

# *Stay informed:* Financial Services 2013 SEC comment letter trends

*Current developments  
in SEC reporting*

*January 2014*



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January 2014

Clients and friends:

As 2013 has come to an end, it is time to prepare for your annual financial statements. With uncertainties in the economic and regulatory environment continuing to drive increased attention on the preparation of annual reports, it is important to understand the SEC staff's greatest areas of focus.

To help you prepare for your annual reporting, PwC's Financial Services Industry Group has developed the enclosed publication titled *Stay informed: Financial Services 2013 SEC comment letter trends*. We have compiled and analyzed the SEC staff's comment letters issued over the past few years to registrants across different sectors within the financial services industry, including: banking and capital markets, insurance, asset management, and real estate. We have identified the areas where registrants received the majority of comments and provided sample comments along with highlights surrounding current hot topics. Also included is a discussion of other notable trends related to topics that are specific to the financial services industry as well as historically recurring themes across other industries.

We hope you find the insights and examples in this report to be both informative and useful as you navigate your year-end reporting process. Please feel free to contact your PwC engagement team or me to discuss the information in this publication or to address any questions you may have.

Best regards,

A handwritten signature in black ink, appearing to read "Jim".

Jim Flanagan

US Financial Services Leader



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## *What's new at the SEC*

During the past year, the Securities and Exchange Commission (SEC) was home to several leadership changes, confirmations and nominations. These changes primarily were associated with Mary Schapiro stepping down as SEC chair in December 2012 and the US Senate's nomination (in February 2013) and confirmation (in April 2013) of Mary Jo White, former US attorney for the Southern District of New York, as new SEC chair.

In August 2013, the Senate confirmed White as chair of the SEC through June 2019 for her second term and also confirmed Michael Piwowar and Kara Stein as SEC commissioners, filling the seats of Troy Paredes and Elisse Walter, respectively.

White's first few months as chair have significantly changed the agency's priorities—the SEC continues to focus on the implementation of the Dodd-Frank and JOBS Acts and emphasizes the importance of corporate governance. However, enforcement of securities law violations is at the top of the SEC's agenda. The SEC has revised its “neither admit nor deny” settlement practice and will seek to obtain admissions from defendants in certain limited instances. To date, SEC settlements under the new policy include significant settlements including those with a hedge fund adviser and a multi-national bank case, both of which included admissions of wrongdoing. Recently Chair White has said that the SEC will also commit more resources to investigating accounting and financial fraud.

In July 2013, the SEC announced the creation of three new task forces: (i) Financial Reporting and Audit, established mainly to review restatements and revisions and analyze industry trends; (ii) Microcap Fraud, established mainly to investigate fraud in the issuance, marketing, and trading of microcap SEC securities; and (iii) Center for Risk and Quantitative Analytics, established mainly to support and coordinate risk identification and data analytics.

Now that the SEC's five commissioners are confirmed and its priorities aligned, it is completing pending rulemaking, including voting to propose both the executive pay ratio and crowdfunding rules in addition to their continued emphasis on enforcement actions.

# Overview

To help registrants gain insight into the SEC's current areas of interest, PwC analyzed comments issued and released by the SEC staff between January 1, 2012 and October 31, 2013 to domestic registrants within the financial services industry. From this analysis, we identified trends of "hot topic" areas, including industry-specific considerations and some other notable trends in comments received across financial services that we believe are relevant and may be of continued focus in the near term.

The hot topics identified in the financial services industry are somewhat consistent with those in other industries, with Management's Discussion and Analysis (MD&A) disclosures regarding results of operations, risk factors and liquidity and capital resources being the most prevalent. Financial services shares a continued focus on loss contingencies and goodwill and impairment with other industries as

well. Specific industry comments relate to valuation, business combinations and Variable Interest Entities (VIEs), among other areas. Executive compensation also features prominently with comments to the industry regarding the determination and drivers of executive compensation decisions. In addition, regulatory reporting, primarily as it relates to the banking and insurance sectors, was a significant trend, including comments regarding Basel III and statutory accounting matters.

Our analysis considered the breakdown of the financial services industry into four sectors: banking and capital markets, insurance, asset management, and real estate. In terms of the aforementioned hot topic areas, all four of the sectors, when analyzed individually, presented substantially similar trends.

| Rank       | "Hot topic" areas                                    | #     | %   |
|------------|--|-------|-----|
| Hot Topics |  |       |     |
| 1          | Management's discussion and analysis                 | 1,116 | 36  |
| 2          | Fair value measurements                              | 303   | 10  |
| 3          | Regulatory reporting*                                | 135   | 4   |
| 4          | Business combinations and variable interest entities | 131   | 4   |
| 5          | Loss contingencies                                   | 80    | 3   |
| 6          | Goodwill and impairment                              | 80    | 3   |
| 7          | Executive compensation                               | 67    | 2   |
| 8          | Other**  | 1,184 | 38  |
| Total      |  | 3,097 | 100 |

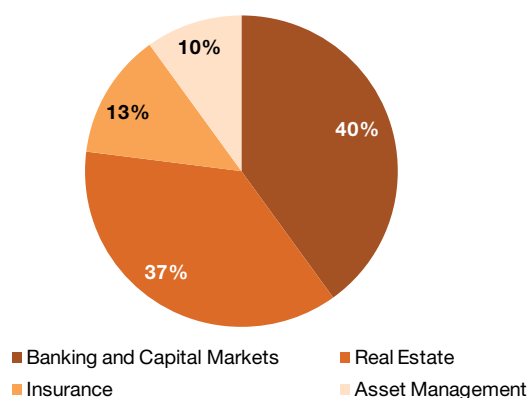
*This publication highlights trends in SEC staff comments for the Financial Services industry. The topics reflect the SEC staff's continued focus on transparent and meaningful disclosures and the overall quality of financial reporting.*

\* See "Regulatory reporting – Basel III & capital requirements" and "Statutory disclosures" in Banking and Capital Markets and Insurance sector highlights, respectively, for further detail

\*\* Primarily items covered in sector highlights including allowance for loan and lease loss and cost capitalization found on pages 16 and 23, respectively

The chart below shows the percentage of total comments included in our analysis of comment letter trends. As indicated below, the largest proportion of comments received related to entities in the banking and capital markets sector. This volume is not surprising considering the creation of a specific assistant director office at the SEC, which was established in 2012 to perform real time reviews of the largest banks and broker dealers, among others.

**Breakdown by sector**



## Methodology

The analysis of SEC staff comment letter trends was based on comments issued and released by the SEC between January 1, 2012 and October 31, 2013 related to Forms 10-K and 10-Q. The criteria specified in this search included only large accelerated filers and accelerated filers with revenues above \$1 million. For consistency of evaluation, the analysis was based solely on the SIC codes indicated on the SEC EDGAR website for each respective financial services sector, as follows:

- Banking and Capital Markets – 6021, 6022, 6029, 6035, 6036, 6099, 6111, 6141, 6153, 6159, 6162, 6163, 6172, 6189, 6199, 6200, 6211
- Insurance – 6311, 6321, 6324, 6331, 6351, 6361, 6399, 6411
- Asset Management – 6282, 6211, 6799, and Business Development Companies
- Real Estate – 6500, 6510, 6512, 6513, 6519, 6531, 6532, 6552, 6798

# Management's discussion and analysis

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) was the top area for comment again in the 2013 comment letter cycle. One of the objectives of MD&A is to provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management. MD&A should also provide information about the quality, and potential variability of a company's earnings and cash flows so that investors can ascertain the likelihood that past performance is indicative of future performance. The discussion should include quantitative analysis and discussion of historical trends, along with details of unusual events and foreshadowing of any material known future trends or events.

