

Stay informed

Retail & Consumer 2013 SEC comment letter trends

*Current developments
in SEC reporting*

January 2014



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January 10, 2014

Clients and friends:

Ongoing developments in the financial reporting regulatory environment, along with changing business risks and conditions in today's economic environment, are contributing to the inherent challenges involved in preparing high-quality annual reports.

During 2013, the Financial Accounting Standards Board (FASB) continued to make progress on the convergence projects and other standard setting activities, such as the leasing and revenue recognition projects. The Securities and Exchange Commission (the SEC or Commission) continued to focus on rulemaking activities, including those required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and the Jumpstart Our Business Startups (JOBS) Act, in the wake of a new chair, two new commissioners and other changes in key positions at the Commission. Registrants are also working diligently to comply with the SEC's conflict minerals rules for which the first filing is due on May 31, 2014. All of these regulatory activities continue to challenge entities in the retail and consumer (R&C) industry and will undoubtedly continue to receive significant attention.

Understanding the SEC staff's recent areas of focus is an important aspect to consider as part of the year-end reporting process. The SEC staff has continued to place emphasis on the importance of providing information to investors that is reliable, meaningful and transparent, particularly in areas of significant judgment. Continuing key themes emphasized by the SEC staff through recent comment letter trends impact both financial and non-financial statement disclosures, with Management's Discussion & Analysis once again being the most frequent area of comment.

In this latest edition of our annual publication, we have analyzed SEC comment letters issued to R&C registrants to assist management teams in identifying and understanding the SEC staff's recent focus areas specific to the industry. The information summarized within this publication is based on comment letters issued to R&C registrants that were published by the SEC from October 1, 2012 to September 30, 2013. We have highlighted the top areas where R&C registrants received the most comments and have provided relevant examples of recent comment letters along with the applicable accounting or reporting guidance.

We hope you find this summary to be a useful reference tool as you prepare your year-end reports, and we look forward to working with you during this financial reporting season. Please do not hesitate to reach out to your engagement team or PwC contact to discuss the information contained within this publication or any other year-end financial reporting issues.

Best wishes,

A handwritten signature in dark ink, appearing to read "Steve Barr", written in a cursive style.

Steve Barr
U.S. Retail and Consumer Leader

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Overview

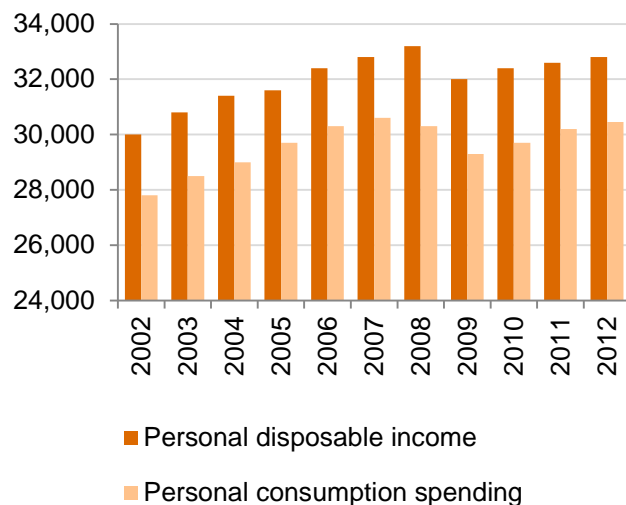


Recent industry trends

The retail and consumer (R&C) industry has faced a broad array of recent developments and challenges, many of which were driven by continually changing consumer behaviors. In the age of digitally empowered consumers, there has been a focus on the increasing importance of interacting with consumers through digital and social media and the transition to an omnichannel marketplace. R&C companies also remain focused on creating brand value through innovative products and experiences that respond to consumers' changing preferences, including differentiation through enhanced customer service and loyalty programs. Acquisition opportunities and streamlining of operations has allowed companies to more quickly transform their businesses to support their strategy and stay ahead of market shifts, and companies are continuing to assess global opportunities, oftentimes in emerging markets. Competition and pricing pressures have remained strong in the industry and have driven growth in private-label offerings and increased investments by manufacturers in direct-to-consumer channels.

Consumer demand has continued its modest improvement. As shown in the chart below, in the U.S., household spending and per-capita income both grew slightly in 2012. At the same time, average real consumption per person reached \$30,562, nearing the \$30,703 peak level seen in 2007.¹ Increases in U.S. consumer spending were primarily the result of improved housing market conditions and stable unemployment levels, partially offset by uncertainties arising from the U.S. federal government fiscal policy. Globally, exports by the industry continued to grow, but at a slower rate than prior years. In 2012, total industry exports increased 8% from 2011, rising to \$87 billion, compared to an average growth rate of 12.8% during the prior five-year period.² The highest growth was seen in exports to NAFTA countries and emerging markets, with slower growth seen in developed nations (the European Union, Japan, Australia) and selected East Asian countries.²

Real per capita income & spending²
2002-2012

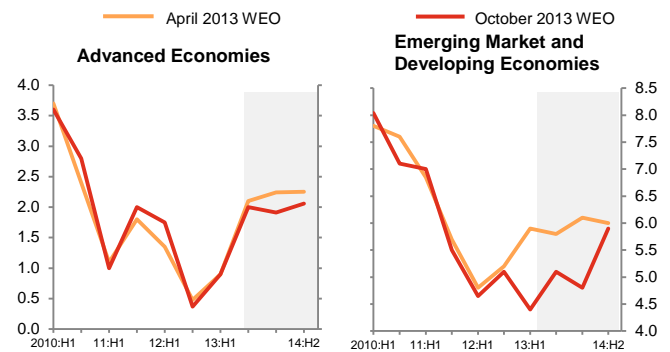


¹ Source: U.S. Bureau of Economic Analysis, *National Income and Product Accounts*, accessed March 2013, as published in the PwC/GMA 2013 Financial Performance Report

² Source: International Trade Administration, *TradeStats Express* data for exports, accessed March 2013, as published in the PwC/GMA 2013 Financial Performance Report

According to the October 2013 International Monetary Fund World Economic Outlook, global growth is projected to remain modest, estimated at approximately 2.9% in 2013 and 3.6% in 2014, primarily driven by emerging markets and developing economies, although growth in these emerging markets is expected to increase at a somewhat slower pace than in recent years.³ Growth is projected to increase in the advanced economies versus that seen in recent years.³ This growth is depicted in the figure below.

GDP Growth³
(annualized quarterly percent change)



³ Source: International Monetary Fund World Economic Outlook Report, dated October 2013, <http://www.imf.org/external/publications/index.htm>

What's new at the SEC?

During the past year, there were several leadership changes at the SEC. These changes included Mary Schapiro stepping down as SEC chair in December 2012 and the confirmation of Mary Jo White, former U.S. Attorney for the Southern District of New York, as the new chair in April 2013.

In August 2013, the Senate confirmed Michael Piowar and Kara Stein as SEC commissioners, filling the seats vacated by Troy Paredes and Elisse Walter, respectively.

In recent speeches, White has stated she plans to continue to focus on the agency's priorities that began prior to her appointment -- rulemaking under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and the Jumpstart Our Business Startups (JOBS) Act and an emphasis on corporate governance. Enforcement of securities law violations also continues to be a key priority. Going forward, the SEC is changing its "neither admit nor deny" settlement practice and will seek to obtain admissions from defendants in certain limited instances.

White has also indicated in recent speeches that the SEC will commit more resources to investigating accounting and financial fraud. This focus on enforcement is evidenced by the fact that two co-directors were appointed to lead the SEC's Division of Enforcement, filling the position most recently held by Robert Khuzami. In addition, 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. In recent speeches, Chair White has indicated that these new task forces are part of her strategy to expand the SEC's reach.

SEC comment letter trends

This publication includes an analysis of comments published by the SEC staff from October 1, 2012 to September 30, 2013, relating to Form 10-K and Form 10-Q filings of R&C registrants.⁴ The comment letter themes provide insights into key areas of focus of the SEC staff for registrants to consider as they prepare for their year-end annual financial reporting. The comments are primarily in areas applicable to all industries and are not necessarily unique to this sector. That said, we have found that sometimes the details of the comments within the broad categories may include industry-specific considerations, which are highlighted where applicable.

In our analysis, we noted that the total number of comments received by R&C registrants in 2013 (nearly 1,650 total comments) decreased substantially (an approximate 34% decline from 2012). However, the 2013 comment letter “hot topics” are generally consistent with those noted in our 2012 publication. The top two areas of comment were related to MD&A and compliance again this year. Segments, impairments and income taxes saw relative increases in the number of comments, and business information and risk factors was new to this year’s top ten. Controls and procedures and acquisitions and divestitures saw relative decreases in the number of comments, and executive compensation fell below the top ten.

The following table summarizes the top ten “hot topics.”

