

# *Stay informed* 2014 SEC comment letter trends Entertainment, Media & Communications

*Current developments  
in SEC reporting*

*December 2014*



the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in the health sector has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons why the public sector has expanded in the UK. One reason is that the population has increased, and the population is ageing. Another reason is that the government has increased its spending on the public sector. A third reason is that the private sector has not been able to provide enough services to meet the demand. A fourth reason is that the government has decided to nationalise certain services.

The expansion of the public sector has led to a number of challenges. One challenge is that the public sector is becoming more expensive. Another challenge is that the public sector is becoming more bureaucratic. A third challenge is that the public sector is becoming more fragmented. A fourth challenge is that the public sector is becoming more politicised.

There are a number of ways in which the public sector can be reformed. One way is to reduce the size of the public sector. Another way is to improve the efficiency of the public sector. A third way is to increase the competition in the public sector. A fourth way is to increase the transparency of the public sector.

The public sector is a complex and challenging area. It is important to understand the challenges that the public sector faces and to find ways to reform it. The public sector is a vital part of the UK economy and society, and it is important to ensure that it is able to provide the services that the UK population needs.

## References

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To our clients and friends:

Based on the positive feedback we received from you, we are pleased to provide you with our second annual publication on the trends in SEC staff comment letters specific to companies in the Entertainment, Media, & Communications (EMC) sector. With the growing optimism among Entertainment, Media & Communications companies as they transform their businesses, this is a great time to refresh your understanding of the SEC staff's areas of focus when it comes to preparing annual reports.

High-quality financial reporting, as well as increasing transparency in communicating with investors and other stakeholders, continues to be an important point of focus. We have analyzed over 700 SEC staff comments issued from November 1, 2013 to October 31, 2014 to companies in the following subsectors: advertising, communications, filmed entertainment, publishing, radio/TV/cable broadcasting, and other, which comprises the casino, cruise, digital media, music, and video game subsectors. While some comments are subsector specific, others are applicable to all companies in the EMC industry and beyond.

We hope that a better understanding of these trends, along with specific examples of comments, will provide you with helpful insights and will aid in your production of high-quality annual reports for investors and other stakeholders. Please don't hesitate to reach out to your engagement teams and the PwC contacts listed on the last page of this document to discuss this information in more detail.

We look forward to working with you in 2015.

Best regards,

A handwritten signature in black ink that reads "Stefanie". The signature is written in a cursive, flowing style.

Stefanie Kane

U.S. Entertainment, Media & Communications Assurance Leader



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## 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

## Overview

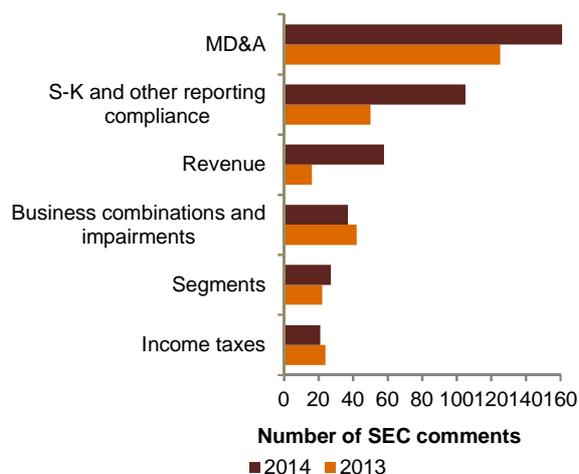
This analysis was based on comments posted on the SEC's EDGAR website from November 1, 2013 to October 31, 2014 related to EMC companies specific to their periodic filings on Forms 10-K and 10-Q. Each subsector includes the following SIC codes:

- Advertising – 7310 and 7311
- Communications – 3661, 3663, 3669, 4812, 4813, 4822, 4899, and 7200
- Radio/TV/Cable Broadcasting – 4832, 4833, and 4841
- Publishing – 2711, 2721, 2731, 2732, 2741, 2750, 2761, 2780, and 2790
- Filmed Entertainment – 7812, 7819, 7822, 7829, 7830, and 7841
- Other – Due to the lower number of registrants, this category consists of the following subsectors and SIC codes:
  - Digital Media – 3672
  - Cruise – 4400
  - Casino – 7900
  - Music - 3651 and 3652
  - Video Games – 7948 and 7990

Certain registrants may cross multiple EMC subsectors. For consistency of evaluation, the analysis was based solely on the SIC codes indicated on the SEC's EDGAR website for each registrant.

Our review of the most recent comment letter trends for EMC companies indicates that disclosures with regards to management's discussion and analysis ("MD&A") continues to be the area of most frequent comments. Specific areas of comment include: providing the "whys" behind the results of operations; clearer executive summaries and commentary on positive and negative trends and outlook; and more transparent and robust liquidity disclosures other than simply repeating the activities disclosed in the cash flow statement. In addition to MD&A, some other frequent comment areas are Regulation S-K and other reporting compliance matters, business combinations and impairment considerations, revenue recognition, segments, and income taxes.

As shown in the chart below, this year's "hot topic" areas of focus by the SEC staff did not change significantly from 2013. On the following pages, we dive deeper into each of these key trends.

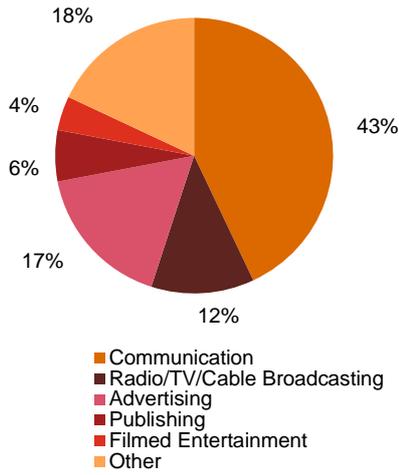


**Overview**

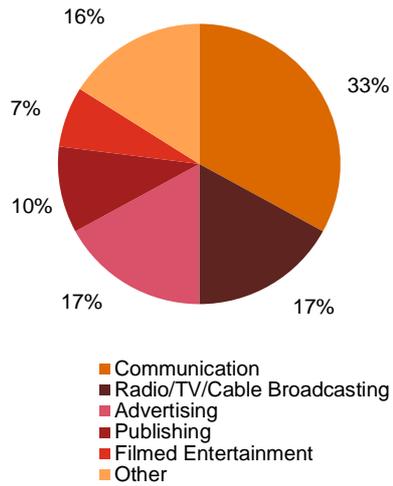
**Subsector breakdown**

In addition to analyzing the number of comments by hot topic, our analysis also looked at the comments by subsector. The following table shows the percentage of comments received by subsector.

