

SEC Reporting Update

2017 trends in SEC comment letters

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What you need to know

- ▶ Non-GAAP financial measures topped our list of the most frequent topics in SEC staff comment letters for the year ended 30 June 2017.
- ▶ Emerging topics of SEC staff focus include how companies are applying the new revenue recognition standard as well as what they are disclosing about cyber risks and cyber incidents.
- ▶ The SEC staff also frequently comments on management's discussion and analysis, segment reporting and income taxes.
- ▶ The SEC staff issued fewer comment letters this year, continuing the trend of recent years.
- ▶ Understanding SEC staff comments and trends, as well as best practices for responding to comment letters, can help companies plan for the year-end reporting season and manage the staff review process.

Overview

The Securities and Exchange Commission (SEC) staff's ongoing focus on companies' use of non-GAAP financial measures was the most significant trend in our study of staff comment letters. In the year ended 30 June 2017, companies' use of non-GAAP measures topped our list of most frequent topics in staff comment letters for the first time.

Over the past year, the staff issued the most comments on compliance with the more explicit guidance it issued in May 2016 in updates to its Compliance and Disclosure Interpretations (CD&Is) on the use of non-GAAP financial measures. In many cases, the staff has conducted targeted reviews that solely evaluate a company's use of non-GAAP financial measures.

While SEC officials have said that the staff's comment letters related to the new CD&Is have been effective in improving compliance with the rules on the use of non-GAAP financial measures, we expect the staff to continue to closely monitor the use of non-GAAP financial measures.

The SEC staff's focus on non-GAAP measures is also noteworthy because the number of comment letters the staff issued on all other topics declined again, consistent with prior years. Overall, the number of comment letters fell 5% in our study.

This publication addresses trends in SEC staff comment letters issued for the year ended 30 June 2017. In addition, we summarize leading practices that may help companies more effectively respond to SEC staff comment letters. Our publication, *2017 SEC Comments and Trends: an analysis of current reporting issues*, discusses the SEC staff's focus areas in more detail and provides information about staff comments that are unique to certain industries, initial public offering registration statements and foreign private issuers.

While each registrant's facts and circumstances differ and require individual judgments about compliance with accounting standards and SEC rules, as well as evaluations about materiality, understanding SEC staff comment areas may help companies plan for the year-end reporting season.

Focus on non-GAAP financial measures

The SEC staff's comments on the use of non-GAAP financial measures spiked after the staff updated its C&DIs in May 2016. The updated C&DIs provided more explicit guidance on when the measures may violate SEC rules, and many of the staff's comments since May 2016 have questioned compliance with these updated interpretations.

The staff comments in this area address the use of non-GAAP measures in earnings releases (where there historically had been less attention) as well as in registrants' periodic reports. The staff has asked registrants to explain how their use of non-GAAP measures complies with the updated C&DIs or to change their presentation if, among other things, they:

- ▶ Present non-GAAP financial measures that adjust a particular gain or loss in the current period but don't adjust similar gains or losses in prior periods or don't treat similar gains and losses consistently
- ▶ Exclude normal, recurring cash operating expenses necessary to operate the business
- ▶ Tailor GAAP recognition and measurement principles by applying accounting methods generally not allowed under GAAP (e.g., proportionate consolidation) or an alternative accounting treatment that is not appropriate for a given transaction
- ▶ Present non-GAAP financial measures more prominently than the most directly comparable GAAP measures, including non-GAAP forward-looking guidance in press releases
- ▶ Present per-share measures that appear to be liquidity measures in substance, even if the company describes them as performance measures

The SEC staff continues to question compliance with Item 10(e) of Regulation S-K in comments about the clarity of labeling of adjustments in the required reconciliation, terms registrants use to describe non-GAAP measures that are identical or similar to terms for GAAP measures and disclosures about the usefulness of non-GAAP financial measures to investors.

The SEC staff's focus on non-GAAP financial measures in comment letters is consistent with the messages SEC officials have been delivering in speeches.

Example SEC staff comments: Non-GAAP disclosures that may be misleading

Excluding normal, recurring cash operating expenses

We note several items in the reconciliation of EBITDA to Adjusted EBITDA to remove recurring cash operating expenses, such as professional fees and management fees and expenses. Considering these adjustments include recurring cash operating expenses, tell us how your presentation complies with the May 17, 2016 updated C&DIs on Non-GAAP Financial Measures.

