


Technology sector

Analysis of SEC comment letters in the semiconductor industry*

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*connectedthinking

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Objectives and scope of study

Objectives and scope of study

The objectives of this study are to highlight key areas that the SEC has focused on in their comment letters to semiconductor registrants in the last year, to examine and discuss any particular trends in SEC comment letters, and to provide specific examples of the types of comments that registrants are receiving from the SEC on specific areas.

Although this report does not cover the registrants' responses to the comments, the material should provide readers with information on the current areas of SEC focus.

The comment letters studied and analyzed for the purpose of this study were restricted to those issued by the SEC on the following filings: Form 10-K, Form 10-K/A, Form 10-Q, Form 20-F, Form 6-K, Form 10-KSB, and Form S-1.

This study includes observations from a total of 79 comment letters issued to 48 semiconductor registrants from August 1, 2007 through July 15, 2008, as included on the SEC's Web site.

We analyzed the nature of the comments within key areas noted in the comment letters to highlight specific areas of current focus for the SEC. The distribution of comments by specific areas of focus within each key areas has been provided along with a brief summary, explaining each area of focus in detail. Actual comment letter examples have also been provided to further illustrate the SEC's views.

This study is a follow-on to a study completed in 2007 where we reviewed observations from a total of 121 comment letters issued to 52 semiconductor registrants from June 1, 2006 through July 31, 2007, as included on the SEC's Web site, and a similar study in 2006. Where applicable, we have included a comparison of results between our 2008 and earlier studies.

Scope of study

'34 Act Filings (Non-IPO filings):

As part of our study, we performed a review of comment letters related to the following '34 Act filings of 43 companies:

Type of filing	Number of comment letters	Number of comments
10-K	42	146
10-Q	9	12
20-F	5	41
10-K/A	1	3
10-KSB	2	6
Total	59	208

S-1 filings (IPO filings):

We also performed a review of selected comment letters related to Form S-1 filings in the past year of five companies that had filed for initial public offerings:

Type of filing	Number of comment Letters	Number of comments
S-1	20	278
Total	20	278

Scope of study

We restricted our study to annual/quarterly public filings and S-1 filings. The listing below shows the remaining filings reviewed by the SEC for which we did not perform a detailed review:

Type of filing	Number of comment letters
8-K, 8-K/A	12
SB-2	3
S-3, S-4	2
F-1	2
TO-I	4
14 A	9
Total	32

Executive summary

Executive summary

On August 1, 2004, the SEC began releasing comment and response letters related to public filings.

A total of 59 SEC comment letters on '34 Act filings were issued to 43 public semiconductor companies from August 1, 2007 through July 15, 2008. A total of 20 comment letters were issued to five companies who filed for an initial public offering during the same time frame.

The comment letters reviewed as part of this study cover a range of different areas within the filings. The distribution of comments among areas of Non-IPO filings in this study remained largely consistent with the 2007 study, with a slight reduction in the percentage of comments relating to financial statements and MD&A. The table below highlights the distribution of comments related to different areas of the Non-IPO (1934 Act) filings.

Topics	Non-IPO filing 2008	Non-IPO filing 2007
Other	26%	18%
MD&A	22%	25%
Financial statements	52%	57%

Executive summary

Topics	IPO filings 2008	IPO filings 2007	
Other	76%	57%	The distribution among areas of IPO filings changed significantly from our 2007 study, with more comments relating to areas outside of the financial statements and MD&A. The table to the left highlights the distribution of comments related to different areas of IPO (S-1) filings.
MD&A	11%	17%	Comments on “Other” areas of the filing (outside of the actual financial statements and MD&A) increased from 57% of comments in 2007 to 76% in 2008. These “Other” areas did, however, include financial information, with an increase in comments on executive compensation disclosures and other financial information within the filing, as well as non-financial areas of filings, such as the prospectus summary, risk factors and the business section.
Financial statements	13%	26%	

While the analysis shows that the majority of comments for S-1 filings were on areas outside of the financial statements, this is largely a result of the significant number of comments received on S-1 filings, many of which are legal in nature. Furthermore, as noted above, many of the comments received on areas outside of MD&A and Financial Statements do relate to financial information and are financial in nature. It is clear, therefore, that the SEC is continuing to ask a significant number of questions about IPO financials. In fact, we found that 63% of comments received in 2008 were for accounting or financial related items, even if they related to areas outside of the financial statements and MD&A (60% in 2007).

Non-IPO filings

Within non-IPO-filings ('34 Act filings), revenue remained the area which drew most comments from the SEC when it comes to financial statements (22% of all comments). We also saw an increase in the number of comments on the valuation of investments. Although perhaps expected given the ongoing credit concerns in the US and global financial markets, we note that the timing of the survey did not provide for any analysis of comments on the adoption of SFAS 157. Instead, the comments were more related to SFAS 115 and the valuation of privately-held investments. We noted a decrease in comments on internal controls and stock compensation, reflective of the increased familiarity with the standards that govern the accounting and reporting under both areas.

IPO filings

The highest percentage of comments in IPO filings continue to be on non-accounting areas, with approximately 37% of comments in 2008 being non-financial related (40% in 2007). We did, however, see an increase in comments on executive compensation (18% of comments compared to less than 5% in 2007) and a continued focus from the staff on comments around cheap stock and stock-based compensation.

Recent trends

As noted in the introduction, the survey does not reflect the trends seen in comment letters issued since July 2008. While not formally addressed as part of this study, the SEC has, not surprisingly, recently increased its focus on areas such as:

- The valuation of investments;
- The valuation of long-lived assets;
- The valuation of goodwill; and
- Comments around liquidity and capital resources.

These more recent comments are reflective of the ongoing economic challenges seen by registrants across all sectors.

Key highlights in '34 Act comment letters (Non-IPO filings)

'34 Act comment letters (Non-IPO filings)

Overview

Our review of the comment letters relating to '34 Act filings (non-IPO filings) highlighted some key themes which were prevalent throughout our study. Each theme noted in the table below represents 3% or more of total comments issued by the SEC.

Our review of the comment letters highlighted trends in key topics that were focused on by the SEC over the past three years as follows:

- Revenue continues to be the main area of comment by the SEC.
- The increase in comments on investments is of note given SFAS 157 was only adopted by most companies during Q1 of fiscal 2008, and given the period covered by our study, the staff had not yet provided any comments around the adoption of SFAS 157 or disclosure requirements of SFAS 157. The increase is therefore likely a result of the general increase in valuation considerations prior to the adoption of SFAS 157 given the on-going credit concerns in US and global markets.
- The decrease in comments on stock-based compensation and internal controls appears to be a result of increased familiarity with the relevant regulation.

Topics	8/07-7/08	6/06-7/07	8/04-5/06
Revenue	22%	12%	19%
Investments	8%	3%	3%
Stock-based compensation	6%	10%	5%
Acquisition	5%	6%	3%
Internal controls	5%	8%	10%
Debt	4%	3%	1%
Inventory	4%	2%	6%
Presentation	4%	8%	6%
Section 906 certification	4%	0%	0%
Audit	3%	1%	2%
Contingencies	3%	2%	3%
Name/Consent of appraiser	3%	2%	0%

'34 Act comment letters (Non-IPO filings)

The table shown below breaks out the “Other” category into more detail. Although these categories do not represent a common trend, they are an indication of the wide variety of topics that the SEC has addressed during its review.

Topic	Number of comments	% of total
MD&A Disclosure	5	2%
Segments	5	2%
Goodwill and Intangibles	4	2%
Income taxes	4	2%
In-Process research and development	4	2%
Non-GAAP	4	2%
Restructuring	4	2%
Cashflow	3	1%
Commitments	3	1%
Divestiture	3	1%
Restatement	3	1%
Warrants	3	1%
Assets	2	1%
Long-lived assets	2	1%
Regulation	2	1%
Other areas ¹	1	-

¹ Other areas where one comment was noted were Discontinued operations, EPS, Executive compensation, Foreign exchange, Non-accounting, Pension, PP&E, Related party and Variable interests.

