

# *Stay informed* 2013 entertainment, media & communications SEC comment letter trends

*January 2014*

*Highlights of SEC  
comment letters issued  
to companies in the  
entertainment, media &  
communications  
sector*



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The content of this publication is based on information available as of October 31, 2013. Accordingly, certain aspects of this publication may be superseded as new guidance or interpretations emerge. Financial statement preparers and other users of this publication are therefore cautioned to stay abreast of and carefully evaluate subsequent authoritative and interpretive guidance that is issued.

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### Message from Stefanie Kane

Clients and friends:

Year-end is just around the corner and that means that many of you are preparing for the 2013 reporting season. The economic recovery in the United States and overseas has continued at a slow pace over the past year. Changes in the regulatory environment, including recent developments at the SEC, continue to increase uncertainties and put additional pressures on registrants. High-quality financial reporting, as well as increasing transparency in communicating with investors and other stakeholders, continues to be an important point of focus.

In light of that, we are pleased to introduce this publication, which focuses on trends in SEC staff comment letters specific to companies in the Entertainment, Media, & Communications (EMC) sector. We have analyzed over 600 comments issued from January 1, 2012 to October 31, 2013 to companies in the following subsectors: advertising, communications, filmed entertainment, publishing, TV/cable

broadcasting, and other, which comprises the casino, cruise, digital media, and video game subsectors. While some comments are subsector specific, others are applicable to all companies in the EMC industry.

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

We look forward to working with you in 2014.

Best regards,

Stefanie Kane

US Entertainment, Media &  
Communications Assurance Leader





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## Overview

Continuing focus on shifting consumer spending and behaviors, investments in technology and the speed of technological changes, concerns over intellectual property and customer data, and changes in talent management strategies continue to challenge the way many companies do business. These topics were tagged as being the more popular trends by Entertainment & Media CEO's from the recent PwC Global CEO survey. Despite the challenges, EMC companies are confident in their strategies to grow their business either organically or through transactions. In certain subsectors, transaction volume has been very active over the past two years.

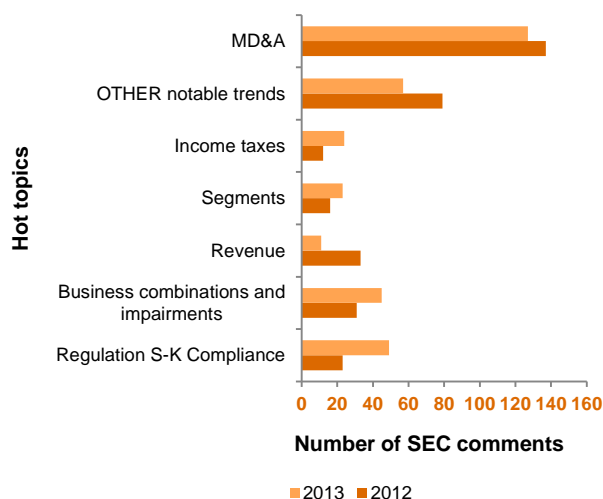
More than ever, companies are connecting with their customers through social media by tapping into their likes and dislikes, creating intimate experiences, and rapidly evolving their products and fine-tuning their marketing efforts. And now, social media outlets such as Facebook and Twitter have become new communication platforms for the Securities and Exchange Commission (SEC) to monitor. In April 2013, the SEC announced that companies may use social media to disseminate material information so

long as investors are alerted, know where to turn for the latest news on the company, and are not restricted from accessing such information. We may start to see more companies using social media to engage with their investors in the same way they have been using social media to connect with their customers.

Our review of the most recent comment letter trends for EMC companies, as presented in this publication, indicates that disclosures with regards to management's discussion and analysis ("MD&A") is the area of most frequent comments. Specific areas of comment include providing the "whys" behind the results of operations, more transparent and robust liquidity disclosures other than simply repeating the activities disclosed in the cash flow statement, and giving greater prominence to the equivalent GAAP measures when using non-GAAP measures. In addition to MD&A, some other frequent comment areas are Regulation S-K compliance, business combinations and impairment considerations, segments, income tax, and revenue, with the remainder grouped as other notable trends.