Proportionate consolidation of equity investments

We note that your Adjusted EBITDA calculation adjusts for your “proportionate share from equity accounted investments.” Your proportionate presentation may be inconsistent with Question 100.04 of the updated C&DIs issued on May 17, 2016. Please review this guidance when preparing future filings.

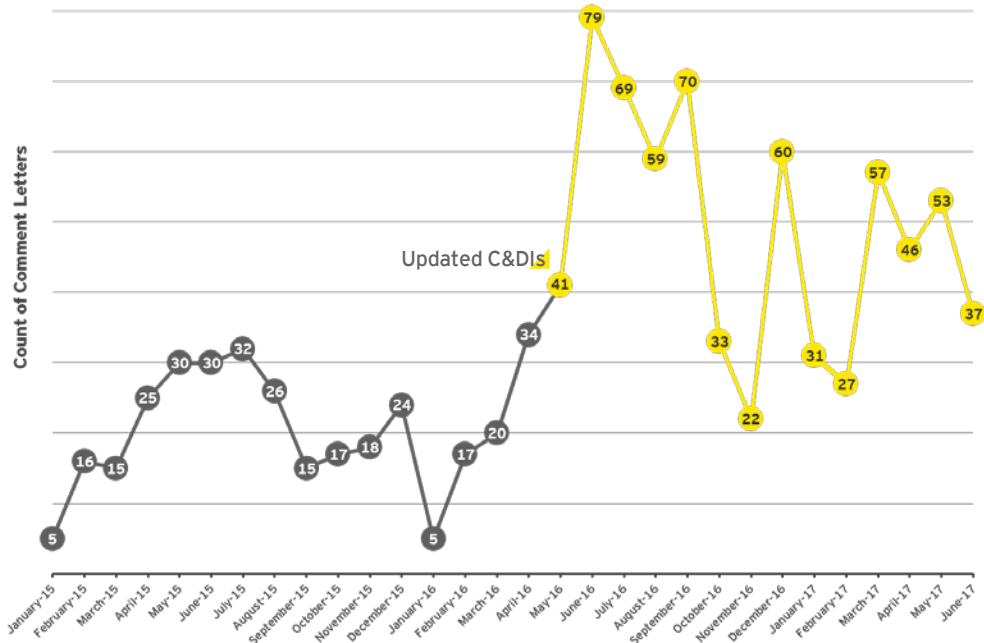
Example SEC staff comment: Prominence of non-GAAP measures

We note that you present non-GAAP earnings and non-GAAP margin before the most directly comparable GAAP measures. Your presentation appears to give greater prominence to the non-GAAP measures than to the comparable GAAP measures, which is inconsistent with the updated C&DIs issued on May 17, 2016. Please revise your presentation in future earnings releases accordingly.

How we see it

Companies should continue to exercise caution when disclosing non-GAAP financial measures. Many companies have already curtailed their use of these measures in light of the updated staff guidance. We expect the staff to continue its vigilance in monitoring compliance with its updated C&DIs.

SEC staff comment letters on non-GAAP measures



Source: Audit Analytics — SEC UPLOAD comment letters on non-GAAP financial measures for the period from 1 January 2015 to 30 June 2017.

Emerging areas of focus

New accounting standards

The SEC staff is closely monitoring registrants' disclosures about the effects of the new revenue recognition standard, which is effective 1 January 2018 for calendar-year registrants, and has requested expanded disclosures in some cases. For example, we have seen the SEC staff issue comments to companies that provided boilerplate disclosure about the new standard without discussing how they may be affected by the revenue recognition standard and the status of their implementation efforts.

The SEC staff has said that registrants' disclosures under SEC Staff Accounting Bulletin Topic 11.M should consider all effects of the new revenue recognition standard, including presentation in the financial statements and disclosures in the notes to the financial statements. The SEC staff also expects registrants to include a description of the process they are using to assess the effect of the new standard, where they are in the implementation process, what matters still need to be addressed and what additional steps they plan to take.

The SEC staff expects a registrant's disclosures to evolve as the effective date of a standard nears and the registrant makes progress in its implementation plan. That is, the staff expects a registrant's disclosures to be more specific each quarter. It is important for management to consider these expectations when developing their disclosures and discussing them with the audit committee each quarter.

We expect the SEC staff to continue its focus on these topics in the coming year as companies prepare to adopt the new standards on leases and financial instruments.