**2014 Breakdown by subsector**



**2013 Breakdown by subsector**



# Management's discussion and analysis

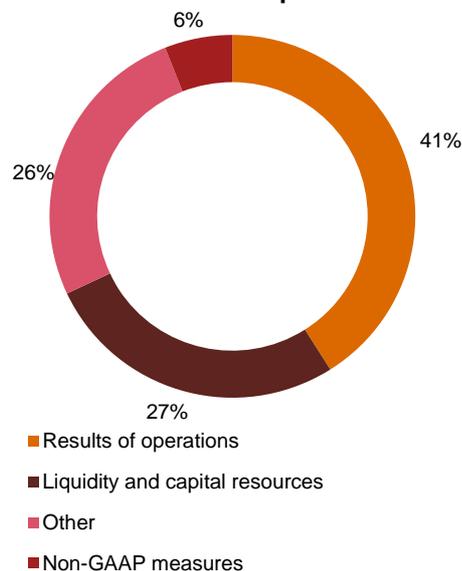
Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is a critical component of registrants' communications with investors and continues to be the top area for comment by the SEC staff in 2014. The key objectives of MD&A are to provide a narrative explanation of the financial statements that enables investors to see the company through the eyes of management, to offer context to the financial statements, and to provide information that allows investors to assess the likelihood that past performance is indicative of future performance. We have found that the majority of SEC staff comments in this area are not aimed at meeting specific technical requirements, but rather at enhancing the quality of disclosures to meet these objectives.

The requirements themselves are set forth in Item 303 of Regulation S-K, which identifies five categories of disclosure in MD&A: liquidity, capital resources, results of operations, off-balance-sheet arrangements, and contractual obligations. Additional guidance is also contained in Financial Reporting Release (FRR) 36 and FRR 72.

Due to the significant volume of MD&A comments, we analyzed the data further to identify the underlying category associated with these comments. The table shows that more than two-thirds of the MD&A comments were related to results of operations and liquidity and capital resources.



MD&A breakdown of topics



## Results of operations

One of the general themes in MD&A comments is to not simply repeat information contained in the financial statements or elsewhere in the filing, but to provide an analysis of the financial results for the period and the “whys” behind the fluctuations.

- **Disclosing known trends:** The SEC staff has consistently asked registrants to disclose known trends affecting the business, in particular, disclosure of events that have occurred and how those events were a positive or negative indicator of future performance. Examples include loss of a significant customer, development of new programming that might increase future revenues or reduce costs, entering a new market, or an acquisition that is expected to impact operating results. In addition, they encourage the discussion of key operating metrics used by management, coupled with an analysis of the relationship between such metrics and GAAP results.

## Management's discussion and analysis

- **Drivers behind fluctuations:** Many comments relate to improving issuers' disclosure of significant fluctuations between periods, including pricing, volume, the impact of acquisitions, and currency movements, among others, by describing the specific factors driving such changes and quantifying each factor separately, even when they may net to an insignificant change overall. The SEC staff has often focused on revenue and cost of revenues in these comments.
- **Consistency of information:** The SEC often reviews other public information for consistency with the information included in a registrant's periodic filings. When management discusses events or trends on earnings calls, social media channels, or the company's website, the SEC staff has commented about why such events are not also addressed in MD&A.

**1** We note your disclosures regarding the factors for which fluctuations in income statement line items are attributed; however, in addition to discussing the reasons for the change (or lack thereof), we believe you should also quantify the reasons for the change, particularly when more than one factor is attributed to the change. For example, in several instances, you state that certain increases were "primarily" attributed to one factor, and "partially offset" by another factor, without quantifying each. For a company with the size and breadth of operations as yours, these disclosures should be presented in a manner so as to allow investors to discern the relative contribution of each of the multiple components cited to the total change. Please revise future Form 10-K and 10-Q to separately quantify each significant factor mentioned.

**2** We remind the company that in providing analysis in the results of operations section of the MD&A, the company may find it helpful to include a discussion of key variables and operational data that management is utilizing in managing the business. These variables and operational data may be non-financial in nature or may represent industry specific metrics. As these key variables and metrics give readers a view of the company through the eyes of management and how the company manages the

business, they would be material to investors, and therefore required. Please refer to SEC Release No. 34-48960 (FR-72), "Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations" at [www.sec.gov/rules/interp/33-8350.htm](http://www.sec.gov/rules/interp/33-8350.htm).

**3** It appears from recent news reports and your fourth quarter earnings call that a material known uncertainty may have arisen prior to the filing of your Form 10-K. Tell us your consideration of the impact on your future financial position, results of operations and financial reporting of changes under consideration at the Federal Communications Commission regarding the regulation of joint sales and shared service agreements. Explain for us your expectations as to whether or not proposed changes will have a material favorable or unfavorable impact on net sales or revenues or your income from continuing operations.

**4** Because data and internet services are significant to the future of your business and nonswitched access has experienced a negative trend over the last several periods, please expand your disclosure to provide more detailed discussion and analysis around this source of revenue. For instance, you attribute decreases in nonswitched access revenue to lower monthly recurring charges and settlements of disputes with carriers; please quantify the impact of each of these drivers of the negative trend and discuss the reasons underlying them. Why are monthly recurring charges continuing to decline? Discuss whether this is a trend that is expected to continue.

**5** We note the significant drop in sales of product A in 20X1 as compared to 20X2. Please expand your explanation to discuss not only why revenues decreased but the reasons for reduced sales of your product. We note your public statements expressing confidence in increased revenues in 20X3. In expanding your discussion of the reasons for drops in sales, please also explain, if true, why you are confident that any recent drop in sales is not indicative of a negative future trend.