Some other overall themes we noted from our study of the comment letters include the following:

- The five areas drawing the most comments from the SEC were revenue, investments, stock-based compensation, acquisitions, and internal controls. These top five areas, combined, represented 46% of the total comments received in comment letters (these same areas represented 39% of '34 Act comments in the 2007 study).
- The SEC continued to emphasize that the wording used in disclosures needs to be clear, concise and unqualified. The use of words such as “generally” and “usually” without further explanation have consistently raised comments from the SEC.
- The SEC again reiterated that disclosures explaining movements in financial statement line items in the MD&A need to be quantified. The SEC believes that each significant factor affecting the increase/decrease should be specified to provide clarity for the investor.
- Several comments were also noted cautioning against the mention of use of external appraisers for valuations without naming them as an expert and obtaining a consent.
- Our study revealed that 39% of the comments suggested that the revisions should be made in future filings whereas 42% requested an immediate response (where additional comments would be provided based on the response). The remaining 19% of comments asked for a response and requested the same revisions be made in future filings. These findings were largely consistent with our 2007 study, where the percentages were 44%, 36% and 20%, respectively.

Revenue

During our review of '34 Act filings, 44 comments, or 22% of all the comments received, were related to revenue, as compared to 28 comments or 12% in the 2007 study. The focus on revenue is highlighted by the finding that for one company, 9 of their 10 comments were related to revenue. As seen, the nature of comments was broadly consistent with the findings of the 2007 study. Revenue-related comments can be further analyzed as indicated in the table shown below:

Topics	Non-IPO filings 2008	Non-IPO filings 2007
MD&A/Notes disclosure	18%	15%
Distributer revenue	35%	38%
Accounting policies	50%	47%

'34 Act comment letters (Non-IPO filings)

Accounting policies

Comments in this category referred mainly to companies' discussions of significant accounting policies in the MD&A or footnotes. In a number of comments, the SEC asked how specific accounting pronouncements were applied or asked that the company explain how revenue was recognized for a specific transaction. In many cases, the SEC requested further clarification or additional disclosures within the accounting policy (i.e. accounting for multiple deliverables, acceptance clauses, long-term construction contracts, non-monetary exchanges, etc.). A common theme highlighted the need for disclosures on how a company accounts for scenarios specific to its business.

Distributor revenue

These are comments received in relation to appropriateness of companies' revenue recognition policy for distributors (sell-in vs. sell-through) as well as consideration of any specific contractual agreements (i.e. price adjustments, price concessions, rights of return, etc.). The comments also focused on expanded disclosure of gross deferred revenue and deferred costs and quantification and assessment of impairment of deferred costs.

MD&A/Notes disclosures

These comments generally focused on the lack of discussion of factors that affect fluctuations in revenue, as disclosed in the MD&A, and on the use of words like "generally" when describing revenue accounting policy. When significant changes have taken place from period to period, the SEC has requested that companies identify and quantify each of the factors.

The following excerpts, of comment letters reviewed, represent previously highlighted themes:

"Please tell us and disclose in future filings the contract elements permitting separate revenue recognition and describe how they are distinguished."

- Credence Systems Corp. (2/17/2008)

'34 Act comment letters (Non-IPO filings)

“Please tell us and in future filings disclose how the general revenue recognition criteria listed in the first paragraph of this section specifically apply to the company’s transactions. For example, please discuss when title transfers and the nature of any acceptance terms. Discuss how you determine when to record revenue in cases where there are acceptance terms.”

- SiRF Technology Holdings, Inc. (12/3/2007)

“Please tell us and revise your critical accounting policies and footnotes to your financial statements in future filings to discuss the key terms of your pricing adjustments and product return rights, such as the time period during which a distributor can return the product or request a price adjustment and how these impact your accounting treatment. Please clearly disclose the pricing adjustments that you offer under your competitive pricing programs and rebates and your accounting treatment for each of these adjustments. Please also discuss whether returns or price adjustments are capped to a certain percentage of sales price or margins and whether any of your arrangements with distributors would allow or require you to grant price discounts below the cost of the product.”

- Broadcom Corporation (4/29/2008)

“We note that for distributors, who have stock rotation, price protection and ship from stock pricing adjustment rights, the company defers revenue and related cost of revenues on sales to these distributors until the product is sold through by the distributor to an end-customer. Please tell us and revise the note in future filings to specifically explain why these rights result in deferral of revenues. For example, if true, you could disclose that you are unable to reasonably estimate the inventory that could be returned pursuant to the stock rotation rights. Likewise, if true, you could disclose that in light of the possible changes to the sales price resulting from price protection and price adjustment rights granted, and your inability to reasonably estimate possible changes, the sales price to distributor is not fixed or determinable until the final sale to the end-user.”

- Integrated Device Technology, Inc. (2/21/2008)

“In light of the fact that you are unable to estimate the price protection, product price reductions, and ship from stock pricing credits you issue under arrangements with your distributors and, therefore, an unknown portion of the amount recorded as “deferred income on shipments to distributors” will never be recognized as revenue, please tell us how you concluded that “deferred income” is an appropriate title for the liability account.

'34 Act comment letters (Non-IPO filings)

We note that Regulation S-X calls for financial statement caption titles that reflect the significance and the character of the items being presented. Please tell us, for example, whether you considered a title for the account such as “customer deposit, net of deferred inventory costs” or other such titles that better depict the nature of the liability.”

- Integrated Device Technology, Inc. (3/26/2008)

“We note that distributors can return physical inventory to you under the stock rotation rights granted to them and it appears that you are unable to reasonably estimate the amount of the inventory that may be returned. Please discuss your rationale under US GAAP for relieving inventory at the time of shipment to the distributor. Please reference the specific authoritative literature on which you have based your policy.”

- Integrated Device Technology, Inc. (2/21/2008)

“We note that you use the word generally when describing your revenue accounting policy. Please tell us and revise in future filings to include clear descriptions of your accounting policies which set forth the accounting you follow for each type of transaction you undertake, including those transactions you may not encounter frequently.”

- NetLogic Microsystems, Inc. (4/17/2008)

“We note that you also defer the related cost of revenue. Tell us whether you present both the deferred costs of sales and the deferred revenue within the Deferred income on shipments to distributors (liability) caption of the balance sheet and, if so, please also explain how that presentation complies with paragraph 5 of FIN 39 which permits the offsetting of assets and liabilities only when a legal right of setoff exists.

- Tell us the amounts of gross deferred cost of revenues and gross deferred revenue presented in that balance sheet caption as of April 1, 2007 and December 30, 2007.”
- Please describe to us your “ship from stock pricing adjustment” arrangements with your distributors.

Please tell us what you mean by the disclosure that you recognize revenue on a “sell-in” basis for Asian and Japanese distributors. Tell us and revise future filings to disclose the point at which you recognize revenue under these arrangements.”

- Integrated Device Technology, Inc. (2/21/2008)

'34 Act comment letters (Non-IPO filings)

“Describe to us the methodology, if any, employed to evaluate the deferred costs for impairment and the authoritative literature in US GAAP on which you base that policy.”

- Integrated Device Technology, Inc. (2/21/2008)

“Please revise Note 1 to provide a discussion of your policies for testing and accounting for the impairment of the deferred cost of sale amounts. In addition, please tell us and revise the note in future filings to disclose whether any of your arrangements with distributors would require you to grant price protection, product price reductions, and ship from stock pricing credits below the cost of the product.