We believe the SEC staff will focus on all aspects of the new guidance that is codified in Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers*, and ASC 340-40, *Other Assets and Deferred Costs – Contracts With Customers*, in the coming year. In particular, we expect the staff will seek to understand the various estimates and judgments made by companies (e.g., identifying performance obligations, determining the transaction price, determining the timing of satisfaction of performance obligations) and make sure the disclosures comply with the requirements of the new standard.

Given the significance of the standard and the SEC staff's concerns about consistency, we expect the staff to devote substantial attention to these matters next year, when most public companies will adopt the new revenue standard.

How we see it

Once they adopt the new revenue recognition standard, registrants may also need to make more disclosures about the judgments and assumptions underlying revenue recognition within their management's discussion and analysis (MD&A) of critical accounting estimates. Companies should reevaluate the need for and sufficiency of their critical accounting estimate disclosures related to revenue recognition.

Cybersecurity

With the increase in the frequency and severity of cyber attacks and data breaches, SEC officials and the staff have been encouraging more robust cybersecurity disclosures.

CF Disclosure Guidance: Topic No. 2, *Cybersecurity*, issued by the staff of the Division of Corporation Finance (DCF), provides a framework for registrants to consider when evaluating whether to disclose information about risks and incidents involving cybersecurity. The SEC staff guidance notes that material cybersecurity risks or cyber incidents must be disclosed.

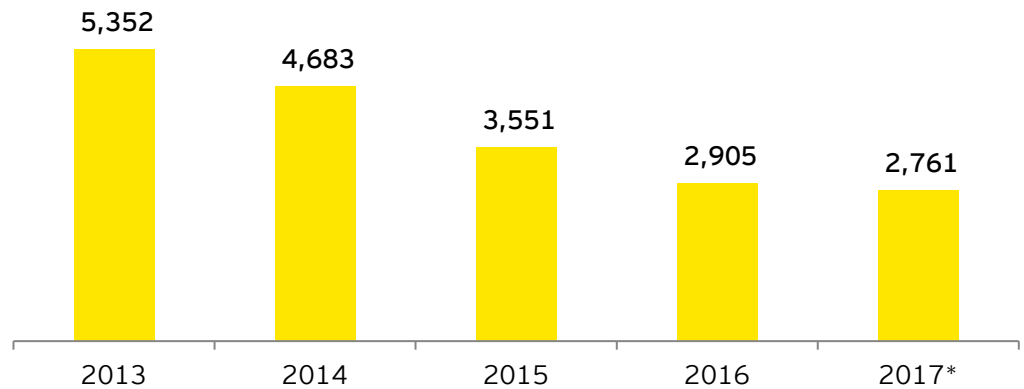
SEC Chairman Jay Clayton¹ said recently that he expects companies to take seriously their obligation to disclose material information about cyber risks and cyber events. As a result, we expect the SEC staff to comment more often on cybersecurity disclosures over the next year.

General observations

Number of SEC staff comment letters continues to decline

The volume of SEC staff comment letters in the year ended 30 June 2017 declined 5% from the previous year, continuing the trend in recent years. In the latest period, the SEC staff issued approximately half the number of comment letters it did in the period ended 30 June 2013.

Number of SEC comment letters by year

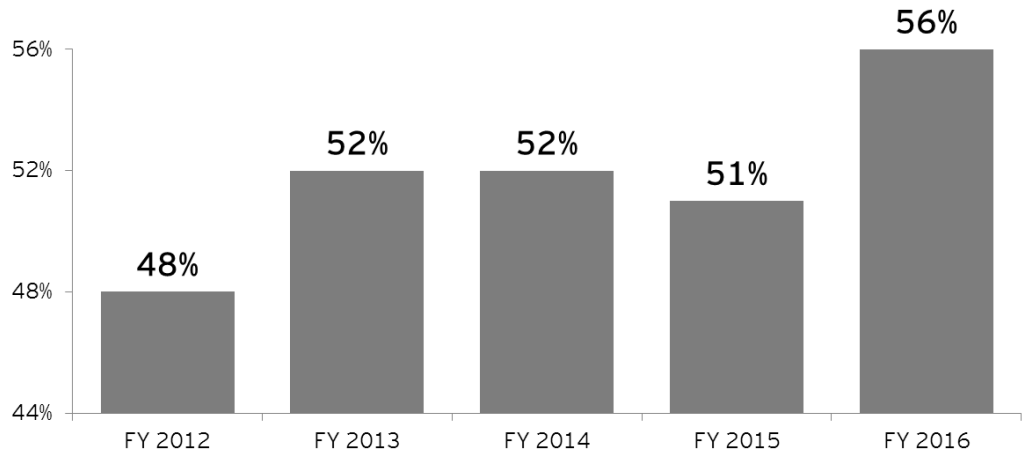


Source: Audit Analytics – SEC UPLOAD comment letters issued related to Forms 10-K and 10-Q for the 12-month periods ended 30 June 2013 through 30 June 2017.

