

Stay informed
2014 SEC comment
letter and disclosure
trends
Energy and Mining

December 2014







Letter from the U.S. Energy Assurance Leader

To our clients and friends:

As we wrap up the 2014 calendar year, year-end financial statement preparation is already underway. An understanding of the SEC staff's areas of focus is critical to Energy and Mining companies, as companies continue to navigate through an uncertain economic and regulatory environment.

In this edition of our annual publication, we have analyzed SEC staff comment letters to registrants across the entire energy sector, including upstream, midstream, downstream, oilfield services, and mining. We have identified the areas where energy and mining registrants received the majority of comments and provide sample comments along with supporting highlights. We have also included a discussion of recent trends common to SEC staff comments issued to registrants across all sectors as well as selective benchmarking.

Our goal with this publication is to provide you with information to make your financial reporting more effective and to proactively address potential SEC comments. We hope you find it beneficial and we look forward to working with you throughout your year-end financial reporting process.

Please contact your engagement team or PwC partner with questions or to discuss the information in this publication.

Kind regards,

A handwritten signature in black ink that reads "Chuck". The signature is written in a cursive, slightly slanted style.

Chuck Chang
U.S. Energy Assurance Leader

Contents

<i>SEC developments</i>	<i>1</i>
<i>Introduction: The big picture</i>	<i>2</i>
<i>Top ten comment letter topics</i>	<i>6</i>
Upstream—Extractive activities and reserves	<i>7</i>
Management discussion and analysis	<i>13</i>
Mining—Extractive activities and reserves	<i>20</i>
Form 10-K and 10-Q compliance	<i>22</i>
Presentation	<i>23</i>
Derivatives	<i>24</i>
Business and risk factors	<i>26</i>
Revenue and accounts receivable	<i>28</i>
Compensation and incentive plans	<i>29</i>
Income taxes	<i>30</i>
<i>Other key matters and looking forward</i>	<i>32</i>
<i>Conclusion: Best practices when responding to SEC comment letters</i>	<i>34</i>
<i>Methodology</i>	<i>36</i>
<i>About PwC energy and mining</i>	<i>38</i>



SEC developments

2014 was a busy year at the SEC. Although there were only a few changes in senior personnel (compared to 2013 when several high profile staff positions were filled and three Commissioners, including a new Chair, were appointed), one notable change was the appointment of Jim Schnurr as the SEC's Chief Accountant. Schnurr joined the SEC staff in October and will play a major role in shaping the SEC's agenda at a time when accounting, auditing, and financial reporting are key areas of focus. This focus reflects a common understanding that transparent, accurate, and reliable financial reporting forms the foundation of trust which allows our capital markets to function properly and provides the transparency and confidence investors need when making decisions.

Following through on initiatives started in 2013, 2014 has seen a high level of activity in the SEC's enforcement program, with renewed attention on financial fraud, issuer disclosure, and gatekeepers. The Enforcement Division's Financial Reporting and Audit Task Force—a small group of experienced attorneys and accountants charged with developing state-of-the-art tools to better identify financial fraud and incubating cases to be handled by other groups—is one example of how the SEC has increased its focus. The Task Force monitors high-risk areas, analyzes industry performance trends, reviews restatements, revisions, and class action filings as well as academic research. It is also working on the SEC's Accounting Quality Model—sometimes referred to as Robocop—which is being developed to use data analytics to assess the degree to which a company's financial reporting appears noticeably different from its peers. The Task Force was very busy during 2014 with even more activity expected in 2015.

The SEC staff has continued to focus on internal control over financial reporting, with more attention on how companies evaluate deficiencies relating to immaterial financial statement errors. The SEC staff signaled its intention to increase its focus in this area in late 2013, and this has led to more frequent comments and questions in 2014, with more likely to come in 2015. Recognizing that full and fair disclosure is a central goal of the U.S. securities laws and is critical to the fulfillment of the SEC's core mission, during 2014 the SEC launched a "Disclosure Effectiveness" initiative. Through this initiative, the SEC is looking for ways to update and

modernize its disclosure system and to eliminate duplicative or overlapping requirements, while continuing to provide material information. Trying "to put better disclosure into the hands of investors," the SEC staff is taking a fresh look at the question: what information do investors need to make informed decisions? In addition to looking at the specific disclosures companies provide, the SEC staff is also looking closely at how disclosures are provided, particularly in light of advances in technology and changes in how information is consumed. For instance, the SEC staff might explore a "company file" approach through which investors would access company-specific information on the SEC's website through tabs such as "Business information," "Financial information," "Governance information" and "Executive compensation," instead of searching for that same information by combing through a reverse chronological list of filings. The SEC staff has been clear that reducing disclosure is not the objective of this important project (indeed, they have said that updating the requirements may well result in additional disclosures), but they have indicated that they believe the initiative can reduce costs and burdens on companies.

Even before any rule changes are adopted (or proposed), companies already have the ability to improve the quality and relevance of their disclosures by reducing redundancy, removing out-of-date, unnecessary information, and refining disclosures to focus on those issues which are truly applicable and material. The SEC staff has been encouraging companies to experiment with the presentation of the information in their filings with the objective of improving the transparency, quality, and relevance of their disclosures.



John A. May
SEC Services Leader

Introduction: The big picture

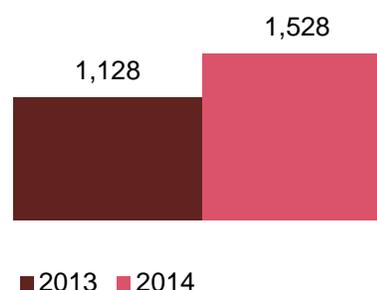
Energy and mining companies currently operate in an environment characterized by commodity price volatility, resource scarcity, rapid advances in technology, and the growing social, political, and economic challenges posed by climate change.

In response, energy companies have continued to focus on risk management, regulatory compliance, and new growth fueled by redefined production possibilities and forays into new global markets.

In the mining sector, companies are reducing capital expenditures, increasing hurdle rates, and disposing of non-core assets to control costs in the wake of depressed mineral prices. The increased number and nature of comment letters issued by the SEC staff over the last year reflect these trends, and underscore the importance of public company reporting as a key source of information for energy and mining company stakeholders.

Overall, the number of comments issued by the SEC staff to energy and mining companies increased approximately 35% as compared to last year—from 1,128 in 2013 to 1,528 in 2014 (See Figure 1). Much of the increase relates to comments on management's discussion and analysis, which jumped by 150% between 2013 and 2014.

Figure 1 – Total number of comments



Stay Informed: 2014 Comment Letter and Disclosure Trends is designed to help energy and mining companies better understand the SEC's recent focus areas and hot topics. Our analysis included SEC staff comments posted on the SEC's EDGAR website between October 1, 2013 and September 30, 2014. Those comments spanned a range of issues important in the energy and mining sectors. Where appropriate, we cover comments specific to upstream, mining, downstream, midstream, and oilfield services businesses.

We have also included highlights from our benchmark disclosure study of more than 130 public energy and mining companies, with an emphasis on those specific reporting areas receiving attention from the SEC staff.

The SEC review process and highlights for upstream, midstream, downstream, oilfield services, and mining

The SEC's Division of Corporation Finance (CorpFin) has a long history of reviewing filings made by public companies under the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). An important goal of these reviews is to monitor and improve compliance with applicable disclosure and accounting requirements, consistent with the SEC's mission of investor protection.

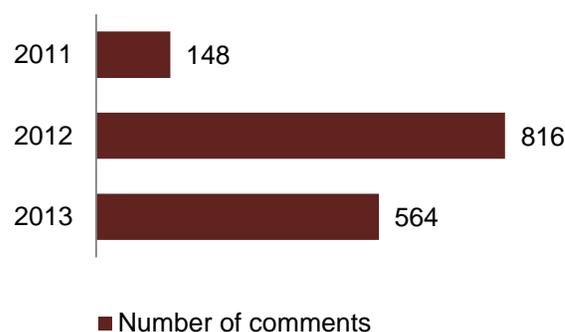
By law, the SEC must review a public company's filings at least once every three years, and in practice these reviews occur more frequently, especially for larger public companies. The SEC does not publicly disclose the criteria it uses when selecting which companies and filings to review. However, the following factors outlined in the Sarbanes-Oxley Act are intended to guide the SEC staff:

- Material restatements of financial results
- Issuers that experience significant volatility in stock price compared to others
- Companies with the largest market capitalizations
- Emerging companies with disparities in price to earnings ratios
- Businesses whose operations significantly affect any material sector of the economy
- Any other factors that the SEC may consider relevant.

Once a company or filing has been selected, the SEC staff can conduct a full cover-to-cover review, limit its scope to financial statements and related disclosures (for example, MD&A), or focus on one or more specific items. Although reviewers concentrate on critical disclosures that appear to conflict with SEC rules or applicable accounting standards, they may also comment on disclosures they believe are deficient in explanation or clarity. The deficiency is judged from the perspective of potential investors and the questions they would pose.

Our analysis focused on SEC comments issued between October 1, 2013 and September 30, 2014, and includes comments on annual and quarterly filings primarily from the 2012 and 2013 calendar years (See Figure 2). Comments on calendar year 2012 filings represented slightly more than half of all comments analyzed, and that total is somewhat lower in comparison to last year's analysis where the second preceding year (2011) received approximately two-thirds of the comments analyzed.

Figure 2 – Calendar years represented in the 2014 publication



Introduction: The big picture

Between 2013 and 2014, SEC comments in the energy and mining sectors increased approximately 35%, with the upstream and oilfield services subsectors accounting for most of the increase (See Figure 3). Upstream extractive activities and reserves continued to be a key SEC focus area due to the importance of the sector to the economy, and the fact that reserves often include a high level of estimation and judgment, and are a key factor in assessing company valuations and prospects. For similar reasons, extractive activities and reserves in the mining sector are in the top three areas of SEC staff comment letter focus for the second consecutive year.

In both years, the upstream subsector received the most comments, with approximately 45% in 2014 and 44% in 2013. The trend underscores the SEC staff's continued focus on upstream extractive activities and reserves. Also, the number of oilfield services companies reviewed also increased compared to last year (See Figure 4).

In the mining sector, the number of SEC staff comments decreased from 40% to 33% of the total analyzed. However, the SEC's Regulation S-K Industry Guide 7 continues to be the predominate topic receiving comments in the mining sector. The majority of the decrease stems from a shift to oilfield services, which saw a 6% increase in total comments, with MD&A being the leading topic. Consistent with the percentage decline in comments, the number of mining companies reviewed declined as well (See Figure 4).