In addition, as we note that impairment of the deferred costs and the amounts of price protection, product price reductions, and ship from stock pricing credits you grant in future periods could reasonably likely have a material impact on your results of operations, liquidity or capital resources, please revise MD&A in future filings to disclose the amounts of gross deferred revenues and gross deferred costs of sales presented in the “deferred income” caption of your balance sheets. Provide an accompanying discussion of the changes in the gross balances in each reported period, highlighting the impact on current and future results, liquidity or capital resources. Quantify and discuss the reasons for any impairment of deferred costs of sales. Further, please discuss any trends noted over the reported periods. Refer to Item 303(a) of Regulation S-K.”

- Integrated Device Technology, Inc. (3/26/2008)

“We note that after you disclose the four fundamental revenue recognition criteria outlined in SAB 104 you indicate “Determination of the criteria set forth in items in three and four above is based on management’s judgment regarding the fixed nature of the fee charged for services rendered and products delivered...” Please address the following:

- Explain to us what you mean by the disclosures that the fixed nature of the fee charged for services rendered and products delivered is based on management’s “judgment”.
- Explain to us why determination of the fees for the services and the products require management judgment.
- Explain to us why you conclude that your revenue recognition policy is in accordance with the recognition criterion that the seller’s price to the buyer is fixed or determinable. Refer to paragraph 1 of SAB Topic 13A.
- Expand your revenue recognition policy to clarify your accounting in future filings and please provide us with your proposed disclosure.”

- Jazz Technologies, Inc. (fka Acquicor Technology, Inc.) (4/3/2008)

'34 Act comment letters (Non-IPO filings)

Investment themes	Percentages	Investments
Expanded disclosure	69%	During our review of '34 Act filings, 16 comments, or 8% of the total comments received, related to investments issues such as valuation of the investments, asset-backed securities and auction rate securities, as compared to seven comments or 3% in the 2007 study. We did not note, however, any comments on SFAS 157 adoption by the time this study was developed due to the timing of the issuance of those comments and the completion of this report. Within the comment letters, those related to investments can be further analyzed as indicated in the table to the left.
Presentation	31%	

Expanded disclosure

In this category, the SEC asked registrants to provide more detailed disclosure about the nature of the investments, critical accounting policy disclosure, factors that may affect the value and liquidity, likely material impact on financial condition, and information necessary to understand the trend and uncertainty.

Presentation

In this category, the SEC asked registrants to provide more detailed information about the classification of investments and follow the disclosure requirements of SFAS 115 and other relevant guidance.

The following excerpts, of comment letters reviewed, represent previously highlighted themes:

“We note that approximately \$102 million of your assets are in the form of marketable securities, which consist of auction rate securities and variable rate demand notes. In your future filings, as applicable, please clearly discuss the nature of the material aspects of these securities as necessary to provide your investors with information necessary for a clear understanding of your balance sheet items. For example, as appropriate, identify the nature of your auction rate securities and variable rate demand notes that you hold, indicate what factors may affect the value or liquidity of those securities, disclose how the interest rates on those investments will be determined and any material risks. Also, if those securities are reasonably likely to affect your financial condition in a material way, please expand your discussion and analysis in applicable future filings to provide your investors with information necessary for a clear understanding of the trend or uncertainty. Refer to Item 303(a) of Regulation S-K. Also add any appropriate disclosure required by Item 305 of Regulation S-K.”

- Eagle Test Systems, Inc. (2/29/2008)

'34 Act comment letters (Non-IPO filings)

“Tell us and revise future filings to disclose how you determined the \$5.9 million value attributed to the equity investment in GloNav.

Tell us and revise future filings to clarify whether you are accounting for the investment in GloNav under the cost or equity method of accounting. Please discuss how you considered your ability to exercise significant influence over GloNav when concluding on the appropriate accounting treatment for the investment.”

- **Broadcom Corporation (4/29/2008)**

“With regards to your marketable securities that are classified as available-for-sale, please tell us about any gains or losses recorded as a part of net income and other comprehensive income, if any. In addition, please revise future filings to provide all of the disclosures required by paragraphs 19-22 of SFAS 115, as applicable.”

- **IPG Photonics Corporation (3/31/2008)**

Stock-based compensation	2008	2007
Disclosure	50%	22%
Presentation	10%	56%
Valuation	40%	22%

Stock-based compensation

During our review of '34 Act filings, 11 comments, or 6% of the total comments received, related to stock-based compensation, as compared to 24 comments or 10% in the 2007 study. A significant number of the comments were issued to companies filing restated financial statements as a result of option backdating investigations.

As is evident, the SEC's focus seemed to have shifted more to valuation and disclosure issues in the current study versus presentation issues in the prior study. Within the comment letters, those related to stock-based compensation can be further analyzed as indicated in the table to the left.

Disclosure

Most of the comments in this category requested registrants to disclose restated stock-based compensation costs as required by FASB Statement No. 123R. Examples of other disclosures requested included expanded disclosures on impact of adoption and material one-time expense reversed on forfeiture.

Valuation

This category relates primarily to companies' rationale in determining the volatility assumption in options' fair value calculations and other valuation assumptions.

'34 Act comment letters (Non-IPO filings)

In many cases, the SEC requested additional explanation or disclosures with respect to companies' underlying data or changes in assumptions from prior year (i.e., exercise prices, volume of market activity, length of expected option terms etc.).

Presentation

Comments in this category mainly focused on improving the presentation of the financial statements or footnotes. The SEC primarily requested clarification of option-related information or reallocation of stock-based compensation amounts to the appropriate income statement line items.

The following excerpts, of comment letters reviewed, represent previously highlighted themes:

“Please amend the footnotes to the audited financial statements to disclose restated stock compensation cost for each annual period prior to the most recent three years presented in the filing, as should have been reported under paragraph 45.c.2 of FASB Statement No. 123. The total of the restated stock-based compensation cost should be reconciled to the disclosure of the cumulative adjustment to opening retained earnings.”

- Asyst Technologies, Inc. (12/4/2007)

“We see from page 115 that volatility decreased from 92% at December 31, 2005 to 68% at December 31, 2006. Please discuss the change in estimates that resulted in the change in the volatility assumption.”

- Asyst Technologies, Inc. (12/4/2007)

“We note footnote 4 to your “Grants of Plan-Based Awards” table states that “the dollar value of these awards is the compensation cost recognized for financial statement reporting purposes for the fiscal year ended December 31, 2007 in accordance with the provisions of Statement of Financial Accounting Standards No. 123R, “Share-based Payments,” (SFAS 123R), but excluding any estimate of future forfeitures and reflecting the effect of any actual forfeitures.” Please reconcile for us this description with the column title “Grant Date Fair Value of Stock and Option Awards” and clarify for us what these amounts represent. Further we note that footnotes 1 and 2 to your Summary Compensation Table provide the same explanation. Please clarify if this is correct and whether both of these amounts represent the amount of stock expense recognized in fiscal 2007.”

- NetLogic Microsystems, Inc. (5/9/2008)

Acquisition

During our review of '34 Act filings, 10 comments, or 5% of all the comments received, related to acquisition issues; as compared to 15 comments or 6% in the 2007 study. Comments were primarily related to the companies' disclosures not meeting the requirements of SFAS 141, or additional disclosures relating to purchase price allocation being required.

Other comments in this area mainly asked companies to provide the SEC staff more information on significance tests (as defined under Rule 3-05 of Regulation S-X) and more information on specific intangible assets generated as a result of the acquisition.

The following are excerpts from comment letters reviewed:

"We note that you allocated approximately \$36 million of the purchase price of Jazz Semiconductor to an intangible asset named Facilities Lease. Please address the following:

Please explain to us about the nature of this intangible asset and why your recognition of this asset is in accordance with U.S. GAAP. Refer to paragraph 39 and Appendix A of SFAS 141. Also in this regard, we note on page 77 that you are amortizing this asset over a 20-year period. Please explain to us why you conclude that the 20-year amortization period is appropriate per U.S. GAAP."