* The SEC staff publicly releases comment letters no earlier than 20 business days after it completes its review. Therefore, some letters for the 12-month period ended 30 June 2017 may not yet be publicly available.

Since 2013, the SEC staff has consistently reviewed more than half of registrants every year. The Sarbanes-Oxley Act of 2002 requires that the SEC staff review every registrant at least once every three years. The SEC staff reviews many registrants more frequently, but they do not always receive letters.

Percentage of SEC issuers reviewed

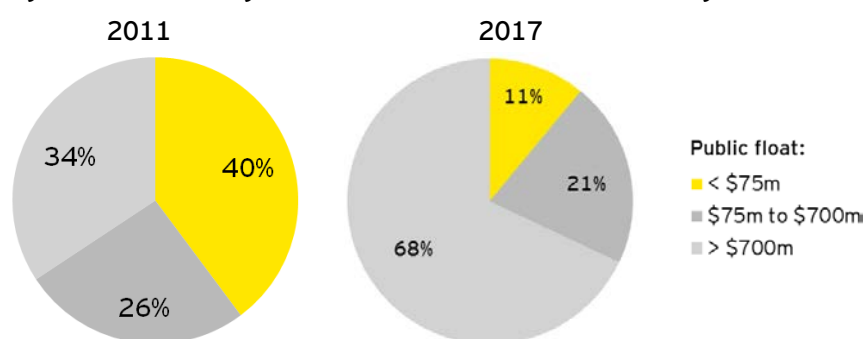


Source: SEC 2016 Annual Performance Report. The SEC's fiscal year-end is 30 September.

In the latest fiscal year, the SEC staff reviewed 56% of issuers. In recent years, the SEC staff has used a risk-based approach, which involves concentrating on larger issuers and reviewing their filings each year. These larger companies represent a relatively small percentage of the total number of registrants but they account for substantially all of the US equity market capitalization. More regular reviews of larger companies decrease the likelihood that there will be issues worthy of comment in every review because comments are often triggered by significant transactions or events or other changes in disclosure. While the SEC staff still must review smaller companies, it may be more judicious issuing comments to those companies given their lower market exposure. These factors have allowed the staff to review filings by more than half of issuers in recent years.

As this chart depicts, accelerated filers accounted for a significantly greater share (68%) of all comment letters in 2017 than they did in 2011 (26%) because the number of SEC staff comment letters to non-accelerated filers with less than \$75 million in public has declined substantially.

Size of registrants receiving comment letters on Form 10-K filings



Source: Audit Analytics — SEC UPLOAD comment letters issued related to Forms 10-K for the 12-month periods ended 30 June 2011 and 30 June 2017.

The SEC staff continues to comment most often on accounting areas that require significant judgments and estimates.

Most frequent comment areas

The following chart summarizes the top 10 most frequent comment areas in the current and previous years.

Comment area	Ranking 12 months ended 30 June		Comments as % of total registrants that received comment letters*
	2017	2016	2016 and 2017
Non-GAAP financial measures	1	2	40%
Management's discussion and analysis**	2	1	43%
Fair value measurements***	3	3	20%
Segment reporting	4	5	16%
Revenue recognition	5	4	15%
Intangible assets and goodwill	6	7	14%
Income taxes	7	6	14%
State sponsors of terrorism	8	**	10%
Acquisitions and business combinations	9	8	9%
Executive compensation	10	**	8%

* Based on comment letter topics assigned by research firm Audit Analytics for SEC comment letters issued to registrants related to Forms 10-K from 1 July 2015 through 30 June 2017.

** This category includes comments on MD&A topics, in order of frequency: (1) results of operations (27%), (2) critical accounting policies and estimates (12%), (3) liquidity matters (10%), (4) business overview (8%) and (5) contractual obligations (3%). Many companies received MD&A comments in more than one category.

*** This category includes SEC staff comments on fair value measurements under ASC 820 as well as fair value estimates, such as those related to revenue recognition, stock compensation and goodwill impairment analyses. Individual SEC staff comments may be associated to multiple comment areas in this chart.