## Overview

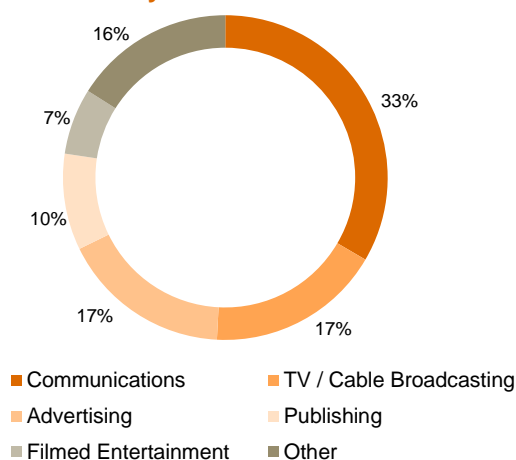
As shown in the chart below, the main areas of focus by the SEC staff did not change significantly from 2012 to 2013. On the following pages, we dive deeper into each of the key trends.



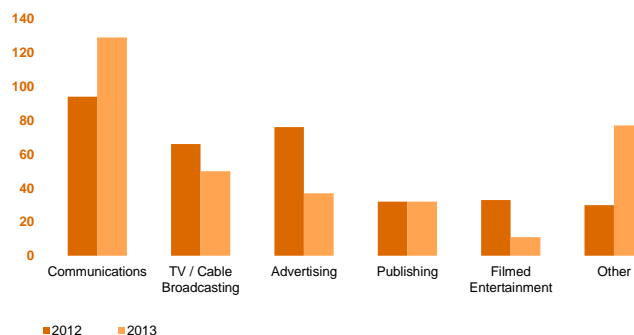
### Subsector breakdown

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

### Breakdown by subsector



We also compared the comments by subsector on a year-over-year basis. They were fairly consistent when comparing 2012 with 2013, with two exceptions. The Communications subsector had a significant increase in comments related to variable interest entities (VIE) and controlling interests, which are described in the *Business combinations & goodwill impairment* section on page 14, and the Other subsector, which had an increase in casinos, cruise, and video game comments due to Regulation S-K compliance, MD&A, and impairments, respectively.





## 1. Methodology



This analysis was based on comments posted on the SEC's EDGAR website from January 1, 2012 to October 31, 2013 related to EMC companies specific to their periodic filings on Forms 10-K and 10-Q. Each subsector includes the following SIC codes:

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

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

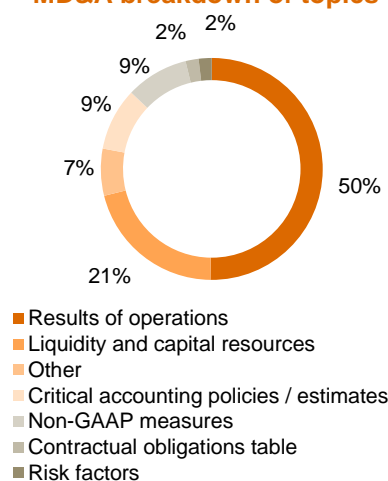
## 2. Management's discussion and analysis

Management's discussion and analysis (MD&A) of financial condition and results of operations is a critical component of registrants' communications with investors. MD&A's primary objectives are to enable investors to see the company "through the eyes of management," to provide context in which financial information should be analyzed, and to provide information about the quality and variability of a company's earnings and cash flows as well as known trends for the future. Disclosure requirements are set forth in Item 303 of Regulation S-K and include a discussion of the registrant's results of operations, liquidity, capital resources, off-balance sheet arrangements and contractual obligations. The SEC stated in its interpretive guidance that it is seeking to "elicit MD&A that not only meets the technical disclosure requirements but generally is informative and transparent," adding that the analysis "should not consist of generic or boilerplate disclosure, but rather should reflect facts and circumstances specific to each individual registrant." Therefore, SEC staff comments on MD&A often focus on suggestions to clarify and improve the disclosure.