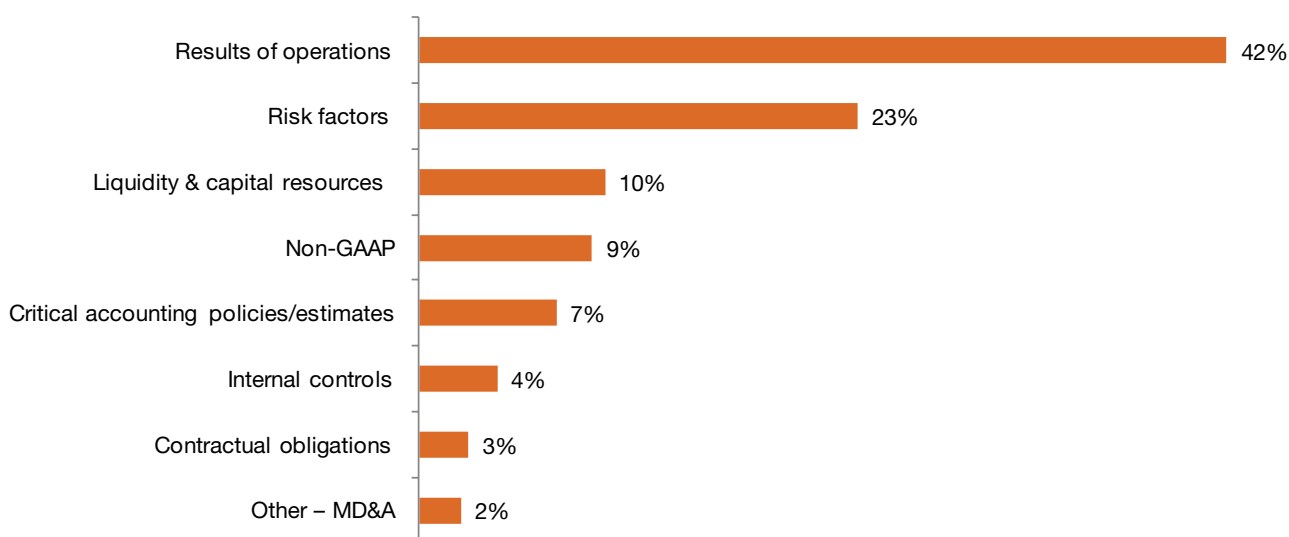
The guidance set forth in Item 303 of Regulation S-K identifies five categories of disclosure in MD&A – results of operations, risk factors, and liquidity & capital resources – and the requirements for each category. Additional guidance is contained in Financial Reporting Release (FRR) 36 and FRR 72. In preparing MD&A disclosures, registrants should

also consider the consistency of the information presented in MD&A with other information that the registrant publicly discloses.

During the 2013 AICPA National Conference on Current SEC and PCAOB Developments ("2013 AICPA Conference"), the SEC staff discussed the importance of providing disclosures in MD&A that are relevant and transparent. Specifically, the SEC staff highlighted the need to provide comprehensive disclosures to address the many business risks that exist in today's economic environment, including their impact on liquidity and results of operations, while being mindful of disclosure overload or use of "boilerplate" disclosures.

The table below summarizes the number of comments received by registrants by topical area of MD&A during the 2013 comment letter cycle. In this section, we have highlighted the top three areas of MD&A in which registrants received comments from the SEC staff and have provided relevant examples.

Number of comments by MD&A topic



*In the following sections we have analyzed SEC staff comments by component of MD&A.*

## Results of operations

Item 303(a)(3) of Regulation S-K contains the requirements for registrants to discuss results of operations in MD&A. The discussion of results of operations should include an analysis of the key factors that caused material changes in line items on the income statement. Registrants should ensure that the results of operations section of MD&A provides readers with a sufficient understanding of the significant components of revenues and expenses that, in management's judgment, facilitate an understanding of the registrant's results of operations. In addition, disclosures should be made of any known trends or uncertainties that have had, or that the registrant reasonably expects will have, a material favorable or unfavorable impact on revenues or income from operations.

The SEC staff frequently issued comments reminding registrants that MD&A should not simply repeat information provided elsewhere in the filing; rather, it should explain the underlying driver behind changes in the financial position, results of operations and cash flows of the registrant and quantify the effect of each of the key drivers. The analysis should sufficiently explain the "whys" and "implications." SEC staff comments also encouraged the use of a segment analysis to provide a reader with a more in-depth understanding of the consolidated results. The segment analysis may be integrated with the discussion of the consolidated results to avoid unnecessary duplication.

## Sample comments

- 1) We note that year-end total loans decreased during 20XX compared to 20XX. We also note that during your earnings conference call you attributed the decrease in loans to intense competition in pricing and structure. In future filings, please expand your disclosure in Management's Discussion and Analysis to discuss the drivers of the decrease in total loans and expected future trends.
- 2) We note your disclosure that commissions and fees on the consolidated statements of earnings were xx% lower in 20XX reflecting lower market volumes. We also note your disclosure in the preceding paragraph about increases in global equity prices and lower market volumes. Please revise your future filings to more clearly link the industry-specific trends such as market volumes and volatilities to the changes in your commissions and fees. To the extent possible, please revise your disclosure to more clearly address your own market making volume statistics relative to the market, and discuss how your own volume statistics compare to the macro economic trends discussed.
- 3) We note that "Compensation and related" is your largest operating expense. As such, please revise your future filings to separately quantify each significant component of this line item and provide investors with a more comprehensive explanation for each of the components comprising it. Discuss the related changes in these items and the impact on your results. In this regard, please ensure you quantify and discuss the impact of variable, discretionary and non-recurring compensation expenses. For example, provide a more comprehensive explanation for what is driving how much share-based compensation is granted each year. For discretionary bonuses, provide investors with an understanding of the drivers behind the decision to award these bonuses for each period presented. Refer to Item 303(A)(3)(i) of Regulation S-K for guidance.

## Risk factors

Registrants are required by Item 503(c) of Regulation S-K to provide a description of significant risk factors within Item 1A of the Form 10-K. The discussion should include an explanation of the risks that specifically affect the registrant (a summary of generic risks that would apply to all entities is not sufficient). Registrants are also required to address market risks, including credit and interest risks, in Item 7A of the Form 10-K.

In October 2011, the SEC released guidance regarding public company disclosure obligations relating to cyber security risks and cyber incidents. The guidance is intended to clarify whether and how companies should disclose the impact of the risk and cost of cyber security incidents. Given the SEC guidance, it would not be surprising if the SEC staff continued to focus on these disclosures in future comment letters. Accordingly, financial service entities should consider cyber security and data breach incidents when deciding how to fulfill their obligations under the SEC's existing disclosure requirements.