In addition to non-GAAP financial measures, the SEC staff continues to question registrants' disclosures related to (1) MD&A, (2) significant accounting judgments and estimates, including those related to segment reporting, (3) fair value measurements, (4) income taxes and (5) revenue recognition (including disclosures related to the effect of adopting the new revenue recognition standard). Registrants are spending significant time addressing SEC staff comments on these topics. The SEC staff often requests additional information to support registrants' conclusions and additional disclosures about the assumptions that support significant accounting estimates.

Other comment areas

Management's discussion and analysis

The SEC staff has increased its focus on performance metrics, including whether registrants have disclosed key metrics monitored by management and how those metrics correlate to material changes in the results of operations. SEC Chief Accountant Wes Bricker has emphasized the importance of having effective disclosure controls and procedures with respect to these performance metrics. "Similar to non-GAAP financial reporting, key operating metrics and forecasts may also be distorted via bias – for example, painting a potentially misleading picture – error or fraud, all of which undermine the credibility of the reporting. Therefore, it is important that companies proactively and thoughtfully address risks to their reporting," Mr. Bricker said in a speech in May 2017.²

The SEC staff recognizes the value of using operating metrics in MD&A and may ask a registrant to disclose key performance indicators in its SEC filings if it provides those metrics outside of its SEC filings (e.g., websites, press releases, analyst presentations) to help investors view the registrant through the eyes of management. For example, retail companies use same-store sales and store openings and closings, while social networking and online gaming companies typically use monthly or daily users.

When a registrant uses a key metric to discuss operating results in MD&A, the SEC staff frequently requests that it:

- ▶ Define the metric, especially when a registrant's definition differs from the definition commonly used in its industry
- ▶ Discuss how the metric is calculated
- ▶ Discuss any limits on the usefulness of the metric (e.g., individuals may be counted more than once in an average monthly users metric)
- ▶ Consider providing information about the metric on a disaggregated basis, such as by segment, geography or revenue stream (e.g., breaking down same-store sales between e-commerce and in-store sales)
- ▶ Clearly explain how the metric or period-to-period change in the metric links to operating results to reveal a trend (e.g., using the increase in the number of customers to explain revenue growth)

However, the staff has asked for clarification when it believes that a registrant's use of such metrics without the appropriate context is potentially misleading and does not appropriately explain any changes in income statement line items. For example, if a company discloses that it has 10 million total users and expects the number to grow 12% but doesn't explain that the majority of them are nonpaying, investors may incorrectly expect a direct correlation between total user growth and profitability.

Example SEC staff comment: Results of operations – key financial metrics

Please revise to clarify the definition and significance of your member-based performance metric on page XX. For example, it appears from the discussion at the top of page XX that roughly 98% of your users are nonpaying members. If the company does not obtain any revenue from these nonpaying members, please clarify the significance of including these members to calculate your member-based performance metric.

The SEC staff also continued to focus on the discussion of critical accounting estimates in MD&A. The staff has said these discussions are often too general and should provide a more robust analysis than what is in the significant accounting policies note to the financial statements. The SEC staff often comments when registrants repeat portions of the significant accounting policies financial statement footnote verbatim in MD&A without explaining the assumptions that may be uncertain and the effect changes in such assumptions could have on the financial statements.

Example SEC staff comment: Duplicative disclosure about critical accounting estimates

Your Critical Accounting Policies within MD&A appears to be a duplication of the accounting policies already disclosed in the notes to your financial statements. Please modify your disclosure to include disclosure that addresses the specific methods, assumptions and estimates underlying your critical accounting measurements. If you prefer to include this disclosure elsewhere in your filing, such as expanded disclosure in the notes to your financial statements, please consider including a simple cross-reference within your MD&A to avoid repetition.

Income taxes

The SEC staff has continued to focus on registrants' accounting for the realizability of deferred tax assets and the related disclosures both in the financial statements and in MD&A. In particular, the SEC staff has questioned the realizability of deferred tax assets recorded by registrants that have recognized consecutive annual losses or a significant loss in the current year. The staff also has asked questions when the reasons why a valuation allowance was recognized initially, reversed or significantly changed are not readily apparent. Also, the SEC staff often comments if a registrant omits disclosures or provides inadequate disclosures related to deferred tax assets.