## Management's discussion and analysis

### Liquidity and capital resources

A key objective of the liquidity and capital resources discussion is to provide a clear picture of the registrant's ability to generate cash and to meet existing known or reasonably likely future cash requirements. The SEC staff expects the liquidity and capital resource discussion to address material cash requirements, sources and uses of cash, and material trends and uncertainties related to a registrant's ability to use its capital resources to satisfy its obligations. General observations on the population of SEC staff comments include the following:

- **Disclosure of events impacting liquidity:** The SEC staff has asked registrants to discuss known trends, events, or uncertainties that are reasonably likely to impact future liquidity. Such events could include entry into material commitments, loss of customers or contracts, treasury stock repurchase programs, or plans for significant capital expenditures.
- **Debt agreements and related covenants:** Comments from the SEC staff have requested expanded disclosure of the material terms of debt agreements, including an indication of compliance with financial covenants. In situations where there has been or is projected to be a potential violation with regard to covenant compliance, registrants should provide a detailed description of the covenants, covenant amounts for the most recent reporting period, and sensitivities, if applicable.
- **Stranded cash:** For companies with foreign operations, the SEC staff has also focused on the registrant's ability to repatriate cash back to the United States in order to meet significant upcoming obligations, such as debt repayments, mandatory pension contributions, or pending acquisitions. Comments focus on the relationship between liquidity needs and the permanent reinvestment assertion that registrants may have made, which allows them not to provide deferred tax on foreign earnings. The SEC staff has also asked companies to quantify the amount of cash held overseas and the amount of incremental deferred tax, if any, if cash were to be repatriated.
- **Cash flow analysis:** One of the common pitfalls in the liquidity analysis is simply repeating the information presented on the face of the statement of cash flows. Instead, registrants should disclose the underlying factors driving the changes in operating, financing, and investing cash flows of the company.

- 1 Please revise to disclose an estimate of your expected capital expenditures for fiscal 20X1.
- 2 Please disclose the actual amount of the leverage ratios based on your financial statements for the current and prior fiscal years. In addition, discuss the reasonably likely effects of non-compliance with the covenants on your financial condition and liquidity.
- 3 A significant portion of your cash and cash equivalents at each balance sheet presented in this filing and in the Form 10-Q for the period ended June 30, 20X1 is held outside of the United States. In view of this, please disclose the availability of cash outside of the U.S. to fund U.S. operations and obligations and the impact on the liquidity of your U.S. operations by maintaining such a significant amount of cash and cash equivalents outside of the U.S. You should also state here the need to accrue and pay taxes upon the repatriation of undistributed earnings of your non-U.S. entities, along with a statement of your intention not to repatriate such earnings, to the extent true, or your need to access the associated funds. Refer to Item 303(a)(1) of Regulation S-K, and Section IV of Release 33-8350 "Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations" available on our website at <http://www.sec.gov/rules/interp/33-8350.htm> for further guidance.
- 4 We note that your operating cash flow discussion provides little insight into the changes in your financial condition. In this regard, you did not address each significant change in working capital or explain the underlying reasons for such changes. For example, we note you did not disclose the reasons for significant changes in accounts payable and accrued expenses. In future filings please provide enhanced disclosure of your operating cash flows to enable readers to better assess significant changes in working capital. Also, include all periods presented in the filing in your discussion of cash flows. Refer to Item 303(a)(1) of Regulation S-K and Section IV.B.1 of SEC Release 33-8350. This comment also applies to subsequently filed Forms 10-Q.
- 5 We note that you believe your "available funds on hand, cash generated from operations, and the availability of borrowing under [y]our credit facilities will be sufficient for the foreseeable future." In future filings, please disclose whether your cash resources will be sufficient to meet your working capital and other operating needs for at least the next 12 months.

## Management's discussion and analysis

### Non-GAAP measures

Companies often supplement their GAAP financial reporting with non-GAAP information that is intended to provide additional insight into the financial performance of the business. A non-GAAP financial measure is a numerical measure that adjusts the most directly comparable measure determined in accordance with GAAP. Such measures provide supplemental information regarding a company's historical or future financial position, performance, cash flows, or liquidity. They generally convey changes to the business that are organic separate from those that may be considered unusual, infrequent, or not representative of underlying trends. Common non-GAAP financial measures in EMC include earnings before interest, taxes, depreciation and amortization (EBITDA), adjusted EBITDA, free cash flow, adjusted earnings or adjusted earnings per share, and net debt.

A company has flexibility in which non-GAAP financial measures it chooses to report, if any, and how it calculates such metrics, subject to certain prohibitions. Therefore, a limitation inherent in non-GAAP financial measures is that they are subjective and may not be comparable to similarly titled non-GAAP financial measures used by other companies, including peers.

When non-GAAP financial information is presented in periodic reports filed with the SEC, registrants are required by Item 10(e) of Regulation S-K to include:

- The reasons why management believes that the non-GAAP measure is relevant to investors
- The additional purposes, if any, for which management uses the non-GAAP measure
- The most directly comparable GAAP financial measure with equal or greater prominence to facilitate comparability among other registrants
- A reconciliation to the comparable GAAP measure

Regulation G requires a similar reconciliation between the non-GAAP measure and the most comparable financial measure calculated in accordance with GAAP, and is applicable to all public disclosures of non-GAAP measures.

Below are some of the circumstances that generated questions in the comment letters reviewed in our analysis:

- Use of terminology that implies a non-GAAP measure is a standard measure, e.g., a measure that includes adjustments to the standard

definition of EBITDA should not be labeled "EBITDA"

- Inappropriate use of a non-GAAP measure that excludes normal cash expenses necessary to operate the business, e.g., advertising costs or salaries
- Presentation of a non-GAAP liquidity measures that omit items which are cash-settled
- Giving greater prominence to non-GAAP results over GAAP results

When evaluating whether and how to disclose non-GAAP measures, registrants should ensure that they understand and adhere to the applicable rules.

**1** We note your presentation of the non-GAAP measures "net cash position" and "free cash flow" and the related reconciliations to the most comparable GAAP measures in your Annual Report on Form 10-K. We also note your disclosure that the non-GAAP measures of net cash position and free cash flow provide useful information to investors as each enhances the overall understanding of your operating performance. As the GAAP measures "cash and cash equivalents" and "net cash provided by operating activities" both appear to be measures of your liquidity, please explain to us and in your filings why you believe the non-GAAP measures "net cash position" and "free cash flow" represent non-GAAP measures that enhance the understanding of your operating performance. Alternatively, please revise future filings to explain that each of these measures enhances an investors understanding of your liquidity. In addition, please revise future filings to explain any additional purposes that each of these measures are used by management in evaluating your operating performance or liquidity.

**2** We note that you reconcile local media EBITDA to operating profit. Please note that non-GAAP measures should be reconciled to the most comparable GAAP measure, which in this case is net income. Refer to Question 103.02 of the Compliance and Disclosure Interpretations issues on January 11, 2010 for further details. Please revise future filings accordingly.