- Jazz Technologies, Inc. (fka Acquicor Technology, Inc.) (4/3/2008)

"We note that during the quarter you acquired the Power Control Systems business of International Rectifier Corporation and the PM Group PLC. Please provide us with your calculation of the income significance test as outlined in Rule 1-02(w) of Regulation S-X for these acquisitions. Please also refer to Rule 3-05 of Regulation S-X."

- Vishay Intertechnology, Inc. (12/27/2007)

"It was noted that the company needs to revise future filings to disclose the primary reasons for the acquisition, including a description of the factors that contributed to a purchase price that results in recognition of goodwill."

- Atheros Communications, Inc. (12/28/2007)

'34 Act comment letters (Non-IPO filings)

Internal controls	2008	2007
Further clarity required	80%	68%
Disclosure of changes	20%	32%

Internal controls

During our review of '34 Act filings, 10 comments, or 5% of all the comments received, related to internal controls, as compared to 19 comments or 8% in 2007 study.

Within the comment letters, those related to internal controls can be further analyzed as indicated in the table to the left.

Further clarity required

As noted in the chart to the left, 80% of the comments on internal control disclosures were focused on improving the clarity of internal controls disclosures. The SEC believes that many of the current disclosures continue to be too vague to explain to the reader the effectiveness of existing internal controls and hence they requested more definitive language to be included within the internal control disclosures. More specifically, they requested management's conclusion on the effectiveness of disclosure controls and procedures to be clearly stated.

Disclosure of changes

The comments reviewed in this category requested registrants to add additional language to their internal control disclosures in future filings. The additional information requested was principally concerned with communication of any changes, not just significant changes, in internal controls since prior company filings as required by Item 308 (c) of Regulation S-K. Also the comments reviewed in this category related to material weaknesses and requested registrants to disclose how the material weaknesses were found and specific steps taken to remediate them.

The following excerpts, of comment letters reviewed, represent previously highlighted themes:

"We note your statement that the chief executive officer and chief financial officer have concluded that the company's disclosure controls and procedures are effective "subject to the limitations noted in this Part II, Item 9A." Given the exceptions noted, it remains unclear whether your chief executive officer and chief financial officer have concluded that your disclosure controls and procedures are effective. Please revise your disclosure in future filings to state, in clear and unqualified language, the conclusions reached by your chief executive officer and your chief financial officer on the effectiveness of your disclosure controls and procedures. Otherwise, please tell us why it is appropriate to include this exception."

- Credence Systems Corporation (2/17/2008)

“We note your statement in your Form 10-KSB for your fiscal year ended May 31, 2007 that your disclosure controls are ineffective due to several deficiencies. For each identified deficiency, disclose when it was identified, who identified it, the causes for the deficiency, the steps you have taken to rectify the situation, and where applicable, why the deficiency persists. Add a risk factor that discloses the risk to investors from the existence and continuing nature of the deficiencies.”

- Open Energy Corporation (10/15/2007)

Other selected categories of comments received

In addition to the key areas covered discussed previously, we also noted several other areas of focus, including the following:

Topic	8/07-7/08		6/06-7/07	
	Number of comments	% of comments	Number of comments	% of comments
Debt	9	4%	7	3%
Inventory	9	4%	6	2%
Presentation	9	4%	19	8%
Section 906 certification	8	4%	0	0%
Audit	7	3%	2	1%
Contingencies	6	3%	4	2%
Name/Consent of appraiser	6	3%	4	2%

Debt

Four percent (4%) of the total comments reviewed focused on debt. Many of the comments required companies to provide more detail of financial covenants, or requested disclosures on accounting for certain debt instruments. The following is an excerpt from a comment letter reviewed:

“We reference the disclosure that \$126 million of your total debt obligations have cross default provisions. We also note that you were not in compliance with certain covenants as of December 31, 2006 and no waiver letter was obtained from the lender, resulting in \$22 million of debt being recorded as a current liability. Please tell us why you should not record additional debt within current liabilities as a result of the cross default provisions.”

- Atmel Corporation (8/8/2007)

Inventory

Four percent (4%) of the total comments received focused on inventory. The majority of these comments related to valuation reserves. Others related to further clarification on accounting treatment. The following is an excerpt from a comment letter reviewed:

“We note that you maintain reserves for potentially excess, obsolete, and slow-moving inventory. We also note that “...if [you] are able to sell previously reserved inventory, [you] reverse a portion of the reserve”. Note that a write-down of inventory to the lower of cost or market at the close of a fiscal period creates a new cost basis that subsequently cannot be marked up based on changes in underlying facts and circumstances. Please explain to us how your reversal of the previously recorded inventory reserve is in accordance with SAB Topic 5BB and tell us the amount of reversed inventory reserve for each of the fiscal years presented in your filing. Otherwise, please clarify your accounting policy on inventory valuation. Revise your future filings to address the matters outlined in our comment.”

- NVE Corporation (2/06/08)

Presentation

Four percent (4%) of the total comments received focused on presentation. The following is an excerpt from a comment letter reviewed:

'34 Act comment letters (Non-IPO filings)

“We see that you have recorded a [3rd party] litigation settlement during the period as part of non-operating other income in your Condensed Consolidated Statements of Operations. We note that the litigation related to certain professional advice received from [3rd party] and it is unclear why presentation of the income as non-operating is appropriate. As such, please tell us in detail why you believe the amount is properly classified as a non-operating activity or alternatively, please reclassify this amount within operating activities in future filings beginning with your next Form 10-K.”

- Micrel Incorporated (11/30/2007)

Section 906 certification

Four percent (4%) of the total comments received focused on Section 906 certification issues. The following is an excerpt from a comment letter reviewed:

“We note that the identification of the certifying individual at the beginning of the certification required by Exchange Act Rule 13a-14(a) also includes the title of the certifying individual. In future filings, the identification of the certifying individual at the beginning of the certification should be revised so as not to include the individual’s title.”

- Kulicke and Soffa Industries, Inc. (4/24/2008)

Audit

Three percent (3%) of the total comments reviewed focused on issues related to auditors or the audited/unaudited financial statements (note that four of the seven comments were to one registrant and were related to two names used by the same audit firm, therefore not reflective of typical comments). The following is an excerpt from a comment letter reviewed:

“Please tell us how you have complied with Article 2 to Regulation S-X in your selection of an auditor and discuss the factors you considered relevant when evaluating the appropriateness of that selection. Discuss each of the following:

- The location of the majority of your assets, revenues, and operations.
- The percentage of your assets, revenues, and operations located in the country where the auditor resides.
- The members of your management and percentage of accounting records located in the US and in Israel.
- Whether the majority of the audit work is conducted inside or outside the US.”

- Broadcom Corporation (8/24/2007)

'34 Act comment letters (Non-IPO filings)

Name/Consent of appraiser

Three percent (3%) of the total comments reviewed focused on issues related to name or consent of appraiser. The following is an excerpt from a comment letter reviewed:

“We note the disclosure on page 50 that you refer to an independent valuation firm in your allocation of amounts allocable to purchased in-process R&D for the acquisition of certain assets, intellectual property and technical designs related to IBM’s network processor product line. While in future filings management may elect to take full responsibility for valuing the equity instruments, if you choose to continue to refer to the expert in any capacity, please revise future filings, beginning with your next 10-Q, to name the independent valuation firm. In addition, please note that if you intend to incorporate your Form 10-K by reference into any registration statement, you will be required to include the consent of the independent valuation firm as an exhibit to the registration statement.”