Example SEC staff comment: Realizability of deferred tax assets

We note from your disclosure that cumulative profitable quarters and projected future pretax income are sources of positive evidence that led you to conclude that it is more likely than not you will realize your deferred tax asset. However, we note you recorded pretax operating losses in fiscal 2015, 2013 and during the nine months ended September 30, 2016. As it appears that pretax cumulative operating losses in recent years exist, please explain to us why you believe it was appropriate to reverse your entire valuation allowance in fiscal 2015. As part of your response, please provide us with your analysis of the positive and negative evidence considered in determining the likelihood that your deferred tax assets will be realized, including the weight given to each positive and/or negative factor and the extent to which each factor is objectively verifiable. Additionally, please include the significant assumptions used in your future pretax income projections and why you believe they are reasonable and appropriate.

The SEC staff has also challenged registrants' assertions that foreign earnings will be indefinitely reinvested and requested evidence supporting that assertion. This line of inquiry is often accompanied by a request to reconcile the registrant's assertion with its discussion of

liquidity in MD&A. Further, the SEC staff has also asked registrants whether they have appropriately considered and included all of the disclosures required by ASC 740 when deferred taxes have not been provided on undistributed foreign earnings.

The SEC staff has continued to express concern about the clarity of registrants' income tax rate reconciliations and the transparency of the effect of foreign earnings on their effective tax rates. More specifically, for material rate reconciliation items associated with foreign jurisdictions, the SEC staff asks registrants to disclose the identities of specific jurisdictions that materially affect the effective tax rate, their tax rates and information about the effects of such foreign jurisdictions (e.g., magnitude, mix) on the effective tax rate.

Further, the SEC staff has expressed concerns about the quality of registrants' MD&A disclosures related to income taxes. The SEC staff has indicated that the income tax disclosures in MD&A often aren't cohesive and don't tell a complete story about the company's tax positions and related trends and uncertainties.

Example SEC staff comment: Foreign earnings

You disclose that your global effective tax rate differs from the statutory rates, in part as a result of the mix of foreign income. Please provide expanded disclosures of the impact that changes in the mix of foreign income have had on your effective tax rate and specifically explain the relationship between the foreign and domestic effective tax rates in greater detail. In this regard, it appears that separately discussing the foreign effective income tax rates may be important information necessary to understanding your results of operations. To the extent that certain countries have had a more significant impact on your effective tax rate, disclose this information and include a discussion regarding how potential changes in such countries' operations may impact your results of operations. Refer to Item 303(a)(3)(i) of Regulation S-K and Section III.B of SEC Release No. 33-8350.

The SEC staff considers meeting the criteria to aggregate operating segments a high hurdle.

Segment reporting

The SEC staff has continued to focus on segment disclosures and the application of ASC 280. At the 2016 AICPA National Conference on Current SEC and PCAOB Developments, the SEC staff discussed its emphasis on the objectives and principles outlined in the segment reporting guidance.

When reviewing segment reporting, the SEC staff considers public information available from a registrant's earnings calls, website and industry or analyst presentations. The SEC staff has asked registrants to explain any inconsistencies between how the business is described in public information and how it is described in their segment footnote. The SEC staff also has requested an explanation when there are inconsistencies between the description of the business in other sections of a registrant's public filings and its segment footnote. For example, the staff has challenged registrants when they say the basis for identifying operating segments is something other than product or service lines (e.g., geography) but publicly disclosed information suggests that management uses financial information by product or service lines to make decisions and allocate resources.

The SEC staff expects registrants to continually monitor business developments. The staff has inquired about changes in the business that could affect the identification or aggregation of operating segments.

To evaluate a registrant's identification of operating segments, the SEC staff often requests a description of the registrant's organizational structure and detailed information about employees who report directly to the chief operating decision maker (CODM), including their roles and responsibilities and interactions with the CODM. The SEC staff also considers the basis on which budgets and forecasts are prepared and how performance objectives are evaluated, including how executive compensation is determined (e.g., performance criteria

underlying compensation plans). This information allows the SEC staff to challenge whether the identified operating segments are consistent with how the CODM assesses performance and allocates resources.

Further, when a registrant identifies only one operating segment, the SEC staff has challenged how decisions can be made about performance and resources for the company as a whole without evaluating discrete financial information on a more disaggregated basis. The SEC staff has said that if the application of the guidance in ASC 280 results in the identification of a single operating segment, a registrant should disclose that it allocates resources and assesses financial performance on a consolidated basis and explain the basis for that management approach.