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### Sample comments

- 1) You disclose that you are exposed to credit risk in several areas of your business operations, including, credit risk relating to reinsurance, co-sureties on surety bonds, independent agents and brokers, issuers of securities, insurers of certain securities and certain other counterparties relating to your investment portfolio. Please provide us the following information regarding credit risks associated with your insurance operations:
    - The maximum exposure to credit risks in your surety business related to co-surety arrangements and concentrations of credit risk, if applicable;
    - The maximum amount of premiums due to you from independent agents and brokers, and concentrations of credit risks, if applicable; and
    - The amounts due from your significant reinsurers and their A.M. Best ratings, any amounts significantly past due from your reinsurers, and the allowance for doubtful amounts due from reinsurers and the factors you considered in determining the amount of doubtful accounts.
  - 2) You disclose that your business is reliant upon technology systems and networks, including systems and networks managed by third parties, to process, transmit, and store information and to conduct many of your business activities and transactions. You also disclose that you have implemented security measures designed to protect against breaches of security and other interference with your systems and networks resulting from attacks by third parties, including hackers. Given your extensive use of information technology systems, please tell us whether you have experienced any attacks, viruses, intrusions, or similar problems in the past and, if so, whether disclosure of that fact would provide the proper context for your risk factor disclosures. Please refer to the Division of Corporation Finance's Disclosure Guidance Topic No. 2 at <http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm> for additional information.
  - 3) Please expand your discussion to describe how the Risk Management Committee monitors and analyzes your market risk exposure between monthly meetings. The discussion should include a discussion of the process by which adjustments to your risk exposure are made.
  - 4) Please revise this risk factor in future filings to describe any recent periods of underperformance for your principal investment strategies and clarify the impact of such periods of underperformance on your business or results of operations.
  - 5) Please revise to address how: the Volcker Rule could adversely impact the manner in which you invest and operate your investment funds; money market fund regulations "could significantly alter money market fund products" (e.g., changes to net asset value and liquidity requirements); and swaps and derivatives regulations promulgated under Dodd-Frank, including additional reporting requirements, could impact your business.
  - 6) We note that you disclose that your systems could be subject to unauthorized access, systems failures and disruptions. Please tell us whether you have experienced attacks, unauthorized access, systems failures and disruptions in the past and, if so, whether disclosure of that fact would provide the proper context for your risk factor disclosures.
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## **Liquidity and capital resources**

Liquidity and capital resources disclosures should provide the reader with a clear understanding of the company's liquidity position and its ability to meet its existing and future cash requirements. Rather than merely repeating items reported in the statement of cash flows, disclosures should focus on discussion of the underlying reasons for current and future changes in cash flows. The purpose of this discussion is to explain the primary drivers and material sources and uses of cash. Areas where disclosures can be enhanced include disclosure of availability under existing credit facilities, debt covenant compliance and external sources of financing. Keep in mind that disclosure of planned capital expenditures and pension funding requirements can provide insight into known demands and commitments that are likely to impact liquidity.

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### **Sample comments**

- 1) Please provide disclosure that separately evaluates your ability to meet upcoming cash requirements over both the short and long term. In this regard, we note your disclosure in Note x to the financial statements regarding debt service obligations in 20XX, the potential need for regulatory approval of additional dividends from the broker-dealer subsidiaries, and the actions that you believe will be necessary to satisfy the company's cash requirements throughout 20XX. We also note disclosure regarding the current borrowing limits on your credit facility and recent trends in stock lending capacity.
  - 2) Please provide us proposed disclosure to be included in future periodic reports to include an explanation for the changes in cash provided by/used in operating activities, investing activities and financing activities for each period presented. In your proposed disclosure, address material changes in the underlying drivers including the specific inflows and outflows generated, rather than merely describing items identified on the face of the statement of cash flows. Your discussion should focus on the primary drivers of and other material factors necessary to an understanding of the company's historical and expected cash flows.
  - 3) We note your table detailing your available liquidity as of the quarter end. Please expand your disclosure in future filings to disclose how long it would take you to liquidate your short term investments and your receivables from banks and brokers. Please provide us with an example of your proposed disclosure.
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## Fair value measurements

Fair value accounting continues to be a topic of significant interest and discussions have continued to intensify among the preparers and users of financial information. In an effort to create a global framework for applying consistent fair value measurements, Accounting Standards Update No. 2011-4 (“ASU 2011-4”) was issued and became effective in the first quarter of 2012.

The SEC staff has continued to focus on compliance with the financial statement disclosure requirements included in ASU 2011-4, emphasizing both the quantitative and qualitative requirements set forth in the standard. Qualitative comments have placed an emphasis on how the registrant implements its processes and controls to support the fair value measurements while the quantitative comments have focused on significant unobservable inputs for level 3 measurements and how they were used to determine fair value.

Management’s process to understand the assumptions used by third party pricing sources has been a point of focus by the SEC staff. Comments have been focused on ensuring management has responsibility of the estimates provided by the pricing service and used in the company’s financial statements. Ultimately, management’s ownership and understanding will result in more meaningful and reliable information disclosed in the financial statements for investors.

The SEC staff comments have continued to focus on the following disclosures:

- All significant inputs used in the valuation of level 3 assets and liabilities
- The weighted average of the significant unobservable inputs to supplement any wide ranges and the basis for determining the weighted average
- The valuation amount for each valuation technique used within a class of assets or liabilities when multiple valuation techniques were used

- The factors considered when determining the appropriate weighting to be applied to each valuation technique when multiple valuation techniques are used to determine fair value
- The controls in place to support the completeness and accuracy of the prices received
- The procedures performed to validate valuations obtained from third party vendors, highlighting process differences between securities in active vs. inactive markets

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### Sample comments

- 1) Please break out (based on the valuation technique actually used) the dollar figures in the column entitled “Fair Value at December 31, 20XX” among the various valuation techniques set forth in the column entitled “Valuation Technique.”
  - 2) Given the wide range of inputs in certain cases, please revise your disclosure in future filings to also disclose the weighted average of the significant unobservable inputs reported. Refer to the illustration provided in ASC 820-10-55-103.
  - 3) We refer to your tabular disclosure of significant Level III inputs on page xx. To supplement your disclosure of the weighted averages of the significant unobservable inputs, please consider revising your future filings to provide more qualitative information regarding the ranges of inputs, including the distribution in the ranges where appropriate.
  - 4) Discuss the interrelationships between the unobservable inputs identified in the table on page xx and how they might magnify or mitigate the effect of changes in the unobservable inputs on the fair value measurement as stipulated in ASC 820-10-50-2g.
  - 5) Please revise your disclosure in future filings to discuss the factors you consider when determining the appropriate weighting to be ascribed to each valuation methodology and how this weighting can differ from investment to investment. Specifically explain why in certain situations the fair value determination would be heavily weighted towards one valuation methodology over another.
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# Business combinations and variable interest entities

Mergers and acquisitions activity has escalated over the years, resulting in an increased consolidation of operations throughout the financial services industry. Acquisition-related accounting and disclosure requirements can be complex, depending on the nature of the transaction and the nature of the assets acquired and liabilities assumed. As companies continue to seek growth opportunities through acquisitions, the SEC staff continues to comment on various acquisition accounting disclosure items and the subsequent impact of goodwill impairment, as discussed below.

## Business combinations

ASC 805, *Business Combinations*, provides extensive disclosure requirements to enable users to evaluate the nature and financial effects of business combinations. Registrants should carefully consider all of the disclosure guidance in preparing financial statements, both in the period of the acquisition and in subsequent periods.

For companies in the financial services industry, the SEC staff comments have focused on various acquisition accounting, consolidation disclosure items and valuation matters, including:

- fair value determination and key assumptions utilized,
- use of an independent valuation performed by a third-party valuation specialist,
- allocation of goodwill to reporting units and the interplay with the registrant's operating segments disclosures, and
- the reasons for significant adjustments to the initial purchase price allocation and the reasons why such information was not available at an earlier date.