Figure 3 – Number of comments by subsector

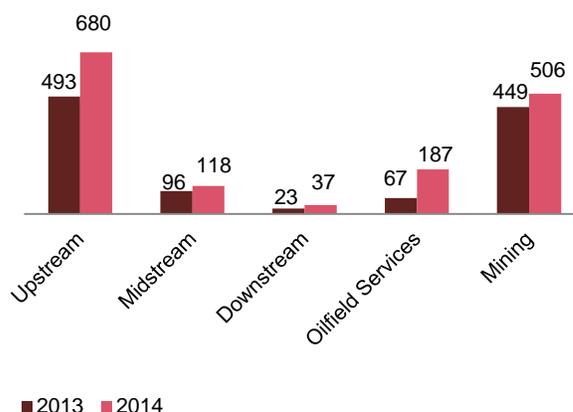


Figure 4 – Number of companies reviewed by subsector

	Downstream	Midstream	Mining	Oilfield Services	Upstream	Total
2014	10	15	56	27	78	186
2013	6	16	67	15	71	175

Introduction: The big picture

Our analysis of SEC staff comments found these major trends (See Figure 5):

- The number of comments relating to MD&A increased approximately 150% compared to last year
- Derivatives, presentation, business and risk factors, revenue and accounts receivable, and taxes are new top 10 topics in 2014
- The number of companies selected for review nearly doubled in the oilfield services subsector
- Comments on impairments have decreased significantly, likely in response to market conditions at the time and a lack of triggering events in the year analyzed
- Upstream -extractive activities and reserves continue to be the top comment area for the energy sector

Figure 5 – Top 10 topics receiving comments

Rank	Nature of comment	#	%
1	Upstream - Extractive activities & reserves	461	30%
2	Management's discussion and analysis	281	18%
3	Mining - Extractive activities & reserves	172	11%
4	Forms 10K and 10Q compliance	105	7%
5	Presentation	75	5%
6	Derivatives	62	4%
7	Business and risk factors	51	3%
8	Revenue and accounts receivable	43	3%
9	Compensation and incentive plans	32	2%
10	Taxes	31	2%

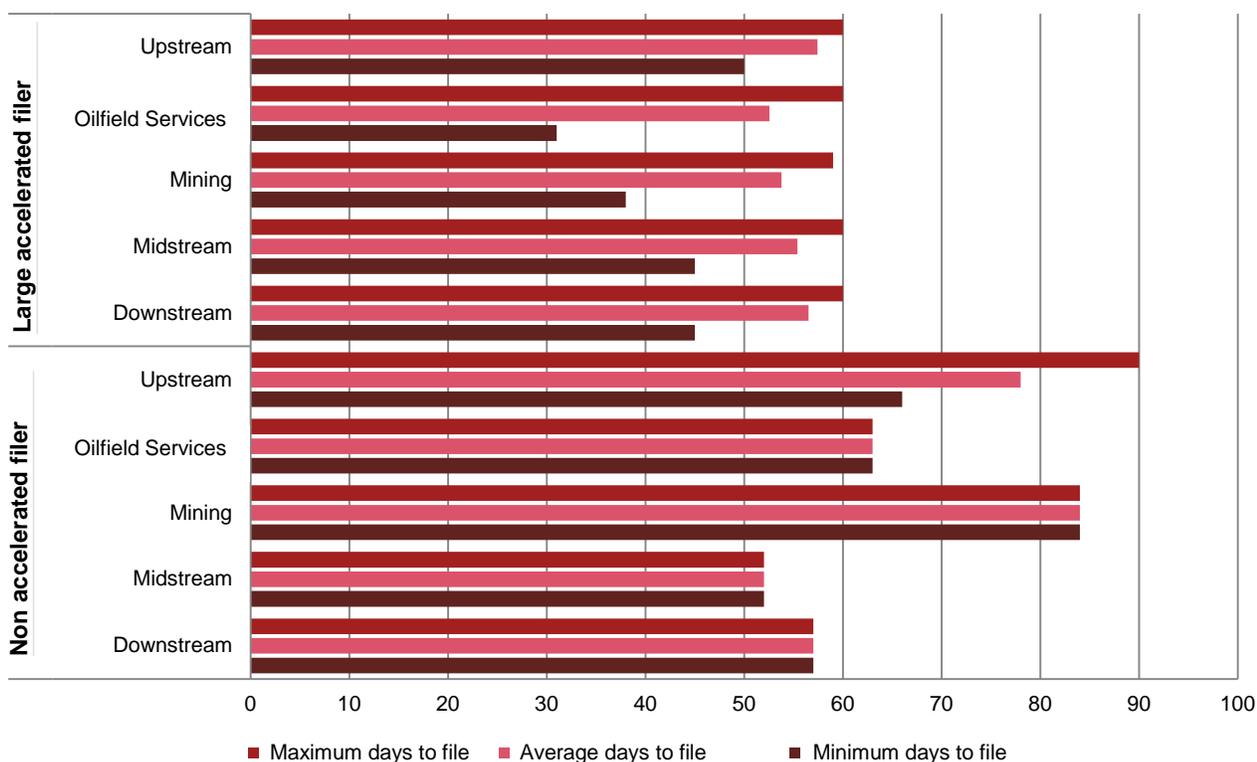
Top ten comment letter topics

We have identified the top ten topics in comment letters received from the SEC staff (see figure 5 above). After an analysis of the timeliness of annual filings, we address each in greater detail, including the areas of focus within each of these topics and examples of comments received from the SEC staff.

Timeliness of annual filings

Although the deadline for filing Form 10-K depends on a registrant’s filing status, the number of days to file can be a useful metric for evaluating the financial reporting process against peers (See Figure 6). None of the registrants in our study filed their Form 10-K after the relevant deadline (i.e., all were filed timely). In our study there were six non accelerated filers and 124 large accelerated filers. There were no smaller reporting companies or emerging growth companies.

Figure 6 – 2013 annual filings - days to file



Upstream—Extractive activities and reserves

For the third consecutive year, reserve disclosures were the largest focus of comments in the energy sector. SEC staff comments concentrated on the disclosure requirements of ASC 932, *Extractive Activities – Oil and Gas*, and Section 1200 of Regulation S-K, and accounted for 30% of the total. Proven undeveloped reserves (PUDs) continued to top the list of sub-topics. However, between 2013 and 2014, information included in third party reports overtook proven reserves as a source of comments (See Figure 7).

Figure 7— Reserves – Primary areas of focus

Rank	2014	2013
1	Proven undeveloped reserves	Proven undeveloped reserves
2	Third party reports	Proven reserves
3	Proven reserves	Third party reports

Proven undeveloped reserves

SEC staff comments on PUD disclosures continued to trend upward, and were focused on the level of detail used by a company when describing material changes in PUD reserves and material PUDs that remain undeveloped for more than five years. Comments reflected that SEC staff's view that companies could better explain the contributing factors that support overall changes in PUDs, which would help users understand the details in the required reconciliation of changes in PUDs year over year. As opposed to providing general recommendations, the SEC staff asked companies to disclose specific operational and business reasons for changes in PUDs.

Helping to drive the year over year increase in comments, the SEC staff focused on companies that disclosed PUDs that remain undeveloped for more than five years from initial disclosure, including the company's rational for including properties that are not scheduled to be developed within that time frame. Matters raised by the SEC staff included verifying that such disclosures are consistent with the company's progress, and that there were no updates to plans and activities for long-standing projects. To assess the likelihood that a registrant can develop PUDs within the five-year window, the SEC staff evaluated information provided by the registrant, including conversion rates and historical capital expenditures. In addition, the SEC staff often requested that registrants explain why they believe such reserves should continue to qualify as PUDs when, based on the analysis of a registrant's information, the SEC staff concluded that development within five years was unlikely. Similarly, the SEC staff frequently requested information on the amount of PUDs related to undeveloped acreage expected to expire in the near future.

Also driving the increase were comments about the sufficiency of registrants' descriptions of material changes in PUDs. There are no specific definitions or guidance for determining what constitutes a material change as used in Item 1203 of Regulation S-K. We have noted, however, that some companies used 10%, consistent with the threshold for determining significant oil and gas producing activities under ASC 932.

Sample comments

1. You disclose significant additions in proved reserves as of December 31, 20XX relating to extensions and discoveries and have stated that "reliable technologies were used to determine areas where proved undeveloped (PUD) locations were more than one offset away from a producing well." With a view to expand the disclosure of the material additions in your reserves as required under Item 1202(a)(6) of Regulation S-K, please quantify for us the number of proved undeveloped locations and associated proved net reserves added that are more than one offset away from an existing proved producing well. Also tell us if any of the wells drilled to date that were more than one offset away from a producing well at the time of their drilling were not determined to be economically producible.
2. We note from your disclosure that the Company annually reviews any proved undeveloped reserves ("PUD") to ensure their development within five years or less. We also note the Company plans to develop its PUD reserves prior to June 30, 20XX which is five years from the date of the current filing on Form 10-K. For the purposes of determining the five year period for development to occur in estimating proved undeveloped reserves, Item 1203(d) of Regulation S-K requires that you use the date of the initial disclosure as the starting reference date. Please tell us the extent to which any of the proved undeveloped reserves disclosed as of June 30, 20XX will not be developed within five years since your initial disclosure of these reserves. Please also clarify in your disclosure on Form 10-K.
3. Item 1203(c) of Regulation S-K requests that registrants discuss investments and progress made during the year to convert proved undeveloped reserves to prove developed reserves, including, but not limited to, capital expenditures. Please expand your disclosure to discuss your progress in converting proved undeveloped reserves to prove developed reserves. Also disclose the capital expenditures incurred relating to the conversion of any proved undeveloped reserves.

4. Item 1203(b) of Regulation S-K requests that registrants disclose material changes in proved undeveloped reserves that occurred during the year, including proved undeveloped reserves converted into proved developed reserves. Please expand your disclosure on page 10 relating to the 2012 revisions of previous estimates to provide the net quantities associated with a change in economic factors separately from the changes resulting from new information obtained from development drilling and well performance.

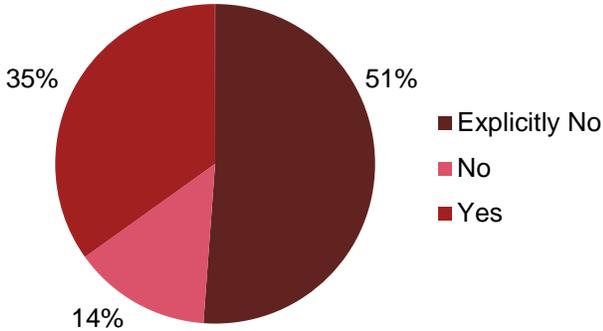
In our benchmarking study, we examined the nature of disclosures for PUDs that remained undeveloped after more than five years following initial booking and disclosure. SEC rules specify that undrilled locations can be classified as having proven undeveloped reserves only if a development plan has been adopted to drill within five years—unless specific circumstances justify more time. For locations scheduled to be developed beyond five years from initial recording, registrants should specifically disclose material locations and the related PUD reserves.

Of the 43 registrants included in our study that had significant oil and gas producing activities, 35% disclosed that their PUD reserves included properties that will not be developed within five years of initial booking. Figure 8 shows the nature of disclosures for these 43 registrants in terms of their PUD reserves. We classified registrants into three groups:

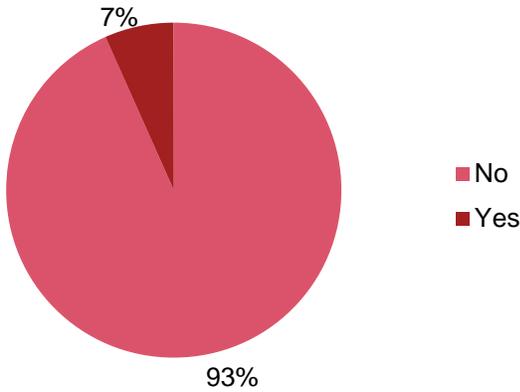
- (Yes):** those that disclosed PUD reserves that were not developed within five years
- (Explicitly No):** those that disclosed that they had no such reserves
- (No):** those that did not include any disclosure of PUD reserves that had not been developed within five years

Figure 8 also shows the results of our benchmarking study. Of those registrants that did discuss why material PUDs remained undeveloped beyond five years, our study examined whether registrants disclosed that the PUDs were material and whether they disclosed the quantity, location, and contributing factors.

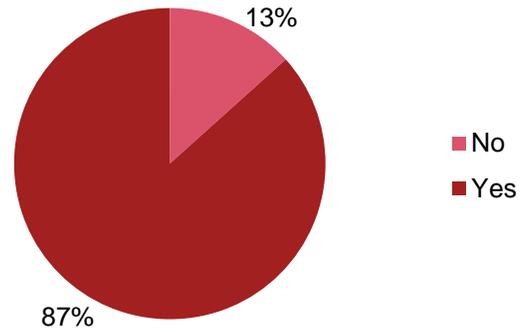
Figure 8 – Disclosures of PUD reserves not developed in 5 years



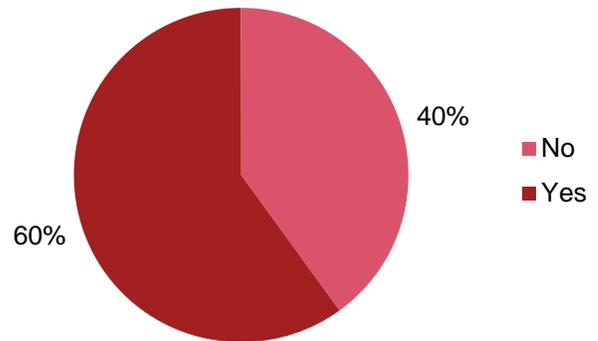
Disclosed amount was de minimis/not material



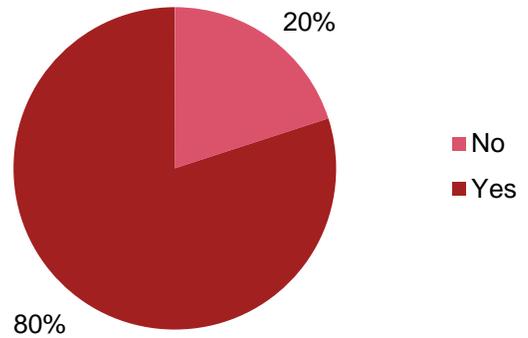
Disclosed quantity



Disclosed factors



Disclosed locations



Third-party reports

Companies that use third party engineers for reserve audits and reports on the company's reserve estimates must comply with Item 1202 (a) (8) of Regulation S-K. The engineer's report on estimated reserves must be included as an exhibit and provide key information on the nature and scope of the reserves audit and a conclusion about the company's estimate of reserves.