**3** We note from your disclosure that Adjusted EBITDA adjusts for \$XX million related to non-cash compensation and other." Please provide us more details as to the nature and amounts included in this line item and how such amounts reconcile to the

## Management's discussion and analysis

amounts included in the financial statements or notes to the financial statements.

### Other MD&A comment trends:

**Critical accounting estimates:** EMC companies use many estimates in the areas of revenue recognition, recoverability of content costs (e.g., film or production costs), estimated useful lives of tangible and intangible assets, fair values, pension and postretirement obligations, and asset impairments. Estimates that are subject to a higher degree of uncertainty and a potential to materially impact the registrant's financial position and results of operations must be disclosed and discussed by management in MD&A. The SEC staff often requests that companies provide more transparency with respect to how such estimates are determined, including the key assumptions and their volatility, and what impact changes to the estimates will have on the financial statements (i.e. a sensitivity analysis).

**Contractual obligations:** Registrants must disclose their known future contractual obligations as of the end of the year. The disclosure is tabular and is meant to provide a snapshot of the registrant's committed future cash requirements. When uncertainty exists as to the timing of payments resulting from an obligation, companies should disclose that information in the footnotes to the table. The SEC staff is primarily focused on ensuring the completeness of the disclosure. Items most often omitted include future interest payments, payments relating to unrecognized tax benefits, and contingent purchase consideration.

**1** We note that your discussion of critical accounting policies as it relates to goodwill is generic, and does not provide any significant insight as to the assumptions used in this analysis such as market multiples, control premiums, future increases in operating expenses and margins or the discounts rates and other assumptions used. In light of the fact that approximately XX% of your recorded goodwill balance relates to your segments A and B which have experienced operating losses during all periods presented in your consolidated financial statements, please revise this section to focus on the sensitivity aspects of your critical accounting policies, that is, the likelihood that materially different results would be reported under different conditions or assumptions. More specifically, please provide a sensitivity analysis which describes how the use of different assumptions such as revenue and expense growth rates, discount rates, etc. would impact your goodwill impairment analysis for these segments. In

addition, please include a discussion as to how your actual results of operations for the current period have compared to the estimates and assumptions used in your prior periods goodwill impairment analysis for these segments.

- 2** In future filings, please provide more robust disclosure regarding the material regulations to which the company is subject and how such regulations impact its business.
- 3** You disclose that you changed the estimated useful lives of your conduit, fiber, and certain transmission equipment. Please tell us the following and expand your disclosure here and in the footnotes: Why the acquisition of AB Company triggered an evaluation of the estimated useful lives of your fixed assets; The carrying values of the assets subject to these revisions; and, The material factors you relied upon to justify an extension of estimated useful operating lives of these assets. Further, it appears to us that your financial statement disclosures and your discussion of critical accounting policies in Management's Discussion and Analysis should be expanded to include robust discussions of accounting policies and methodologies for determining the useful operating lives of your long-lived assets.
- 4** We note that your contractual obligations table includes "other purchase obligations" of approximately \$X million, which are primarily due within the next three years. We believe that this disclosure would be more meaningful to readers if you provided a brief description of the nature of these additional purchase obligations in a footnote to your table. Please revise your disclosure accordingly.
- 5** Disclosures in this section indicate that "certain items" and "many of your non-current liabilities" were excluded from the contractual obligations table. In your response please describe and quantify these liabilities. If the amount of the undisclosed liabilities is material, disclose the amount via footnote to the table or otherwise.

## S-K and other reporting compliance

When preparing financial statements, registrants must be diligent in ensuring transactions and disclosures are appropriately reflected in the financial statements. Another equally important item that is sometimes overlooked is compliance with the instructions for various provisions of Regulations S-K and S-X, and other requirements for the preparation of Form 10-K and Form 10-Q. It is important to ensure compliance with the rules governing description of the business (including seasonality), supplementary financial information, separate financial statements, signatures, certifications, exhibits, as well as the appropriate inclusion of any required consents (such as those from the independent registered public accounting firm and from other named third party experts). Various provisions with Regulation S-K and S-X address description of business (including seasonality), supplementary financial information, and separate financial statements. Regulation S-T outlines the general rules and regulations for electronic filings, while Regulation S-K (primarily Item 601 as it relates to exhibits) outlines non-financial requirements specific to filings under the Securities Act of 1933 and Exchange Act of 1934. In comment letters, the SEC staff often requested amendments to filings that were not compliant with the requirements referenced above.

Below are some of the circumstances that generated questions in the comment letters reviewed in our analysis:

**1** We note your disclosure that Company A represented XX% of your net revenue for fiscal year 20X1. We also note your risk factor disclosure that a reduction in sales to any one of your customers could have a material adverse effect on your results of operation. Because you appear to be substantially dependent on your relationship with Company A, please tell us if you considered including in your Form 10-K a description of your contractual arrangements with Company A and filing your agreements with Company A as exhibits. See Item 601(b)(10)(ii)(B) of Regulation S-K.

**2** We note from the transcript to your Earnings Conference Call for the quarterly period ended March 31, 201X that you describe first quarter sales as seasonally low. We also note that your net sales in the first quarters of fiscal years 20X2 and 20X1 have been historically lower than in other quarters. In future filings, please confirm that you will disclose the extent to which your business is seasonal. Refer to Item 101(c)(1)(v) of Regulation S-K.

**3** It appears to us that your investment in ABC may be significant as defined by Rule 1-02(w) of Regulation S-X for 20X1 and 20X2. Please tell us how you considered the provisions of Rule 3-09 of Regulation S-X in your determination not to include separate financial statements of ABC, for all periods presented. In your response, please provide us with your calculations for all periods presented.

**4** Please revise to discuss the nature of any unusual or infrequent items that impacted your quarterly results of operations for the various periods presented, such as accelerated depreciation recorded due to the shortening of service lives of certain assets, and asset retirement losses. Refer to the requirement outlined in Item 302(a)(3) of Regulation S-K.

**5** Please file a copy of the asset purchase agreement with Company A as an exhibit to your annual report. In addition, please disclose the material terms of the asset purchase agreement here, including the number shares issued in connection with this transaction.

# Revenue recognition

Revenue recognition continues to be a significant focus area. Included below are some general comments as well as some more specific comments related to gross vs. net and multiple element arrangements.