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## Sample comments

- 1) We note that during the quarter ended, the Company recorded a measurement period adjustment, based on the receipt of new appraisals, to reflect a change in the estimate of the acquisition date fair value of the loans acquired in the first quarter acquisition. Please confirm, if true, that the new information obtained in the fourth quarter was directly related to facts and circumstances that existed as of the acquisition date. Further, provide us with additional information in regard to the nonperforming loans in question, which resulted in the adjustments, addressing whether these loans were nonperforming at the acquisition date or became nonperforming during the year. We reference ASC 805-10-25-13 to 19.
  - 2) In future filings, please include more specific disclosure with regard to each acquisition in which you engage, including the price paid, strategic reasons for the acquisition, and, if applicable, any agreement with regulatory agencies in connection with the purchase of assets.
  - 3) Please provide us proposed revised disclosure to be included in future periodic reports that indicates your accounting policy for business combinations. In your disclosure, please specifically indicate: that you apply the acquisition method; how you record assets acquired and liabilities assumed; how you record contingent consideration; how you determine the value of goodwill; and, how you treat acquisition costs..
  - 4) We have the following questions about the "Negative goodwill gain" recognized in your Statements of Operations: Please tell us specifically how you considered and applied the guidance in ASC 805-30-25-4 and ASC 805-30-30-4 through 6 in reassessing whether you have correctly identified all of the assets acquired and all of the liabilities assumed prior to recognizing a gain on this bargain purchase. Tell us in detail the methodologies used in determining fair value of the assets and liabilities and whether you employed the services of an independent expert for this purpose. Revise your disclosure to describe why the transaction resulted in a gain. Refer to ASC 805-30-50-1f.
  - 5) We note that for the acquisition, you determined that a component of the consideration should be accounted for as compensation expense as opposed to a component of the purchase price. Please provide your analysis of the factors in ASC 805-10-55-25 that support this component of the arrangement being treated as compensation expense as opposed to a component of the purchase price.
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## **Variable interest entities (VIE)**

ASC 810-10-20 defines a variable interest as investments or other interests that will absorb portions of a VIE's expected losses or receive portions of the entity's expected residual returns. Variable interests are contractual, ownership, or other pecuniary interests in a VIE that change with changes in the fair value of the entity's net assets exclusive of variable interests. The identification of a variable interest represents one of the more challenging aspects of the VIE model.

Within financial services, typical VIE's include:

- Sale-leasebacks of real estate or equipment
- Synthetic leases
- Transactions involving the sale/transfer of financial assets to special purpose entities
- Reinsurance securitizations
- The transfer of financial assets to an entity subject to debt that is recourse only to those financial assets rather than to all of the entity's assets
- Certain investment products advised by Asset Managers

The VIE model requires that both the primary beneficiary of a VIE and a reporting entity with a variable interest in a VIE disclose key information on their involvement with a variable interest entity. This is in addition to the disclosure requirement that may be required by other accounting

topics. Accordingly it is important that companies develop, monitor and maintain systems, processes and internal controls to ensure compliance with these requirements in a timely and complete manner. ASC 810, *Consolidation*, provides extensive disclosure requirements to enable users to evaluate the nature and financial effects of VIE's. The SEC staff comments have focused on the following:

- The significant judgments and assumptions made by a reporting entity in determining the primary beneficiary of a VIE
- If the conclusion to consolidate a VIE has changed in a period, the primary factors that cause the change and the effect on the financial statements
- The nature of the restrictions on a consolidated VIE's assets and on the settlement of its liabilities
- The nature of and changes in the risks associated with involvement with a VIE
- How a reporting entity's involvement with a VIE affects the reporting entity's financial position, performance and cash flow
- Recourse to the general credit of the primary beneficiary
- Enhanced disclosure of accounting policy and determination of consolidation and deconsolidation of investment products

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**Sample comments**

- 1) You state that many of your financial guaranty contracts provide you with substantial control rights over the activities of VIEs upon the occurrence of default or other performance triggers and that additional VIEs may be consolidated if these events occur. Please tell us the nature of these conditions in which you would determine that you are required to consolidate if the trigger occurs and why you believe the trigger point is the point in which consolidation would be appropriate. Reference appropriate authoritative literature.
  - 2) Please revise your future filings to provide tabular disclosure that shows the composition of your Investments in Partnerships by accounting method (e.g., fair value, equity method) and investment type (e.g., feeder funds, affiliated/unaffiliated partnerships, offshore funds and other entities). Please also expand your disclosure in future filings either here or within you consolidation policy discussion to more clearly explain how you determined whether such entities were VIEs or VOEes and why consolidation was not required.
  - 3) We note that you began consolidating three investment vehicles during the second quarter of fiscal year 20XX, as you were the sole investors in these vehicles as of December 31, 20XX. In future filings, please provide the significant accounting policies and footnote disclosures for the assets and liabilities and transactions conducted by the investment vehicles. In this regard, it is unclear how including the net asset value of the investment vehicles as one line item in a footnote disclosure properly reflects the consolidation of these investment vehicles in your consolidated financial statements. Please refer to ASC 810-10-30, ASC 810-10-35-3 through 5, ASC 810-10-45-25, and ASC 810-10-50-7 through 14 for guidance. Please provide us with the disclosures you intend to include in future filings.
  - 4) We understand that you consolidate those entities in which you have a controlling interest (but not wholly-owned) in accordance with ASC 810 and that investments in entities in which you exercise significant influence, but do not control, you use the equity method. Please tell us and expand your policy disclosure in future filings to clarify your consideration of whether or not you held any investments in companies that were variable interest entities (VIEs). To the extent that you do hold a variable interest in any VIE, tell us how you concluded that you were not the primary beneficiary of the entity and tell us the specific guidance you used to support your accounting assessment.
  - 5) We note your disclosure that you periodically add new investment strategies to your investment product offerings by “seeding” or providing the initial cash investment, and that you initially consolidate the seeded investment products and the individual securities within the portfolio are accounted for as trading securities. You then go on to state that you consolidate these investment products as long as you hold a controlling interest in the investment product, defined as greater than 50% ownership. In order to help us better understand these transactions and the related accounting applied, please respond to the following: Tell us how often you create these new “seeded” investments. For example, quantify the number of new “seeded” products created in 20XX, 20XX and 20XX. Describe your typical investment in the “seeded” products. For example, clarify whether your original investment typically represents the majority of the equity investment in the new product and how long you typically hold the majority of the investment. Tell us how you de-consolidate your investments and describe the related changes to your financial statements upon de-consolidation, including whether any fee revenues are earned from these investments while you consolidate them. Discuss how many of these “seeded” investment products were de-consolidated in 20XX, 20XX and 20XX. Clarify whether you determined the “seeded” investment funds to be variable interest entities.
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# Loss contingencies

The SEC staff continues to focus on ensuring that registrants comply with the guidance in ASC 450, *Contingencies*, related to loss contingency disclosures. The comments provided in this area have been consistent throughout the years and focus on ensuring that the registrant has made an assessment of the likelihood of loss related to each contingency disclosed. The guidance in ASC 450-20-50 requires disclosure of certain loss contingencies that do not meet the conditions for accrual, including material loss contingencies that are considered probable but not reasonably estimable and those that are at least reasonably possible (but not probable), regardless of whether they are reasonably estimable. For contingencies that meet the criteria for disclosure, registrants should disclose the nature of the contingency and an estimate of the possible loss or range of loss (or a statement that such an estimate cannot be made).