Compared to last year, comments on third-party report nearly doubled, making the issue the second largest focus area in reserves. SEC comments addressed the consistency of the information between the reserve report and other elements of a company's filing. The SEC staff requested that registrants remove extraneous information mentioned in the reserve report, or reconcile differences between reserve information in the third party report and reserve disclosures. In addition, the SEC staff asked companies to quantify locations and amounts of net proven reserves where the reserves report included PUD estimates for locations with negative PV-10. The SEC staff also requested that registrants expand their disclosures and include such information in addition to the company's final investment decision and commitment to developing these reserves in light of the negative value.

Sample comments

1. You clarified there were 268 proved undeveloped locations totaling 662 Bcf that were associated with a negative present worth when discounted at 10 percent. Based on the disclosure of your proved reserves, we note the 662 Bcf attributable to these locations represents approximately 24.2% of your total proved undeveloped reserves of 2,737 Bcf and 9.5% of your total proved reserves of 6,976 Bcf. To the extent that the Company determines that the reserves associated with locations that have negative present worth discounted at 10% comprise a material portion of the Company's total proved reserves, please expand your disclosure regarding such locations in your annual filing on Form 10-K to address the following: Clarify that reported reserve volumes include locations and quantities that have a negative present value when discounted at 10%; Indicate the number of locations and reserve volumes with a negative present value, and; Confirm that you have made a final investment decision, and are committed to developing the reserves, despite the negative value. See FASB ASC paragraph 932-235-50-10.
2. The reserves report contains references to additional supplemental information not included in Exhibit 99.1 for example grand total summaries, reserve estimates and economic forecasts and composite rate-time history-forecast curves by reserve category. Please obtain and file a revised report to include the referenced supplemental information. Alternatively, remove these references if you do not intend to include this supplemental information in Exhibit 99.1.
3. Please reconcile for us each of the following differences between the reserves information as of December 31, 20XX presented in Exhibit 99.1 and the corresponding information presented in the filing on Form 10-K: Total proved undeveloped reserves of 2,376,582 MMcf of natural gas disclosed in Exhibit 99.1 compared to 2,736,582 MMcf of natural gas disclosed on page 79 of Form 10-K. Total undiscounted pre-tax future net revenue of \$10,707,064 thousand dollars disclosed in Exhibit 99.1 compared to \$10,102,110 thousand dollars derived from the future pre-tax cash inflows of \$22,624,562 thousand dollars less the future production costs of \$8,895,956 thousand dollars and the future development costs of \$3,626,496 thousand dollars disclosed on page XX of Form 10-K. Total proved present worth discounted at 10% (pre-tax PV-10) of \$5,147 million dollars disclosed in Exhibit 99.1 compared to \$5,129 million dollars on page X of Form 10-K.
4. The reserves report does not include certain disclosure required by Item 1202(a)(8) of Regulation S-K. Please obtain and file a revised reserves report to include the following information in order to satisfy your filing obligations. The purpose for which the report was prepared (Item 1202(a)(8)(ii)). The date on which the report was completed (in addition to the effective date) (Item 1202(a)(8)(ii)). The proportion of the Company's total proved reserves covered by the report (1202(a)(8)(iii)). The realized prices by product type for the reserves included in the report as part of the primary economic assumptions (Item 1202(a)(8)(v)).

Proven reserves

Consistent with the prior year, 2014 comments on proven reserves reflected the SEC staff's view that some companies may not have disclosed adequate information about the technologies used to ascertain the appropriate level of certainty for reserves estimates. Comments also asked for more robust disclosure of the reasons for significant changes in proven reserves, period over period. Disclosures should provide appropriate details including the various operational factors and activities that support the change in proven reserves.

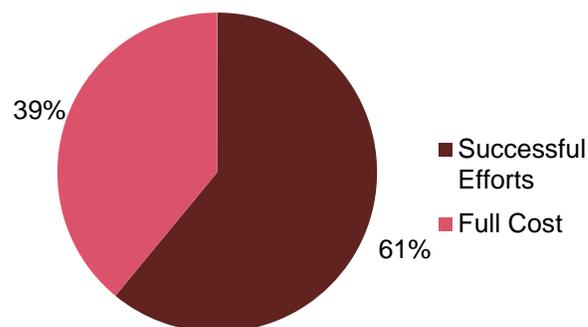
Sample comments

1. Item 1202(a)(6) of Regulation S-K requires a registrant that is disclosing material additions to its reserves estimates to provide a general discussion of the technologies used to establish the appropriate level of certainty for reserves estimates from material properties included in the total reserves disclosed. Please amend your document to comply with Regulation S-K.
2. You state that as part of the audit process you have prepared independent estimates of the Company's proved reserves. Please tell us the extent to which the reserves contained in the report are supported by one or more reliable technologies as defined in Rule 4-10(a)(25) of Regulation S-X and include future drilling locations that are more than offset from an existing producing well.
3. Please revise to provide additional detail explaining significant changes identified in your proved reserves during the periods presented. For example, describe the causal factors underlying the changes due to extensions and discoveries. Refer to FASB ASC 932-235-50-5.

Other trends

Our benchmarking study assessed registrants' use of full cost accounting versus successful efforts (see Figure 9). The choice of accounting method is critical since it determines how companies treat costs incurred for the acquisition, development, and exploration of oil and gas properties. The majority of registrants surveyed disclosed the use of the successful efforts method.

Figure 9 – Accounting methods



Oil and gas properties, wells, operations, and acreage

SEC staff comment letters on these topics focused primarily on the omission of disclosures required by Regulation S-K, Item 1208. Specifically:

- Total gross and net productive wells separately for oil and gas
- Total gross and net developed acreage by geographic area
- The amount of undeveloped acreage, both leases and concessions if any, expressed in both gross and net acres by geographic area
- Acreage concentrations, and if material, the minimum remaining terms of leases and concessions

Sample comments

1. We note that your table of leasehold acreage does not include details of acreage and lease expiration. Item 1208(b) of Regulation S-K requires the disclosure of material acreage which will expire in the near term, e.g. each of the next three years. Please expand your disclosure to comply with this requirement.
2. The disclosure indicates that a significant percentage of the Company's net undeveloped acreage will expire in 2013, 2014 and 2015. Please tell us the net amounts by product type of your December 31, 20XX proved undeveloped oil and gas reserves assigned to locations on acreage scheduled to expire in each of the next three years. Also tell us if all such proved undeveloped locations are included in a development plan adopted by management as of December 31, 20XX indicating that these locations are scheduled to be drilled prior to lease expiration.

Production, revenue, and price history

Regulation S-K Item 1204 requires registrants to disclose production by final product sold of oil, gas, and other products in each of the last three fiscal years. The information must be disclosed by geographical area and country. It is also required for each field containing 15% or more of a registrant's total proven reserves.

Sample comments

1. Item 1204(a) of Regulation S-K requires, in part, the disclosure of historical annual production for any field that contains 15% or more of a registrant's total proved reserves. Item 1204(b) of Regulation S-K requires the disclosure of historical product prices and production costs by geographical area. It does not appear you have included these items in your filing. Please revise the tabular disclosure to comply with Item 1204 of Regulation S-K.
2. Please note the disclosure required by Item 1204 of Regulation S-K regarding production by final product sold and average sales price and average production cost per unit should be provided on an annual basis. Please revise your disclosure accordingly.

Management discussion and analysis

Energy and mining company MD&A continues to rank as one of the top areas of SEC staff focus. Our analysis found that the majority of MD&A comments related to improving the quality of disclosures to meet the overall objectives of MD&A, rather than meeting specific technical requirements of Regulation S-K.

The requirements themselves are set forth in Item 303 of Regulation S-K, which identifies five MD&A disclosure categories:

- Liquidity
- Capital resources
- Results of operations
- Off-balance-sheet arrangements
- Contractual obligations

Financial Reporting Release (FRR) 36, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, and FRR 72, *Interpretation: Commission Guidance regarding MD&A of Financial Condition and Results of Operations*, provide additional guidance.

Following the release of its December 2013 *Report on Review of Disclosure Requirements in Regulation S-K mandated by the JOBS Act*, the SEC announced that the Division of Corporation Finance will develop recommendations to improve and streamline disclosure requirements. This project may reduce the costs and burdens placed on companies and eliminate duplicative MD&A disclosures. However, it may also identify opportunities to increase the transparency of information which may lead to new requirements.

In the meantime, the comment letter process has reinforced the well-established MD&A objectives that disclosures be:

- Transparent and provide relevant information
- Tailored to the company's facts and circumstances
- Consistent with the financial statements and other public communications

- Comprehensive in addressing the many business risks that exist in today's economic environment

Results of operations, as well as liquidity and capital resources are the areas within MD&A that received the most SEC staff comment letter attention among energy and mining registrants. In the following, we provide analysis and relevant examples of comments issued by the SEC staff in each of these areas.

Results of operations

SEC staff comments reminded energy and mining registrants that results of operations should provide a clear understanding of significant revenues, expenses, and events that have caused, or are likely to cause, a material change in the relationship between costs and revenues.

SEC comments frequently underscored that MD&A should not simply repeat information provided elsewhere in the filing. Rather, it should explain the underlying drivers behind changes in a company's financial position, results of operations, and cash flows. Increasingly, the SEC challenged registrants to clearly and concisely quantify the impact of multiple factors on a particular line item.

Our analysis found these general themes in the SEC staff comments:

- **Disclosure of known trends** – The SEC staff asked registrants to disclose known trends affecting the business—in particular events that have occurred and how they are a positive or negative indicator of future performance. For example:
 - Acquisition of significant oil and gas properties
 - Expiration of a drilling contract resulting in a loss of a significant customer
 - Entering a new market
 - An acquisition of a business via a drop down transaction under common control that is expected to impact operating results

Management discussion and analysis

In addition, the SEC encouraged management to discuss key operating metrics with an analysis of how those metrics relate to GAAP results.

- **Drivers behind fluctuations** – Many comments sought improvement in disclosures of significant fluctuations between periods, including commodity pricing, production volume, impact of an acquired business via a common control transaction, and currency exchange movements. The SEC staff asked companies to provide more detailed descriptions of the specific factors driving these fluctuations and to quantify those factors separately, even if they net to an insignificant change overall.
- **Consistency of information** – The SEC staff has been known to review publicly available information and check its consistency against information included in a registrant's periodic filings. When management discusses events or trends on earnings calls, in social media channels, or on the company's website, the SEC staff has questioned why such events are not addressed in MD&A.
- **Segment discussion** – SEC staff comments also encouraged the use of segment analysis if it provides a more in-depth understanding of the consolidated results. The segment analysis may be integrated into the discussion of consolidated results in order to avoid unnecessary duplication.

Sample comments

1. Please expand your disclosure under each subheading to provide additional details about period-on-period changes in your results of operations. For example, we note that you have attributed your increasing expenses to the "substantial growth" of the company over the past three fiscal years. Your disclosure should describe what aspects of your activities were the main drivers of the increases in your expenses. Please note your Management's Discussion and Analysis should not be merely a restatement of financial statement information in a narrative form, but should provide an analysis explaining the underlying reasons or implications,

interrelationships between constituent elements, or the relative significance of those matters.