## General comments:

**1** Regarding revenues from the licensing of television programming, please clarify if such revenues are recognized in the period that the television series is made available to the licensee for immediate broadcast. Additionally, tell us why there is a significant timing difference between revenue recognition and when payments under the licensing arrangements are due.

**2** We note from the disclosure in MD&A that revenue recognized during 20X1 included revenue from the ABC project. We further note that this revenue included \$XX million related to ABC sales and \$XX million related to revenue from deferred income that represented revenue participation rights earned from the DE investment. Please tell us and revise your revenue recognition policy included in your summary of significant accounting policies to explain how you are recognizing each of these types of revenue in your consolidated financial statements. Your response and your revised disclosures should also explain the types of costs incurred in connection with generating these types of revenues and should also explain how the related costs are being recognized in your consolidated financial statements.



## Gross vs. net:

Companies in the EMC sector may act as intermediaries between other companies and end customers. For example, they could be fulfilling obligations to deliver programming, selling Internet media services on behalf of another company, or hosting game software on their platform. In these cases, registrants should determine whether to present revenue on the gross or net basis, which requires analysis of the arrangement using criteria listed in ASC 605-45. The analysis is aimed at determining whether the company acts as a principal or an agent in the arrangement with the end customer. The SEC staff comments frequently request that registrants provide the detailed analysis of the factors listed in the authoritative guidance. Although the conclusion is an area of significant management judgment, greater emphasis is placed on who is the primary obligor, who has the ability to set price, and who bears inventory risk.

**1** We note that on occasion you sell directly to your larger enterprise customers and that some of these direct sales are "channel partner-assisted". We note also that you offset compensation paid to those channel partners against your revenues from these direct sales. Please explain how you accounted for these transactions and tell us the following: Quantify the revenues earned from "channel partner-assisted" direct sales and the offsetting amounts recorded for channel partner compensation recognized in each reporting period, describe the typical goods and services provided by you to your direct sale customers, describe the service provided to you by these channel partners and the typical goods and services they provide under these arrangements to your direct sale customers, describe the pertinent contractual terms between the parties, and explain to us your consideration of the applicability of the gross-vs.-net accounting guidance provided in ASC 605-45-45.

## Revenue recognition

### Multiple element arrangements

EMC companies often provide multiple products or services to their customers as part of a single arrangement. These deliverables can include software, hardware, and services; can be delivered up-front or over a period of time; and may be labeled “free.” It can sometimes be challenging to determine the most appropriate technical guidance to apply, given the complexities of the arrangements. A company is required to allocate the arrangement consideration using its best estimate of selling price (BESP) for the deliverables in an arrangement when vendor-specific objective evidence (VSOE) or third-party evidence (TPE) of the selling price is not available. The residual method of allocating arrangement consideration is no longer permitted. Registrants’ critical accounting estimates and judgments related to multiple-element arrangements continue to be among the most common revenue-related comments in the EMC sector from the SEC staff. They include questions about determining the appropriate units of accounting, determining the appropriate valuation techniques and assumptions to arrive at values for each of the units of accounting, and the periods over which revenue should be recognized.

- 1** Your multiple elements arrangement disclosure appears to quote accounting literature, but does not provide specific qualitative and quantitative information about your revenue arrangements. Please refer to the guidance in ASC 605-25-50. Provide us with your proposed disclosures.
- 2** We note in your disclosure hereunder that you evaluate multiple element arrangements for bundled advertising and content licenses, which involves allocating the consideration among individual deliverables within the bundled arrangement. Please expand your disclosure to separately identify each unit of accounting and your basis for allocating revenue and recognizing revenue therefrom.
- 3** Please expand your revenue recognition policy to describe your multiple element arrangements, including identification of such deliverables that qualify as separate units of accounting and your basis for determining their relative selling prices as set forth in, but not limited to, your responses. Refer to ASC 605-25-50-2. With respect to product x, please further disclose how you concluded that the stated price of product x constitutes VSOE or third party evidence of selling price.

# Business combinations and impairments

## Business combinations

Mergers and acquisitions have increased in the EMC sector, resulting in consolidation of operations throughout the industry, and also an increased focus on the related accounting. 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 business combination accounting disclosure items and the subsequent impact of goodwill impairment, as discussed below.

ASC 805, *Business Combinations*, provides extensive disclosure requirements to enable users to evaluate the nature and financial effects of a business combination. 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 EMC industry, the SEC staff comments have focused on valuation matters and other general acquisition accounting matters, including:

- Fair value determination and the key assumptions used
- The identification of the accounting acquirer
- The accounting for variable interest entities and controlling interests



**1** Please provide us your analysis documenting your basis for concluding the company was the accounting acquirer, when accounting for the merger with Company X. Include in your response your consideration of the factors found in ASC 805-10-55-12.

**2** We note that in connection with the Company's acquisition you allocated a portion of the purchase price to goodwill and other intangibles. Please explain to us and revise to disclose the nature of the other intangibles acquired, how you determined or calculated the fair values attributable to these intangibles, and the useful lives assigned to each type of intangible asset.

**3** We note that the pro forma revenues disclosed in the second table on page XX are but a fraction of the consolidated revenues reported on page XX. Please reconcile these amounts for us and describe for us the pro forma adjustments underlying the supplemental pro forma disclosures. As applicable, please expand your disclosure of supplemental pro forma information for the Company ABC acquisition as required by ASC 805-10-50h.1, -50h.3 and -50h.4.

**4** We note that the consideration Company A received includes entitlements to preferential cash distributions that are contingent on the future cash flows of Company B. Tell us how you evaluated this entitlement in assessing whether this is contingent consideration that would be included in the calculation of the purchase price.

**5** We note that in connection with the reorganization, you recorded \$XX million of non-controlling interest during the year ended December 31, 20X1. Please revise to disclose how you calculated or determined that amount. Also, please tell us the nature of the transfers from non-controlling interest during 20X1 and in the first quarter of 20X2 and explain how you calculated or determined these amounts.

## Business combinations and impairments

### Goodwill and long-lived and indefinite-lived intangible asset impairments

The SEC staff continues to issue comments on registrants' considerations of disclosures related to goodwill, indefinite-lived intangible assets, and long-lived asset impairments.