For loss contingencies that are reasonably possible, the SEC staff has focused on the sufficiency of disclosures regarding the nature of the contingency and the estimated loss or range of loss. In response to concerns about disclosing too much detail about individual cases, the SEC staff has indicated they will not take exception to disclosure of a range of loss in the aggregate for all reasonably possible contingencies.

The SEC staff also has focused on foreshadowing disclosures as it relates to loss contingencies and has emphasized that the nature and the amount of a loss should generally not be disclosed for the first time in the period in which it is recorded; instead, early-warning disclosures should be provided as soon as they are appropriate. More robust disclosures would be expected as matters progress over time.

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## Sample comments

- 1) Please revise your disclosure to include an estimate of the possible loss or range of loss or a statement that such an estimate cannot be made for loss contingencies that are at least reasonably possible but not accrued, either because it is not probable that a loss has been incurred or the amount of loss cannot be reasonably estimated, as required by ASC 450-20-50-3 and 50-4. If you cannot make an estimate, please disclose the facts and circumstances that prevent you from making such an estimate as well as a discussion of what is being sought in those proceedings.
  - 2) Please provide us proposed revised disclosure to be included in future filings that provides the reasonable range of possible loss or an explicit statement that such an estimate cannot be made for the contingencies disclosed. Please provide us proposed revised disclosure to be included in future filings that provides the reasonable range of possible loss or an explicit statement that such an estimate cannot be made for the contingencies disclosed. Refer to ASC 450-20-50.
  - 3) We note your disclosure regarding the resolution of “other matters,” in which you note that you are unable to estimate the amount or range of “potential losses” for “certain of these matters” due to the preliminary nature. First, please describe the nature of these “other matters” per ASC 450-20-50-1 and 50-4. Second, we assume that you are using the term “potential losses” in place of the term reasonably possible losses. As “potential losses” is not defined in ASC 450-20-25-1, please revise your disclosure in future filings to use the term reasonably possible loss as defined in ASC 450-20-25-1 when providing the disclosures required by ASC 450-20-50-4. Finally, please provide the disclosures required by ASC 450-20-50-3 50-5 for the “other matters” that are not preliminary in nature. Please provide us with the disclosures that you would have provided in your Form 10-K in response to this comment.
  - 4) You disclose that the ultimate resolution of the litigation is not estimable at this time. Please tell us and revise future filings to disclose whether or not you can estimate the possible loss or range of loss. If you are not able to provide this disclosure, please tell us why and when you think circumstances will change to allow for such an estimate. Reference is made to paragraph 4b of ASC 450-20-50.
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## Goodwill and impairment

Comment letters continue to focus on the transparency of goodwill disclosures for reporting units whose fair value is not substantially in excess of their carrying values. Recent comments continue to highlight the importance of providing foreshadowing disclosures for these at-risk reporting units. The goal of these comments is to allow an investor the ability to assess the likelihood of a future material impairment.

Evaluating whether a reporting unit is at risk is a matter of professional judgment. The SEC staff has recommended MD&A disclosures when reporting units are at-risk. Companies should consider providing disclosure of the amount of the goodwill assigned to the reporting unit; the percentage by which the fair value exceeded its carrying value; and a qualitative discussion of the methods and key assumptions used to determine fair value.

Disclosures should also inform the reader of the degree of uncertainty associated with key assumptions and a description of potential events and circumstances that could have a negative effect on the reporting unit's fair value. For example, a discussion of the sensitivity of changes in the discount rate and the assumptions used for revenue and margin growth rates may provide additional insight.

The SEC staff has indicated companies should make a disclosure if there are no at-risk reporting units or if there is no material goodwill associated with an at-risk reporting unit.

When an impairment charge has occurred, registrants should consider disclosing in the footnotes the events that gave rise to the impairment, such as changes in the underlying business or environment, the amount of the impairment loss, and the method of determining fair value of the reporting unit.

Registrants may be able to apply the provisions of the qualitative assessment standard, commonly referred to as Step 0 to determine whether it is necessary to perform the quantitative impairment test. While the qualitative standard didn't change the current disclosure requirements, companies may consider disclosing the rationale and specific factors for using Step 0 in the critical accounting estimates section in MD&A. We have seen instances where the SEC staff asks companies to consider expanding their disclosure of the qualitative factors evaluated. In other cases, comments inquire about which reporting units are tested on a qualitative basis and why management believes it is appropriate to perform a Step 0 analysis.

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**Sample comments**

- 1) As a related matter, we note your disclosure that you early adopted the new accounting guidance that permits entities to make a qualitative assessment of whether it is likely that the fair value of a reporting unit is less than the carrying amount and applied the guidance for “certain” impairment tests. Please respond to the following: a. Tell us the fair value of each of your reporting units as a percentage of the carrying value as of June 30, 20XX, which you determined in connection with your annual goodwill impairment test. b. Clarify your disclosure that you determined that step two of the goodwill impairment test was not required for any of your reporting units as of June 30, 20XX since their fair values exceeded each of their carrying values. In this regard, we note your disclosure that the total fair value of all of your reporting units at June 30, 20XX was \$XX billion but the total book shareholders’ equity for the company as of that date was \$XX billion. c. Tell us which reporting units were qualitatively assessed for impairment since your early adoption of ASU 2011-08 in the third quarter of 20XX. d. Provide additional insight into the positive and negative qualitative factors that you considered in concluding that this qualitative analysis was sufficient for your reporting units, and specifically address in your response the significant decline in your market capitalization during the third and fourth quarters of 2011 and the variability of items and results of your “All Other” reporting unit.
  - 2) We note your disclosure on page xx, which indicates your results of operations could be adversely affected as a result of goodwill impairments. We also note that your largest equity services continue to underperform in the current economic environment. Please identify and provide the following disclosures in future filings: The percentage by which fair value exceeds carrying value as of the most-recent step-one test. Describe and disclose the actual assumptions used in your estimated fair value determinations, including your discount rate, revenue and income growth rates, terminal value growth rate, and any other key growth rates and assumptions used in your analysis. A discussion of any uncertainties associated with each of your key assumptions. A discussion of whether the assumptions and methodologies used in the current year have changed since the prior year, highlighting the impact of any changes. Please reference Item 303 of Regulation S-K for guidance and provide us with a copy of your proposed disclosure revisions as part of your response.
  - 3) Please tell us each reporting unit for your goodwill impairment test and the respective goodwill balance at December 31, 20XX. For any reporting unit in which the estimated fair value is not substantially in excess of the carrying amount and therefore is at risk of failing step one of the impairment test, please provide proposed revised disclosure to be included in future filings to include the following:
    - Percentage by which fair value exceeded carrying value as of the date of the most recent test;
    - Amount of goodwill allocated to the reporting unit;
    - Description of how the key assumptions in the impairment analysis were determined;
    - Discussion of the degree of uncertainty associated with the key assumptions. The discussion regarding uncertainty should provide specifics to the extent possible (e.g., the valuation model assumes recovery from a business downturn within a defined period of time); and
    - Description of potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions.

If you believe that material goodwill does not exist at reporting units that are at risk of failing step one, or that no reporting units are at risk, please revise to disclose this information.
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# Executive compensation

Item 402 of Regulation S-K contains extensive disclosure requirements related to executive compensation. The applicability of these disclosures varies based on each registrant's particular facts and circumstances. SEC staff comments in this area focused on enhancing the disclosures of specific aspects of an employee's performance and/or the criteria used to evaluate and determine compensation awards. Where benchmark or market data is used in the evaluation, the data and its use should be specifically disclosed. The SEC staff also issued comments when disclosures of a registrant's compensation policies and practices as they relate to risk management (required by Item 402(s) of Regulation S-K) were omitted.