2013 Rank	Nature of comment	2013 Trends		2012 Rank
		#	%	
1	Management's discussion and analysis (MD&A)	393	24%	1
2	Compliance	155	9%	2
3	Segments	100	6%	4
4	Impairments	90	5%	9
5	Business information and risk factors	87	5%	N/A
6	Income taxes	82	5%	7
7	Acquisitions and divestitures	79	5%	6
8	Revenue recognition and related areas	78	5%	8
9	Controls and procedures	76	5%	3
10	Loss contingencies	67	4%	10

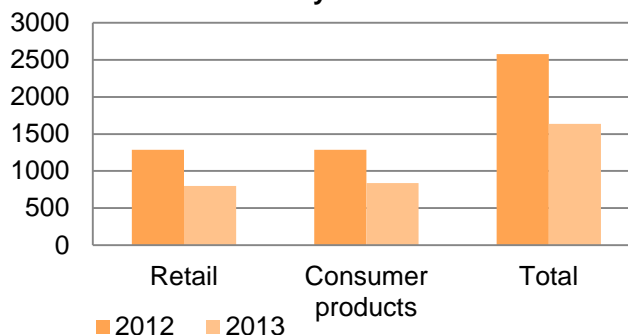
⁴ The population was analyzed based on the following SIC codes indicated on the SEC EDGAR website:

- Retail – 3942-3950, 5000, 5020, 5040-5047, 5063-5099, 5130-5150, 5180-5990 and 7600
- Consumer Products – 100, 200, 700, 900, 2000-2390, 2510-2531, 2590, 2670, 2840-2844, 3021, 3089-3140, 3420, 3630, 3634, 3651, 3652 and 3873-3931

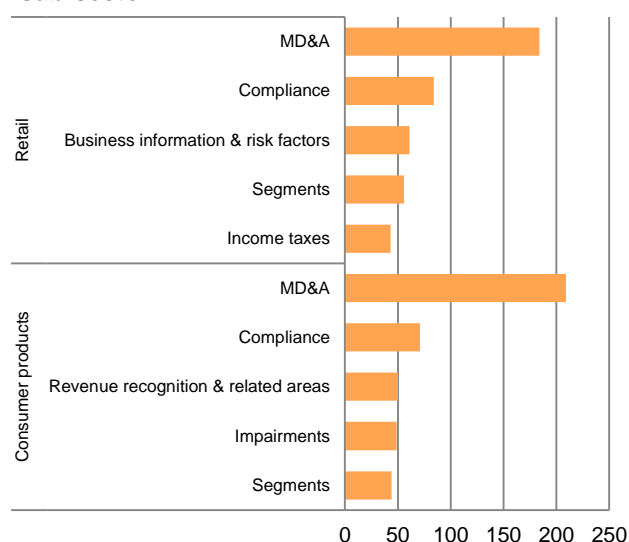
In analyzing the comments, the following statistics were noted:

- Consistent with the 2012 comment letter cycle, a majority (86%) of the total number of comments received related to Form 10-K filings.
- Approximately 36% of comments took more than one round of comment letters before resolution, a reduction from approximately 50% in the prior year.
- Year over year, there was an approximately even split between the number of comments received by retail registrants versus consumer products registrants. The number of comments by sub-sector and the top five “hot topics” for each sub-sector in 2013 are noted within the charts to the right. The overall top ten “hot topics” for retail registrants were consistent with the aggregated results. However, there were two additional notable areas of comment received by consumer products registrants that differed from the aggregated top ten results. These pertained to cash flow presentation (primarily related to appropriate classification of line items and disclosure of non-cash items) and inventory (primarily related to the selection and disclosure of valuation methods, enhanced disclosure of inventory adjustments, and disclosure of the cost elements capitalized to inventory).

Number of comments by sub-sector

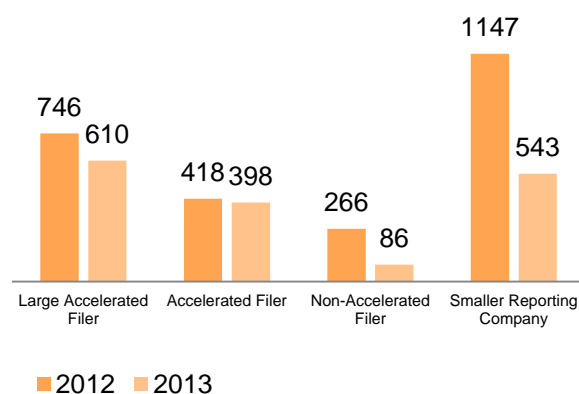


2013 top categories of topics by sub-sector

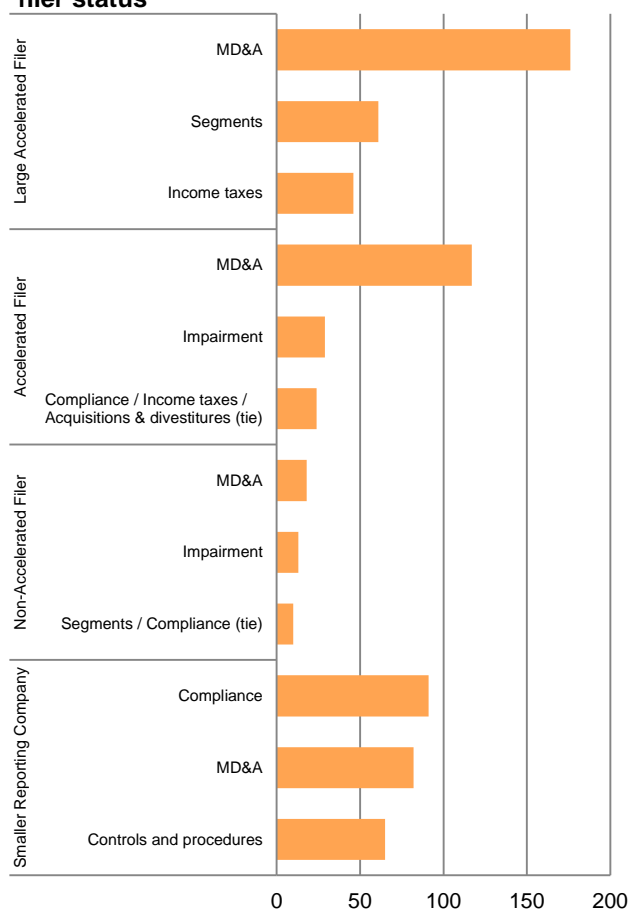


- The highest percentage of comments were issued to large accelerated filers (received 37% of total comments) and smaller reporting companies (received 33% of total comments), followed by accelerated filers (received 24% of total comments). Smaller reporting companies (which received almost half of all comments in the 2012 comment letter cycle) saw the largest decline in the number of comments year over year. MD&A was the number one area of comment among large accelerated filers and accelerated filers, while the comments received by smaller reporting companies were more evenly split between compliance, MD&A, and controls and procedures. Analysis of the total number of comments by filer status as well as the top three "hot topics" among the filer status categories is noted in the charts to the right.

Number of comments by filer status



2013 top categories of topics by filer status



Management's discussion and analysis

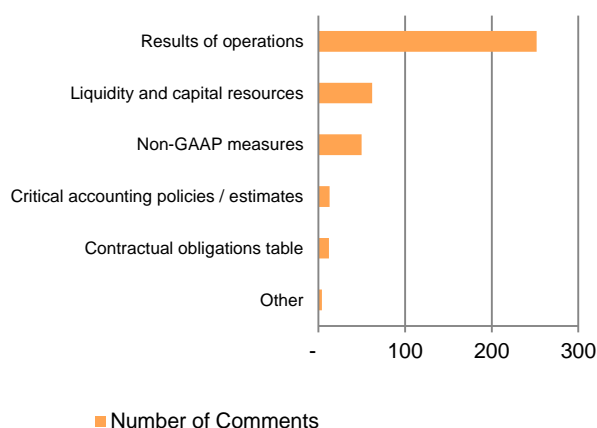


MD&A was the top area for comment again in the 2013 comment letter cycle. The guidance set forth in Item 303 of Regulation S-K identifies five categories of disclosure in MD&A -- liquidity, capital resources, results of operations, off-balance-sheet arrangements and contractual obligations -- and the 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 is publicly disclosed.

The SEC staff has emphasized 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 SEC staff is nearing completion of its study regarding Regulation S-K that was mandated by Section 108 of the JOBS Act. While the primary objective of the study is to determine whether the reporting requirements can be streamlined for emerging growth companies, Chair White suggested in a recent speech that this study is the first step toward creating optimal disclosure requirements that will serve the needs of investors and be supported by large and small businesses.

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 of recent comment letters.

Number of comments by MD&A topic



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 the results of operations section provides readers with a clear picture 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 registrants reasonably expect will have, a material favorable or unfavorable effect on the results of operations or cash flows so that investors can ascertain the likelihood that past performance is indicative of future performance. Registrants should also disclose events that are likely to cause a material change in the relationship between costs and revenues and the impact of key factors, such as price, volume

and foreign currency, when such factors contributed to a change in the registrant's financial results.

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 drivers behind changes in the financial position, results of operations and cash flows of registrants and quantify the effect of each key driver. The analysis should sufficiently explain the "whys" and "implications." SEC staff comments also encouraged the use of a segment analysis if such analysis would provide readers 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.