- HIFN, Inc. (3/21/2008)

Contingencies

Three percent (3%) of the total comments reviewed focused on providing robust documentation of the nature of the contingencies and the estimate of possible losses. The following is an excerpt from a comment letter reviewed:

“In future filings, please provide the disclosures required by SFAS 5. Note that even if no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 of SFAS 5 are not met, disclosure of the contingency should indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made.”

- Applied Micro Circuits Corporation (7/31/07)

Key areas highlighted in Form S-1 comment letters (IPO filings)

Overview

We reviewed 20 comment letters covering 278 comments issued in connection with S-1 filings.

Comments on “Other” areas of the filing (outside of the financial statements and MD&A) increased from 57% of comments in 2007 to 76% in 2008. We noted from the study that the SEC appeared to have placed more emphasis on the non-financial areas of filings, such as the prospectus summary, risk factors, executive compensation and the business section.

While the analysis shows that the majority of comments for S-1 filings were on areas outside of the financial statements, this is largely a result of the significant number of comments received on S-1 filings, many of which are legal in nature. Furthermore, many of the comments received on areas outside of MD&A and Financial Statements do relate to financial information and are financial in nature. It is clear, therefore, that the SEC is continuing to ask a significant number of questions about IPO financials. In fact, we found that 63% of comments received in 2008 were for accounting or financial related items, even if they related to areas outside of the financial statements and MD&A (60% in 2007).

The distribution among areas of IPO filings again saw the majority of comments to areas outside of the financial statements and MD&A, as shown in the table:

Topics	IPO filings 2008	IPO filings 2007
Other	76%	57%
MD&A	10%	17%
Financial statements	14%	26%

Key areas highlighted in Form S-1 comment letters (IPO filings)

As previously noted, 76% of the comments seen as part of our 2008 study related to areas other than the financial statements and MD&A. The chart shown below breaks out the comments between various areas of the filing. These comments represents 5% or more of total comments issued by the SEC. The most significant area of comment relates to disclosures around executive compensation.

IPO filings: 2008 areas of comment	% of total
Executive compensation	20%
Notes	14%
Prospectus summary	11%
MD&A	10%
Risk factors	8%
Business	8%
Principal and selling shareholders	6%
Related-party transactions	5%
Exhibits	5%
Others	13%

Key areas highlighted in Form S-1 comment letters (IPO filings)

One of the primary drivers for the increase in comments outside of the financial statements and MD&A, was the increase in comments on executive compensation. This reflects the increase in disclosures requirements around executive compensation, including the CD&A requirements which were introduced in 2007. The wide range in categories is an indication of the wide variety of topics that the SEC has addressed during its review.

In addition, as noted previously, the relatively high percentage of comments on areas other than the financial statements and MD&A is also a reflection of the significant number of legal-related comments received on S-1 filings. A breakdown of the number of comments received is shown below.

Area of filing	Number of comments	% of total
Executive compensation	56	20%
Prospectus summary	31	11%
Risk factors	22	8%
Business	20	8%
Principal and selling shareholders	16	6%
Related-party transactions	15	5%
Exhibits	15	5%
Other areas	35	13%
Total other	209	76%
Financial statements (“F pages”)	40	14%
Management discussion & analysis (MD&A)	29	10%
Total comments	278	100%

Key areas highlighted in Form S-1 comment letters (IPO filings)

Our review of the comment letters highlighted some key themes which were prevalent throughout our study. Each theme noted below represents five percent (5%) or more of total comments issued by the SEC.

The major area of comment for S-1 filings still remains Non-Accounting related issues. This is consistent with our finding that the majority of comments are on areas other than the financial statements and MD&A and reflects the fact that many comments are legal in nature.

The SEC also paid more attention to the areas of executive compensation and equity transactions, while cheap stock and stock-based compensation continued to be an area of focus by the SEC.

Our review of the comment letters highlighted trends in key topics that were focused on by the SEC over the past two years. As noted previously, this also highlights that even though the majority of comments were on areas other than the financial statements and MD&A, 63% of comments in 2008 were financial or accounting in nature (60% in 2007).

S-1 themes	8/07-7/08	8/07-7/07
Non-accounting	37%	40%
Executive compensation	18%	3%
Related-party transactions	9%	7%
Equity	9%	4%
Stock-based compensation	5%	10%
Revenue	5%	7%
Financial statement presentation	3%	5%
Commitments	0%	7%
Other assets	0%	6%
All others	14%	11%

Non-accounting comments

As previously noted, non-accounting comments continue to represent the majority of comments, with 37% of comments in 2008 relating to non-financial areas compared to 40% in 2007.

The majority of the non-accounting comments related to areas other than in the financial statements and MD&A, consistent with the finding that the majority of comments on IPO filings are on areas outside of those typically seen as involving financial accounting comments, such as the prospectus summary, business section, risk factors and exhibits.

These findings again highlight how the SEC continues to comment on all aspects of S-1 filings.

On the following pages we have included a summary of the nature of certain of these non-accounting comments, as well as examples of the comments provided.

Breakdown of non-accounting comment areas

The following represent the key areas within the S-1 filings that included the most common non-accounting comments.

Prospectus summary

Comments under this section of the filing included requests for the use of plain English, the need for a more balanced overview of the filing and requests for independent, objective support for the statements regarding your leadership and market standing (including copies of the third-party support used).

Business

Comments under the Business section of the filing included the need for balanced discussions of competition and requests for the filer to include key terms of customers agreements and other key agreements (such as supply and license agreements). The SEC also requested filers to include copies of selected material agreements as exhibits.

Risk factors

Comments relating to the risk factors included seeking clarification on the description and ordering of risk factors.

Exhibits

Comments relating to the exhibits included requests for additional agreements to be filed as exhibits.

Key areas highlighted in Form S-1 comment letters (IPO filings)

Prospectus summary – examples of the comments provided

“Due to your extensive use of jargon, technical terms and abbreviations, it is difficult understand what you do. In the forepart of your prospectus, including the summary and risk factors, please eliminate your reliance on abbreviations, jargon and technical terms like SoC, MSO, CPE, PHY, “telcos,” “solutions” and “core competencies.” Instead, explain concepts like these in concrete, everyday language. In addition, in sections of your document other than the forepart, please try to avoid use of defined terms and jargon. Before revising your document in response to this comment, please carefully review Updated Staff Legal Bulletin No. 7 (June 7, 1999), particularly sample comments 4, 5, 14, 16, 39 and 40 appearing at the of the bulletin.”

- **Entropic Communications, Inc. (8/23/2007)**

“Please ensure that the information that you provide in your summary is balanced with positive and negative information provided with equal prominence. We note, for example:

- You quantify your revenue growth on page 2, but you do not quantify your history of losses and accumulated deficit until page 6; and
- You provide separately captioned and explained bullet points about your strengths on page 3, but you provide a brief bullet list of risks on page 4.”

- **Intellon Corporation (8/10/2007)**

“Please provide us independent, objective support for the statements regarding your leadership and market standing. For example, you state on page 1 of your prospectus that you “are a pioneer in providing accelerometers to China’s fast-growing mobile phone market and are among the leading providers of accelerometers for image projector supplying to several Japanese OEMs,” that your products “have been used by leading international and China-based manufacturers” and that one of your customers includes “a leading European automotive safety systems supplier.” Please also provide us with independent support for your statement that the thermal technology you are using to produce MEMS accelerometers has a “higher shock tolerance, lower failure rate and lower cost relative to alternative mechanical solutions.”

- **MEMSIC Inc. (10/25/2007)**

Key areas highlighted in Form S-1 comment letters (IPO filings)

“Please provide us with copies of the sources of all third-party data included in the prospectus. Please mark the materials so that they are keyed to the disclosure. Please tell us whether:

- The data is publicly available,
- Whether the sources of the cited data have consented to your use of their names and data,
- You commissioned any of the data, or
- It was prepared for use in this registration statement.”