Comments relating to MD&A continue to be the most prevalent, and during the past year they represented 38% of all comments made by the SEC staff to EMC companies.

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

MD&A breakdown of topics



### Results of operations

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

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



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

**1** We note the discussion in your fourth quarter earnings call where you mention your strategy of focusing on original programming. In this regard, please consider discussing, in the business overview section of your MD&A, your past and future initiatives and strategies in programming. It appears that this disclosure may provide investors insight into material opportunities, challenges and risks, such as those presented by known material trends and uncertainties, on which you are most focused for both the short and long term, as well as the actions you are taking to address these opportunities, challenges and risks. For additional guidance, refer to Item 303 of Regulation S-K as well as Part Four of the Commission's Interpretive Release on Management's Discussion and Analysis of Financial Condition and Results of Operation which is located on our website at: <http://www.sec.gov/rules/interp/33-8350.htm>.

**2** We note several instances in which two or more factors are cited as a cause of a variance, with references to offsetting items in some cases. Please quantify each factor cited so that investors may understand the magnitude and relative impact of each on your results.

Refer to section 501.04 of the Codification of Financial Reporting Releases for guidance.

Your quantification should also indicate the amount of cost recognized for each material component discussed, in order to provide investors with additional context regarding the component's contribution to your results. For example, you state that content acquisition and licensing expenses increased by \$x million, but do not disclose the total amount of content acquisition and licensing expense recognized during the current year or prior year. We believe that disclosure of the amounts recognized in the current year and/or prior year may be necessary to provide context to (A) the significance/magnitude of this cost component relative to total "cost of subscription" and (B) the increase in the amount recognized relative to historically recognized amounts. If quantification is not practicable, please state so and disclose the basis for the cited item. Your disclosure should also discuss, at an appropriate level of detail, the underlying reason for the impact of each factor identified. Please provide us with a copy of your intended revised disclosure.

**3** Please discuss the reasons why, despite the continuing loss of retail wireless subscribers, your average monthly revenue has increased. Discuss how in recent years you have been able to grow revenues by offsetting retail wireless subscribers losses with price increases, and whether you expect this trend to continue.

**4** We note from your disclosures that you anticipate your programming expenses to continue increasing. Please consider discussing the trend of rising programming expenses in the overview section and how management intends to address it.

**5** Refer to your Earnings Call for the quarter ended December 31, 20xx. We note that you described setting up a distribution hub and that "clearly there was cost associated with the consolidation of contract manufacturing, costs associated with moving to a third-party logistics center." Please expand the MD&A discussion of Cost of Revenues and Gross Profit to include the costs associated with these activities during the periods presented, including quantification of any one-time costs.

## Liquidity and capital resources

As a result of the lingering economic uncertainty for registrants with foreign operations as well as the rapid changes in technology and the competitive environment, it's not surprising that the SEC frequently focuses its review and comments on liquidity disclosures. The SEC staff expects registrants to provide transparent and robust discussion of liquidity and capital resources to enable investors to understand the company's ability to generate cash and to meet its obligations as they come due.

- **Disclosure of events impacting liquidity:** The SEC staff has asked registrants to discuss known trends, events, or uncertainties that are reasonably likely to impact future liquidity. Such events could include entry into material commitments, loss of customers or contracts, treasury stock repurchase programs, or plans for significant capital expenditures.
- **Debt agreements and related covenants:** Comments from the SEC staff have requested expanded disclosure of the material terms of debt agreements, including an indication of compliance with financial covenants. In situations where there has been or is projected to be a potential violation with regard to covenant compliance, registrants should provide a detailed description of the covenants, covenant amounts for the most recent reporting period, and sensitivities, if applicable.
- **Stranded cash:** For companies with foreign operations, the SEC staff has also focused on the registrant's ability to repatriate cash back to the United States in order to meet significant upcoming obligations, such as debt repayments or mandatory pension contributions. Comments focus on the relationship between liquidity needs

and the permanent reinvestment assertion that registrants may have made, which allows them not to provide deferred tax on foreign earnings. The SEC staff has also asked companies to quantify the amount of cash held overseas and the amount of incremental deferred tax, if any, if cash were to be repatriated. This is also a topic of discussion under income tax trends. See page 18 for further discussion.

