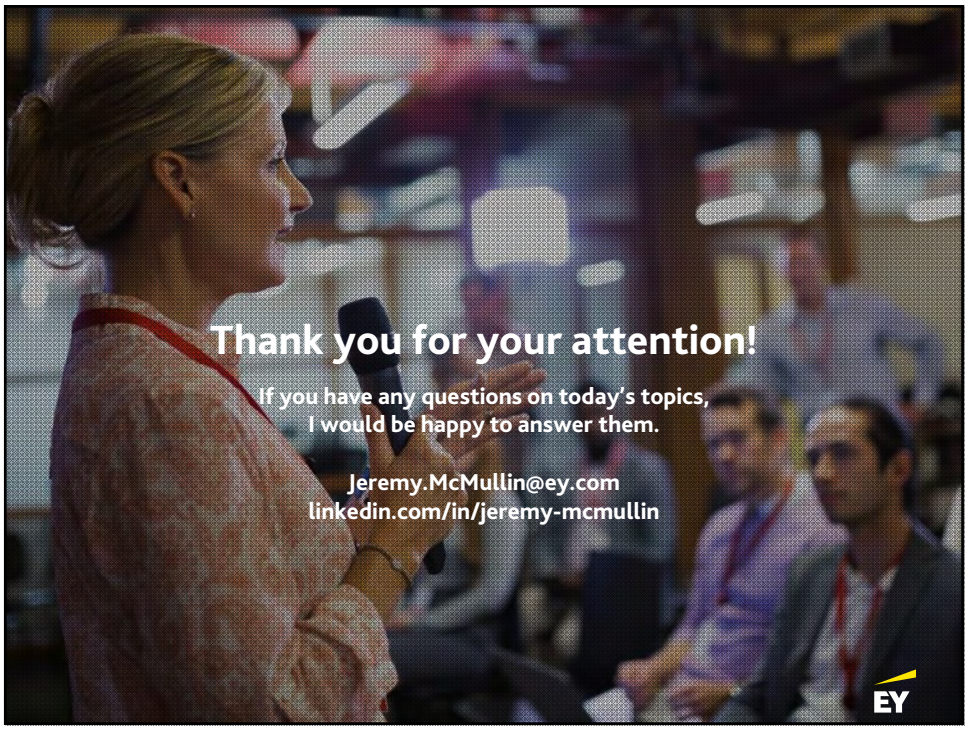
Louisiana Tax Legislative Update
Credits and Incentives

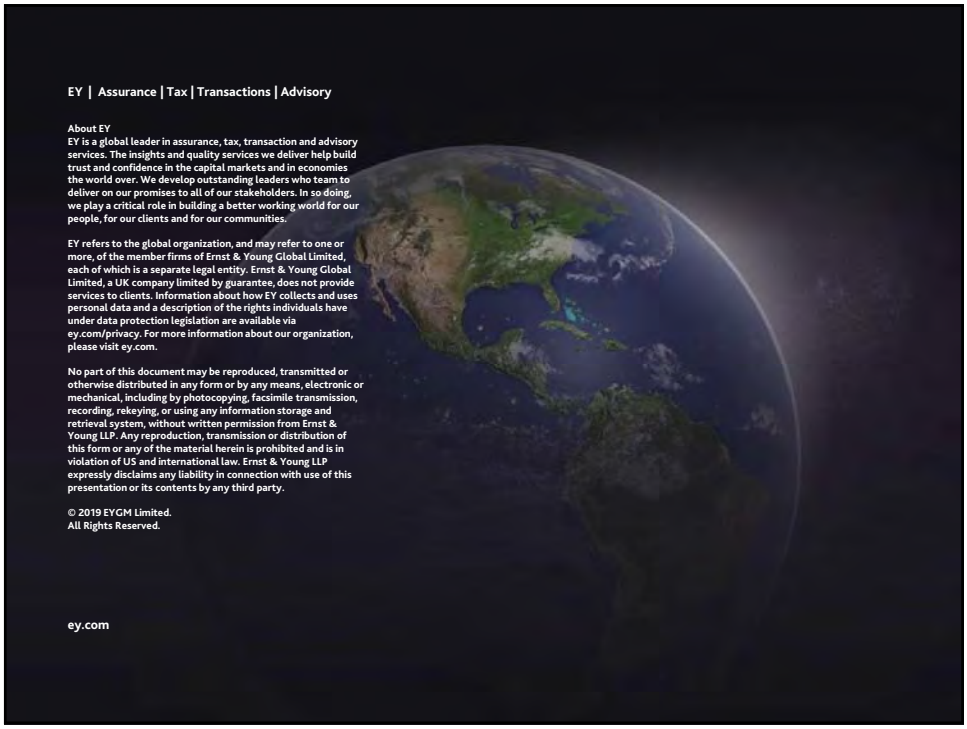
HB 585, Louisiana Regular Session 2019, Adds structures Located in Opportunity Zones to the Property Eligible to Participate in the Restoration Tax Abatement Program

- Piggybacks on federal opportunity zones by expanding restoration tax abatement program eligibility, but not tie to participation in Federal program

Opportunity Zones Program Overview

- Created through the passage of the Tax Cuts and Jobs Act; Codified in IRC 1400Z-1 and 1400Z-2.
- Designed to incentivize long-term investments in economically distressed communities designated as Opportunity Zones.
- Taxpayers receive preferential tax treatment as a reward for investing capital gain in Opportunity Zones through investment vehicles called Qualified Opportunity Funds or "O-Funds".

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