- Rubicon Technology, Inc. (10/2/2007)

Business – examples of the comments provided

“Please describe the positive and negative factors pertaining to your competitive position relative to the competing technologies mentioned in the last paragraph of this section.”

- Entropic Communications, Inc. (8/23/2007)

“Please clearly distinguish between applications from which you currently generate revenue and potential applications.”

- Intellon Corporation (8/10/2007)

“We note your references to your reliance on licenses here and on page 16. Please disclose the material terms of the licenses, including duration, termination provisions, and scope of property involved. Also, file the material licenses as exhibits to the registration statement.”

- Intellon Corporation (8/10/2007)

“Please expand to discuss the material terms of the agreements with your major customers. Also, file the agreements as exhibits.”

- MEMSIC Inc. (10/25/2007), Rubicon Technology, Inc. (10/2/2007)

Key areas highlighted in Form S-1 comment letters (IPO filings)

Risk factors – examples of the comments provided

“This risk factor appears to cover a number of different risks that should be broken out in separate risk factors. Please provide a separate risk factor discussing the MoCA versus competing technologies and a separate risk factor discussing the fact that you may have to license your technology to potential competitors.”

- Entropic Communications, Inc. (8/23/2007)

“If your current operations or products require redesign or other changes to comply with existing requirements, please say so directly without use of vague terms like “may.” If you are uncertain, please explain the reason for the uncertainty.”

- Entropic Communications, Inc. (8/23/2007)

“You may not disclaim responsibility for your disclosure. Please revise your statement here and elsewhere that the disclosure is for “illustrative purposes only” to remove any implication of a disclaimer.”

- Entropic Communications, Inc. (8/23/2007)

“In view of its materiality, please relocate from page 13 the risk factor entitled, “We have incurred significant losses...” so that it is the first risk factor on page 7.”

- Rubicon Technology, Inc. (10/2/2007)

Exhibits – examples of the comments provided

“Please tell us why you have not yet filed agreements that have already been executed, like exhibit 10.16.”

- Intellon Corporation (8/10/2007)

“Please file complete exhibits. For example, please file the exhibits to the agreement filed as exhibit 2.1 to the extent material to an investment decision and are not otherwise disclosed. Also, include a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish to us a copy of any omitted schedule to the Commission upon request. See Item 601(b)(2) of Regulation S-K.”

- Entropic Communications, Inc. (8/23/2007)

“Please file the Cadence agreement mentioned on page 63. Also, please file the Arabella Software agreement described on page 14.”

- Entropic Communications, Inc. (8/23/2007)

Executive compensation

During our review of IPO filings, 51 comments, or 18% of total comments received, related to executive compensation. This compares to less than 5% of comments in the 2007 study. The significant increase to the number of comments seen in this area reflects the increased focus on the adequacy of executive compensation disclosures, including the need for Compensation Disclosure and Analysis since 2007.

These comments asked for further disclosures around compensation plans, descriptions of compensation increases, how the size of increases were determined and individual goals to be achieved in order for executive officers to earn those awards.

The following are excerpts from certain comment letters reviewed. These examples are representative of the themes highlighted above:

“We note your disclosure about the Chief Executive Officer providing an “analysis of annual corporate goal achievement” and “executive officer performance.” Please describe specifically how these factors were used to make compensation decisions during the applicable periods.”

- [Entropic Communications, Inc. \(8/23/2007\)](#)

“We note that you have not provided a quantitative discussion of the “pre-approved corporate goals” and “individual goals” to be achieved for your executive officers to earn their discretionary annual bonuses. Please provide such disclosure or alternatively tell us why you believe that the disclosure of such information would result in competitive harm such that the information could be excluded under Instruction 4 to Item 402(b). Further, qualitative goals generally need to be presented to conform to the requirements of Item 402(b) (2)(v). To the extent that it is appropriate to omit specific targets, discuss how difficult it would be for the executive or how likely it will be for the registrant to achieve the target levels or other factors.”

- [Entropic Communications, Inc. \(8/23/2007\)](#),

- [Rubicon Technology Inc. \(10/2/2007\)](#)

Key areas highlighted in Form S-1 comment letters (IPO filings)

“We note that you have not provided specific disclosure about the identity of the company and individual goals to be achieved in order for your executive officers to earn their awards. Please provide such disclosure or alternatively tell us why you believe that the disclosure of such information would result in competitive harm such that the information could be excluded under Instruction 4 to Item 402(b). To the extent that it is appropriate to omit specific targets, discuss how difficult it would be for the executive or how likely it will be for the registrant to achieve the target levels or other factors. Please see Instruction 4 to Item 402(b).”

- [Intellon Corporation \(8/10/2007\)](#)

“Explain in more detail the performance objectives and financial budgetary goals established for 2007 that will be considered in determining annual cash incentive compensation. Explain what factors the board considered in determining the percentages that would apply if described objectives were met. Clarify how annual cash incentives will be determined if some, but not all, corporate performance objectives are met.”

- [Entropic Communications, Inc. \(8/23/2007\)](#)

“We note your disclosure about how annual salaries are set at the time of hire taking into account the “executive officer’s scope of responsibilities, qualifications, experience, competitive salary information and internal equity” and in ensuing years on an assessment of “the executive’s performance against job responsibilities, overall company performance and competitive salary information.” Please describe specifically how these factors were used to make compensation decisions during the applicable periods.”

- [Entropic Communications, Inc. \(8/23/2007\)](#)

“We direct your attention to the Staff Observations in the Review of Executive Compensation Disclosure, dated October 9, 2007, and available on our website, for specific guidance in the preparation of this discussion. In addition to the specific comments that follow, please consider this report in providing a more fulsome compensation discussion and analysis in your amended filing. We may have further comment.”

- [MEMSIC Inc. \(10/25/2007\)](#)

Key areas highlighted in Form S-1 comment letters (IPO filings)

“It appears from your disclosure on pages 88 through 90 that you benchmark compensation of your named executive officers against peer companies in the semiconductor and other advanced technology and information technology-related industries. Please identify these peer companies. We note your statement in the second whole paragraph on page 89 that the annual Compensation & Entrepreneurship Report in Information Technology does not identify the companies sampled, however, your disclosure in this paragraph suggests that this is not the only report from which you derive information relating to compensation levels. If this is the only report you considered, it is unclear how you were able to determine that the data in the report related to companies you deemed your peers.”

- MEMSIC Inc. (10/25/2007)

“Please describe with specificity how the compensation committee determined the grants in 2006 and 2007. Include a discussion of how the factors led to decisions about the size of the option grants for the different executive officers.”

- MEMSIC Inc. (10/25/2007)

“Please expand the first paragraph on page 70 to describe with specificity how the factors considered led you to the equity incentive compensation decisions made in 2006. Include a discussion of how the factors led to decisions about option grants for the different executive officers.”

- Rubicon Technology, Inc. (10/2/2007)

Related-party transactions

During our review of IPO filings, 26 comments, or 9% of all comments received, related to disclosures around related-party transactions, including comments on principal and selling shareholders as well as specific comments on the related party section within the IPO filing itself.

These included comments requesting additional disclosures around certain shareholders as well as comments seeking additional understanding and disclosure around the nature of certain significant relationships noted in the filing.

The following excerpts, of comment letters reviewed, represent previously highlighted themes:

“Please tell us whether any of the selling stockholders are broker-dealers or affiliates of broker-dealers. A selling shareholder who is a broker-dealer must be identified in the prospectus as an underwriter. In addition, a selling stockholder who is an affiliate of a broker-dealer must be identified in the prospectus as an underwriter unless that selling stockholder is able to make the following representations in the prospectus: the selling shareholder purchased the shares being registered for resale in the ordinary course of business, and at the time of the purchase, the selling shareholder had no agreements or understandings, directly or indirectly, with any person to distribute the securities. Please revise as appropriate.”