Given the degree of estimation and volume of assumptions, the evaluation of goodwill for impairment involves considerable judgment. Although a reporting unit may not be impaired, the SEC staff may request expanded disclosures related to reporting units that are "at risk" of failing step one of the goodwill impairment test. The SEC staff has requested that registrants disclose: the percentage by which fair value exceeds the carrying value as of the date of the most recent test, the amount of goodwill allocated to the reporting unit, and a qualitative discussion of assumptions used to determine fair value, including the inherent uncertainties and potential events and circumstances that could have a negative effect on the reporting unit's fair value. A similar impairment test and disclosures are required for indefinite-lived intangible assets.

While goodwill and indefinite-lived intangible assets must be assessed for impairment annually, intangible assets subject to amortization are evaluated for impairment when events or changes in circumstances indicate that the carrying value may not be recoverable.

The SEC staff frequently challenges the timing of a goodwill impairment charge, particularly when it results from the annual goodwill impairment test. They are likely to ask whether the factors and conditions that led to the impairment existed in an earlier period, especially when previous filings did not contain any foreshadowing language. The SEC has challenged why sustained declines in revenues and operating income or a depressed stock price for an extended period of time were not considered triggering events requiring an interim goodwill impairment assessment.

The SEC staff comments related to long-lived assets were consistent with the themes presented for goodwill and other indefinite-lived intangible assets. Specifically, the SEC staff scrutinized the timing of when impairment charges were recorded and the sufficiency of disclosures of valuation methodologies. The SEC staff has also requested that registrants provide additional information about the level of uncertainty and sensitivity of key assumptions related to "at risk" assets or asset groups. In some instances, the SEC staff has requested details of the impairment analysis and challenged registrants' conclusions relative to how they considered economic challenges, operating losses at a specific segment, the impairment of similar assets as a potential trigger event, or how they defined the lowest level of identifiable cash flows used to identify the asset group.

**1** Given the significance of your goodwill balance and the ABC segment's significant recurring operating losses, please expand your disclosure in future filings to provide robust and comprehensive disclosure both in your footnote and in your critical accounting policies regarding your impairment testing policy and management's insights and assumptions related to the recoverability of goodwill. Further, we note that the company elected not to perform a qualitative goodwill impairment assessment and proceeded directly to performing a quantitative evaluation. If a reporting unit is at risk of failing step one of the goodwill impairment test, please also disclose the following information for the reporting unit: The percentage by which fair value exceeded carrying value as of the most recent step-one test; Description of key assumptions used and how the key assumptions were determined; and Discussion of any trends or uncertainties associated with the key assumptions and any potential events and/or circumstances that could have a negative effect on the key assumptions.

## Business combinations and impairments

**2** We note your disclosure that in July 20X2, you entered into an agreement to sell the ABC Company and during the third quarter of 20X2, you estimated the fair value less cost to sell of the group, which resulted in a \$XX million impairment charge for fixed assets at the group. Please explain to us why you believe the assets of the ABC Company were appropriately valued at December 31, 20X1 and June 30, 20X2 and were not impaired as of those dates, particularly in light of the disclosure in Note X to the Form 10-K that in January 20X2 you announced that you retained a strategic advisor in connection with a sale of ABC Company and your disclosure in the Form 10-Q for the quarter ended June 30, 20X2 that you expected to recognize a loss on the sale of \$XX-\$XX million. As part of your response, please tell us the nature of any changes in facts or circumstances that occurred between December 31, 20X1 and the third quarter of 20X2 that resulted in the impairment charge recognized in the third quarter of 20X2.

**3** We note your disclosure that a quantitative analysis was performed for two reporting units that account for approximately XX% of the Company's goodwill and an assessment of the implied fair value of goodwill was performed for one reporting that accounts for approximately XX% of your goodwill due to a negative carrying value. Please tell us if any of your reporting units were at risk of failing Step 1 of the impairment analysis (as defined in ASC Topic

350). For any reporting units that are at risk of failing step one, please revise your disclosure in MD&A to provide the following: the percentage by which fair value exceeded carrying value as of the date of the most recent test; the amount of goodwill allocated to the reporting unit; a description of the methods and key assumptions used and how the key assumptions were determined; a discussion of the degree of uncertainty associated with the key assumptions; and a description of potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions.

**4** We note your disclosure that you have identified existing assets that are expecting to be impacted by the redevelopment and that those assets will require accelerated depreciation or losses on asset retirements, totaling approximately \$XX million over the approximate XX-month project time span. Please explain to us how you evaluated these assets for potential impairment under the guidance in ASC 360-10-35.

## Segments

The purpose of segment disclosures is to provide investors with the ability to see the company through the eyes of management. In particular, it allows investors to obtain information about a company at a disaggregated level that is used by the company's chief operating decision maker (CODM) to evaluate performance and make resource allocation decisions. The SEC staff has often asked issuers to submit the information given to the CODM to allow the SEC staff to consider whether the information is consistent with the registrant's identification of its segments (particularly when a company reports only one segment). This frequently leads to questions about the aggregation of operating segments into reportable segments. GAAP allows registrants to aggregate operating segments into reportable segments only if the segments have similar economic characteristics (e.g., long-term gross margins) and are similar in a number of other areas.

The SEC staff has sometimes challenged registrants' determination of their segments because of the interaction between operating segments and reporting units used for purposes of goodwill impairment testing. The incorrect identification of operating segments could result in a company incorrectly preparing its goodwill impairment assessment.

The SEC staff has also requested that registrants disclose the amount of revenues for each product or service or each group of similar products or services in accordance with the accounting guidance. The SEC staff has been skeptical when registrants have asserted that providing such disclosures is impracticable, particularly when the description of the company's business elsewhere in the filing includes quantification and discussion of different revenue categories. Also, when performing filing reviews, the SEC staff continues to review information outside of a registrant's filings, including press releases, analyst calls, and the company's website, among other sources. The SEC staff reviews these other sources of information to look for inconsistencies between how management describes the company in those forums, with how it is presented in the financial statements.

**1** Please tell us whether segment management receives discrete financial information by market or market group. If so, tell us why each market is not deemed a reporting unit.

**2** We note your disclosure that segment X consists of operating segment AB and CD. Tell us in detail how you evaluated the aggregation criteria in ASC 280-10-50-11 to conclude that it is appropriate to aggregate these two operating segments into one reportable segment.



**3** In light of your increasing international operations and your product and service revenue mix, please tell us whether the CODM evaluates discrete financial performance measures, such as gross margin, concerning international versus domestic or product versus service revenues.