Example SEC staff comment: Identification of operating segments

Please tell us who your CODM is and provide us with your analysis in determining the CODM. As part of your response, please provide us with an organizational chart that includes the titles and roles of the individuals who report directly to the CODM. In doing so, specifically explain to us the responsibilities of these individuals and the manner in which they typically interact with the CODM. In addition, please respond to the following:

- ▶ Tell us the nature of the resource allocation and performance assessment decisions the CODM makes, including examples to illustrate the description.
- ▶ Describe the information regularly provided to the CODM and how frequently it is prepared.
- ▶ Describe the information regularly provided to the Board of Directors and how frequently it is prepared.
- ▶ Explain how budgets are prepared, who approves the budget at each step of the process, the level of detail discussed at each step and the level at which the CODM makes changes to the budget. Also describe the level of detail communicated to the CODM when actual results differ from budgets and who is involved in the meetings with the CODM to discuss budget-to-actual variances.
- ▶ Describe the basis for determining the compensation of the individuals that report to the CODM.

While the identification of operating segments follows a management approach, the aggregation of operating segments should be viewed from the investor's perspective. The SEC staff has stated that it is important for registrants to consider information such as industry reports and other analyses by users of the financial statements that may provide evidence of how a reasonable investor would analyze the company.

ASC 280 requires that aggregated operating segments have "similar economic characteristics," such that they would be expected to have similar long-term financial performance. The SEC staff has said that the expectation that operating segments will have similar economic characteristics (e.g., long-term average gross margins) in the future does not overcome a lack of similarity in their current and past performance.

The SEC staff often reviews the registrant's website, analyst presentations and information in public filings and raises questions if any of that information is inconsistent with the registrant's conclusion that aggregating operating segments is appropriate. For example, a discussion of diverging trends or differing results at two business lines could indicate that these two business lines, if they qualify as operating segments, may not be economically similar. The SEC staff has also requested historical and projected operating margins, gross margins, revenues and other measures of operating performance when challenging the aggregation of operating segments.

When a registrant has aggregated operating segments into a reportable segment, the staff has frequently asked for an explanation of why the registrant believes the five qualitative characteristics of the operating segments are similar, as required by ASC 280.

Example SEC staff comment: Aggregation of operating segments

We note that your five operating segments are aggregated into one reportable segment. Please address the following:

- ▶ Compare and contrast your operating segments relative to the areas listed in ASC 280-10-50-11(a) through (e). With respect to any differences among your operating segments, tell us why you determined that disaggregation was not warranted.
- ▶ Provide us with each operating segment's historical and projected revenues, gross margin, operating margin and measure of segment profitability.
- ▶ Tell us the basis of organization (i.e., why the company is organized in the manner that it is).

We continue to see a high level of staff focus in this area, even when the staff has previously commented on a registrant's segment reporting. Questions on segment reporting have often resulted in multiple rounds of comments, particularly when the registrant's initial response was not comprehensive. The SEC staff considers meeting the criteria to aggregate operating segments a high hurdle.

How we see it

Companies should challenge any conclusions they reach on operating segments that are inconsistent with their basic organizational structure, other public information, changes in the business environment or the level of disaggregation used by the CODM in making key operating decisions. In addition, companies should consider the processes the CODM uses to evaluate performance and allocate resources, including the CODM's interaction with direct reports, the basis on which budgets and forecasts are prepared, how executive compensation is determined (e.g., the performance criteria underlying compensation plans) and the related internal controls.

Companies should be prepared to respond to questions from the SEC staff whenever they make changes in their segment reporting or make changes in the business that may indicate that segment disclosures should change.

SEC comment letter best practices

A thoughtful and well-written response letter is important to resolve SEC staff comment letters timely. When responding to SEC staff comment letters, keeping the following points in mind can make the comment process more efficient:

- ▶ Responses to each comment should focus on the specific question(s) asked by the SEC staff, and those responses should cite authoritative literature wherever possible.
- ▶ Responses should address the registrant's unique facts and circumstances. While it may be helpful to consider response letters from other registrants as a resource, registrants should not just repeat responses made by other registrants to similar comments.
- ▶ If revisions are being made to a filing as a result of a comment from the SEC staff, responses should indicate specifically where these revisions are being made. If additional disclosure will be included in a future filing, the registrant should consider providing the proposed language in its response letter to avoid an additional comment once the disclosure is filed.