- Entropic Communications, Inc. (8/23/2007)

“Please expand to discuss the material terms of your agreements with TSMC and your two additional foundry service providers, such as the duration and cancellation provisions of the agreements.”

- MEMSIC Inc. (10/25/2007)

Equity

During our review of IPO filings, 23 comments, or approximately 9% of all comments received, were on equity-related matters, as compared to less than 5% in the 2007 study. These included the classification of preferred stock and questions around the valuation of equity consideration provided in a business combination.

The following are excerpts from certain comment letters reviewed. These examples are representative of the themes highlighted above:

“Please describe to us and expand to disclose how you determined the fair market value assigned to the common and preferred shares issued in the acquisition. Please reconcile any significant differences in the per share value assigned to the preferred shares from that assigned to the common shares.”

- Entropic Communications, Inc. (8/23/2007)

“We see that on January 29, 2004 you acquired certain assets and liabilities of Cogency Semiconductor. As part of the transaction, you issued Series A-1 and Series A-2 redeemable convertible preferred stock with a combined fair value of \$1.5 million. Please tell us how you determined the fair market value of the convertible preferred stock issued in the transaction. Please also revise the filing to comply.”

- Intellon Corporation (8/10/2007)

“To help us better understand your classification and accounting for each class of preferred stock and warrants please address the following:

- Describe the material terms of all related agreements, such as registration rights agreements, details of adjustable conversion terms or details of all anti-dilution provisions. Include any circumstances that you may be required to pay penalties or can only provide registered shares.
- Describe how you have accounted for each class of convertible preferred stock and related warrants, including any embedded derivatives requiring bifurcation pursuant to SFAS 133 and EITF 00-19.”

- Intellon Corporation (8/10/2007)

Key areas highlighted in Form S-1 comment letters (IPO filings)

“In this regard, if you have reclassified the preferred stock warrant liability to additional paid-in capital tell us why you believe this reclassification is factually supportable and quantifiable taking into consideration that the warrants could be exercised for cash prior to the completion of this offering. Please note this comment applies to your pro forma presentation of the conversion of preferred stock warrants throughout the filing.”

- Rubicon Technology, Inc. (10/2/2007)

“We note that the “accretion of preferred stock to redemption value” is recorded against accumulated deficit. Please tell us why the debit was not recorded against additional paid-in capital in accordance with paragraph 18 of EITF Topic D-98. Please revise or advise.”

- Rubicon Technology, Inc. (10/2/2007)

“We note from your balance sheet that you are classifying the redeemable convertible preferred stock in the mezzanine section. Based on this classification it appears that you have determined that the redeemable convertible preferred stock is more akin to equity than debt. Please revise your disclosures to clearly disclose how you concluded that the redeemable convertible preferred stock is more akin to equity taking into consideration the cumulative fixed dividends and redeemable features of the preferred stock.”

- Rubicon Technology, Inc. (10/2/2007)

Stock-based compensation

During our review of IPO filings, 16 comments, or 5% of the total comments received, related to stock-based compensation. These primarily included questions around the valuation of stock-based awards and the application of SFAS 123R.

The following are excerpts from certain comment letters reviewed. These examples are representative of the themes highlighted above:

“Please provide us with a schedule showing in chronological order, the date of grant, optionee, number of options granted, exercise price and the fair value of the underlying shares of common stock for the options issued within during 2006 and to date in 2007. Also include other issuances of preferred and common stock. Please indicate the compensation recorded for each of these issuances and reconcile to the amounts recorded in the financial statements.

Describe to us the objective evidence and analysis which supports your determination of the fair value at each grant and stock issuance date. Highlight any transactions with unrelated parties believed by management to be particularly evident of an objective fair value per share determination. Also provide us with a chronological bridge of management’s fair value per share determinations to the current estimated IPO price per share. Also, indicate when discussions were initiated with your underwriter(s) about possible offering price ranges.”

- Entropic Communications, Inc. (8/23/2007)

Key areas highlighted in Form S-1 comment letters (IPO filings)

“Provide us with an itemized chronological schedule detailing each issuance of your common shares, preferred shares, stock options and warrants since July 2006 through the date of your response. Include the following information for each issuance or grant date:

- Number of shares issued or issuable in the grant
- Purchase price or exercise price per share
- Any restriction or vesting terms
- Management’s fair value per share estimate
- How management determined the fair value estimate
- Identity of the recipient and relationship to the company
- Nature and terms of any concurrent transactions with the recipient
- Amount of any recorded compensation element and accounting literature relied upon to support the accounting.

In the analysis requested above, highlight any transactions with unrelated parties believed by management to be particularly evident of an objective fair value per share determination. Please provide us with a chronological bridge of management’s fair value per share determinations to the current estimated IPO price per share. Also, indicate when discussions were initiated with your underwriter(s) about possible offering price ranges. We will delay our assessment of your response pending inclusion of the estimated IPO price in the filing.”

- [Intellon Corporation \(8/10/2007\)](#), [Rubicon Technology, Inc. \(10/2/2007\)](#)

“In this regard, we noted that you issued Series C redeemable convertible preferred stock in December 2006 at an issuance of \$1.3383 per share. We also note your issuance of common stock and options during September 2006 through April 2007, which you determined the fair value to be \$.19-.17 per share for options and \$.32-.17 per share for restricted common stock. We generally believe that securities convertible into common shares are strong evidence of fair value. Progressively bridge management’s fair value per shares determination of your common stock to the conversion price of the series C preferred shares. Additionally, please tell us the dates of all the discussions with your underwriters and state any per share prices or price ranges discussed.”

- [Intellon Corporation \(9/14/2007\)](#)

Key areas highlighted in Form S-1 comment letters (IPO filings)

Revenue

During our review of IPO filings, 13 comments, or 5% of all the comments received, were related to revenue, as compared to 7% in the 2007 study.

The following are excerpts from certain comment letters reviewed:

“We note that certain end-users of your products have price concessions and that you can reasonably estimate these pricing concessions and recognize revenue upon shipment under SFAS 48. Please tell us more about these price concessions and how you have met all of the conditions set forth in paragraphs 6-8 of SFAS 48 to recognize revenue at shipment.”

“We also note that distributors “generally do not have any right of return.” Please tell us circumstances when they would have a right of return. Confirm that transactions with these distributors qualify as sales at shipment. Specifically address each requirement of paragraph 6 of SFAS 48 in your response. Lastly, specifically address any stock rotation rights or other post shipments obligations granted to distributors.”

- Intellon Corporation (8/10/2007)

“We see your critical accounting policy regarding revenue recognition. However, the disclosure merely repeats the policies from your significant accounting policies footnote with minimal elaboration. Please expand to describe the specific factors that in your view make it critical. Discuss the nature of estimates and uncertainties about those estimates inherent to your revenue recognition policy, including how you make those estimates. Discuss how different assumptions, methods or conditions might effect your financial statements.”

- Intellon Corporation (8/10/2007)

“Please revise to quantify the impact of increases in number of units sold and the decline in average selling prices of your products on net sales. Your discussion should also address whether you expect the trend of the declining gross margins to continue. Please also apply to your discussion for the year ended December 31, 2006.”

- MEMSIC Inc. (10/25/2007)

“Please disclose the reasons for the change in revenues from material customers. Provide similar disclosure in your discussion for the year ended December 31, 2006.”

- MEMSIC Inc. (10/25/2007)

Other selected categories of comments received

There were a number of other areas of comment within the S-1 filings we reviewed. These included comments on financial statements presentation, accounting policy, specific transactions (such as acquisitions), pro forma disclosures and the use of Non-GAAP measures.