When key performance indicators (KPIs) are reported, the SEC staff has issued comments asking registrants to disclose how such KPIs were determined. The number of SEC staff comments relating to how e-commerce results affect KPIs, such as comparable store sales, has increased. There is diversity in practice in how registrants present e-commerce results and KPIs. The presentation depends on each registrant's own specific facts and circumstances, including the significance of e-commerce sales, how that business is managed, and how e-commerce sales are fulfilled. In recent comment letters, the SEC staff frequently asked registrants to disclose whether e-commerce results were included in KPIs, such as comparable store sales, and at times requested that registrants disclose comparable sales data for e-commerce and other sales channels separately.

Sample comments

(1) In future filings, when you identify intermediate causes of changes in revenues, such as an increase or decrease in domestic or overseas sales or an increase or decrease in same store sales, please provide your readers with insight into the underlying drivers of those changes.

(2) As a related matter, please revise to explain the reasons behind significant fluctuations in each of your various income statement line items. For example, you mention on page [X] that volume growth and net selling prices increased during 20XX in both [region A] and [region B] while net selling prices decreased in [region C] during [the current and previous year]. It is unclear what factors were driving the volume growth and changes in selling prices both overall and in each segment. To the extent there were multiple factors, please separately quantify the impact of each factor and discuss in greater detail the reason(s) for each change. For example, if the volume growth was attributable to new product launches, please identify and quantify the launches which had the greatest impact upon your results.

(3) In your analysis of results of operations, you often attribute period-to-period changes to a combination of several different factors, such as in your discussion of cost of sales, gross profit margin percentage and operating expenses associated with selling and fulfillment expenses. When you list multiple factors that contributed to changes, please quantify, if possible, the impact of each factor that you discuss to provide better insight into the underlying reasons behind the changes in your results.

(4) Please provide a more comprehensive analysis of net sales, cost of products sold/gross profit margin, and segment operating income margin so that you sufficiently explain why each factor has occurred and is impacting the specific line item in the specific manner, which may result in a need to discuss the product lines and/or geographic areas that underlie each of your reportable segments.

(5) Please disclose how you calculate the change in same store sales from period to period. If applicable, please also disclose how you treat remodeled stores in these computations, as well as stores that were closed during the period.

(6) We note your discussion in the business section that you operate retail websites in the United States, Canada, Europe and South Korea. Please quantify for us the amount of e-commerce sales by reportable segment for each period presented. To the extent e-commerce sales are material, please expand your disclosure within Management's Discussion and Analysis ("MD&A") to include a more robust discussion of e-commerce sales and their impact on sales and gross profit for each period presented. Refer to SEC Release 33-8350 for guidance.

(7) We note your comparable store sales include sales initiated online and you have continued to invest in your e-commerce platforms. Please quantify for us the effect of eCommerce sales on comparable store sales for the periods presented. To the extent that eCommerce sales have a measurable effect on your comparable store sale increases (decreases), please present your comparable store sales metric on both the basis of excluding eCommerce sales and including eCommerce sales for each of the periods presented in future filings, or alternatively, separately quantify the eCommerce activity included in this metric for each period presented. Please provide us with the text of your proposed future disclosure in your response.

Liquidity and capital resources

Item 303(a)(1) and 303(a)(2) of Regulation S-K contain the requirements for registrants to discuss liquidity and capital resources in MD&A. 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. In comment letters, the SEC staff reminded registrants that the discussion should not simply repeat items reported within the statement of cash flows. Instead, the discussion of cash flows should focus on the material drivers and factors underlying the cash flows in order for a reader to evaluate the predictive value of historical cash flows.

Recent comment letters from the SEC staff have continued to request that registrants disclose items impacting the availability of credit, including reasonably likely future debt covenant violations, limitations on the ability to draw on existing lines of credit, and other borrowing limitations. The SEC staff comments also focused on liquidity restrictions, such as cash held in foreign jurisdictions in which earnings are considered indefinitely reinvested for income tax accounting purposes, and requested enhanced disclosure of such restrictions.

Sample comments

(1) Expand your disclosure to address whether you anticipate generating sufficient funds to meet your anticipated working capital needs. Please also provide a more detailed discussion of your ability to meet your long-term liquidity needs. We consider "long-term" to be the period in excess of the next twelve months.

(2) Please revise future filings to analyze the underlying reasons for changes in your cash flows and to better explain the variability in your cash flows, rather than merely reciting the information seen on the face of your cash flow statement.

(3) Please note that in regard to operating cash flows that your analysis should focus on factors that directly affect cash, and not merely refer to net income, items reported in the statement of cash flows or changes in line items presented in your balance sheet.

(4) Regarding the ... credit facility ..., please tell us and revise future filings in MD&A to disclose how much is available for borrowing thereon as of the latest balance sheet date.

(5) To the extent your debt covenants limit, or are reasonably likely to limit, your ability to undertake financing to a material extent, please revise your disclosure in future filings to discuss these covenants and the consequences of the limitation on your financial condition and operating performance, including detail regarding (and, if appropriate, quantification of) the amount of cash flow from operations you are required to dedicate to the payment of principal and interest on indebtedness, and the extent to which your ability to incur indebtedness, make capital expenditures, enter into mergers, acquisitions, and joint ventures, pay dividends, change your line of business and other activities is limited.

Non-GAAP measures

A non-GAAP measure is a numerical measure of historical or future financial performance, financial position, or cash flows that excludes items that are included in the most directly comparable U.S. GAAP measure or that includes items that are excluded from the most directly comparable U.S. GAAP measure. In a recent R&C financial reporting survey conducted by PwC⁵, it was noted that the majority of both retail registrants (approximately 70%) and consumer products registrants (approximately 76%) disclosed non-GAAP measures in their filings. Some common examples of non-GAAP measures used by registrants in the R&C industry include operating measures excluding currency impacts, EBITDA or adjusted EBITDA, free cash flow and operating measures excluding specific items (e.g., restructuring charges, store closing costs and impairment charges). In addition, retail registrants often excluded the impact of a 53rd week in their non-GAAP measures.

Registrants that present non-GAAP measures should comply with the authoritative guidance in Regulation G, Item 10(e) of Regulation S-K, and Exchange Act Release No. 47226, *Conditions for Use of Non-GAAP Financial Measures*. Additional guidance can be found in a series of Compliance and Disclosure Interpretations (CD&Is) issued by the SEC's Division of Corporation Finance. Through the comment letter process, the SEC staff has encouraged registrants to be consistent in all of their communications in how they portray their business and financial results to investors and to include all important information in their SEC filings, including non-GAAP measures.

The SEC staff has continued to focus on compliance with non-GAAP disclosure requirements. During the 2013 comment letter cycle, the SEC staff issued a variety of comments relating to non-GAAP measures.

These comments focused on the prominence of the non-GAAP measure in relation to the most directly comparable GAAP measure, disclosure of the reasons why management believes the non-GAAP measure provides useful information to investors, and reconciliation between the non-GAAP measure and the most directly comparable GAAP measure. The SEC staff also continued to challenge whether items characterized as “infrequent,” “unusual” or “non-recurring” are reasonably likely to recur within two years or if there was a similar charge or gain within the prior two years. The SEC staff also issued comments when the terminology used for a non-GAAP measure was misleading. For example, the SEC staff commented when a registrant referred to a non-GAAP measure as EBITDA when it did not consist of earnings before interest, taxes, depreciation and amortization. Registrants should ensure their non-GAAP disclosures comply with the requirements of the applicable rules and regulations of the SEC.

⁵ Source: *Stay informed: Retail and Consumer 2013 Financial Reporting Survey*. The information contained in the financial reporting survey conducted by PwC was based on the most recent annual reports on Form 10-K filed on or before July 31, 2013. The survey participants included SEC registrants in the R&C industry (as defined in footnote 4) with annual revenues greater than \$5 billion that apply U.S. GAAP.

Sample comments

(1) We also note that you believe your non-GAAP adjustments are useful to investors, but do not state why. Please disclose why management believes the measure is useful to investors.

(2) We note your presentation of Adjusted EBITDA as a non-U.S. GAAP performance measure and the reconciliation to Net earnings (loss) from continuing operations on page [X]. We believe that if EBITDA is presented as a performance measure, it should be reconciled to net income as presented in the statement of operations under GAAP.

(3) Within your quarterly reconciliation of EBITDA to Adjusted EBITDA on page [X], you have included a line item referred to as “Nonrecurring charges.” It is our understanding these adjustments to arrive at the amount you disclose as “Adjusted EBITDA” are in accordance with your credit agreement disclosed on page [Y]. However, Item 10(e) of Regulation S-K prohibits adjusting a non-GAAP financial performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years. Please tell us the nature and amounts of these “nonrecurring charges,” and revise or tell us why you believe referring to these items as “nonrecurring charges” is in accordance with Item 10(e) of Regulation S-K.

(4) You present EBITDA and EBITDA ratio. Since these measures include additional adjustments not included in EBITDA as commonly defined, please retitle them in future filings to more clearly convey this fact. One option may be to call them Adjusted EBITDA and Adjusted EBITDA ratio. Similarly revise the titles used for EBIT and EBIT margin throughout future filings, since you say on page [X] that they exclude goodwill impairment charges.

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 Form 10-K and Form 10-Q, particularly related to signatures, certifications and 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). Regulation S-T outlines the general rules and regulations for electronic filings, while Regulation S-K (primarily Item 601) outlines 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 did not include the required signatures (in typed form) or did not include all required exhibits or material contracts. In the 2013 comment letter cycle, slightly over half of the comments in this area were received by smaller reporting companies, with approximately 25% received by large accelerated filers.