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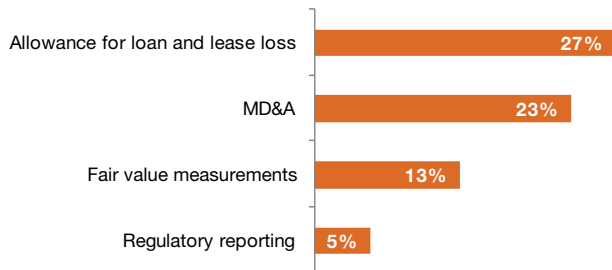
## Sample comments

- 1) We note that you considered the compensation practices at certain peer companies in setting compensation for your named executive officers. Please provide more detail as to how the compensation of your named executive officers compares to the compensation paid by the peer group companies. In addition, please also tell us which banks in the peer group are experiencing similar financial hardships.
  - 2) Please provide further explanation of how the Compensation Committee considered dividends, follow-on offering proceeds, the amount of equity owned by the individual and compensation in prior years when determining bonuses.
  - 3) In your proposed disclosure you state that [person's] award of XX deferred restricted "common units" is reflected in his 20XX stock awards and reflects his 20XX performance. Based on your "Deferred Compensation Plan" disclosure, it appears that, since the right to stock settlement of the deferred annual cash payment is embedded in the terms of the plan, disclosure related to this plan should be made in the year when the participant receives the "deferral units" which should be reported in the summary compensation table based on the probable outcome of the performance conditions as of the grant date, rather than the actual outcome of the performance condition. In this regard, it is unclear what the portion of the deferral units the deferred restricted common units represent, in light of your disclosure that the deferral units are delivered equally in three equal installments over a three-year period, with the xx% premium delivered at the end of the three year period. Please advise or otherwise revise your future filings accordingly. For additional guidance please refer to Questions 119.24 and 119.28 of Regulation S-K compliance with disclosure interpretations.
  - 4) While we note that you disclose the subjective nature of the bonus payments awarded to senior executives, we also note you emphasize elements of individual and corporate performance as factors considered when determining the size of the bonus payments. Please expand your disclosure to specify the contributions and accomplishments achieved by your senior executives and to explain how your financial performance during the reportable year impacted year-end bonus compensation. In your response, please provide this disclosure as it would have appeared in your 20XX Form 10-K or provide proposed disclosure for your 20XX 10-K.
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# Sector highlights

## Banking and capital markets

### Breakdown of banking and capital market comments by topic



### Allowance for loan losses and loan modifications

Disclosures around allowance for loan losses and loan modifications are expected to be complete and transparent. Specifically, it has been noted that this is an area where judgment is critical and therefore these judgments need to be documented and disclosed. As a result, comments have been focused on changes companies have made to their models or methodology used to calculate their allowance. It is expected that disclosures around these changes should be clear and transparent and the impact of the change quantified.

As the economy continues to improve, the focus has shifted slightly to the release of reserves. The SEC staff believes that the investor needs to be able to understand the drivers of changes in allowance for loan and lease losses (“ALLL”) and how this is consistent with the overall credit story. In order to accomplish this, they continue to ask for more robust disclosure by portfolio and a focus on the MD&A disclosures regarding trends and how these reconcile to the decision to release or increase reserves.

Loan modifications, including troubled debt restructurings (“TDRs”), remains an area of focus as there has been an increase in levels of commercial and consumer loan modifications by financial institutions. The SEC staff

continues to look for enhanced qualitative and quantitative disclosure around modifications being made. They have also commented publicly on the fact that they continue to observe a lack of clarity in how banks define payment default and that practices are varied with regard to the 12-month look back disclosure. In addition, the lack of disclosure around the removal of loans from TDR designation has been an area of increased comment by the SEC.

### Sample comments

- 1) Please revise future filings to address the following related to your troubled debt restructurings (TDRs):
  - Disclose the key factors you consider at the time a loan is restructured to determine whether or not it should accrue interest;
  - Disclose how you determine that a loan has been restructured to be reasonably assured of repayment and of performing according to the modified terms. Discuss how your process for ensuring that a restructured loan is supported by a current, well-documented credit assessment of the borrower’s financial condition and prospects for repayment under the revised terms;
  - Disclose how you measure impairment on your TDRs;
  - Disclose your policy for removing loans from TDR classification; and
  - Disclose whether you have modified any loans that were not accounted for as TDR’s. If so, disclose how you determined that they should not be classified as TDR’s. Disclose the amount of loans modified and not accounted for as TDR’s during each period presented
- 2) In your discussion for credit losses you state that the provision related to the residential mortgage and other lending subsidiaries, totaling \$XX million and \$XX million, respectively, increased and were largely the result of updates to loss estimate factors. Please tell us and disclose in future filings how you define loss estimate factors. In addition, discuss the underlying factors that contributed to the update to loss estimate factors for your residential mortgage and other lending subsidiaries loan portfolios, including any trends within the credit quality of the underlying loan portfolios.

- 3) We note you maintain a dual risk rating system for estimating losses given an event of default in addition to your historical risk grading system for commercial credits. We also note that you have completed significant validation and testing of the dual risk rating system and will make a decision on the implementation of the dual risk rating model for purposes of determining the ALLL once the FASB has issued a final standard. Please tell us the key differences between the two models that you are maintaining in terms of key assumptions utilized as well as quantified loss estimates as of the balance sheet date. Clarify why you have deferred a decision on whether to utilize the dual risk rating model and disclose the reasonably likely changes in your allowance for loan losses due to the implementation of the new dual risk rating model given that you have this information available.

## Regulatory reporting – Basel III and capital requirements

As regulatory reporting requirements continue to increase and change, the amount of comments provided by the SEC on the topic have continued to increase as well. The SEC staff is asking companies to provide clarity around measures being presented as well as clear discussion as to what is driving changes. This has been illustrated specifically through comments regarding risk-weighted assets. In addition, numerous banks are looking to fully implement and disclose Basel III requirements before they are required by US GAAP. As such, the SEC staff has commented on the non-GAAP nature of these metrics and requested clear disclosure by institutions that opt to disclose early.

As more prominence is given to regulatory disclosures, there is increased scrutiny in the disclosure of risk factors associated with regulatory changes. Specifically the SEC is looking for clear disclosure as to the impact regulations such as Dodd-Frank and changes to prudential supervisory requirements will have on the operations of the company. They have asked for increased disclosure within risk factors and MD&A as to how proposed rules may impact the company and have encouraged quantification where possible.

As companies begin disclosing these new capital and related regulatory requirements, they should consider the use of qualifying language such as “estimate” or “possible” as a means to clarify that requirements may be in proposed form or subject to revision and transition and that a company will continue to refine these capital calculations through formalization and implementation periods. In addition, during the transition or “phase in” period, there may be discontinuity in the companies’ disclosures as compared to prior year reported capital and lack of comparability with peer reporting. An example of this will be the calculation and disclosures of qualifying capital, which will be implemented by the largest banks during 2014. This may also be the case with regard to risk-weighted assets for some of these institutions. The calculation and disclosure of qualifying capital and standardized risk weighted assets will not become effective for all subject companies until the beginning of 2015. It is recognized that some disclosures may not be fully comparable, additional disclosure explaining the differences may be needed. Companies should consider the appropriate location of these disclosures, and/or associated supporting information that may be required by bank regulation, which may be outside of the financial statements or MD&A.