- ▶ Companies should seek the input of all appropriate internal personnel and professional advisers (such as legal counsel and independent auditors) to determine whether they have responded to the comment letter in a complete and accurate manner. Waiting until a later round of comments to involve the necessary resources may delay or hinder a successful resolution.

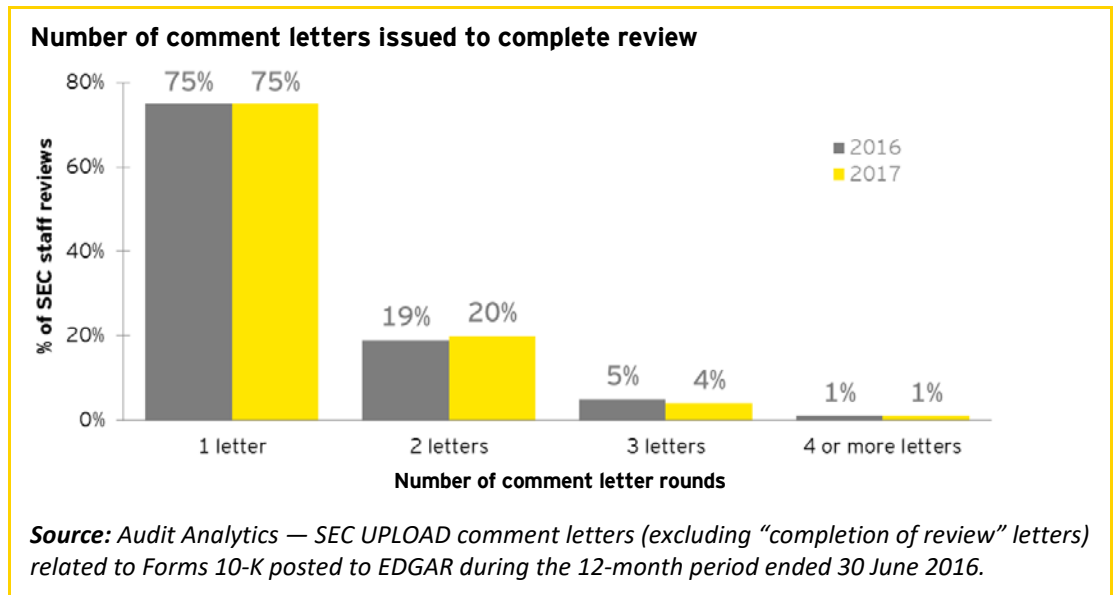
A registrant should not assume that because the SEC staff has issued a comment, it disagrees with the registrant’s disclosures or accounting treatment. The SEC staff often issues comments to obtain additional information to better understand whether a company complied with requirements or whether additional disclosure may be material to investors. Registrants should consider the materiality of additional disclosures before including them solely to clear an SEC staff comment.

Providing a thorough explanation or analysis of an issue to the SEC staff beyond the existing disclosure may help the staff better understand the accounting and disclosure, and it often will resolve the comment without adding more disclosure. To facilitate such responses, registrants should maintain contemporaneous documentation of significant accounting and disclosure decisions. Judgment applied and documented contemporaneously is more persuasive than a retrospective defense following receipt of an SEC staff comment.

While SEC staff comment letters often request a response within 10 business days, companies should not hesitate to request an extension if more time will enhance the quality of their response.

In the 12 months ended 30 June 2017, three quarters of the reviews were completed with only one round of comments (i.e., a letter from the SEC staff and a response from the company). That percentage was unchanged from the previous year.

Proactive communication with the SEC staff may expedite the comment letter process.



The vast majority of reviews are closed after one or two comment letters, which shows that a well-organized process for responding to SEC staff comments can minimize the amount of back and forth with the SEC staff. We have also found that holding a live discussion with the SEC staff rather than communicating exclusively in writing can help resolve a difficult comment. For example, if a comment remains outstanding after two rounds of comments, a company might consider requesting a conference call to discuss the issues.

Endnotes:

- ¹ Speech by Jay Clayton, SEC Chairman, at the Economic Club of New York, July 2017. The text is available at <https://www.sec.gov/news/speech/remarks-economic-club-new-york>.
- ² Speech by Wesley R. Bricker, SEC Chief Accountant, at the 2017 Baruch College Financial Reporting Conference. The text is available at <https://www.sec.gov/news/speech/remarks-2017-baruch-college-financial-reporting-conference-advancing-our-capital>.

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