

Remember New Item 16 When Filing Your Form 10-K This Year

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For public companies whose fiscal year is the calendar year, the 10-K season is quickly approaching. One technical change to Form 10-K this year is the addition of new Item 16 (Form 10-K Summary). As you may recall, the Fixing America's Surface Transportation Act, more commonly known as the FAST Act, which became law in December 2015, was primarily a transportation bill, but also contained a number of changes to the federal securities laws. One of the FAST Act's securities law provisions instructed the SEC to issue regulations, within 180 days of the FAST Act's enactment, that would permit issuers to submit a summary page on Form 10-K, but only if each item on that summary page included a cross-reference (by electronic link or otherwise) to the material contained in the Form 10-K to which that item related. Accordingly, in June 2016, the SEC adopted an interim final rule that expressly allowed issuers to include, at their option, a summary page in their Form 10-Ks. As noted in the SEC's adopting release, prior to the enactment of the FAST Act, nothing prohibited issuers from voluntarily including a summary page in their Form 10-Ks. And, because both the FAST Act and the interim final rule required that any summary page included in a Form 10-K meet certain specified requirements, an issuer actually had more flexibility regarding the content of any summary page it chose to include in its Form 10-K prior to the SEC's adoption of the interim final rule. In any event, historically, most issuers have not included a summary page in their Form 10-Ks, and we do not expect this to change in the near term. However, as a technical matter, when issuers file their Form 10-Ks this year, they should remember to include new Item 16 (Form 10-K Summary) at the end of Part IV. Most of the issuers that have thus far included new Item 16 in their Form 10-K filings, but that have not included a summary page, have inserted "none" for this item.

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