- **Cash flow analysis:** One of the common pitfalls in the liquidity analysis is simply repeating the information presented on the face of the statement of cash flows. Instead, registrants should disclose the underlying factors driving the changes in operating, financing, and investing cash flows of the company.

**1** In your response letter, you committed to provide a more robust discussion of long-term cash and financing needs and your plans to meet those needs. Please revise to provide that discussion. Your discussion should address the pressure on cash flows you expect from [Company X's] entry into the wireless market and cuts in regulatory subsidies as well as management's plan to counter those pressures.

**2** We note that you indicate that you were in compliance with your debt covenant limiting the ratio of consolidated secured debt, net of cash and cash equivalents, to consolidated EBITDA for your Senior Secured Credit Facility. However, it is not clear if you were in compliance with your debt covenants for your other debentures. Given the significance of your total debt, please confirm to us whether you were in compliance with all your material debt covenants for the periods presented.

**3** Since your foreign operations are significant, please address the following in future filings: Disclose the amount of foreign cash and cash equivalents as compared to your total amount of cash and cash equivalents as of year-end; Quantify the amount of cash held in foreign countries where the funds are not readily convertible into other foreign currencies, including U.S. dollars. Please also explain the implications of any such restrictions upon your liquidity; and Discuss the fact that if the foreign cash and cash equivalents are needed for your operations in the U.S., you would be required to accrue and pay U.S. taxes to repatriate these funds. Disclose if it is your intent is to permanently reinvest these foreign amounts outside the U.S. and whether your current plans do not demonstrate a need to repatriate the foreign amounts to fund your U.S. operations.

Refer to Item 303(a)(1) of Regulation S-K, SEC Release 33-8350 Section IV and Financial Reporting Codification 501.06.a.



**4** We note that your operating cash flow discussion provides little insight into the changes in your financial condition. In this regard, you list certain working capital changes in 20XX without explaining the underlying reasons for the changes. For example, we note that in 20XX, the change in accounts receivable had a favorable impact on cash flows of \$X million whereas in 20XX, there was an unfavorable impact on cash flows of \$X million, however your disclosures do not explain these changes or provide a comparison of these periods. Please tell us what consideration was given to providing a more robust discussion of your operating cash flows pursuant to the guidance of Item 303(a)(1) of Regulation S-K and Section IV.B.1 of SEC Release 33-8350. This comment also applies to your subsequent Form 10-Q's.

### Non-GAAP measures

Registrants often present certain quantitative measures of past performance, financial position, or cash flows that make various adjustments (inclusions or exclusions) to measures reported in the GAAP financial statements. Some of the non-GAAP measures frequently used by EMC companies in their earnings releases or periodic filings with the SEC include EBITDA; OIBDA; adjusted EBITDA and/or OIBDA (often reflecting the elimination of restructuring and impairments, which is typically high for companies in this space); adjusted revenue (eliminating acquisition accounting adjustments related to deferred revenue); or free cash flow (often defined as operating cash flow less capital expenditures). It's important to keep in mind that these non-GAAP measures are not standard or prescribed by U.S. GAAP and may differ considerably from one company to the next. Such non-GAAP financial measures are permitted to be included in press releases, periodic filings, and registration statements, as long as they meet the requirements set out in Regulation G and Item 10(e) of Regulation S-K. Although comments in this area have not been as significant as in prior years, there remains a focus on the following areas:

- **Identification and reconciliation:** The SEC staff has commented when non-GAAP financial measures have not been clearly labeled as such or have not been clearly reconciled to the most directly comparable GAAP measure. Registrants should disclose the adjustments made to arrive at the non-GAAP measure and why it is useful to investors. They should not label adjustments as non-recurring, infrequent, or unusual when similar events and transactions may have occurred in the past or are reasonably likely to occur in the future. Similarly, the SEC staff comments when issuers refer to adjustments as “non-cash” if the underlying obligations may have to be settled in cash in the future.
- **Undue prominence:** The SEC staff has commented consistently when non-GAAP measures are presented more prominently than the directly comparable GAAP measures in MD&A or in earnings releases. They have also objected to the inclusion of a full non-GAAP statement of operations.

**1** Since you use EBITDA and Adjusted EBITDA as liquidity measures in addition to performance measures, you should also reconcile these non-GAAP measures to Cash Flows from Operations. In addition you should include a prominent presentation of amounts for the three major categories of the statement of cash flows for each period.

Please refer to the guidance in Conditions for Use of Non-GAAP Financial Measures at [www.sec.gov/rules/final/33-8176.htm](http://www.sec.gov/rules/final/33-8176.htm). Also refer to Question 102.06 of the Division of Corporation Finance's Compliance and Disclosure Interpretations on Non-GAAP Financial measures at [www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm](http://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm).

**2** Please include a prominent presentation of the amounts for the three major categories of the statement of cash flows when presenting free cash flow, a non-GAAP liquidity measure. In this regard, refer to the guidance in Question 102.06 of the Compliance and Disclosure Interpretation on Non-GAAP Financial Measures dated July 8, 2011.

**3** Although you define (consolidated) Gross Profit, you do not present a reconciliation to its most comparable consolidated GAAP measure. Additionally, since you also report segment Gross Profit as a non-GAAP measure, please include herein a reconciliation to segment net income (loss), its most comparable GAAP measure. Refer to Item 10(e) of Regulation S-K.



### Other MD&A comment trends:

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

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

**1** We note that certain of your streaming contracts are not reported on the balance sheet because the streaming license fee is not known or reasonably determinable for a specific title or the title does not meet the criteria for asset recognition (e.g., because the underlying license agreement does not specify the number of titles, the license fee per title, or the windows of availability per title). Please tell us and disclose whether these contracts that do not qualify for balance sheet reporting are evaluated to determine whether known associated costs, if any, are recoverable and/or whether the contracts are in a loss position. If so, explain how recoverability is evaluated including, whether the contracts are evaluated on an individual basis, aggregated with other streaming contracts that do not qualify for balance sheet recognition, or are aggregated with contracts that are reported on your balance sheet for purposes of measuring the recoverability of your entire streaming portfolio. In addition, tell us and disclose how revenues are attributed to specific contracts or a subset of your entire portfolio contract for purposes of evaluating the recoverability of contract costs, if applicable. Please cite any accounting literature that you believe supports your accounting treatment as part of your response. Please also provide your proposed expanded disclosure as part of your response.

**2** For program rights, please consider modifying your critical accounting policies and estimates by addressing the role your policy has in understanding the company's results of operations.

For example, you should include disclosure similar to what you discussed in your fourth quarter earnings call, regarding why you had program write-downs and how you determined the program write-downs. You should also discuss any specific changes in amortization for program rights (i.e., increase in amortization due to increase in revenue from market acceptance of a particular program). Please expand and/or modify your disclosure by analyzing to the extent possible factors such as: How the company arrived at the estimate; How accurate the estimate/assumption has been in the past; Whether the estimate/assumption has changed or is reasonably likely to change in the future; and Evaluate the sensitivity to change of the critical accounting policy and estimate.



**3** We note that the disclosures provided in your critical accounting policies are essentially identical to the information included in the notes to your consolidated financial statements. Please note that the disclosure in MD&A should supplement, not duplicate, the description of accounting policies disclosed in the notes.