2. The discussion under this section indicates that, after giving effect to various adjustments, production on an oil-equivalent basis during 2012 was down as compared to 2011 due to field decline. We also note the discussion at your analyst meeting on March 31, 20XX in which you discussed production expectations for the current year, 2013, and the near term period from 2013 to 2017. To the extent that there are known production trends that have had or you reasonably expect will have a material impact on your net sales or revenues or income from continuing operations, discuss whether and the extent to which these trends will continue and the impact if they do. See Item 303 of Regulation S-K.
3. Throughout your filing, you have discussed the impact of a low natural gas price environment on your business strategy. We note that as of December 31, 20XX, 83% of your proved reserves were held in natural gas. In view of this price environment and the relative significance of gas to you, explain the consideration you have given to providing disclosure regarding the uncertainty surrounding future gas prices and the possibility of impairment charges under the full cost rules. For example, explain to us how you have considered providing information regarding the extent to which the cost center ceiling exceeded capitalized costs as of December 31, 20XX and subsequent balance sheet dates. See Item 303(a)(3)(ii) of Regulation S-K.
4. We note several instances in your discussions of segment results where you disclose an increase or decrease in operating expenses and general and administrative expenses without describing the underlying reasons for the increase or decrease. Please disclose the underlying causes for the changes in future filings. Also, we note that you identify more than one factor underlying increases or decreases in gross margins and costs and expenses without quantifying the impact of the factors. In future filings please quantify, to the extent practical, the impact of each factor identified.

Liquidity and capital resources

Discussion of liquidity and capital resources should provide a clear picture of a company's ability to generate cash and meet known, or reasonably likely, cash requirements. The SEC staff expects the discussion to address material cash requirements, and the sources and uses of cash. The discussion should also address material trends and uncertainties in a company's ability to use its capital resources to satisfy its obligations. General observations regarding SEC staff comments in this area include the following:

- **Disclosure of events impacting liquidity** – The SEC staff asked registrants to discuss known trends, events, or uncertainties that are reasonably likely to impact future liquidity. Such events could include reduction in capital expenditure programs, cash distribution plans for MLPs, and significant drilling programs.
- **Debt agreements and related covenants** – The SEC staff requested expanded disclosure of the material terms of debt agreements, including compliance with financial covenants. In situations where there has been, or is projected to be, a violation of covenant compliance, registrants should provide a detailed description of the covenants, and the target and actual covenant measures for the most recent reporting period. They should also discuss the sensitivity of those measurements, if applicable. Companies should also clearly detail any other items with potential impact on the availability of credit, including limitations on the ability to draw on existing credit lines, and/or other borrowing issues.
- **Cash flow analysis** – Registrants simply repeating information readily found on the face of cash flow statement was one common SEC staff area of comment on the liquidity analysis. Organizations should disclose the underlying factors driving changes in operating assets and liabilities and the related cash flows, for example, changes in accounts receivable that are inconsistent with changes in revenue.

Sample comments

1. Please provide a comparative discussion of your operating cash flows between all periods presented in the statements of cash flows. For example, there is no discussion of operating cash

flows for the fiscal year ended December 31, 20X1 compared to December 31, 20X2. Please also provide a more informative analysis and discussion of operating cash flows that focuses on how identified factors impacted cash. In doing so, please explain the underlying reasons and implications of material changes between periods to provide investors with an understanding of trends and variability in cash flows. Please ensure your discussion and analysis is not merely a recitation of changes evident from the financial statements. Please refer to item 1 of Section IV.B of SEC Release No. 33-8350.

2. Please expand your overview to provide insight into material opportunities, challenges and risks, such as those presented by known material trends and uncertainties, on which the company's executives are most focused for both the short and long term. See Section III.A of SEC Release 33-8350 (Nov. 29, 2003). For example, discuss the causes and effects of debt and equity financings on your continuing and expanding operations. In this regard, we note your disclosure that your ability to fund operating cash flow shortfalls, fund capital expenditures, and make acquisitions will depend on your operating performance and the availability of equity and debt financings.
3. We note that actual and estimated capital and exploratory expenditures for 2012 and 2013 were higher than corresponding amounts for 2011 and, more significantly, 2010. Please expand your MD&A to explain the reasons for these increases. Additionally, to the extent that there are known trends with respect to these expenditures that have had or you reasonably expect will have a material impact on liquidity or capital resources, discuss whether and the extent to which these trends will continue and the impact if they do. See Item 303 of Regulation S-K.
4. You state that that your expansion capital expenditures for organic growth projects increased from \$7.7 million in the twelve months ended December 31, 20X1 to \$17.9 million in the twelve months ended December 31, 20X2. In addition, you state that you expect expansion capital expenditures for organic growth projects to be approximately \$40 million to \$50 million in 20X3. Please revise your disclosure to identify the sources of liquidity for such expenditures and any known trends or uncertainties that are reasonably expected to have a material impact on sales, revenue or income from continuing operations and liquidity and capital resources.

Non-GAAP measures

Companies often use non-GAAP measures as alternative liquidity or performance measures. However, non-GAAP financial measures included in SEC filings are subject to the requirements of Regulation G and Item 10 of Regulation S-K. When non-GAAP financial information is presented in periodic SEC reports, companies should also include:

- Reasons why management believes that the non-GAAP measure is relevant to investors
- Additional purposes, if any, for which management uses the non-GAAP financial measure
- A presentation with equal or greater prominence on the most directly comparable financial measure presented in GAAP to facilitate comparison with other companies
- A reconciliation to the comparable GAAP measure

In addition to inappropriate items being excluded from non-GAAP measures, the SEC staff continued to challenge the appropriateness of presenting realized and unrealized gains and losses on derivative instruments as separate line items in the reconciliation of adjusted EBITDA or similar non-GAAP measures to the applicable GAAP measure. The inquiries also focused on non-GAAP measures that reflect recovery of costs previously paid to acquire or modify terms of derivative arrangements (e.g., premiums).

Sample comments

1. We note that you present various non-GAAP measures in your earnings releases and website presentations, including Adjusted Net Income and Discretionary Cash Flow, which appear to reflect adjustments to net income for amounts identified as either "Unrealized Derivative (Gains) Losses" or "non-cash" gains and losses on mark-to-market derivatives, as disclosed as Exhibit 99 to the Form 8-K that you filed on February XX, 2013. However, the reconciling amounts shown in the Exhibit for 2011 and 2012 do not agree with the unrealized activity presented in your table under this heading or the

corresponding amounts reported as reconciling items in your Statements of Cash Flows on page 80. Please explain the reasons for the variances in amounts and descriptions and indicate whether the adjustments are intended to reflect total cash settlements of derivatives in your non-GAAP measures, the cumulative gain or loss reported in accordance with GAAP, or some combination of amounts. If your non-GAAP measures reflect recovery of costs previously paid to acquire or modify the terms of your derivatives, please quantify these amounts and explain your rationale.

2. We note your disclosure stating that the non-GAAP measure "Adjusted Earnings" represents net earnings excluding certain non-cash or non-recurring items. However, it does not appear that the characterization of certain line items as non-recurring is appropriate. For example, we note the adjustments for restructuring costs in each of the three fiscal years ended December 31, 20XX and the adjustments for U.S. income taxes on foreign earnings in each of the two fiscal years ended December 31, 20XX. Please revise your disclosure to comply with Item 10(e)(1)(ii)(B) of Regulation S-K. For additional guidance, refer to Question 102.03 of the Compliance & Disclosure Interpretation regarding Non-GAAP Financial Measures.
3. We note that you have a corresponding tabular disclosure showing the various components of derivative fair value income, which is preceded by tabular disclosure of average realized prices, including two categories that reflect the settlement of derivatives that were not accounted for as hedges. Please clarify the extent to which the realized and settlement amounts shown or reflected in these presentations represent a recovery of costs that were paid to acquire or modify derivatives that were settled. If the settlement amounts correspond precisely to the cumulative gains and losses that had been recognized in accordance with GAAP, and do not therefore represent any recovery of derivative costs, please provide this clarification in a footnote to any tabulations that include settlement amounts, including your non-GAAP presentations.

Distributable cash flow

The SEC also focused on reconciling distributable cash flow (DCF) to the relevant GAAP measure and the appropriateness of derivative amounts included in the non-GAAP reconciliation. DCF, sometimes used as a proxy for cash available for distribution, is a common non-GAAP measure used by many master limited partnerships (MLPs) to provide unit holders with insight into an MLP's ability to sustain or support cash distributions. However, the SEC staff has asked MLPs to address trends and relationships between DCF and actual distributions in MD&A. SEC staff comments also have questioned whether it might be more appropriate to reconcile DCF to operating cash flow instead of net income. These questions stem from the fact that MLPs sometimes discuss DCF as a liquidity and operational metric.

Growth versus maintenance capital expenditures is another recent area of DCF focus. In their comments, the staff has questioned how a registrant differentiates between the two types of capital expenditure, why normalized versus actual costs are more appropriate, and how they relate to actual historical amounts.

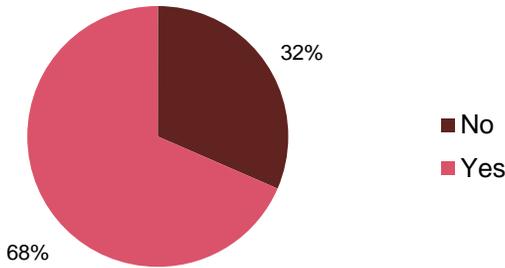
Sample comments

1. Given that you present the non-GAAP measure of Distributable cash flow on page 57 and state Distributable cash flow is a significant liquidity metric which is an indicator of our ability to generate cash flows at a level that can sustain or support the quarterly cash distributions, tell us why you reconcile this measure to net income rather than cash flow from operations as may be necessary to comply with Item 10(e)(1)(i)(B) of Regulation S-K. Also explain why you did not consider it meaningful to address the trends or relationship between this metric and your distributions in your discussion and analysis.
2. Your response to prior comment 18 indicates that the non-GAAP measure of Distributable Cash Flow" is the actual measure that "represents the aggregate amount of funds available to pay distributions and is a more relevant financial measure for a direct correlation to distributions paid. Given the importance of ongoing distributions to your business model, and the emphasis you have placed on various non-GAAP measures that are intended to exhibit your ability to continue making these distributions, please explain how you have considered disclosing your non-GAAP measure of Distributable Cash Flow, accompanied by an explanation of variances between the non-GAAP measure and actual distributions, along with your non-GAAP measure of Adjusted EBITDA.
3. Please expand your disclosure to explain how reconciling adjustments of maintenance capital expenditures made in deriving your non-GAAP measure of Distributable Cash Flow were calculated. It should be clear how these amounts correlate with your historical cash flows and how the funds have been used – please identify the projects involved, and describe the benefits realized. It should also be clear how you differentiate between maintenance capital expenditures and all other capital expenditures – please disclose the reasons you believe this is a meaningful effort, with details sufficient to understand their significance.

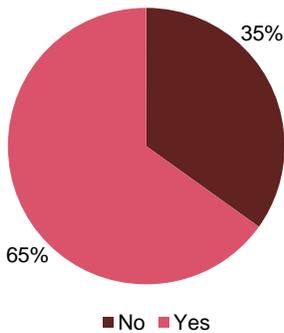
Management discussion and analysis

In our benchmarking study, we found that EBITDA, adjusted EBITDA and distributable cash flow (DCF) were the most commonly reported non-GAAP measures. In addition, we analyzed the use of non-GAAP measures in periodic reports by subsector and the types of non-GAAP measures used (see Figure 10).