**4** You disclose that you refocused your business in 20X1 and now have two reportable segments. We note that the ABC segment includes a range of services to various types of customers. Tell us how you applied the guidance in ASC 280 in identifying your operating segments. If you have aggregated operating segments, please disclose this and provide us with your analysis of the aggregation criteria in ASC 280-10-50-11 for the various products and services you provide.

**5** We note that you have not identified any components within your single operating segment and, hence, have a single reporting unit for purposes of goodwill. Please tell us in more detail how you determined that you have only one reporting unit in accordance with ASC 350-20-35-34 to 38. In your response, please tell us about your reporting structure and how you considered your recent acquisition of ABC Company.

## Income taxes

The accounting for income taxes, including related disclosure requirements, is often complex and involves significant judgment. SEC staff comments have focused on disaggregation in the income tax provision disclosures, additional detail related to the determination of the valuation allowance, and the sufficiency and consistency of indefinite reinvestment disclosures. The most notable comment letter trends in the area of income taxes are:

- **Permanent reinvestment:** If the company determines that its foreign earnings will be permanently reinvested outside of the United States, it does not have to record a deferred income tax liability related to repatriating these earnings. The SEC staff has regularly asked registrants to provide support and disclose in MD&A their considerations related to the permanent reinvestment assertion, to quantify the amount of undistributed earnings for which no tax liability has been recorded, and to quantify the amount of the unrecognized tax liability or disclose why it is not practicable.
- **Impact of different tax rates on earnings:** Comments frequently ask registrants to disclose how foreign effective tax rates differ from the domestic rate, and analyze how the results of operations are impacted from having proportionally higher or lower earnings in jurisdictions with different effective tax rates.
- **Deferred tax assets:** The assessment of recoverability of deferred tax assets involves significant management judgment. In their comment letters, the SEC staff has asked companies to explain and disclose in their filings their considerations related to the recoverability of deferred tax assets, including analysis of both positive and negative evidence, especially when a

prolonged history of losses exists. Additionally, any time a company records or reverses a valuation allowance against its deferred tax assets, they should be prepared to respond to a challenge from the SEC staff as it relates to the timing of the charge/reversal (i.e., why now or why not last quarter/year?) including previous foreshadowing language or lack thereof.



- Other comments include providing (a) a detailed breakdown of the effective tax rate reconciliation items (i.e., showing all individual items greater than 5% of the statutory tax rate); (b) more transparent disclosure of unrecognized tax benefits; (c) quantitative disclosure of aggregate and per-share effect of the tax holidays; and (d) details of how registrants estimate the effective tax rate in interim periods.

**1** We note that certain of your subsidiaries have tax holidays in China which resulted in lower income tax expense during the periods presented. Please tell us what consideration was given to disclosing the per share effects and the expiration dates of the tax holidays. Refer to SAB Topic 11.C.

## Income taxes

**2** We note that if you are “able to realize [y]our deferred tax assets in excess of [y]our net recorded amount, an adjustment to the valuation allowance would increase income in the period such determination was made.” We further note from disclosure in Note X that you have a valuation allowance of \$XX million against deferred tax assets of \$XX million as of December 31, 20X1. Please tell us and revise future filings to disclose the specific deferred tax assets to which your valuation allowance relates and the potential circumstances that may cause you to adjust your valuation allowance in future periods. To the extent your estimates and assumptions are reasonably likely to change in the future, for example if additional taxable income in an upcoming quarterly period would cause you to release of all or a portion of your valuation allowance, you should address this in your disclosures. Refer to Section V of SEC Release 33-8350.

**3** We note that you consider the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in assessing the ultimate realization of deferred tax assets. Please tell us what consideration was given to cumulative earnings or losses by jurisdiction in your assessment and please provide us with a reasonably detailed summary of your assessment as of December 31, 20X1. Refer to ASC 740-10-30-16 through 25.

**4** It is unclear how you determined that the impact of changes in the liability for uncertain positions is not significant to results of operations for each of the three year periods presented. Please provide us with the tabular reconciliation of the liability for uncertain tax positions and explain how you assessed the materiality of the changes. Also tell us the amount of interest and penalties recorded in each period.

**5** We note that you have not provided for federal taxes on the undistributed earnings of your international subsidiaries because such undistributed earnings are considered to be permanently reinvested in your international operations. Please tell us what consideration was given to disclosing the amount of the unrecognized deferred tax liability related to the undistributed earnings, to the extent determination of that liability is practicable, or a statement that determination is not practicable. Refer to ASC 740-30-50-2(c).

## Other notable comments

Included below are additional categories receiving some level of focus by the SEC staff in comments issued to EMC companies in 2014.

### Controls and procedures

We have heard various members of the SEC staff signal that internal control over financial reporting (ICFR) is an area of increasing interest. At the 2014 AICPA National Conference on Current SEC and PCAOB Developments, several presenters noted that as part of the comment letter process, the SEC staff is looking for potential indicators of material weaknesses, such as corrections of an error or disclosures regarding material changes in internal controls. Presenters also commented that the SEC staff may be interested in a registrant's conclusions regarding ICFR in instances where they do not agree with a registrant's conclusion on an accounting matter. We have begun to see an increasing volume of comments in this area. Registrants should continue to carefully evaluate the ICFR and disclosure controls and procedures (DC&P) implications in responses to the SEC staff and the sufficiency of their disclosures, assessments, and certifications.

**1** In light of the error corrections related to X and Y noted in Note X, please tell us how you determined internal controls over financial reporting were effective at December 31, 20X1, pursuant to Item 308 of Regulation S-X. Please tell us in your response how the errors were detected, the determination of materiality relative to the errors, and any corrective actions required in your internal controls.

**2** Please update and clarify your disclosure of changes in internal controls over financial reporting for the quarter ending March 30, 20X1 as a result of your project x initiative which commenced in 20X1. As required by Item 308(c) of Regulation S-K, disclose any change that has materially affected or is reasonably likely to materially affect your internal control over financial reporting.

**3** 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.

### Materiality

The SEC staff's views on evaluating materiality are included in SAB Topics 1.M and 1.N (otherwise known as SAB 99 and SAB 108). In the event an error is identified, materiality must be evaluated considering both quantitative and qualitative factors. The quantitative analysis should include the effects of the errors on each of the company's financial statements impacted (both annual and interim) and related disclosures using both the iron curtain and roll-over methods. However, registrants should not assume that the error is not material simply because it falls below a certain dollar or percentage threshold. A qualitative analysis must also be performed to address important considerations such as whether the error impacts management's compensation, whether it was intentional or the result of a fraudulent act, and if the error impacts reported trends or analysts' expectations. The materiality analysis should be robust and balanced (reflecting positive and negative factors) and should be contemporaneously documented, as the SEC staff often ask registrants to provide their materiality analysis.