In this regard, please ensure that your critical accounting estimates disclosures (i) provide greater insight into the quality and variability of information in the consolidated financial statements; (ii) address specifically why the accounting estimates or assumptions bear the risk of change; (iii) analyze the factors on how the company arrived at material estimates including how the estimates or assumptions have changed in the past and is reasonably likely to change in the future; and (iv) analyze the specific sensitivity to change of your critical accounting estimates or assumptions based on other outcomes with quantitative and qualitative disclosure, as necessary. Please confirm your understanding and revise accordingly. You may refer to the guidance in Section V of FRR-72 (Release No. 33-8350).

**4** We note that you present "streaming content obligations" in the contractual obligations table because they represent a purchase obligation as defined in Item 303(A)(5)(ii)(D) of Regulation S-K. However, footnote 3 to the table states that the "less than one year" column does not include \$x millions of streaming content obligations because they are included in "content accounts payable" and reflected as current liabilities on the balance sheet. This exclusion from the table does not appear to be permitted by Item 303(A)(5) of Regulation S-K for the categories specified therein, since this portion of the content accounts payable balance appears to reflect obligations incurred pursuant to contracts (i.e., rather than a traditional invoiced payables). Please revise the table accordingly. In connection with your revised disclosure, tell us, as well as disclose on a separate basis, the respective on and off balance sheet amounts included in the streaming content obligations amount shown in the table.

**5** We note that your contractual obligations table includes "other purchase obligations" of approximately \$X million, which are primarily due within the next three years. We believe that this disclosure would be more meaningful to readers if you provided a brief description of the nature of these additional purchase obligations in a footnote to your table. Please revise your disclosure accordingly.

**6** Disclosures in this section indicate that "certain items" and "many of your non-current liabilities" were excluded from the contractual obligations table. In your response please describe and quantify these liabilities. If the amount of the undisclosed liabilities is material, disclose the amount via footnote to the table or otherwise.

### 3. Regulation S-K compliance

EMC registrants saw an increase in compliance-type comments. Compliance-type comments are those comments that relate to compliance with S-K rules and the instructions to Form 10-K and Form 10-Q. For example, there were a number of comments related to appropriately filing exhibits, legal opinions, employment agreements, etc. These comments typically result in the registrant having to file amended documents.

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

The SEC staff also challenges registrants as to whether certain adjustments, which may be characterized by registrants as reclassifications, are in fact errors. Similarly, when errors are deemed by management to be immaterial to the period of origination and are



recorded in the period in which they were identified as out-of-period adjustments, the SEC staff may challenge management's conclusion and may determine that the previously issued financial statements need to be restated or revised. Disclosure of material errors and related corrections provides transparent information to the users of the financial statements.

- 1** *We note the executed tax opinion provided by [Professional Firm A] fails to identify the specific tax issue on which the opinion is based. Please note that counsel must opine on the tax consequences of the transactions, not the manner in which they are described in the prospectus. Refer to Section III.C.2 of Staff Legal Bulletin No. 19. Please appropriately revise the description of counsel's opinion contained in the first paragraph on page X and in the short-form opinion filed as Exhibit 8.1 and file an updated opinion with an amendment to the Form S-4.*
- 2** *We note your discussion of employment agreements. To the extent you have employment agreements with any of your named executive officers, please revise to disclose the terms of the employment agreements, including any severance or change of control compensation, for each of your named executive officers in future filings. In addition, please file these agreements as exhibits pursuant to Item 601(b)(10) of Regulation S-K with your next periodic report.*
- 3** *We note that you only provide the certifications required by Section 302 of the Sarbanes-Oxley Act of 2002 and 18 U.S.C. Section 1350 for your chief executive officer. Please confirm that your chief executive officer also was your principal financial officer at the time of signing the certifications for your fiscal year 20XX Form 10-K and Forms 10-Q for the first three quarters of 20XX. In future filings, please provide the required certifications for each principal executive and principal financial officer of the issuer, or persons performing similar functions. If the same individual is both the principal executive officer and principal financial officer, the individual may provide one certification and provide both titles underneath the signature. For guidance, please refer to Question 161.03 of the Division of Corporation Finance's Compliance and Disclosure Interpretations for Exchange Act Rules, available on our website at <http://www.sec.gov/divisions/corpfin/cfguidance.shtml>.*