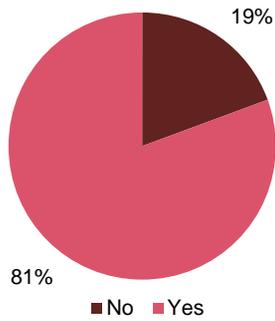
Figure 10 – Entities reporting non-GAAP measures



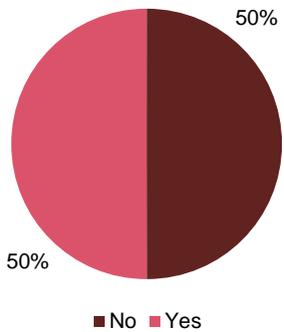
Upstream



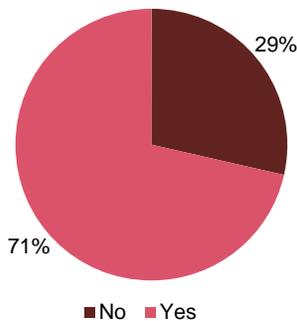
Midstream



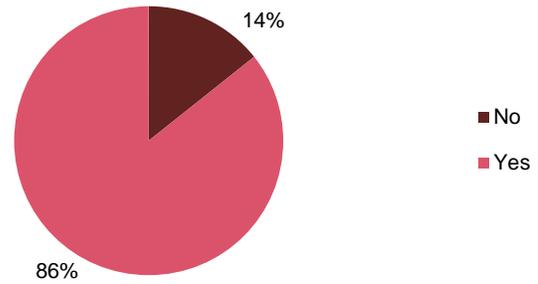
Oilfield Services



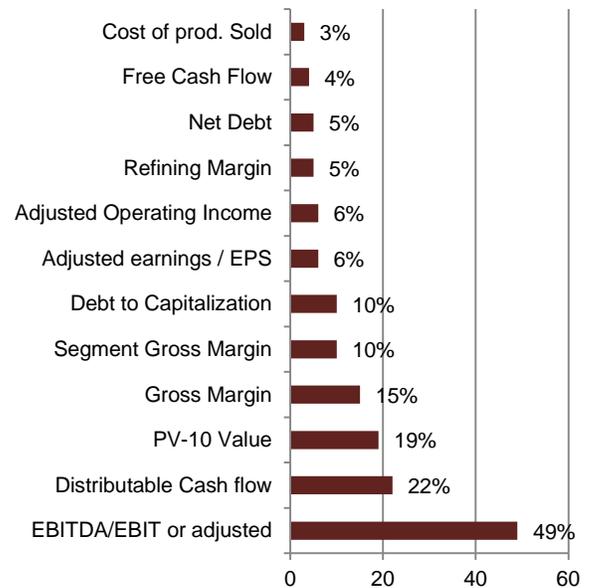
Downstream



Mining



Types of non-GAAP measures



Other key MD&A trends

Critical accounting policies

The SEC staff has issued guidance on the nature and extent of disclosures of important accounting policies, including FRR 60, *Cautionary Advice Regarding Disclosure about Critical Accounting Policies*. Through comment letters, the SEC staff continued to stress the need for more robust and transparent MD&A discussion of critical accounting policies, preparer judgments, and risks and uncertainties. In recent years, the SEC staff has also offered several recommendations to improve critical accounting policy disclosures. Our benchmark study found that the number and nature of policies disclosed were fairly consistent across the energy and mining sectors (see Figure 11). More than half of the registrants surveyed included critical accounting policies related to income taxes (including tax uncertainties), goodwill, and property, plant, and equipment impairments (see Figure 12).

Figure 11 – Critical accounting policies

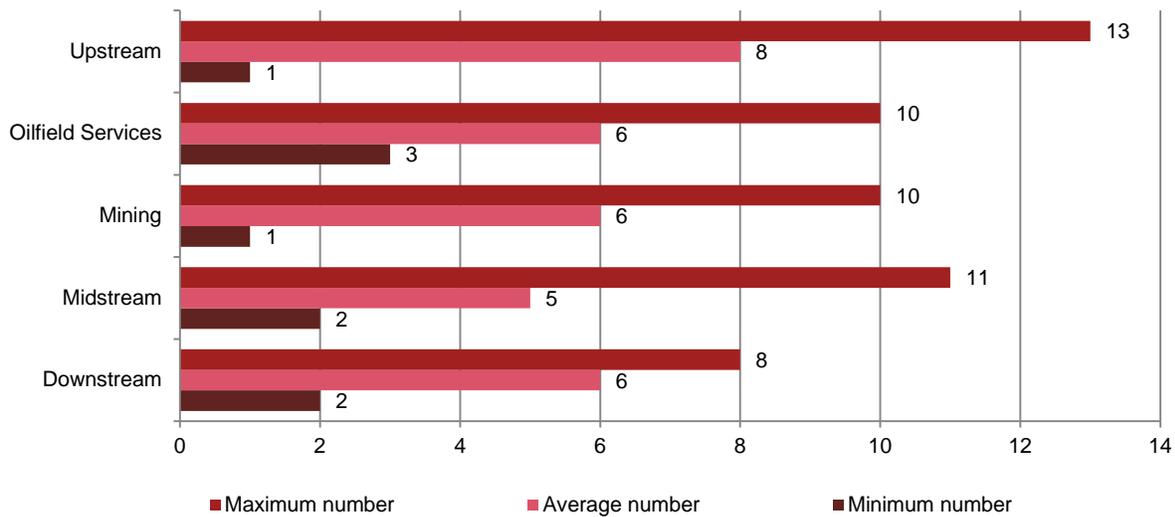
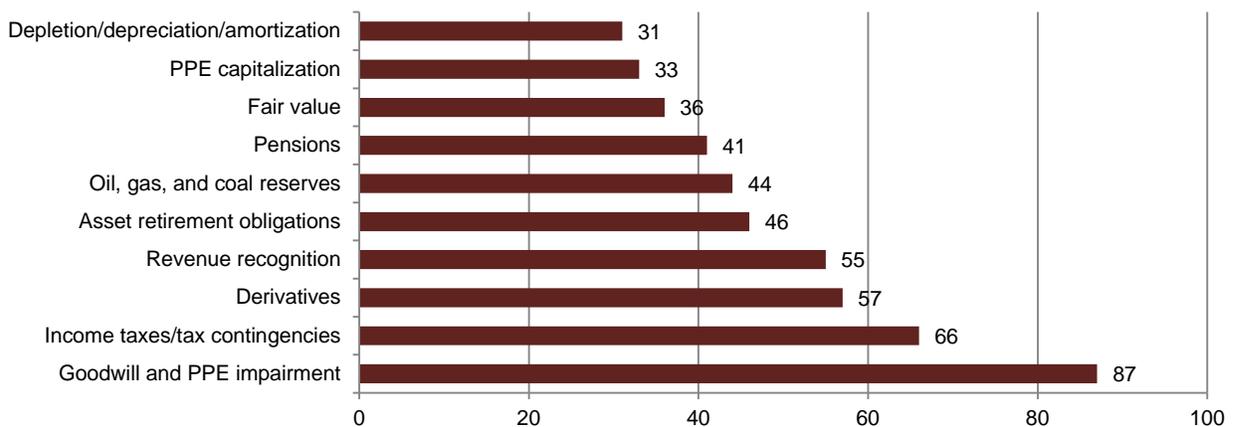


Figure 12 – Top 10 critical accounting policies

(Number of registrants disclosing policy)



Mining—Extractive activities and reserves

Mining reserves and properties are the most important economic assets and sources of value for mining registrants. To evaluate reserves and properties and a company's ability to transform them into future cash flow, investors rely on required disclosures in this area. The SEC staff's comments focused primarily on compliance with SEC Regulation S-K Industry Guide 7 and Regulation S-K Item 102, Description of Properties. Comments on mining extractive activities and reserves published in 2014 accounted for approximately 11% of the total population of comments.

Reserves—proven and probable

The SEC staff frequently commented on the use of the terms “mineralized materials” instead of “mineral reserves” or “mineral resources” and “proven” and “probable” reserves when companies discuss mineral quantities. Making the distinction between “mineralized materials” and “mineral reserve/resource” is essential, since each has a specific definition. A mineral reserve is the part of a mineral deposit that a company can economically and legally extract or produce at the time of the reserve determination. Conversely, a mineralized material is part of a mineral deposit which is potentially valuable and there are reasonable prospects for eventual economic extraction. SEC staff comments also suggested that companies should disclose the mineral sample collection, preparation, and procedures used to develop analytical results. Registrants should also disclose any quality assurance/quality control (QA/QC) protocols that are in place to ensure proper custody, precision, and accuracy of the mineral sample.

Sample comments

1. We note your disclosure of tonnes and average grade of ore in this section of your filing. As a company incorporated in Delaware, only proven or probable reserves meeting the definitions in section (a) of Industry Guide 7 may be disclosed in filings with the United States Securities and Exchange Commission. Historically, the reporting of measured and indicated resources in term of tons and grade of mineralized material has been permitted. However, this material should be designated as mineralized material in your filing. Please revise your disclosure accordingly.
2. In an appropriate section of your filing, provide a brief description of the QA/QC protocols including sample preparation, controls, custody, assay precision and accuracy as it relates to your exploration plans. This would apply to exploration and operational analytical procedures. In your response please indicate the location of this disclosure.

Exploration, development and production stage

The terms “exploration,” “development,” and “production” also have specific definitions under SEC Regulation S-K Industry Guide 7. Proper usage of these terms helps investors understand what stage of the mining process a company is in and whether costs should be capitalized or expensed.

Sample comment

1. We note your references to development and commercial production throughout your filing. Pursuant to paragraph (a)(4) of Industry Guide 7, only companies with established mineral reserves may be termed development or production stage companies in filings with the United States Securities and Exchange Commission. Please revise your disclosure throughout such that investors understand that you are in the exploration stage until you have established mineral reserves. We suggest substituting certain terms to enhance this clarification. For example, substitute mining operations with mining activities, substitute commercial production or production with extracting or processing mineralized materials.

Mining operations

Industry Guide 7, paragraph (b) requires the disclosure of certain information relating to each mine, plant, and other significant properties owned, operated—or presently intended to be owned or operated—by the registrant. Often, the SEC staff requested the required disclosures for all material properties when it was not clear which properties were considered material. The SEC staff has also required disclosures if information is missing for a specific property.

Sample comment

1. Please disclose the following information for each of your properties: (1) The nature of your ownership or interest in the property; a description of all interests in your properties, including the terms of all underlying agreements and royalties; (2) describe the process by which mineral rights are acquired at this location and the basis and duration of your mineral rights, surface rights, mining claims or concessions; (3) provide an indication of the type of claim or concession such as placer or lode, exploration or exploitation, mining leases, and/or mining concessions; (4) please include certain identifying information, such as the property names, claim numbers, grant numbers, mining concession name or number, and dates of recording and expiration that is sufficient to enable the claims to be distinguished from other claims that may exist in the area of your properties; (5) the conditions that must be met to retain your claims or leases, including quantification and timing of all necessary payments, annual maintenance fees, and disclose who is responsible for paying these fees; (6) the area of your claims, either in hectares or in acres. Please ensure that you fully discuss the material terms of the land or mineral rights securing agreements, as required under paragraph (b)(2) of Industry Guide 7.

Properties

Regulation S-K, Item 102, paragraph 3, requires disclosure of production, reserves, locations, development, and the nature of the registrant's interest. SEC staff comments often requested scale maps and detailed information on annual production for material properties.

Sample comments

1. We note that several of your maps and pictures are too small to be legible. Please revise such that these maps and pictures are of sufficient scale to be clearly legible.
2. It appears you have produced and sold mineralized materials from your (ABC project). In future filings please disclose a summary of your annual production including production tonnages, sales tonnages, sales prices, and costs.

In the previous sections, we analyzed the top three comments, which accounted for approximately 60% of all comments issued during the period under analysis. In the following sections, we turn our attention to other areas where energy and mining companies commonly received comments from the SEC staff. Although none of the topics these comments do not exceed 10% of the population total, in aggregate they comprise approximately a quarter of all comments analyzed.

Form 10-K and 10-Q compliance

Overall, comments appear to reflect the SEC staff's view that some companies may need to provide or improve certain exhibits in order to comply with the instructions for Form 10-K and Form 10-Q. Regulation S-T outlines the general rules and regulations for electronic filings, while Regulation S-K outlines the nonfinancial requirements specific to filings under the Securities Act, Exchange Act, and Energy Policy and Conservation Act of 1975.

SEC staff comments in this category focused primarily on the dates and language included in financial statement certifications by the chief executive and principal accounting officers, as required by the Sarbanes Oxley Act and outlined in Regulation S-K, Item 601(b)(31). Comments also addressed exhibits and appendices required by Regulation S-K, Item 601(b)(10). For example, the SEC staff requested amendments to filings that did not include required signatures on typed forms or did not include all of the appropriate exhibits and material contracts. In comment letters, the SEC staff often requested amendments to filings that were not compliant with the requirements referenced above. Requests like these can impact the timeliness of periodic report filing and a registrant's ability to quickly access capital markets.