As registrants prepare their financial statements, management should revisit the guidance referred to above to ensure compliance with the requirements. Comments received in this category primarily related to:

- signatures of officers;
- language included in certifications for each principal executive officer and principal financial officer as required by the Sarbanes-Oxley Act under Sections 302 and 906 outlined in Regulation S-K Item 601(b)(31); and
- exhibits and appendices that are required to be included and referenced within the filing (primarily focused on exhibits for material contracts as required by Regulation S-K, Item 601(b)(10) and for consents of named third party experts as required by Regulation S-X Item 601(b)(23)).

While these matters do not typically require significant effort to remediate, they may require an amended filing.

Sample comments

(1) We note that your executive officer has signed the annual report on Form 10-K on behalf of the registrant, but he does not appear to have signed individually in his various capacities as your principal executive officer, your principal financial officer and your principal accounting officer or controller. Your annual report on Form 10-K must be signed by the registrant, and individually by your principal executive officer, your principal financial officer, your controller or principal accounting officer, and by at least the majority of your board of directors. Please see General Instruction D(2)(a) of Form 10-K and the signature page section of Form 10-K. In future filings, please ensure that your filings are properly executed.

(2) We note that your Section 302 certification does not comply with the language required by Item 601(31) of Regulation S-K in the following respects: the titles of the certifying individuals should be removed from the introductory paragraph; references

to “quarterly report” should be replaced with references to “report;” and the head note to paragraph 4 should include a reference to “internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)).” Please revise your certification to address each of the matters noted above.

(3) Please review your exhibit index and file all exhibits required under Item 601 of Regulation S-K. For example, please file any material contracts that fit within the scope of Item 601(b)(10)(ii)(D) of Regulation S-K or advise us why you are not required to do so. In this regard, we note that [the Company] has entered into material lease agreements.

(4) We note the amounts of assets and liabilities recognized in connection with the acquisition of [A] was “based on” a third-party valuation. Where you rely on the results of a third-party's valuation, that party should be identified in the filing and their consent is required to be filed under Exhibit 23 when your Form 10-K or Form 10-Q is incorporated by reference into a registration statement. See Rule 436 of Regulation C and Item 601(b) of Regulation S-K. Alternatively, you may delete all references to the third party or you can accept responsibility for such valuation while indicating that you considered the report of a third-party valuation firm. For additional guidance, please refer to Question 141.02 of the Compliance and Disclosure Interpretations on Securities Act Sections, which can be found at <http://www.sec.gov/divisions/corpfin/cfguidance.shtml>, which would be applicable to the extent your Form 10-K or Form 10-Q was incorporated by reference into any registration statement. Please revise to clarify the nature and extent of the third party's involvement and management's reliance on the work of the third-party valuation firm.

(5) It appears you are using an outdated version of the Section 302 certification that does not conform to the specific form and content required by Item 601(b)(31)(i) of Regulation S-K. Please amend your filing to include new certifications to conform to this Item.

Segments



Segment disclosures continue to be a hot topic in comment letters of the SEC staff across all industries. In the 2013 comment letter cycle, the SEC staff most frequently commented on the determination of operating segments and the aggregation of operating segments into reportable segments. They also commented on entity-wide disclosures required by ASC 280.

Determination of reportable segments

In a recent R&C financial reporting survey conducted by PwC⁵, it was noted that approximately 25% of all registrants surveyed reported a single segment (the majority of which were retail registrants), and 70% of all registrants surveyed reported three or fewer segments. Approximately 44% of registrants surveyed defined segments based on business category or product type, approximately 23% were based on geography, approximately 10% were based on sales channel, and the remainder was based on a combination thereof.

In the 2013 comment letter cycle, the most frequently issued comment related to the aggregation of operating segments into reportable segments. Specifically, the SEC staff challenged whether operating segments met the criteria for aggregation and at times requested supplemental information from registrants to assess whether the operating segments are economically similar. The SEC staff also questioned whether operating segments continued to demonstrate similar economic characteristics and if there has been a divergence in economic performance such that aggregation is no longer appropriate.

Similar to the 2012 comment letter cycle, the SEC staff continued to focus on whether operating segments have been appropriately identified. The SEC staff has requested additional information such as the registrant's organizational structure, information on how the entity determined who its chief operating decision maker (CODM) is, and the discrete financial information regularly reviewed by the CODM. At times, the SEC staff challenged a registrant's conclusion that there was only one operating segment, including whether e-commerce business should be a separate operating segment. The SEC staff also reviewed other publicly available information about the registrant, such as press releases and earnings calls, and asked registrants to explain inconsistencies between such information and the segment disclosures.

Sample comments

(1) Please explain to us in further detail how you concluded your two retail operating segments were economically similar pursuant to the aggregation criteria in ASC 280-10-50-11 and ASC 280-10-55-7A through 55-7C. We note you consider operating earnings as a percentage of sales the best quantitative measure for assessing whether the traditional [A] stores and [B] discount stores operating segments satisfy the aggregation criteria under FASB ASC 280-10-50-11. However, we note from your website that customers at your [B] stores can save up to [X]% ..., and we assume this could result in a different customer base, different products and produce economic variability with respect to gross margins and sales trends. Therefore, please provide to us the internal financial reports that your CODM uses to assess the performance of your business. Lastly, please provide to us the following information in tabular form for the past three years for each of your three operating segments: revenue information, operating earnings as a percentage of sales, and gross margin history. Similarly, tell us how you evaluated the future economic prospects of your operating segments in your aggregation analysis, and provide to us in tabular form the aforementioned revenue, operating earnings as a percentage of sales, and gross margin information on a projected basis.

(2) You disclose that e-commerce sales now account for approximately [X]% of total net sales and assert this business is a top strategic growth priority for you. We also note the discussion on page [X] indicates comparable stores sales are experiencing deteriorating operations which is in sharp contrast to the growth trend reported by comparable e-commerce sales. Please tell us how you determined including the e-commerce business within the [A] and [B] reporting segments is appropriate and how you identified your operating and reporting segments in accordance with ASC 280-10-50. Please also provide us with a copy of the financial package used by the CODM to assess performance and allocate resources to support the assertions in your response.

Entity-wide disclosure requirements

SEC staff comment letters also focused on entity-wide disclosure requirements, including revenues by product or service, net sales by geographic location, information about major customers, and material long-lived assets in a geographic location. The SEC staff comments focused on omitted disclosures or inconsistencies between the financial statement footnote disclosure and information provided outside of the financial statements.

Sample comments

(1) Please tell us how you considered the guidance in FASB ASC 280-10-50-40 requiring disclosure of revenue from external customers for each product (or each group of similar products) by reportable segment.

(2) Please tell us your consideration of separately disclosing revenues attributed to individual foreign countries. Refer to ASC 280-10-50-41a.

Impairments



Impairment assessments require a high degree of judgment and estimation. As a result, this area continued to face scrutiny from the SEC staff during the 2013 comment letter cycle. In recent SEC comment letters, the SEC staff frequently asked for more robust disclosure within critical accounting estimates related to goodwill, indefinite-lived intangible assets and long-lived asset impairment.

Goodwill and indefinite-lived intangible assets

SEC staff comments during the 2013 comment letter cycle reflected similar themes with 2012, including a focus on “foreshadowing” disclosures in periods preceding the recognition of an impairment charge. As it relates to goodwill for “at risk” reporting units (i.e., reporting units whose fair values are not substantially in excess of their carrying amounts), the SEC staff has asked registrants to disclose (i) the percentage by which the fair value of the reporting unit exceeded its carrying value as of the date of the most recent quantitative analysis, (ii) a description of the methods and key assumptions used in the impairment assessment, (iii) a discussion of the degree of uncertainty associated with key assumptions, and (iv) a description of potential events and circumstances that could have a negative effect on the reporting unit's fair value. This guidance is outlined in the Division of Corporation Finance Financial Reporting Manual Section 9510.3. While the focus of this guidance is on goodwill, companies should consider similar foreshadowing disclosures for indefinite-lived intangible assets.

The SEC staff also challenged whether impairment charges were recognized in the appropriate period. In some instances, the SEC staff requested that registrants provide the current year and prior year impairment analysis accompanied by a reconciliation of key assumptions underlying each analysis along with supporting evidence for the changes in assumptions. Some registrants also received comments from the SEC staff when no impairment charge was recorded during the annual assessment, but other publicly available data indicated the presence of a negative trend that could impact the impairment assessment.

Sample comments

(1) We note your disclosures regarding your accounting policies for goodwill and other intangible assets. In the interest of providing readers with better insight into management's judgments in accounting for goodwill, please disclose the following in future

filings: identify the reporting unit(s) to which goodwill applies; and explain how the assumptions and methodologies in the current year have changed since the prior year, if applicable, highlighting the impact of any changes. If any of your reporting units have estimated fair values that are not substantially in excess of the carrying value and to the extent that goodwill for these reporting units, in the aggregate or individually, could materially impact your operating results, in future filings please provide the following disclosures for each of these reporting units: identify the reporting unit; the percentage by which fair value exceeds the carrying value as of the most-recent step-one test; the amount of goodwill; a description of the assumptions that drive the estimated fair value; a discussion of the uncertainty associated with the key assumptions. For example, assuming you use a discounted cash flow model, to the extent that you have included assumptions in your discounted cash flow model that materially deviates from your historical results, please include a discussion of these assumptions; and a discussion of any potential events and/or circumstances that could have a negative effect on the estimated fair value. If you have determined that the estimated fair value for each of your reporting units substantially exceeds its carrying value, please disclose this determination.