## Sample comments

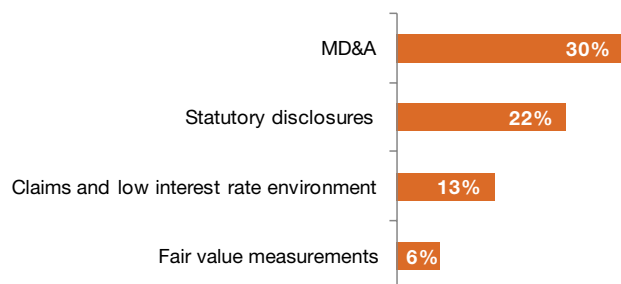
- 1) Please revise future filings to further describe the proposed Basel III capital standards and the proposal to implement a capital surcharge on financial institutions that are designated as systemically important financial institutions and identified as global systemically important banks. For example, please address the following:
  - Clarify or quantify increased capital requirements, new minimum regulatory capital ratios and new capital buffers such as the requirements for minimum common equity tier 1 and supplemental tier 1 leverage ratios, the capital conservation buffer, and the countercyclical capital buffer.
  - Clarify the altered regulatory capital treatment of trust preferred and other hybrid capital securities; and
  - Estimate the capital surcharge that will be applied to you as a global systemically important bank

- 2) We note your disclosure on page xx of certain regulatory capital metrics (e.g., Tier 1 common capital ratio and risk-weighted assets) on a Basel 3 fully-phased in basis as of June 30, 20XX. Given that these metrics are not currently required to be disclosed by GAAP, Commission rules or banking regulatory requirements, they would appear to be non-GAAP measures under Item 10 of Regulation S-K. As such, please clearly label these measures as non-GAAP in your future filings and show how such measures have been calculated.
  - 3) Please expand your disclosure in this risk factor to describe the proposed Basel III capital standards, as well as the Basel Committee proposal to implement a capital surcharge on systemically important financial institutions so that investors can better understand the risks associated with Basel III implementation.
  - 4) We note your disclosure of risk-weighted assets and the summary narrative description of the types of financial instruments driving the decrease in risk-weighted assets. However, it is not entirely clear if the decrease being driven by those positions is due to decreases in book size, book quality, model or methodology updates, etc. Therefore, in future filings, please consider providing a rollforward of risk-weighted assets showing the key drivers of the movements in the risk-weighted assets balance, by type of risk-weighted asset type, if possible.
  - 5) Please revise your disclosure in this section to clarify how the regulations that you discuss in this section present material risks to you. For example, it currently is unclear how the Dodd-Frank Act may adversely impact your business, require you to change certain business practices, or impose additional costs on you. Please also expand your disclosure to explain risks associated with proposed changes relating to money market fund regulations and to clarify whether such changes could materially impact your operations. Please ensure that your revised disclosure captures the most significant regulatory risks applicable to both your United States and foreign operations.
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## Insurance

Breakdown of insurance comments by topic



### Statutory disclosures

Registrants continue to see frequent comments related to the statutory disclosures in ASC 944. The SEC staff has been very consistent in regards to their comments on the following disclosures across all the various types of insurance products including:

- Disclose the amount of statutory capital and surplus necessary to satisfy regulatory requirements for the registrant's statutory entities
- Disclose the nature of statutory restrictions on the payment of dividends and the amount of retained earnings that is not available for the payment of dividends to stockholders
- Disclose the amount of statutory net income or loss for each period presented
- Ensure disclosures are provided on an audited basis
- Provide a description of, and the monetary impact on, statutory surplus for any permitted statutory accounting practices

### Sample comments

- 1) You disclose that some of your insurance subsidiaries are subject to significant regulatory restrictions limiting their ability to declare and pay dividends and disclosed that the statutory capital and surplus of your insurance subsidiaries met regulatory requirements for 20XX, 20XX and 20XX. Please provide us proposed disclosure to be included in future periodic reports that addresses the following: Disclose the amount of statutory capital and surplus necessary to satisfy regulatory requirements if significant in relation to actual statutory capital and surplus, as required under ASC 944-505-50-1b. If not significant, please clarify in the disclosure. Disclose the amount of retained earnings or net income that is restricted or free of restrictions for payment of dividends to its stockholders as required by Rule 4-08(e)(1) of Regulation S-X.
- 2) Please provide us proposed disclosure to be included in future periodic reports to address the following: Clarify whether there is a difference between policyholders' surplus disclosed in the table and statutory capital and surplus as required by ASC 944-505-50-1a. Disclose the amount of statutory capital and surplus necessary to satisfy regulatory requirements if significant in relation to actual statutory capital and surplus, as required under ASC 944-505-50-1b. If not significant, please clarify in the disclosure. Disclose the amount of retained earnings or net income that is restricted or free of restrictions for payment of dividends to its stockholders as required by Rule 4-08(e)(1) of Regulation S-X. Provide the disclosures required under ASC 944-505-50-2 through 50-6, as applicable.
- 3) Disclose the amount of statutory net income or loss for each period. Refer to Rule 7-03(a)(23)(c) of Regulation S-X.

## Low interest rate environment

Due to the continued low interest rate environment, the SEC staff has continued to comment on registrants' disclosures related to the impact this is having on their financial position, results of operations and cash flows. Specifically, the SEC staff has requested registrants to enhance current disclosures regarding their investment portfolio to include information on the amount of maturing or callable features and their weighted average yields that will need to be reinvested at lower rates. Similarly, the SEC staff has requested enhanced disclosures around the type and value of insurance products with guaranteed minimum crediting rates and the effect that reinvesting the assets backing these products at lower rates will have on the registrants' spread income.



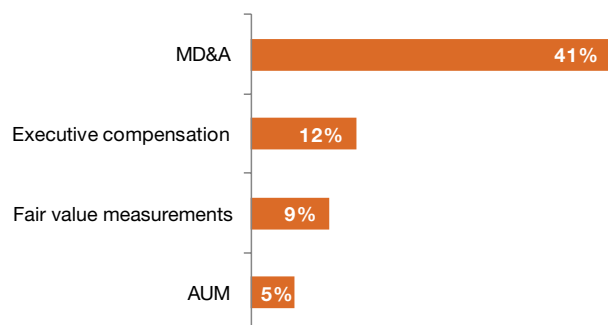
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### Sample comments

- 1) In future periodic reports that discloses the expected effects of this known trend or uncertainty on your future financial position, results of operations and cash flows. To the extent that information about cash flows you expect to have to reinvest at lower rates due to potential maturities or calls of your investments, or cash flows that you are committed to pay due to products with guaranteed features is necessary to understand these effects, please include information such as the amount of maturing or callable investments and their weighted average yields and the amount of products with guaranteed features and their rates in your proposed disclosure.
  - 2) You disclose that interest rate fluctuations or significant and sustained periods of low interest rates could negatively affect our interest earnings and spread income, or otherwise impact our business. Please provide us proposed disclosure to be included in future periodic reports that discloses the expected effects of this known trend or uncertainty on your future financial position, results of operations and cash flows. To the extent that information about the amount you expect to have to reinvest new cash flows or to reinvest at lower rates, or information about the amount of products you are committed at guaranteed rates is necessary to understand these effects, please include these amounts and their effects in your proposed disclosure to the extent known.
  - 3) You state that fluctuations, mainly prolonged periods of low or declining interest rates and interest rate spreads could negatively impact sales, profitability and/or cash flows of interest- rate sensitive products, reduce investment income and increase prepayment risk. Please provide us proposed disclosure to be included, in MD&A, in future periodic reports that discloses the expected effects of this known trend or uncertainty on your future financial position, results of operations and cash flows. To the extent that information about the amount you expect to have to reinvest new cash flows or to reinvest at lower rates, or information about the amount of products you are committed at guaranteed rates is necessary to understand these effects, please include these amounts and their effects in your proposed disclosure to the extent known.
-