Sample comments

1. We note that your Section 302 certifications do not comply with the language required by Item 601(b)(31) of Regulation S-K in the following respect: Paragraph 4(b) as defined in Item 601(b)(31) of Regulation S-K was not included. Please revise your certifications to address the matter noted above.
2. It appears that the quarterly report on Form 10-Q filed on December 31, 20XX did not include the certifications required by Item 601(b)(32) of Regulation S-K. Please file the quarterly report with all required certifications.
3. We note the reference to the property option agreement between you and ABC Company. This appears to be a material agreement that is required to be filed as an exhibit pursuant to Item 601(b)(10)(ii)(A) and (B) of Regulation S-K. Please file a copy of this agreement as an exhibit to your amended filing.

Presentation

Presentation matters received a greater level of attention from the SEC staff this year. SEC comment letters included requests to clarify certain line items on the face of the financial statements and amendments to present significant line items separately if the balance was a significant percentage of total assets, liabilities, or equity. In addition, the SEC staff requested additional information regarding pending sales or divestitures that were not classified as discontinued operations and/or assets and liabilities held for sale.

Sample comments

1. Please expand your disclosure to present revenues and costs separately for product sales, rentals and services as necessary to comply with Rule 5-03(b) 1 and 2 of Regulation S-X, where revenues from any of these categories exceed ten percent of the total.
2. Please tell us and revise in future filings whether any elements of other current liabilities exceed 5 percent of total current liabilities. Refer to Rule 5-02(20) of Regulation S-X. Please provide us your revised disclosure.
3. As part of your disclosure surrounding the anticipated sale of ABC LLC, we note you have concluded that the regulatory approval process could prevent the closing of the transaction. As a result, you have not classified the disposal group as held for sale in your financial statements, and do not intend to do so until you make satisfactory progress in the regulatory process. Please tell us more about the factors that resulted in this accounting treatment conclusion. As part of your response, please also tell us what consideration you gave to the implementation guidance in ASC 360-10-55-44 through 45 when arriving at your conclusion.

Derivatives

As it relates to derivatives, the SEC staff focused primarily on registrants' use of separate "realized" and "unrealized" amounts to explain derivative activity. The SEC staff questioned how such presentations comply with ASC 815-10-35-2. In their comments, the SEC staff suggested that companies avoid any use of realized and unrealized terminology to discuss the results as if hedge accounting had been applied.

Reconciling derivative amounts from the primary financial statements to the notes was another area of focus. A registrant with derivative activity typically provides various tabular disclosures to comply with the authoritative literature. The SEC staff frequently issued comments when the totals disclosed in the notes did not reconcile to corresponding amounts the financial statements. Totals presented in tabular form should reconcile with the balance sheet, income statement, and cash flow statement, as applicable.

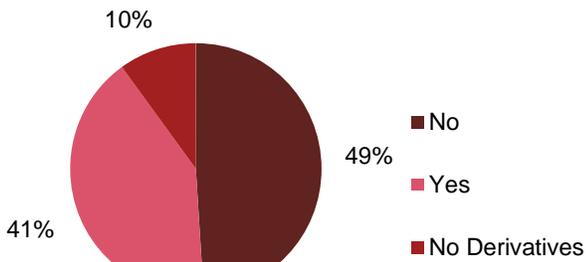
Sample Comments

1. We note that you separately disclose realized and unrealized gains and losses on derivative instruments. Please clarify how you determined each portion of the derivative gains and losses so that we are able to understand how your methodology compares to the requirements of FASB ASC 815-10-35-2, which does not differentiate between realized and unrealized gains and losses. If your realized and unrealized measures are not individually limited to the current period change in fair value for derivatives settled during the period, or retained as of the end of the period, respectively, explain your rationale and cite the authoritative guidance you have relied upon. In addition, tell us how recovery of premiums or other costs of derivatives impact each of these measures.
2. We are unable to reconcile the gain (loss) on derivative amounts for the three and six months ended June 30, 20XX to the information presented in the table on page XX. That is, the sum of the gains and losses recognized from derivatives not designated as hedges in the table does not correspond to the gain (loss) on derivatives amounts on the statements of operations. Please assist us by providing a reconciliation of these amounts for the three and six months ended June 30, 20XX.
3. In view of our question regarding the support under GAAP for your separate presentation of realized and unrealized gains and losses, explain to us your basis for concluding the following presentations are appropriate: The line item "Mark-to-market on natural gas and oil derivatives not designated as hedges (gain) loss" in your consolidated statements of cash flows; Disaggregated presentation of realized and unrealized gains/losses in the notes to your consolidated financial statements; Separate presentation and discussion of realized and unrealized gains/losses on derivatives in tabular information provided in your MD&A; and, The line item "Change in mark-to-market on unrealized derivatives gain (loss)" in the non-GAAP measures presented in your Form 8-K filed February XX, 2013.

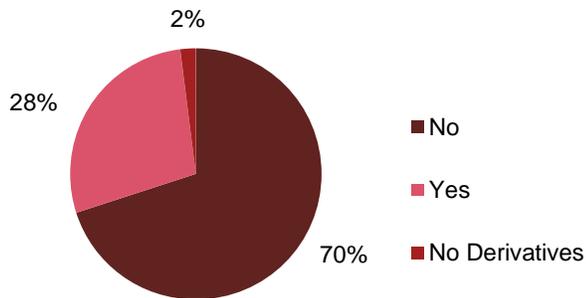
Derivatives

As derivative instruments are commonly used in the energy and mining sectors, our benchmarking study quantified the number of companies by subsector that elected hedge accounting (see Figure 13). Overall for the sector, approximately half of the companies studied elected to use hedge accounting for at least part of their derivative portfolios. Upstream participants had the lowest percentage of companies using hedge accounting whereas the midstream subsector had the highest.

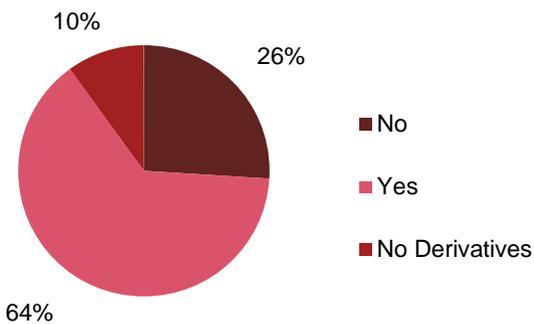
Figure 13 – Companies applying hedge accounting



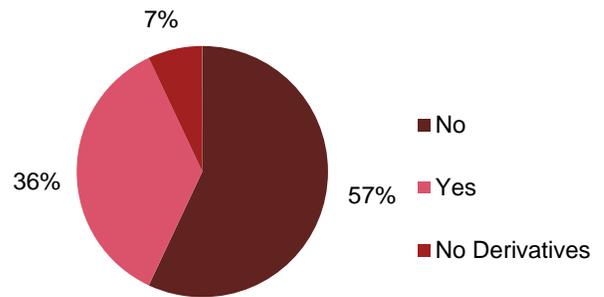
Upstream companies applying hedge accounting



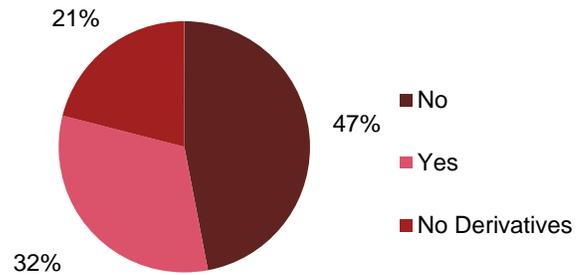
Midstream companies applying hedge accounting



Downstream companies applying hedge accounting



Oilfield Services companies applying hedge accounting



Mining companies applying hedge accounting

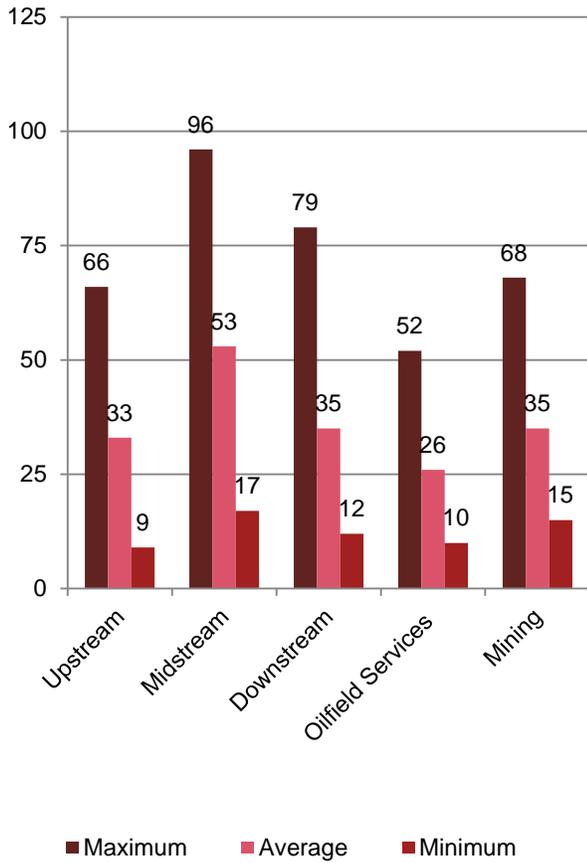
Business and risk factors

The SEC staff commented on a number of disclosures in the forepart of Form 10-K. These matters included, but were not limited to, requesting greater clarification on significant customers (i.e., those that represent more than 10% of total sales), terminology used to describe trends or significant activity in operations, and the impact of rig utilization on the company's operations (predominately in the oilfield services subsector). In addition, the SEC staff issued comments regarding foreword discussion of production requirements, capacity, and significant agreements. Finally, consistency between items in the forepart and other sections of the document was an SEC focus area.

Sample comments

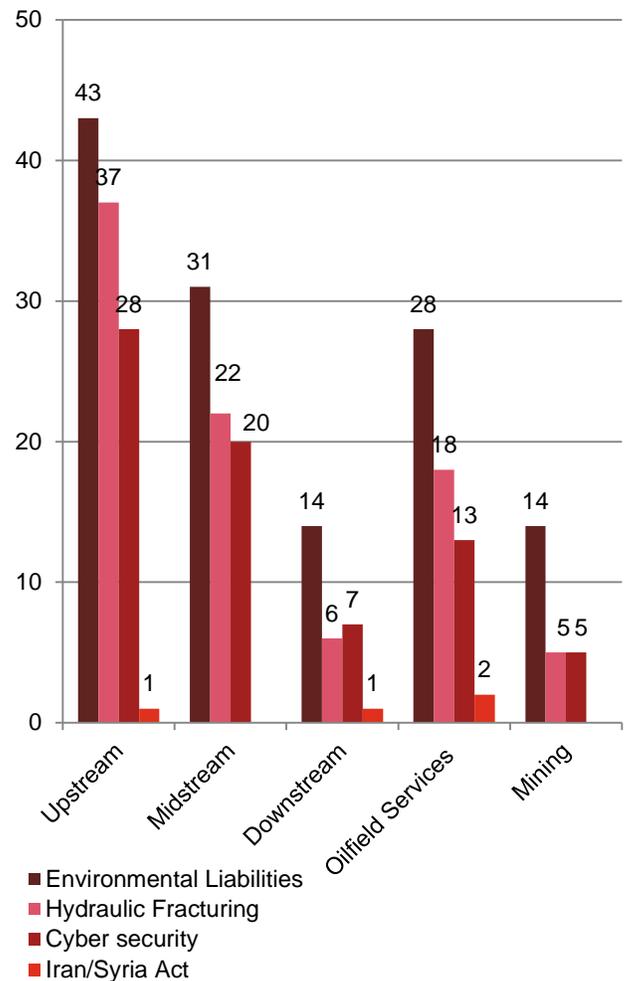
1. We note your risk factor here and later disclosure that “[f]or the year ended December 31, 20XX, two customers accounted for 13.2% and 12.1% of [your] total sales.” In accordance with Item 101(c)(1)(vii) of Regulation S-K, please disclose the names of these customers and their relationship to you or explain to us why you believe this information is not required. We note your statement that “[t]he total loss of either of these two customers could adversely affect [y]our ability to market products on a competitive basis and generate a profit.”
2. We see that you disclose total rig counts along with utilization rates for in-service rigs” that exclude contractual downtime for shipyard projects ”and cold-stacked rigs which were not actively marketed.” Please expand your table to include in-service rig counts and utilization rates without such exclusions, also provide an accompanying narrative to describe the numerators and denominators utilized to clarify the manner by which utilization and the number of in-service rigs are measured for each year.
3. We note your references in this section to transportation agreements. However, you have not filed such agreements as exhibits to your filing. Please provide your analysis as to whether such agreements are required to be filed as material contracts. Refer to Item 601(b)(10) of Regulation S-K.