(2) We note that no impairments were indicated in your goodwill impairment testing as of July 1, 20XX. ... Please help us better understand the facts and circumstances that led to an impairment being identified and recorded three months later in your testing date as of October 1, 20XX. Please tell us what the fair value of the [A] and [B] reporting units were at July 1, 20XX. In addition, please provide us with a specific and comprehensive discussion regarding changes in the significant assumptions that led to the impairment charge. In this regard, please discuss how forecasted cash flows developed for the [A] and [B] reporting units as of your July 1, 20XX testing date compared to actual results for the three months ended September 30, 20XX and how actual results and revised cash flow projections were incorporated into your impairment testing date as of October 1, 20XX.

Long-lived assets

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 charges were recorded, the disclosure of valuation methodologies and disclosure of the level of uncertainty of key assumptions related to “at risk” assets or asset groups. In some instances, the SEC staff requested the impairment analysis and other supporting information and challenged registrants’ conclusions or disclosures of the lowest level of identifiable cash flows used to define the asset group.

Sample comment

(1) We note you recognized impairment charges related to store assets during each quarter in the current fiscal year. Please provide us with, and confirm in future filings you will include the following information on how you tested the long-lived assets for recoverability: clarify what you consider an asset group (e.g. individual store); clarify how many asset groups were tested for impairment during the current quarter; clarify how many asset groups were considered at risk of impairment (i.e. the asset group has a fair value that is not substantially in excess of its carrying value); for any at-risk asset group, provide us with (i) the percentage by which fair value exceeded carrying value as of the date of the most recent test, (ii) a description of the methods and key assumptions used and how the key assumptions were determined, (iii) a discussion of the degree of uncertainty associated with the key assumptions (e.g., the valuation model assumes recovery from a business downturn within a defined period of time), and (iv) a description of potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions.

Business information and risk factors



The business environment has become increasingly complex and, as a result, has increased the number of risks registrants have to manage. During the 2013 comment letter cycle, there was a relative increase in the number of SEC comments focused on the level of disclosure around registrants' business operations and the completeness of associated risk factors. The SEC staff also requested information about business relationships with locations identified by the U.S. Secretary of State as state sponsors of terrorism. Registrants should carefully consider whether their business description and risk factors disclosures are complete and transparent and be mindful of any business activities in those locations identified as state sponsors of terrorism.

Business information

Registrants are required by Item 101 of Regulation S-K to provide information about their business, including products and product development, raw materials, supplier relationships, intellectual property, seasonality, concentration of customers, competition, financial information about segments and geographic areas, among other items. Comments during the 2013 comment letter cycle were centered on two specific themes: incomplete and unclear disclosures. Registrants should review the requirements of S-K Item 101 to ensure they have addressed all of the disclosure requirements and that the disclosures are sufficiently detailed and transparent.

Sample comments

(1) Please revise to describe the specific products you sell, the manner in which you sell your products, and describe your customer base, giving information about the type and number of customers you serve.

(2) In future filings, please expand your backlog discussion to include a breakdown of your backlog by segment. In addition, please provide a discussion of margin trends within your backlog and disclose whether or not there are components of your backlog that are not moving forward.

(3) Please provide financial information on the different geographic areas in which you operate, as required by Item 101(d) of Regulation S-K. We note that you appear to provide some of this information on page [X], however, it does not appear that you provide all of this information, as applicable.

(4) We note your discussion of your various license agreements on page [X] under the section [License Agreements]. For each description of the license agreements, in future filings please include additional disclosure of the material terms of the license agreements, including whether the licenses are perpetual or have a fixed term. In addition, for those licenses where the royalty rates are reduced upon an aggregate total amount of royalties paid, please specify

whether the total amount of royalties has been paid, thus allowing the reduced royalty percentage rate.

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. SEC staff comments indicated registrants should avoid overly broad and boilerplate disclosure and provide more specific information on the actual risks affecting the registrant. Registrants should also 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 cybersecurity risks and cyber security incidents. The guidance was intended to clarify whether and how registrants should disclose the impact of the risk and cost of cybersecurity incidents. Given the SEC guidance, it would not be surprising if the SEC staff focused on these disclosures in future reviews of public filings. Accordingly, R&C registrants should consider cybersecurity and data breach incidents when deciding how to fulfill their obligations under the SEC's existing disclosure requirements.

Sample comments

(1) Please add a risk factor to your disclosure discussing the risks you are exposed to from currency rate changes.

(2) Please add a risk factor to your disclosure discussing the risks you are exposed to from competition.

(3) Please add a risk discussing the current weakening of the European economy and its potential impact on your financial condition.

(4) In future filings, please consider expanding your risk factor disclosure to capture all material risks that the company faces because of current market conditions and predicted volatility. Please try to avoid overly broad and boilerplate disclosure and provide

more specific information to focus on actual risks, including, but not limited to, the following: ... the actual risks arising from doing business in specific countries; ... provide additional qualitative and quantitative information to alert investors about how the market downturn has affected and may affect your business and financial performance; and given the significant discrepancy between your current market capitalization and the book value of your equity, your [impairment risk factor needs to] quantify, to the extent possible, the actual impairment risks and the potential impact to your earnings.

Disclosure of operations in locations identified as state sponsors of terrorism

As registrants expand their operations and increase their global footprint, some are entering into material transactions, either directly or more often indirectly, with countries that support acts of international terrorism as determined by the U.S. Secretary of State. The countries currently in this category are Cuba, Iran, Sudan and Syria. The U.S. government has imposed sanctions and embargoes restricting commerce and trade with these countries.

The SEC staff has made public remarks and issued comment letters asking registrants to discuss qualitative and quantitative factors relating to relationships with state sponsors of terrorism that a reasonable investor would regard as important in making an investment decision. Through comment letters, the SEC staff has indicated the discussions should include the following information:

- a description of the nature and extent of the registrant's past, current and anticipated contacts with Cuba, Iran, Sudan and Syria, whether through subsidiaries, resellers, distributors, or other direct or indirect arrangements.
- a quantitative discussion of revenues, assets and liabilities associated with each of the referenced countries for the last three fiscal years and the subsequent interim period.
- a description of any goods, equipment, services, technology or support that the registrant has provided to Cuba, Iran, Sudan or Syria, directly or indirectly, and any agreements, commercial arrangements, or other contacts the registrant has with the governments of these countries or entities controlled by them.
- an analysis of the potential impact of investor sentiment as evidenced by actions against registrants that deal with Cuba, Iran, Sudan or Syria, such as divestment and other similar initiatives proposed or adopted by various state and municipal governments, universities, and other investors.
- a description of any materials, including chemicals, products, technology, equipment or components the registrant may have provided or may intend to provide, directly or indirectly, to Cuba, Iran, Sudan or Syria, that are on the Department of Commerce's Commerce Control List.

On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the Act). In addition to expanding sanctions with respect to Iran, Section 219 of the Act adds Section 13(r) to the Exchange Act, which requires registrants to provide quarterly and annual disclosures of their or their affiliates' engagement in certain business activities relating to Iran.

Registrants (or their affiliates) that have engaged in any activity specified in Section 13(r) are required to disclose (i) the nature and extent of the activity, (ii) the gross revenues and net profits attributable to the activity, and (iii) whether the registrant or its affiliate intends to continue the activity. The law was self-executing, meaning that the disclosure requirements became operative without the need for additional rulemaking.

Registrants that are required to disclose Iran-related business activities under Section 13(r) must also file a notice that they have provided such disclosure to the SEC. Registrants should consult with their SEC counsel when determining whether disclosures are necessary and around the form and content of the disclosures.

Sample comments

(1) Please tell us about any contacts with Iran, Syria, or Cuba since your letter to us of [Month] XX, 20XX, including through your [A] joint venture with [B]. As you are aware, Iran, Syria and Cuba are designated by the State Department as state sponsors of terrorism, and are subject to U.S. economic sanctions and export controls. We note that your website currently states that your products are sold in Syria; a 20XX news article reports that you have [X] licenses for Iran; and a recent sector capsule for [the product market] in Iran reports market share information for [C] and [A]. Please describe to us the nature and extent of your past, current, and anticipated contacts with Iran, Syria and Cuba since your prior letter, whether through subsidiaries, joint ventures, resellers, distributors, or other direct or indirect arrangements. Your response should describe any products you have provided to

those countries, and any agreements, commercial arrangements, or other contracts you have had with the governments of those countries or entities controlled by those governments. We also note that your website references ... Middle East and North Africa. Sudan, located in North Africa, is also deemed a state sponsor of terrorism. Please provide the same information for any contacts with Sudan.