The following are excerpts from certain comment letters reviewed. These highlight some of the other areas of comment:

Financial statement presentation

“We note that your discussion of the significant changes in sales, cost of sales and gross profit is limited and does not quantify the specific reasons for material changes in line items in the financial statements. Please revise to present and quantify each significant factor that contributed to the changes, including offsetting factors, for sales, cost of sales and gross profit. Trends and uncertainties that may have a material impact upon revenues or operating results should also be discussed. In addition, separately describe and quantify the effects of changes in prices and volume of your product offerings on your operating results. Refer to Item 303 (a)(3)(iii) of Regulation S-K. Please also apply this comment to your discussion of the three months ended March 31, 2007.”

- Intellon Corporation (8/10/2007)

“We see that you record amounts paid as royalty fees under the license agreement as general and administrative expenses. Please tell us why this amount should not be recorded as cost of sales in the period the underlying products are sold.”

- MEMSIC Inc. (10/25/2007)

Key areas highlighted in Form S-1 comment letters (IPO filings)

Non-GAAP

“We note that you present non-GAAP financial measures and reconciliations in the form of two pro forma statements of operations for the quarters ended March 31, 2007 and June 30, 2007. This format may be confusing to investors as it reflects numerous non-GAAP financial measures which have not been individually described to investors as required by S-K Item 10(e). It is not clear whether management uses each of these non-GAAP measures or if they are shown here primarily as a result of the presentation format. When presenting non-GAAP financial information you must provide all the disclosures required by S-K Item 10(e) for each individual non-GAAP financial measure, including reconciliation to the directly comparable GAAP measure for each non-GAAP financial measure presented and explanation why you believe each non-GAAP financial measure provides useful information to investors. Please remove the pro forma statements of operations for the individual quarters and instead disclose only those non-GAAP measures used by management that you wish to highlight for investors, with the appropriate reconciliations and disclosures required by S-K Item 10(e).”

- Entropic Communications, Inc. (10/26/2007)

Liquidity and capital resources

“Please discuss material changes in the underlying drivers of your working capital changes (e.g. cash receipts from the sale of goods and cash payments to acquire supplies and components or goods for resale), rather than merely describing items identified on the face of the statement of cash flows to provide a sufficient basis for a reader to analyze the change. Refer to Item 303(a) of Regulation S-K and Release 33-8350.”

- Rubicon Technology, Inc. (10/2/2007)

Appendix:
Comment
letters
reviewed in
this study

Comment letters reviewed in this study

Company name	Date of filing	Type of filing
Aehr Test Systems	9/26/2007	10-K
Applied Materials, Inc.	2/22/2008	10-K
Applied Micro Circuits Corporation	7/31/2007	10-K
Asyst Technologies, Inc.	9/28/2007	10-K
Asyst Technologies, Inc.	12/4/2007	10-K
Atheros Communications, Inc.	12/28/2007	10-K
Atmel Corporation	8/8/2007	10-K
Broadcom Corporation	4/29/2008	10-K
Broadcom Corporation	4/29/2008	10-Q
Broadcom Corporation	8/24/2007	10-K
Brooks Automation, Inc.	2/1/2008	10-K
Brooks Automation, Inc.	2/1/2008	10-KA
CEVA, Inc.	8/24/2007	10-Q
Credence Systems Corp.	2/17/2008	10-K
Credence Systems Corp.	4/4/2008	10-K
e.Digital Corporation	2/13/2008	10-K
Eagle Test Systems, Inc.	2/29/2008	10-K
Entropic Communications, Inc.	8/23/2007	S-1
Entropic Communications, Inc.	9/21/2007	S-1
Entropic Communications, Inc.	10/9/2007	S-1
Entropic Communications, Inc.	10/26/2007	S-1
Entropic Communications, Inc.	11/2/2007	S-1
Entropic Communications, Inc.	11/16/2007	S-1
ESS Technology, Inc.	5/2/2008	S-4
Finisar Corporation	1/11/2008	10-K
Genesis Microchip Inc.	1/31/2008	10-K
HIFN, Inc.	3/21/2008	10-K

Comment letters reviewed in this study

Company name	Date of filing	Type of filing
Infineon Tech North America Corp.	3/24/2008	20-F
Integrated Device Technology, Inc.	2/21/2008	10-K
Integrated Device Technology, Inc.	3/26/2008	10-K
Intellon Corporation	8/10/2007	S-1
Intellon Corporation	9/14/2007	S-1
Intellon Corporation	10/16/2007	S-1
Intellon Corporation	11/16/2007	S-1
Intellon Corporation	12/4/2007	S-1
Intellon Corporation	12/10/2007	S-1
IPG Photonics Corporation	3/31/2008	10-K
Jazz Technologies, Inc.	4/3/2008	10-K
KLA - Tencor	1/31/2008	10-K
Kulicke and Soffa Industries, Inc.	4/24/2008	10-K
Kulicke and Soffa Industries, Inc.	4/24/2008	10-Q
Kyocera Corporation	3/7/2008	20-F
Lattice Semiconductor Corporation	11/6/2007	10-K
Lightpath Technologies, Inc.	5/1/2008	10-K
Linear Technology Corporation	2/12/2008	10-K
MEMSIC, Inc.	10/25/2007	S-1
MEMSIC, Inc.	11/19/2007	S-1
MEMSIC, Inc.	11/29/2007	S-1
Micrel Incorporated	11/30/2007	10-Q
Micro component Technology	9/27/2007	10-K
MRV Communications, Inc.	8/20/2007	10-K
Nanometrics Incorporated	11/15/2007	10-K
Nanometrics Incorporated	11/15/2007	10-Q
Nanometrics Incorporated	2/12/2008	10-K
NetLogic Microsystems, Inc.	4/17/2008	10-K

Comment letters reviewed in this study

Company name	Date of filing	Type of filing
NetLogic Microsystems, Inc.	5/9/2008	10-K
NVE Corporation	2/6/2008	10-K
NVE Corporation	2/6/2008	10-Q
Open Energy Corporation	10/15/2007	10-KSB
OSI Systems, Inc.	2/15/2008	10-K
Perfectenergy International Limited	2/26/2008	S-1
Perfectenergy International Limited	2/29/2008	S-1
Photronics, Inc.	3/28/2008	10-K
PSi Technologies Holdings, Inc.	11/28/2007	20-F
Qlogic Corporation	1/25/2008	10-K
Qlogic Corporation	1/25/2008	10-Q
Rubicon Technology, Inc.	10/2/2007	S-1
Rubicon Technology, Inc.	10/26/2007	S-1
Rubicon Technology, Inc.	10/30/2007	S-1
Semtech Corporation	10/15/2007	10-K
Semtech Corporation	10/15/2007	8-K
Silicon Motion Technology Corporation	10/18/2007	20-F
SiRF Technology Holdings, Inc.	12/3/2007	10-K
SiRF Technology Holdings, Inc.	12/3/2007	10-Q
Solitron Devices, Inc.	11/30/2007	10-KSB
Suntech Power Holdings Co., Ltd.	1/30/2008	20-F
Suntech Power Holdings Co., Ltd.	11/28/2007	20-F
Texas Instruments Incorporated	2/14/2008	10-K
Texas Instruments Incorporated	10/30/2007	10-K
Vishay Intertechnology, Inc.	12/27/2007	10-K
Vishay Intertechnology, Inc.	12/27/2007	10-Q

About this report

This report was prepared by our Assurance team under the leadership of Wayne Hedden, Senior Manager, in San Jose and is the product of organized research that we undertake to keep our team focused on our clients and industry developments.

The information contained in this report was obtained from the SEC's EDGAR database and publicly available comment letters issued to companies. Comments within this summary represent the views of the authors.

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