Figure 14 – Number of risk factors by subsector



A wide range of risk factors are disclosed in the business section in the forepart of the Form 10-K. We analyzed the number and types of risk factors by subsector (see Figure 14). We also examined the more common risk factors within the energy sector. We found that the number and types of risk factors were fairly consistent across sectors and subsectors (see Figure 15). More than half of the registrants in our study included risk factors for environmental liabilities, hydraulic fracturing, cyber security, and the Iran Threat Reduction and Syria Human Rights acts.

Figure 15 – Number of risk factors disclosed by type and subsector



Revenue and accounts receivable

SEC staff comments concerning revenue and accounts receivable also increased this year compared to last. The category made the top ten list of comment areas and covers revenue recognition policy and how consistently companies apply that policy in their filings.

Revenue recognition of mobilization revenue in the oilfield services subsector was a main focus of the SEC staff. Specifically, the SEC staff requested additional information regarding the recognition of revenue over the life of the drilling contract, how that treatment was in accordance with ASC 605, and how a straight line recognition method over the drilling contract's term correlates with the actual drilling schedule.

In addition, comments highlighted situations where the SEC staff indicated that the revenue recognition policy included in the filing did not provide sufficient detail about the company's significant revenue streams or specific contractual provisions that could impact revenue recognition (e.g., refunds).

In some cases, a company's revenue recognition accounting policy appeared to have been rolled forward from the previous year, even though the company's circumstances may have evolved or it entered into significant new contracts. Registrants should take a fresh look at their revenue recognition policy to ensure it addresses each material revenue stream and unique contractual provisions.

Sample comments

1. We note your disclosure indicating you earned mobilization revenues for the [ABC asset] during the fourth quarter of 2012. Please reconcile this statement with the accounting policy indicating that fees received during periods of mobilization are deferred and recognized as drilling services are provided.
2. We understand from your prior correspondence that you recognize revenues uniformly over the term of your drilling contracts, based on the amount of time that has elapsed, and that this practice is consistent with the day rates you have negotiated and the pace of drilling for which you are being compensated. You confirm in response to prior comment 3 that revenues are recognized on contracts as time is incurred, efforts are expended and materials are consumed. Tell us your schedule for reviewing and confirming the results of your percentage-of-completion computations, by alternative measures that involve observation and inspection as required by FASB ASC 605-35-25-78, and the manner by which this have been accomplished. It should be clear how you periodically verify that a straight line method of recognition over the term of the drilling contracts correlates with actual drilling, which you have identified as the deliverable.
3. Tell us and revise your revenue recognition policy note to state specifically how you recognize revenue from trading iron ore and also describe your collection policies for these receivables. The existing disclosure is boilerplate and provides no insight into your revenue-generating activities.
4. Please expand your disclosure to explain your policy for recognizing amounts allocated to the sale of unproved property interests along with your turnkey drilling arrangements, to clarify the manner of calculating these amounts and the timing of recognition. This disclosure should be integrated with your turnkey drilling revenue recognition policy note and clarify how your circumstances are appropriate for the method applied. If there are circumstances under which amounts received under these contract are refundable, such as may occur prior to drilling, it should be clear how any provisions of this sort have been considered in formulating your policy of accounting for proceeds allocable to the sale of unproved property interests, specifically as it relates to the timing of recognition.

Compensation and incentive plans

Item 402 of Regulation S-K provides extensive requirements for executive compensation disclosures. The applicability of these disclosures will vary for each registrant based on its particular facts and circumstances. Consistent with the SEC staff's theme of encouraging registrants to provide more robust and transparent disclosures, comments in this area continued to focus on specific aspects of an executive's performance and the criteria used to evaluate performance and determine compensation awards. Where benchmark or market-based data is used in the evaluation, the SEC staff expects companies to specifically disclose this data and how it was used.

Sample comments

1. We note that your general partner granted performance awards at the closing of your IPO in July 2012 and that the awards have a performance condition related to the total unit-holder return realized on your common units from the date of the IPO through December 31, 20XX. Please define for us the term total unit-holder return and tell us why, if applicable, you believe these awards contain a performance condition and not a market condition. See the related definitions in ASC 718-10-20. Also explain to us the fair value model" used in your valuation.
2. We note that you issued common shares to your President, or a company controlled by your President. Please disclose the reasons for the issuance of this stock, clarify whether this was a non-reciprocal transaction, and tell us why there is a disparity in the valuation of these shares in comparison to the shares issued to extinguish debt in the subsequent month. We would generally expect the shares would need to be recorded at fair value, as indicated by the quoted market price of your stock on the date of issuance, to comply with GAAP.
3. We note your disclosure that you have granted certain restricted stock awards with market conditions. Please disclose the information required by ASC 718-10-50-2(g) as it relates to your granted restricted stock awards with market conditions. Please provide us your revised disclosure to be included in future filings.

Income taxes

Accounting for income taxes, including related disclosure requirements, is often complex and involves significant judgment. SEC staff comments in this area focused on disaggregation in the income tax provision disclosures, additional detail included to determine the valuation allowance, and the sufficiency and consistency of indefinite reinvestment disclosures.

Income tax provision disclosures

Comments frequently asked registrants to enhance their disclosures of how the results impact earnings in jurisdictions with different tax rates. SEC staff comments also addressed the extent to which foreign effective tax rates differ from domestic rates.

The SEC staff also issued comments when it was unclear whether a registrant's effective tax rate reconciliation included each item that exceeded five percent of income tax expense calculated using the applicable statutory tax rate (as required by ASC 740-10-50-12 and Rule 4-08(h) of Regulation S-X).

Sample comments

1. It appears that many of the individual items that make up the adjustment to your income tax expense reconciliation captioned "revaluation of tax attributes" are in excess of five percent of your tax provision. Please tell us how you considered the guidance per Rule 4-08(h) of Regulation S-X in aggregating these amounts into a single line item.
2. Since you are a U.S. entity, please tell us your basis for using statutory rates applicable to Mexico and Peru, rather than the U.S. statutory rate, for purposes of reconciling from the domestic federal statutory rate to your effective tax rate pursuant to ASC 740-10-50-12. Refer to Questions 2 and 5 of ASC 740-10-S99-1. To the extent you decide the U.S. statutory rate should be used instead, please provide us the revised reconciliation and accompanying disclosures you will include in future filings.

Valuation allowances

The SEC staff continued to scrutinize registrants' assessments of deferred tax assets. In their comment letters, the SEC staff asked registrants to explain the nature and weight of the positive and negative evidence considered. When significant changes occurred with respect to realizability of deferred tax assets, the SEC staff often asked registrants to explain the circumstances that led to the change, and to justify the timing of the change. When changes in circumstances could impact the realizability of deferred tax assets and can be foreseen, registrants should consider foreshadowing disclosures in periods preceding the change.

Sample comment

1. Given your history of recurring net losses, please discuss the nature of the deferred tax assets which have not been offset by a valuation allowance and how you determined that these assets would be realized. Please address the following: a) expand your discussion of the nature of the positive and negative evidence that you considered, how that evidence was weighted, and how that evidence led you to determine it was not appropriate to record a valuation allowance on the remaining deferred income tax assets; b) disclose the amount of pre-tax income that you need to generate to realize the deferred tax assets; c) explain the anticipated future trends included in your projections of future taxable income; and d) disclose that the deferred tax liabilities you are relying on in your assessment of the realizability of your deferred tax assets will reverse in the same period and jurisdiction and are of the same character as the temporary differences giving rise to the deferred tax assets. Please provide us in your supplemental response planned disclosures to be included in your future filings.

Indefinite reinvestment assertion and related liquidity disclosures

The SEC staff frequently asked registrants to explain how they support an indefinite reinvestment assertion, including a description of reinvestment plans for each foreign jurisdiction. In addition, the SEC staff reminded registrants that when an indefinite reinvestment assertion was made, ASC 740-30-50 requires disclosure of the amount of the unrecognized deferred tax liability on undistributed earnings of foreign subsidiaries—or a statement that such determination is not practicable.

The interplay between a registrant's indefinite reinvestment assertion and liquidity continues to be an area of SEC staff comment. The SEC staff has asked registrants to disclose:

- The amount of cash and cash equivalents in jurisdictions with an indefinite reinvestment assertion
- Potential tax consequence of repatriation
- A description of events that may cause such foreign earnings to become taxable

The SEC staff stressed that highlighting the amount of cash that may not be available to fund domestic operations or obligations without paying a significant amount of taxes upon repatriation is an important element of transparent liquidity disclosures.

Sample comment

1. You disclose that you hold cash balances in both U.S. and Canadian dollars. Given your significant cash balances please tell us the amount that is held in foreign countries. To the extent foreign cash balances are significant, please address the following in future filings: disclose the amount of foreign cash and cash equivalents as compared to your total amount of cash and cash equivalents as of period end; discuss the fact that if the foreign cash and cash equivalents are needed for your operations in the U.S., you would be required to accrue and pay U.S. taxes to repatriate these funds. Disclose if it is your intent to permanently reinvest these foreign amounts outside the U.S. and whether your current plans do not demonstrate a need to repatriate the foreign amounts to fund your U.S. operations.

Other key matters and looking forward

Internal controls and procedures

Internal control over financial reporting (ICFR) is an area of increasing interest for the SEC. At the 2014 AICPA National Conference on Current SEC and PCAOB Developments, for example, several speakers observed that the SEC staff is looking for potential indicators of material weaknesses, such as corrections of an error or disclosures reporting material changes in internal controls.

Similarly, SEC comments on ICFR are on the upswing. Companies should continue to carefully evaluate ICFR and disclosure controls and procedures (DC&P) when they respond to the SEC staff. Registrants should also assess the sufficiency of their disclosures, assessments, and certifications.

On a quarterly basis, most registrants are required to report on the effectiveness of their DC&P and to disclose if there were any material changes in their ICFR. The effectiveness of ICFR is assessed annually. The SEC increasingly challenged registrants' conclusions about the existence or severity of internal control deficiencies.

Sample comment

1. It appears that your control structure failed, in either design or execution, to prevent an error from being detected before resulting in a material restatement. It remains unclear whether there were no controls in place that would have prevented such an error, or if the controls in place failed. Please clarify. Further, because the control failure resulted in a material restatement, it is unclear why you believe the related weakness is not material. Please explain.

While the SEC staff is likely to question why a restatement did not result in the reporting of a material weakness, we have also seen comments about the existence of material weaknesses when immaterial errors were corrected by means of revision of comparative financial statements.

Sample comments

1. We continue to question your evaluation of the deficiencies in ICFR and your determination that it was not reasonably possible that a material misstatement of your financial statements would

not be prevented or detected on a timely basis as a result of certain control deficiencies.

2. Tell us why the severity is limited to the specific, individual process-level errors you describe in your response and how you determined that the reasonably possible potential error for each is limited to the various errors identified. For example, how was it determined that the significant deficiency is limited to only being manifested through an immaterial error in a specific type of revenue transaction?

Companies sometimes assess control deficiencies by focusing on the control activities component of COSO. However, it is important to evaluate the implications of control deficiencies of all COSO components. The SEC staff requested additional information about the specifics of a company's COSO framework.

Sample comment

1. Please describe in greater detail how you considered the numerous deficiencies in evaluating the monitoring and risk assessment components of COSO. Specifically, we continue to question whether one or more deficiencies exist in the risk assessment or monitoring component and whether one or more such unidentified deficiencies represent a material weakness.