(2) Please discuss the materiality of your contacts with Iran, Syria, Cuba and Sudan described in response to the foregoing comment and whether those contacts constitute a material investment risk for your security holders. You should address materiality in quantitative terms, including the approximate dollar amounts of any associated revenues, assets, and liabilities for the last three fiscal years and the subsequent interim period. Also, address materiality in terms of qualitative factors that a reasonable investor would deem important in making an investment decision, including the potential impact of corporate activities upon a company's reputation and share value. Various state and municipal governments, universities, and other investors have proposed or adopted divestment or similar initiatives regarding investment in companies that do business with U.S.-designated state sponsors of terrorism. Your materiality analysis should address the potential impact of the investor sentiment evidenced by such actions directed toward companies that have operations associated with Iran, Syria, Cuba and Sudan.

Income taxes



The accounting for income taxes, including related disclosure requirements, is subject to significant judgment, and is made even more complex when registrants have global tax structures, transfer pricing between jurisdictions, tax holidays and uncertain tax positions, among others. As a result, accounting for income taxes has been an area of frequent comment by the SEC staff in recent years. Comment letters issued to R&C registrants during the 2013 comment letter cycle focused on the areas of income tax provision disclosures, valuation allowance and indefinite reinvestment disclosures.

Income tax provision disclosures

One common theme of SEC staff comment letters in 2013 related to transparent disclosure of the changes in the relationship between the registrant's tax provision and their pre-tax income or loss, including discussion of the key underlying factors driving the registrant's effective tax rate. Specifically, SEC staff comments have focused on disclosure of pre-tax earnings attributable to U.S. operations separately from those pre-tax earnings attributable to foreign jurisdictions, along with the income tax provision or benefit for each. The SEC staff also issued comments when it was unclear whether the registrant's effective tax rate reconciliation included each item that exceeded five percent of income tax expense calculated using the applicable statutory tax rate (as required by ASC 740-10-50-12 and Rule 4-08(h) of Regulation S-X). As a result of these comments, some registrants were asked to enhance disclosure in future filings to include the impact to the worldwide effective tax rate due to operations in foreign jurisdictions, the impact of significant discrete items on the effective tax rate and anticipated material changes in the effective tax rate over the next 12 months.

Sample comments

(1) We note that your reconciliation of the U.S. federal statutory tax rate to your effective income tax rate includes material adjustments labeled "Foreign rate differential." Please tell us whether or not this line item relates solely to differences in foreign and domestic tax rates. If particular countries contribute a disproportionately large amount of net income due to favorable tax rates, please disclose additional information within MD&A about the tax structure of those countries and their impact on your operations. Consider disclosing pre-tax income and tax expense related to those countries.

(2) We have reviewed your response to our letter dated [X]. We note that you plan to revise your effective tax reconciliation and MD&A disclosures to identify and discuss the countries where earnings are subject to tax at rates that are significantly different from the U.S. federal statutory rate. Please show us how these revised disclosures would have read for the historical periods presented. Please ensure that your results of operations discussion in MD&A adequately explains any disproportionate relationships among pre-tax foreign and domestic earnings and foreign and domestic tax rates.

(3) We note that in [the current and previous fiscal year] the reconciliation of the statutory federal income tax rates to the effective tax rates includes a line titled "other." In light of the significance of this amount in these fiscal years, please tell us the nature of this reconciling item.

(4) We note your effective income tax rate has benefited due to the foreign rate differential. Please explain whether earnings are being generated in jurisdictions with very low rates. If so, describe the rates and the pre-tax income for the most significant jurisdictions.

Valuation allowances

Valuation allowance disclosures also continued to be an area of SEC staff focus in the 2013 comment letter cycle. Such comments focused on disclosing the reasons for significant changes in the valuation allowance, including enhanced disclosure of circumstances that led to a significant change in the valuation allowance. When changes in circumstances impacting the realizability of net deferred tax assets can be foreseen, registrants should consider "foreshadowing" disclosures in periods preceding the change. In situations where registrants have experienced losses in recent periods but have not recorded a valuation allowance against net deferred tax assets, the SEC staff has requested that registrants describe the evidence considered under ASC 740-10-30 in determining that it was more likely than not such assets were realizable, such as the nature and weight of the positive and negative evidence considered and the existence of sufficient taxable income of the appropriate character.

Sample comments

(1) Please expand your disclosures to address the following: During fiscal 20XX, you concluded that certain valuation allowances associated with certain U.S. federal, state and Canadian deferred tax assets should be reversed because it had become more likely than not that the value of those deferred tax assets would be realized. Please expand your disclosures to better explain the specific triggering events or circumstances which occurred in 2012 and led to the reversal; please disclose the amount of pre-tax income that you need to generate to realize your deferred tax assets; and please include an explanation of the anticipated future trends included in your projections of future taxable income. Please show us in your supplemental response what the revisions will look like in future filings.

(2) Given your recurring domestic losses before income tax, please discuss the nature of the U.S. deferred tax assets which have not been offset by a valuation allowance and how you determined that these would be realized. Please also address the following in regards to your U.S. deferred tax assets: please expand your discussion of the nature of the positive and negative evidence that you considered, how that evidence was weighted, and how that evidence led you to determine it was not appropriate to record a valuation allowance on the remaining U.S. deferred tax assets; please disclose the amount of pre-tax income that you need to generate to realize the deferred tax assets; please include an explanation of the anticipated future trends included in your projections of future taxable income; and please disclose that the deferred tax liabilities you are relying on in your assessment of the realizability of your deferred tax assets will reverse in the same period and jurisdiction and are of the same character as the temporary differences giving rise to the deferred tax assets.

Indefinite reinvestment assertion and related liquidity disclosures

Given the ongoing economic challenges, global expansion and related liquidity pressures impacting R&C registrants, it is no surprise that SEC staff comments have continued to focus on filings where registrants asserted foreign earnings are indefinitely reinvested. Specifically, the SEC staff asked registrants to clarify the factors considered to support this conclusion. Also, when an indefinite reinvestment assertion is made, ASC 740-30-50 requires disclosure of the amount of the unrecognized deferred tax liability on undistributed earnings of foreign subsidiaries, or a statement that such determination is not practicable. In 2013 comment letters, the SEC staff focused on disclosure of the amount of undistributed foreign earnings and requested clarification as to why it was not practicable to determine the related unrecognized deferred tax liability. The SEC staff also asked registrants to describe their specific plans for reinvestment in each foreign jurisdiction, in particular when a registrant asserted indefinite reinvestment for one or more foreign jurisdictions but also disclosed amounts repatriated from other foreign subsidiaries.

The interplay between a registrant's indefinite reinvestment assertion and liquidity also continued to attract the interest of the SEC staff. Many registrants have operations in foreign locations in which the amount of undistributed foreign earnings has grown in recent years. In a recent R&C financial reporting survey conducted by PwC⁵, approximately 95% of consumer products registrants and approximately 71% of retail registrants with global operations disclosed an indefinite reinvestment assertion with respect to undistributed earnings of foreign subsidiaries. The majority of such registrants (approximately two-thirds) disclosed in MD&A the amount of cash held domestically versus internationally.

In the liquidity discussion in MD&A, registrants should disclose factors that impact liquidity, including those where liquidity is restricted. In that regard, the SEC staff expressed their view in comment letters that cash held in foreign subsidiaries, for which the registrant asserted that such earnings are permanently reinvested for income tax accounting purposes, constituted a liquidity restriction. In these cases, the SEC staff sometimes requested that registrants disclose the amount of cash and cash equivalents currently held outside the registrant's home country, the potential tax consequence of repatriation (e.g., consider disclosing that the registrant would have to accrue and pay taxes on repatriated earnings and the amount of deferred tax liability that would be recorded and the income tax that would be due if the cash was repatriated), and a description of events that may cause such foreign earnings to become taxable. This disclosure is intended to highlight the possibility that cash may be currently unavailable to fund domestic operations or obligations without paying a significant amount of taxes upon repatriation.

Sample comments

(1) We note you have disclosed that it is not practicable to determine the tax amounts that would be payable if the undistributed foreign earnings were distributed to the U.S. parent. Please explain why it is impracticable to determine the tax amounts in light of the fact that you have determined and recorded a deferred tax liability for the undistributed foreign earnings not considered indefinitely reinvested.

(2) You incurred additional costs of \$[X] million in 20XX associated with the repatriation of foreign earnings. You decided to repatriate earnings from [certain foreign units] that were previously determined to be indefinitely reinvested. Please address the following: please tell us at what point you determined that these earnings would not be permanently reinvested; please provide us with a breakdown of each country that the \$[X] million relates to as well as how you previously determined the earnings were permanently reinvested; prior to the repatriation in 20XX, please provide us with a summary of the evidence you relied upon in determining that these earnings were permanently reinvested. You should address your specific plans for reinvestment for these undistributed earnings that demonstrated remittance of the earnings would be postponed indefinitely; and as of December 31, 20XX, you had foreign undistributed earnings of \$[X] million where it is your intent that the earnings be reinvested indefinitely. Please provide us with a breakdown of each country that this relates to as well as how you determined the earnings are permanently reinvested. Please provide us with a summary of the evidence you relied upon in determining that these earnings are permanently reinvested. You should address your specific plans for reinvestment for these undistributed earnings that demonstrate remittance of the earnings would be postponed indefinitely. Please refer to paragraph ASC 740-30-25-17.

