

Report on SEC Comment Letter Trends Highlight Issues for 10-K Disclosure

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Deloitte recently published a [127-page report](#) on SEC comment letter trends that companies may find useful as they prepare their annual 10-K disclosures.

Recognizing that Keith Higgins and other SEC staff members have admonished companies not to provide disclosure merely because it is known to be a “hot button” that may generate an SEC comment, with similar advice from the staff that even the receipt of an SEC letter with specific comments is supposed to be the beginning of a discussion rather than a set of demands, companies should still be aware of the topics that generate the strongest staff focus.

Segment reporting is one of the perennial issues, including the identification of the chief operating decision maker, the identification of operating segments, and the analysis supporting the aggregation of operating segments. Other issues that attract SEC staff attention include revenue recognition, income taxes such as deferred tax assets and reinvested foreign earnings and the classification of items in cash flow statements. When companies disclose immaterial error corrections in their filings, they may get asked whether they have appropriately assessed their internal control over financial reporting to confirm there is no material weakness.

As expected, the staff comments often concentrate on MD&A disclosure as well. In terms of the requirement to disclose known trends or uncertainties, the staff may inquire about whether companies should quantify the components of overall changes in financial statement line items and also enhance their analysis. For example, they may ask companies to discuss any additional influences on revenue beyond the mix of volume and products. These may be the possible impact of pricing, acquisitions, new contracts, inflation and foreign exchange. For the disclosure on liquidity and capital resources, the SEC staff may ask companies to consider disclosing the primary drivers and significant developments after the balance sheet date, key indicators such as leverage ratios and other metrics, and the possible impact of changes in leverage, any funding strains, restrictions on cash flows from subsidiaries and the influence of any debt covenants and ratios.

Risk factors often draw attention, particularly cybersecurity. When companies disclose breaches, the SEC staff may want disclosure that explains when they occurred and ask companies to describe the material costs and consequences involved, such as direct costs, reputational costs, impact on customers and any increased protection sought. SEC comments on cybersecurity breaches could also inquire about disclosure of any insurance policies and limits on coverage.

Finally, companies should reconcile their public filings with other communications on corporate websites and as discussed in analyst calls, such as the use of non-GAAP measures in those communications.

The Deloitte report also includes helpful insights for comments on IPO company registration statements and foreign private issuers.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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