The SEC staff also commented when registrants provided no explicit conclusion about the effectiveness of DC&P. They also raised concerns when a company's management concluded DC&P was effective even though the assessment of ICFR indicated a material weakness.

Other key matters

Under Rule 13a-15(b) of the Exchange Act, management must evaluate the effectiveness of DC&P at the end of each fiscal quarter. The evaluation includes assessing controls and other procedures that ensure that required information in a company's filings is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. It is important to remember that there is substantial overlap between the processes considered part of DC&P versus those considered in ICFR. Nearly all of ICFR falls within the scope of DC&P. However, aspects of DC&P can extend beyond what is considered part of ICFR. As such, it is rare that a material weakness in ICFR would not be accompanied by an ineffective DC&P.

Sample comments

1. In light of the ineffectiveness of your internal controls over financial reporting at June 30, 20XX, it is unclear to us how you determined that your disclosure controls and procedures were effective. Please explain.
2. Exchange Act Rule 13a-15(b) or 15d-15(b) requires that management evaluate, with the participation of the principal executive and principal financial officers, the effectiveness of disclosure controls and procedure as of the end of each fiscal quarter. Please revise to disclose that your principal executive and financial officer participated in the evaluation. Item 308(a) of Regulation S-K.

Looking forward

Going forward into 2015, we expect the SEC staff to continue commenting on many of the same topics covered in 2014. We also expect an increased focus on a number of additional topics, and are providing our insights below.

Impairments

Due to the current price environment, energy companies should consider whether any impairments exist and whether an interim or trigger-based impairment test is warranted. If tangible or intangible assets are not impaired, but are "at risk" of being impaired, registrants should consider the need to add disclosures about the possibility of impairment. The SEC's enforcement division has issued informal inquiries regarding the chronological events that lead to the ultimate booking of an impairment, and questioned the lack of foreshadowing discussion in filings preceding an

impairment charge. Registrants may be questioned why an impairment test was not performed in an environment experiencing low commodity prices or to assess the impact on valuation when a company decides to decrease its capital expenditure program. Therefore, it is imperative for a company to have contemporaneous and robust documentation to support management's analysis and conclusions. The factors that contribute to the potential for a future impairment and details regarding the assets at risk and the sensitivity of the valuation are usually included in foreshadowing disclosures.

Discontinued operations

ASU 2014-08, *Reporting discontinued operations and disclosures of disposals of components of an entity*, will be effective for all disposals of components of an entity that occur within annual periods beginning on or after December 15, 2014, and interim periods within annual periods beginning on or after December 15, 2015 with early adoption permitted. The new guidance includes new disclosure requirements and introduces the concept of "strategic shift" that will have a major effect on how an entity determines a disposal represents a discontinued operation. Once adopted, the SEC staff may have questions about how energy companies apply the new guidance, the basis for their conclusions, and the sufficiency of disclosures.

Statement of cash flows

Continuing as a top restatement trend, the statement of cash flow will most likely continue to be a focus area for comments. Companies should focus on the appropriate cash flow presentation of non-cash transactions such as capital expenditures accruals and how non-routine transactions, such finance elements in a business acquisition, are presented in the statement of cash flow.

MLP dropdowns/Earnings per unit

The topic of earnings per unit (EPU) was recently addressed by the Emerging Issues Task Force (EITF) which reached a consensus-for-exposure requiring an MLP to allocate net income (loss) of a transferred business under common control entirely to the General Partner (GP) when computing EPU in periods prior to the dropdown transaction. Under this tentative conclusion, an MLP would not adjust prior period EPU for its publicly-traded LP units (i.e., no income or loss will be allocated to the LP units in these prior periods). The proposed guidance will need to be applied retrospectively and is expected to be issued in mid-2015.

Conclusion: Best practices when responding to SEC comment letters

The SEC staff's comments are based primarily on a company's disclosures and other public information, including a company's website, press releases, and analyst call discussions (nonpublic information, such as whistleblower tips and PCAOB inspection reports, can also be a source of comments). SEC comments reflect the staffs' understanding of the applicable facts and circumstances. The staff may request additional supplemental information so they can better understand a company's disclosure. In addition, the staff may ask that a company provide additional or different disclosures in future filings. They may also ask the company to change accounting and/or revise the disclosure by filing an amendment.

To effectively respond to SEC staff, company management should keep these best practices in mind:

- **Own the process**—Companies should take advantage of the knowledge and experience of their auditors and SEC counsel. But most important, the company should own the process. As is the case with any project, answering an SEC comment should have a clear owner and project manager to coordinate the various sources involved in developing a response.
- **Don't rush**—Organizations should realistically assess how long it will take to respond. Although the letter from the SEC will request a response in 10 business days, it is acceptable for the company (usually through counsel's call to the SEC staff) to request more time if it is needed. A thoughtful and complete response is better than a quick reply.
- **Think about future filings**—Companies should discuss with auditors and counsel the comment letters it has received shortly before filing a registration statement to determine if the comments have implications on the content and timing of the registration statement. Timing questions can also be discussed with the SEC staff, as well as the possibility of an expedited review of the company's response.
- **Ask the SEC staff**—Registrants can call the SEC staff if they do not understand the comment. When inquiring, however, the focus should be on clarifying the comment—not explaining the company's position.
- **Remember that comments become public**—Comments become part of the public domain once submitted and resolved and are posted to the SEC's website no earlier than 20 days after the review is completed or the registration statement is declared effective. Even those comment letters related to emerging growth companies that have been filed confidentially are eventually made public. CorpFin will redact any information subject to a Rule 83 confidential treatment request without evaluating the substance of that request.
- **Don't rely solely on precedent**—The use of previous comments and responses from other companies may be helpful but should not be the primary basis of a response. Each comment has its own specific facts and circumstances and may involve different levels of materiality. The reason the SEC staff accepted a response from one company may not apply to another. Make sure responses are appropriate and based on the company's specific facts and applicable accounting literature.
- **Address the intent of the question and provide technical references**—Consider, if possible, the objective of the SEC staff comment. Sometimes providing a complete answer that addresses the intent of the question and that provides the relevant technical accounting and reporting references can stave off future comments.
- **Provide planned disclosures**—Many comments will request additional disclosures in future filings. To ensure there is a meeting of the minds, companies should provide the SEC staff with a draft of the applicable disclosure, even if uses data from a prior period. This allows the SEC staff to decide whether the narrative sufficiently addresses their comment and may prevent future comments on the same disclosure.

Best practices when responding to SEC comment letters

The company or its representatives should feel free to involve the SEC's Office of the Chief Accountant (OCA) (distinct from CorpFin's Office of Chief Accountant) at any stage in this process. Generally, OCA addresses questions concerning the application of GAAP and materiality, while CorpFin resolves matters concerning the age, form, and content of financial statements required in filings.

Closing a filing review

Once a company has resolved all SEC staff comments on an Exchange Act registration statement, a periodic or current report, or a preliminary proxy statement, CorpFin provides a letter that confirms that its review is complete.

When a company has resolved all SEC staff comments on a Securities Act registration statement, the company may request that the SEC declare the registration statement effective so that it can proceed with the transaction.

A more detailed discussion of the filing review process used by the Division of Corporate Finance can be found on the SEC's website as <http://www.sec.gov/divisions/corpfin/cffilingreview.htm>

Methodology

Our analysis of SEC comment letter trends was based on comments published to the SEC EDGAR website from October 1, 2013 to September 30, 2014 related to the Form 10-K and 10-Q filed by registrants in the energy and mining industry. The population was analyzed by energy subsectors as determined based on the following allocation of SIC codes:

- Downstream - 2911, 5171
- Midstream - 4610, 4922
- Oilfield services - 1381, 1382, 1389, 3533
- Upstream - 1311, 5172, 6792
- Mining – 1000, 1040, 1090, 1220, 1221, 1400

Certain registrants may be involved in multiple energy subsectors. For consistency of evaluation, the analysis was based solely on the SIC codes indicated on the SEC EDGAR website for each respective registrant and the aforementioned allocations.

Benchmark survey participating registrants

Energy registrants surveyed downstream

CVR Energy, Inc.
CVR Refining, LP
Delek US Holdings, Inc.
Genesis Energy, L.P.
HollyFrontier Corporation
Imperial Oil Limited
Marathon Petroleum Corporation
Murphy Oil Corporation
Northern Tier Energy LP
Phillips 66
Tesoro Corporation
Valero Energy Corporation
Western Refining, Inc.

Midstream

Access Midstream Partners, L.P.	NuStar Energy L.P.
Atlas Energy, L.P.	Oneok Partners, L.P.
Atlas Pipeline Partners, L.P.	Phillips 66 Partners LP
Boardwalk Pipeline Partners, LP	Plains All American Pipeline, L.P.
Buckeye Partners, L.P.	PVR Partners, L.P.
DCP Midstream Partners, LP	Spectra Energy Partners, LP
El Paso Pipeline Partners, L.P.	Sunoco Logistics Partners L.P.
Enbridge Energy Partners, L.P.	Targa Resources Corp. L.P.
Energy Transfer Equity, L.P.	Targa Resources Partners LP
Energy Transfer Partners, L.P.	TC Pipelines, LP
EnLink Midstream Partners, L.P.	Tesoro Logistics LP
Enterprise Products Partners L.P.	Western Gas Partners, LP
Kinder Morgan Energy Partners, L.P.	The Williams Companies, Inc.
Kinder Morgan, Inc.	Williams Partners L.P.
Kinder Morgan Management, LLC	
Magellan Midstream Partners, L.P.	
MPLX LP	

Methodology

Mining

Alliance Holdings GP, L.P.	Martin Marietta Materials, Inc.
Alliance Resource Partners, L.P.	MDU Resources Group, Inc.
Armstrong Energy, Inc.	Natural Resource Partners L.P.
Cliffs Natural Resources Inc.	Newmont Mining Corporation
Compass Minerals International, Inc.	Peabody Energy Corporation
CONSOL Energy Inc.	Southern Copper Corporation
Freeport-McMoRan Copper & Gold Inc.	Vulcan Materials Company

Oilfield services

Atwood Oceanics, Inc.	Kodiak Oil & Gas Corp.
Baker Hughes Incorporated	Nabors Industries LTD.
Cameron International Corporation	National Oilwell Varco, Inc.
Core Laboratories N.V.	Noble Corporation plc
Diamond Offshore Drilling, Inc.	Oceaneering International, Inc.
Dril-Quip, Inc	Oil States International, Inc.
Energy XXI (Bermuda) Limited	Patterson-UTI Energy Inc
EnSCO plc	Rowan Companies plc
FMC Technologies, Inc.	RPC, Inc.
Forum Energy Technologies, Inc.	Schlumberger N.V.
Frank's International N.V.	SemGroup Corporation
Halliburton Company	Superior Energy Services, Inc.
Helix Energy Solutions Group, Inc.	Transocean LTD.
Helmerich & Payne, Inc.	Weatherford International LTD

Upstream

Anadarko Petroleum Corporation	Laredo Petroleum, Inc.
Apache Corporation	Linn Energy LLC
Athlon Energy, Inc.	Marathon Oil Corporation
Berry Petroleum Company, LLC	Markwest Energy Partners, L.P.
Breitburn Energy Partners L.P.	Newfield Exploration Company
Cabot Oil & Gas Corporation	Noble Energy, Inc.
Chesapeake Energy Corporation	Oasis Petroleum, Inc.
Chevron Corporation	Occidental Petroleum Corporation
Cimarex Energy Co.	Pioneer Natural Resources Company
Cobalt International Energy, Inc.	QEP Resources, Inc.
Concho Resources Inc.	Range Resources Corporation
Continental Resources, Inc.	Regency Energy Partners LP
ConocoPhillips	Rosetta Resources Inc.
Denbury Resources, Inc.	Sandridge Energy, Inc.
Devon Energy Corporation	SM Energy Co
Energen Corporation	Southwestern Energy Company
EOG Resources, Inc.	Ultra Petroleum Corp.
Exxon Mobil Corporation	Unit Corporation
Gran Tierra Energy, Inc.	Vanguard Natural Resources, LLC
Gulfport Energy Corporation	Whiting Petroleum Corporation
Hess Corporation	World Fuel Services Corporation
Kosmos Energy Ltd.	WPX Energy, Inc.

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