## Asset Management

Breakdown of asset management comment by topic



### Unconsolidated subsidiaries remain unchanged – Business Development Companies (BDCs)

Specific to Business Development Companies, the SEC's Division of Investment Management has recently issued guidance clarifying the applicability of the rules for presenting separate financial statements and summarized financial information of unconsolidated majority-owned subsidiaries and subsidiaries not consolidated. This guidance could be a significant change for some companies and require the inclusion of separate financial statements along with their Form 10-K and or increased disclosure about such entities in the financial statements. The application of the rules is contingent on the significance tests described in Regulation S-X which, if met at certain thresholds, determines the financial reporting requirements.

### Sample comment

1) Has the Company performed an analysis as to whether the disclosure requirements of Rules 3-09 or 4-08(g) of Regulation S-X should be applied? The Staff believes that Rules 3-09 and 4-08(g) of Regulation S-X apply to BDCs and RICs. Rule 3-09 of Regulation S-X is applicable for a majority owned subsidiary (greater than 50% ownership) which is not consolidated by the Registrant. Rule 4-08(g) of Regulation S-X is applicable for subsidiaries (generally, 25% or more ownership) not consolidated. Subsidiary is defined by 1-02(x) of Regulation S-X as "an affiliate controlled by such person directly or indirectly through one or more intermediaries." An affiliate is defined by 6-02(a) of Regulation S-X as "as defined in Section 2(a)(3) of the Investment Company Act of 1940 unless otherwise indicated." The term "control" has the meaning (given) in section 2(a)(9) of the Act." Section 2(a)(9) of the Investment Company Act of 1940 defines control as having "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position of such company... Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company.

## Assets under management

The majority of revenues generated by asset management advisors are based on assets under management (“AUM”) and any fluctuations in AUM will generally have a direct impact on changes in revenues and profitability. The AUM disclosures included as part of the Results of Operations section of the MD&A have been a focus of the SEC staff comments over recent years. The SEC staff continues to provide comments to enhance disclosures and transparency surrounding the drivers of AUM and how changes to AUM and asset classes impact the registrant’s results of operations.

SEC staff comment themes consist of the following:

- Provide enhanced disclosures of AUM by the various distribution channels or investment strategies and describe how each class of assets under management impact operating revenues
- Disclose the key market factors that positively or negatively impacted the fair values of your investments and explain whether fair values generally increased/ (decreased) across your portfolio or whether it varied by fund and/or industry and if so, why
- Disclose how changes to AUM through redemption activity and market appreciation/(depreciation) impact the results of operations and cash flows
- Disclose the performance results of AUM relative to their applicable benchmarks

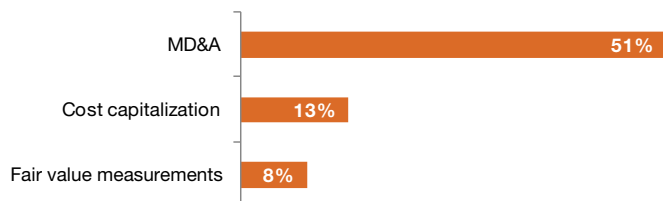
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### Sample comments

- 1) We note you present your assets under management (AUM) by investment objective and the average mix of AUM for the last three fiscal years here and on page xx. We also note your discussion beginning on page xx for fluctuations in operating revenues and expenses that are driven by the mix or average of certain investment objective AUM. In an effort to provide more transparent disclosures regarding trends in revenue and expenses, please disclose your average AUM by investment objective.
  - 2) We note that “investment performance is one of the most important factors for the maintenance and growth of [y] our assets under management” and “[p]oor investment performance...could impair [y]our revenues and growth...” Please refer to page x. Please also refer to your disclosures regarding the three primary areas of focus on page xx. While we understand that you manage hundreds of funds, it would appear as though providing your investment strategies’ composite returns, net of management fees, for the one, three and five year periods as of the end of your most recently completed fiscal year and/or quarter end, and from each investment strategy’s inception, compared to their applicable benchmarks would allow investors to better understand the performance of the funds you manage and also understand the market performance presented in your AUM rollforward. Please advise. Please also disclose the inception date used for each composite.
  - 3) Please provide a reasonably detailed discussion accompanying each of your rollforwards of Assets Under Management to help readers understand the impact that such performance/activity had on your results of operations and cash flows. Your discussion should include a comprehensive analysis of each of the significant components in your rollforward for each period presented, including market appreciation/(depreciation) and redemptions. In this regard, we note that during your earnings call you discussed specific changes in your assets under management, including actual or anticipated redemptions. Please show us in your supplemental response what the revisions will look like in future filings.
  - 4) We note various changes in the composition of your assets under management. For example, we note an increase in the alternative asset class as a percentage of total assets under management. With a view towards future disclosure, please provide us with a specific and comprehensive quantified discussion regarding how changes in the composition of assets impact your results. In this regard, we note your revenue is impacted by different fee rates. To the extent average fees or the range of fee rates differs based upon asset class; please revise future filings to discuss the differences and how changes in asset class concentrations impact results.
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## Real Estate

### Breakdown of real estate comments by topic



\*MD&A includes the topic of "Leasing activities"

### Cost capitalization

Recent comment letters trends show that cost capitalization continues to be an area of focus. The SEC staff has recently asked for disclosure of total soft costs (e.g., interest expense, real estate taxes, payroll, and other general and administrative expenses) capitalized during each period presented. Additionally, the SEC staff has requested further breakout of soft costs capitalized by development, redevelopment, and other capitalized expenditures within MD&A, along with a narrative discussion of fluctuations from year to year. Further, the SEC staff has requested Registrants to define when the capitalization period begins and ends within their accounting policy footnote.

### Sample comments

- 1) We also note that you capitalize soft costs such as interest, payroll and other G&A expenses. In future filings please disclose the amount of these soft costs capitalized that breaks down total capital expenditures between new development, redevelopment and other capital expenditures. Please provide a narrative discussion for fluctuations from year to year.
- 2) Please tell us, and disclose as part of your significant accounting policies and critical accounting policies in future filings, the capitalization period relating to the other costs associated with your capital projects, including when the capitalization period begins and ends and how that is determined.

### Leasing activities

The majority of comments related to MD&A for real estate companies continued to be focused on results of operations and leasing activities. Specifically, the SEC staff has requested enhanced discussion of trends in leasing activities for REITs, including disclosure of average occupancy, average rental rates, comparison of rates of expiring leases vs. current market rents, and costs incurred to obtain new leases.

### Sample comment

- 1) In future periodic filings, please expand your disclosure of your leasing activities for the most recent period, including a discussion of the volume of new or renewed leases, average rents or yields on new and renewed leases, the relationship between new rents and old rents on released space and, where applicable, average tenant improvement costs, leasing commissions and tenant concessions. To the extent you have material lease expirations in the next year, please include trend disclosure regarding the relationship of rents on expiring leases to market rents.

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