(3) Please enhance your liquidity disclosures to address the following: disclose the amount of foreign cash and short-term investments you have as compared to your total amount of cash and short-term investments as of the latest balance sheet date; and discuss the fact that if the foreign cash and short-term investments are needed for your operations in the U.S., you would be required to accrue and pay U.S. taxes to repatriate these funds but your intent is to permanently reinvest these foreign amounts outside the U.S. and your current plans do not demonstrate a need to repatriate the foreign amounts to fund your U.S. operations, if true. Refer to Item 303(a)(1) of Regulation S-K, SEC Release 33-8350 Section IV and Financial Reporting Codification 501.06.a. Please show us in your supplemental response what the revisions will look like in future filings.

(4) We note your discussion regarding earnings that are indefinitely reinvested outside the U.S. and that you utilize a “variety of financing strategies to ensure that worldwide cash is available” when needed. Considering the significant amount of cash denominated in foreign currencies, please provide draft disclosure to be included in future filings, that discuss the “financing strategies” you use to ensure cash is available in the locations that need it.

Acquisitions and divestitures



During 2012, merger and acquisition (M&A) deal value was at its highest level since 2008⁶, and M&A activity has continued to be high in 2013. Corporations spinning off businesses, private equity investment in retail, increased cross border activity and expansion into e-commerce continued to drive activity in the sector. Additionally, the rise of the digitally empowered consumer has driven retail business models to transition from traditional stores to a marketplace that is increasingly omnichannel. Retailers have looked at acquisition opportunities to more quickly transform their businesses by expanding their e-commerce capabilities and gaining access to alternative business models.

⁶ Source: PwC U.S. Retail and Consumer M&A Insights, 2012 Year in Review and 2013 Outlook.

During the 2013 comment letter cycle, the SEC staff continued to issue comments focused on the completeness and appropriateness of disclosures required by ASC 805, *Business Combinations*. However, the accounting for and disclosure of discontinued operations under ASC 360, *Property, Plant & Equipment*, was the most frequently issued comment in this area during the 2013 comment letter cycle, a change in trend from the 2012 comment letter cycle. Specifically, the SEC staff asked registrants for additional information and disclosures relating to:

- the timing and assessment of classifying the disposal group as held for sale,
- the timing of recognizing a gain or loss on the disposal group,
- the registrant's assessment of reporting the disposal group as a discontinued operation, and
- the nature and extent of continuing involvement with the disposal group.

Registrants should carefully consider the accounting and disclosure guidance related to acquisitions and disposals when preparing their financial statements in the period of the acquisition or disposal and in subsequent periods.

Sample comments

(1) Please advise us of the following with respect to the ... disposal group: To the extent that the assets and liabilities relating to the [disposal group] are being presented as held for sale under ASC 205-20-50-2, explain to us why you believe this disposal group meets the criteria for classification as held for sale under ASC 360-10-45-9. Tell us how you measured this disposal group at the [Month] XX, 20XX acquisition date and cite the generally accepted accounting guidance that you followed. Subsequent to the acquisition date, tell us whether you have applied the Sections ASC 360-10-35 and ASC 360-10-45 guidance on long-lived assets to be held and used, or the guidance on long-lived assets held for sale for this disposal group.

(2) We note your dispositions of the [A] and [B] operations in [Month] 20XX and that you entered into licensing agreements with the respective buyers. In that regard, explain to us why you did not report discontinued operations for these dispositions in the financial statements. Refer to ASC 205-20-45-1.

(3) As reported in your ... Form 10-Q, we note that [during the first quarter of 20XX] ... you completed the sale of the [A] operating segment. Please tell us, using the guidance in FASB ASC 205-20-45 and the examples at paragraphs 205-55-28 through 55-79, the consideration given to reporting the sale of [A] as discontinued operations. Describe the nature of the transitional services agreement in your response. Also, please confirm that you will provide discussion of any gain or loss on disposal.

(4) We note your disclosure of several acquisitions you consummated during the most recent fiscal year, as well as your table illustrating your allocation of the purchase price. Please tell us the nature and amount of the intangible assets recognized. Additionally, please tell us what consideration was given to including the disclosures required by ASC 350-30-50.

Revenue recognition and related areas



Revenue recognition continued to be a top area of SEC staff comment, in particular with respect to consumer products registrants. During the 2013 comment letter cycle, there was an increase in the frequency of comments relating to gross versus net revenue presentation. In addition, disclosures of revenue recognition policies continued to be a point of focus.

Gross versus net revenue presentation

ASC 605-45 clarifies under what circumstances a company should present revenue based on the gross amounts billed to the customer in a principal relationship or the net amount retained in an agency relationship. The decision between gross versus net revenue presentation is a matter of significant judgment and therefore it is no surprise the SEC staff issued comments on the topic. Registrants received comments regardless of whether their disclosure indicated they were or were not the primary obligor. The SEC staff considered information about the revenue generating activity that was disclosed outside the financial statements, such as in MD&A, press releases and material contracts. Registrants should carefully consider how to describe the nature and terms of the revenue generating activity and whether that description is consistent with other publicly available information and the revenue presentation model being used.

Sample comments

(1) Please provide us with your analysis under ASC 605-45 for gross versus net reporting of revenue. In this regard, we note from your disclosure ... in MD&A that your primary focus is on procurement services for [product] distributors and wholesalers including identifying, evaluating, and engaging local manufacturers for supply of [product].

(2) Please provide us with a detailed analysis of all the indicators used in concluding that net revenue presentation is appropriate. We refer you to ASC 605-45-45. Further, tell us how your analysis considered Example 8 (Case A) as described in ASC 605-45-55-28 and 55-29. It appears that this example shares similarities with your facts and circumstances.

Revenue recognition policies

The SEC staff often issued comments when the disclosure of a registrant's accounting policies related to revenue recognition did not provide enough information to assess whether the policy is consistent with U.S. GAAP. Common areas of focus during the 2013 comment letter cycle included clarifying when title transfers (including whether the four criteria outlined in SAB 104 have been met), the accounting for gift cards (including the related income statement classification of breakage and the methodology used for recognition), accounting for multiple deliverable arrangements, accounting for product returns (including management's estimation process) and customer incentives. SEC staff comments in this area focused on understanding the registrant's revenue recognition policies when the disclosures were not clear, and assessing whether the policies were consistent with U.S. GAAP.

Sample comments

(1) We reviewed your revenue recognition policy disclosure listing the four criteria outlined in SAB 104. Please revise your disclosure to elaborate upon how each of these criteria specifically applies to each of your revenue streams (e.g., persuasive evidence of an arrangement is demonstrated via contracts with purchasers). In addition, revise to disclose the nature and amounts of revenue dilution (e.g., from product returns, inventory credits, discounts for early payment, credits for product that is not sold by the expiration dates, and other allowances). Your accounting policy should explain how you assess returns of products, levels of inventory in the distribution channel and estimated shelf life (or spoilage). Discuss to what extent you consider

information from external sources (e.g., end-customer demand, third-party market research data) to assist you in such critical estimates. In addition, disclose and discuss any sales made to customers wherein such sales are as a result of incentives or in excess of the customer's ordinary course of business inventory level.

(2) We refer you to your policy regarding gift cards ... Please explain to us and disclose in future filings, as applicable, the following: for non-expiring gift cards a description of the redemption patterns and when you determine that redemption is remote based on those patterns to support recognition; the appropriateness of recognizing breakage as a reduction of SG&A expense rather than revenues or other income under GAAP; and, the amounts of gift card breakage recognized in the periods presented.

(3) ... You enter in sales arrangements with customers that contain multiple elements or deliverables. Please provide us with a detailed discussion of these types of arrangements and how you are recognizing revenue in accordance with FASB ASC 605-25.

(4) We note your disclosure of promotions and rebates given to customers. Please provide draft disclosure to be included in future filings, that expands your accounting policy regarding these incentive programs, the amounts recognized in the income statement and the line items(s) in which the amounts are recognized. Cite the authoritative guidance that supports your accounting treatment.

Controls and procedures



Disclosures related to internal control over financial reporting (ICFR) continue to be an area of focus of the SEC staff. Reporting entities are required by Item 307 of Regulation S-K to disclose in quarterly and annual filings the principal executive and financial officers', or the equivalent, conclusions regarding the effectiveness of the registrant's disclosure controls and procedures (DCP). In addition, Item 308 of Regulation S-K requires management to issue an annual report on ICFR and disclose whether there were any changes in ICFR in the last fiscal quarter that have materially affected or are reasonably likely to materially affect ICFR.

A noteworthy development that will impact many companies occurred in May 2013 when the Committee of Sponsoring Organizations (COSO) issued an updated internal control framework. The framework provides for a transition period until the update becomes effective on December 15, 2014. During this transition period, registrants should disclose which framework they utilized in their assessment of ICFR within applicable year-end filings.

Consistent with the 2012 comment letter cycle, the majority of comments related to controls and procedures during 2013 were received by smaller reporting companies. SEC staff comments primarily related to incomplete or missing disclosures or other modified language included within the DCP section and management's annual report on ICFR. Common comments in this area also included failure to disclose changes in ICFR relating to the remediation of a material weakness, a recently acquired business, or the implementation of a new financial reporting system.