The SEC staff also challenges registrants as to whether certain adjustments, which may be characterized by registrants as reclassifications, are in fact errors. Similarly, when errors are deemed by management to be immaterial to the period of origination and are recorded in the period in which they were identified as out-of-period adjustments, the SEC staff may challenge management's conclusion and may determine that the previously

## Other notable comments

issued financial statements need to be restated or revised. Disclosure of material errors and related corrections provides transparent information to the users of the financial statements.

**1** Your disclosures provide little quantitative insight into the significance of your misstatements. Please amend your filing to disclose the amount of the errors you have discovered to date that resulted in your determination that your financial statements filed for the quarter ended June 30, 20X1 should no longer be relied upon.

**2** We see that you recorded out-of period correcting adjustments to write off certain costs that were capitalized in previous periods. We reference your statement that the corrections resulted in an increase to the Company's "net loss" of \$X million for the six months ended June 30, 20X1. Given the company's net income for the six months ended June 30, 20X1, please tell us how you concluded that the amounts were not material, either individually or in the aggregate, to any prior period and to the 20X1 interim or expected full year financial statements. Please provide us with your SAB No.99 analysis in assessing the materiality of the error.

## Loss contingencies

The SEC staff continues to focus on ensuring that registrants comply with the guidance of ASC 450, *Contingencies*. Some registrants are resistant to providing the required disclosures for fear that they may divulge information that could adversely affect the outcome of litigation. To that end, the SEC staff has indicated that they will accept disclosure of estimated exposure on an aggregated basis, rather than requiring separate disclosure for each individual matter.

GAAP requires companies to record an accrual for a loss contingency when it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Even if the criteria for accrual have not been met, disclosure may still be required if the loss is reasonably possible. For loss 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 estimate cannot be made).

To keep investors apprised of material developments associated with the nature, timing, and amount of a loss contingency, such details should generally not be disclosed for the first time in the period in which they are recorded. The SEC staff has frequently evaluated

the disclosures in periods prior to the period in which a loss is recorded and commented on the lack of adequate early-warning or foreshadowing disclosures. Such comments often request additional information to understand the triggering event for recording the loss and whether such losses should have been recorded in an earlier period. The SEC staff expects that loss contingency disclosures will be updated regularly, both qualitatively and quantitatively, for developments in the related matters and as more information becomes available.

**1** We note your disclosure that in regards to the Case A litigation, you disclose that management does not believe that the Company has incurred a probable, material loss. Please revise to disclose an estimate of the possible loss or range of loss related to this litigation, or include a statement that such an estimate cannot be made. See guidance in ASC 450-20-50-4. Alternatively, you can disclose, if true, that any reasonably possible loss would not materially affect your financial position or results of operations.

**2** We note there was a confidential settlement of the lawsuit filed against Company ABC. If material, you should fully disclose the terms of the settlement and provide a sufficiently detailed discussion in MD&A so that the impact of the settlement on your results of operations is wholly transparent to readers. Please explain to us the terms of the settlement and tell us how it was reported in your financial statements.

**3** We note your disclosure that in fiscal 20X2 you recognized a \$XX million charge related to the Company ABC litigation, which was paid in 20X2. We also note from your disclosure that this charge was taken in the first quarter of fiscal 20X2. In light of your disclosure in Note X to your Form 10-K for the year ended December 31, 20X1, which indicated that no accrual was made for this litigation since a loss was not determined to be probable, please explain to us why you believe it was appropriate to record the entire charge in 20X2, rather than accruing for a portion or all of the loss in fiscal 20X1. As part of your response, please tell us the nature and specific timing of the changes in the facts and circumstances that occurred between December 31, 20X1 and the end of the first quarter 20X2 that resulted in your determination that the charge was appropriately recognized in fiscal 20X2.

## Other notable comments



### Executive compensation disclosures and incentive plans

Item 402 of Regulation S-K requires extensive disclosures on executive compensation for proxy statements, Form 10-K filings, and registration statements, the objective of which is to provide users of financial statements with robust and transparent information. The SEC staff continues to focus on this area.

Comment letters issued by the SEC staff have required that registrants disclose the specific performance targets and thresholds that employees have to achieve in order to earn their compensation awards. Many registrants have used the “competitive harm” argument; however, the SEC staff remains skeptical, especially when such information is based on actual company results and the performance target will occur after the fiscal year has ended. Additionally, where peer benchmarks are used in the evaluation of compensation, the SEC staff has required registrants to add specific peer group data.

In September 2013, the SEC issued a proposal to require companies to disclose the ratio of the annual total compensation of its chief executive officer to the median of the annual total compensation of all employees of the company (excluding the chief executive officer) as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The comment period closed in December 2013 and the SEC is currently moving toward a final rule. Although there is no definitive timetable as to when the final rule will be issued, recent comments by the SEC staff indicate that the final rule may yet be issued in 2014. Under the proposed rule, a company would be required to provide the new pay ratio disclosures for its first fiscal year commencing on or after the effective date of the final rule, which if released in 2014, would mean calendar-year registrants would need to calculate the pay ratio based on 2015 compensation.

- 1 We note you use performance targets in connection with your Annual and Long-Term Incentive Plan Awards. Please disclose all of the performance targets applicable to your executive compensation program (as part of your annual or long-term incentive plans or otherwise).
- 2 We note that bonus payments to executives were made in part on a discretionary basis and in part on your success in meeting “certain performance-related targets consisting of revenue, EBITDA, and the number of customer locations installed.” Please disclose your performance-related targets upon which part of the bonus payments are awarded. Please refer to Item 402(b) of Regulation S- K.

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## ***About PwC's Entertainment, Media & Communications practice***

As audit, accounting and business advisors to the world's leading Entertainment, Media and Communications companies, PwC has an insider's view of trends and developments driving the industry. PwC has depth and breadth of experience working globally across the key industry sectors including: communications, television, film, music, Internet, video games, advertising, publishing, radio, out of home advertising, sports, business information, theme and amusement parks, casino gaming and more. But perhaps even more significantly, we have aligned our practice around the issues and challenges that are of utmost importance to our clients in these sectors such as digital transformation, future business models, globalization, emerging markets, and changing operational dynamics.

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