Sample comments

(1) We note that both disclosure controls and internal controls over financial reporting at March 31, 20XX were determined to be effective. Given that both disclosure controls and procedures and internal controls over financial reporting at December 31, 20XX were ineffective due to material weaknesses, please tell us, and revise to disclose, the nature of the changes that were implemented to remediate these material weaknesses, resulting in effective controls at March 31, 20XX. Refer to Regulation S-K, Item 308(c).

(2) We note that you have concluded both of your disclosure controls and procedures and internal control over financial reporting to be not effective as of November 30, 20XX. Please expand this section to include a discussion as to why your controls were not effective. ...If applicable, please provide discussion of the errors identified and the resulting material weakness in the amended 20XX Form 10-K, to be filed, along with management's plans for remediation of the material weakness.

(3) In view of the aforementioned revision to your first quarter 20XX financial statements, please discuss the consideration you gave to the conclusion that your disclosure controls and procedures were effective as of March 31, 20XX.

(4) ...Please explain the reasons you modified the [disclosure controls and procedures] language and clarify for us whether management's assessment on disclosure controls and procedures was based solely on the definition provided therefor in Exchange Act Rules 13a-15(e) and 15d-15(e) rather than the [modified language as included within Item 4, Controls and Procedures].

(5) Please identify the framework used by management to evaluate the effectiveness of your internal control over financial reporting. Refer to Item 308(a)(2) of Regulation S-K for additional guidance.

Loss contingencies



Financial reporting of commitments and contingencies involves considerable judgment given the amount of estimation and assumptions necessary to determine whether an existing condition could result in a loss to the reporting entity when one or more future events occur or fail to occur. Considerations include timing of recognition, the appropriate income statement classification of charges (e.g., litigation settled with a customer is typically a reduction of revenue under EITF 01-9 and EITF 02-16) and related disclosures. Because of this complexity, there is wide variety in commitments and contingencies disclosures, and this area continued to be one of the focus areas of the SEC staff.

SEC staff comments focused on compliance with the requirements of ASC 450, *Contingencies*, which requires various disclosures depending on whether a loss is considered remote, reasonably possible or probable. The guidance in ASC 450-20-50 requires disclosure of certain loss contingencies that do not meet the conditions for accrual, including 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, entities 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). The SEC staff has indicated through comment letters that overly broad and boilerplate disclosures generally do not meet the requirements of ASC 450 and has advised registrants to revise disclosures to provide more specific disclosures using the terms outlined in the guidance.

The most frequent area of comment in 2013 related to disclosure of reasonably possible loss contingencies. The SEC staff focused on the sufficiency of disclosures regarding the nature of the contingency and the estimated loss or range of loss. Through comment letters, the SEC staff has indicated it would be unusual if a registrant could not reasonably estimate a range of loss for at least some of its contingencies and has requested that registrants explain in the comment letter response their process for evaluating and developing an estimate of reasonably possible losses and disclose in the filing why they are unable to estimate a loss at the current reporting date. The SEC staff has also indicated it will not take exception to disclosure of reasonably possible ranges of loss in the aggregate for all contingencies, rather than on an individual contingency by contingency basis. Consistent with comment letter themes in MD&A and goodwill, the SEC staff also focused on foreshadowing disclosures related to loss contingencies and expressed their view that the recognition of a material accrual for a contingent liability related to a historical event should generally not be the first disclosure of the contingency.

Sample comments

(1) We note your discussion of various pending lawsuits and disclosure indicating that they are not expected to have a material adverse effect on the business. If you have concluded that the possibility of a material outflow in connection with these matters is remote, confirm that to us. Otherwise, explain to us how you have considered the disclosure requirements of FASB ASC 450-20-50 relating to contingencies you have deemed reasonably possible or probable.

(2) If there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred for any of your matters, including the matter with [X tax authority], please either disclose an estimate (or, if true, state that the estimate is immaterial in lieu of providing quantified amounts) of the additional loss or range of loss, or state that such an estimate cannot be made in future filings. You may provide your disclosures on an aggregated basis. Please refer to ASC 450-20-50. Please show us supplementally what the revised disclosure will look like. If you conclude that you cannot estimate the reasonably possible additional loss or range of loss, please supplementally: (1) explain to us the procedures you undertake on a quarterly basis to attempt to develop a range of reasonably possible loss for disclosure and (2) what specific factors are causing the inability to estimate and when you expect those factors to be alleviated. We recognize that there are a number of uncertainties and potential outcomes associated with loss contingencies. Nonetheless, an effort should be made to develop estimates for purposes of disclosure, including determining which of the potential outcomes are reasonably possible and what the reasonably possible range of losses would be for those reasonably possible outcomes.

(3) We note your disclosures in both your Form 10-K and quarterly periodic reports regarding various legal proceedings and litigation matters you are exposed to. We also note that in all of these situations, you have not clearly disclosed either: (i) the possible loss or range of loss; or (ii) a statement that an estimate of

the loss cannot be made. The disclosure requirements of FASB ASC 450 state that if an unfavorable outcome is determined to be reasonably possible but not probable, or if the amount of loss cannot be reasonably estimated and accrual would be inappropriate, ... disclosure must be made regarding the nature of the contingency and an estimate of the possible loss or range of possible loss or state that such an estimate cannot be made. Additionally, your disclosure appears to indicate that in instances where an accrual may have been recorded as all of the criteria in FASB ASC 450-20-25-2 have been met, you have not disclosed whether an accrual was made or the amount of the accrual which may be necessary in certain circumstances, nor has there been disclosure indicating that there is an exposure to loss in excess of the amount accrued and what the additional loss may be for your litigation matters. For contingencies and litigation matters you discuss, please revise your disclosures beginning in your Form 10-K for the fiscal year ending 20XX to include all of the disclosures required by paragraphs 3-5 of FASB ASC 450-20-50. In this regard, we do not believe that general boilerplate disclosure indicating that you do not believe the ultimate resolution of the legal proceedings will have a material adverse effect on your financial condition, results of operations or cash flows satisfies the criteria in FASB ASC 450.

(4) Reference is made to the litigation settlement of \$[X] recognized in the second quarter of fiscal year 20XX. We did not note disclosure of a reasonably possible loss or range of loss related to this litigation in any periodic reports prior to the settlement. If this assertion is incorrect, please refer us to such disclosure. Otherwise, please explain why your disclosures in the periodic reports prior to the settlement complied with the disclosure requirements of ASC 450-20-50. In addition, please explain to us the procedures you undertook on a quarterly basis to attempt to develop a reasonably possible loss or range of loss for disclosure. Please note that we expect that the closer you are to accruing or settling a matter, the more estimable the matter.

About the PwC Retail and Consumer Practice

Within PwC we have combined both retail and consumer-oriented companies into one practice group. Drawing on the talents of approximately 15,000 partners and professional staff worldwide dedicated to serving clients within the R&C sector, we help companies to solve complex business problems and measurably enhance their ability to build value, manage risk and improve performance in an internet-enabled world by providing industry-focused assurance, tax, and advisory services.

Our R&C practice is a leading financial accounting, tax and advisory consulting business. Our experience cuts across all geographies and all segments of the R&C sector, serving the food & beverage, health & beauty care, tobacco & confectionery and other consumer products manufacturers, as well as a broad spectrum of retailers to include food, drug, mass merchandisers and specialty retailers. Our combined R&C practice allows us to understand issues across the entire supply chain, from source to sale, and to easily transfer our knowledge to clients related to attesting to and ensuring the accuracy of financial statements and reporting systems, providing local, state and global tax and compliance advice, managing and mitigating enterprise risk, improving business processes and operations, implementing technologies and helping clients with mergers and acquisitions to drive growth and improved profitability.

Our global practice is organized to serve clients with similar issues and problems in order to facilitate the sharing of knowledge and to deliver world-class client service. Our professionals are dedicated to providing insight into the industry and are aligned with many global organizations and trade associations that serve the interests of the industry and our clients. We are associate members of the Grocery Manufacturers Association (GMA) and exclusive sponsors of their

CFO Council, a group of consumer goods financial executives who identify and explore financial issues of importance to the organization's members. Our professionals make presentations at several GMA events throughout the year and jointly develop an annual Financial Benchmarking Report for the GMA which has become an industry standard and recognized as the definitive report on financial metrics for the consumer packaged goods industry. For the National Retail Federation (NRF), we play a leading role as technical advisor to the NRF's Financial Executives Council, Internal Audit & Compliance, and IT Councils, assisting them in understanding the implications of new accounting regulations and compliance issues, as well as security and privacy issues and related IT issues. We are also associate members of the Retail Industry Leaders Association (RILA) where we sponsor their Tax Leaders Committee and provide counsel on emerging tax and regulatory issues emanating from Washington, DC. Additionally, we are members of the American Apparel and Footwear Association (AAFA) where our professionals are active members of the Supply Chain, Information Systems and Sustainability committees and the In-Store Marketing Institute, which is involved in POS and in-store operating systems. We have a strategic partnership with Kantar Retail, recognized as the premier market intelligence group in the U.S. for the retail industry. Lastly, on a global basis, we are affiliated with the Consumer Goods Forum - the global food manufacturers association, and the World Economic Forum where we help facilitate industry-related discussion groups.

For more information...

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