**4** We refer to your Form 8-K filed January XX, 20XX, which includes your press release for the third quarter of fiscal 20XX. We note that the amount of the error for share-based payments for the X-month period ended November 30, 20XX was \$X million and that the restated Net Loss was \$X million rather than the originally reported Net Loss of \$X million. We also note that the Form 10-Q filed January XX, 20XX for the period ended November 30, 20XX includes a Net Loss of \$X million for the prior X-month period ended November 30, 20XX, which differs from the amounts included in your press release. Due to the materiality of the amounts, it appears that the Form 10-Q for the period ended November 30, 20XX and the Form 10-K for the year ended February XX, 20XX should be amended to restate for the correction of the error in accounting for share-based payments. Please revise or advise.

**5** Including restated, unaudited annual financial statements in your Form 10-Q does not satisfy an obligation to amend a previously filed Form 10-K. Explain to us why you have not filed an amended 2011 Form 10-K that includes restated, audited financial statements, restated selected financial data, and revised MD&A.

**6** We note your representation that the impact of the errors corrected in your most recent Form 10-Q are immaterial, individually and in the aggregate, on prior period consolidated financial statements. Your basis for this conclusion is unclear. It is also unclear to us whether you considered previously recorded out-of-period adjustments in 20X2 and 20X1, and the related errors that were corrected, when concluding that your prior period financial statements are not materially misstated. In this regard, we note on page XX of the Form 10-Q that diluted earnings per share for the year ended December 31, 20X2 was understated by \$X per share and the impact of the out-of-period adjustment recorded in 20X3 was to understate diluted earnings per share \$X per share, apparently resulting in a combined understatement in previously reported diluted earnings per share of \$X. Please provide us with your comprehensive evaluation of the materiality of all known errors in your previously filed financial statements, on both a financial statement line-item and net impact basis, explaining your consideration of both the quantitative impact and the qualitative impact of all identified errors on your previously reported financial statements. This analysis should include a sufficiently detailed explanation of the nature of all of the errors identified and corrected in 20X3, 20X2 and 20X1, whether they are related, how they occurred, and any other relevant facts and circumstances.

## 4. Business combinations & goodwill impairment

### Business combinations

Mergers and acquisitions have increased in the EMC sector, resulting in consolidation of operations throughout the industry, and also an increased focus on the related accounting. Acquisition-related accounting and disclosure requirements can be complex, depending on the nature of the transaction and the nature of the assets acquired and liabilities assumed. As companies continue to seek growth opportunities through acquisitions, the SEC staff continues to comment on various business combination accounting disclosure items and the subsequent impact of goodwill impairment, as discussed below.

ASC 805, *Business Combinations*, provides extensive disclosure requirements to enable users to evaluate the nature and financial effects of the business combination. Registrants should carefully consider all of the disclosure guidance in preparing financial statements, both in the period of the acquisition and in subsequent periods. For companies in the EMC industry, the SEC staff comments have focused on valuation matters and other general acquisition accounting matters, including:

- fair value determination and key assumptions used;
- identification of the accounting acquirer; and
- variable interest entities and controlling interest.



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

**2** We note that the majority of the purchase price allocation related to the Company's acquisition was allocated to accounts receivable. Please tell us and revise to disclose the gross contractual amounts receivable and the best estimate at the acquisition date of the contractual cash flows not expected to be collected. See guidance in ASC 805-20-50-1(b).

**3** We note that your purchase price allocation to customer relationships, acquired identified technology and goodwill represented X%, X% and X%, respectively, of the total purchase price. In addition, we note that [Company A] manages "unique, secure databases" and such databases will provide services to current and new customers

Further, the [Company A] acquisition will allow you to "offer a much more diverse portfolio of services." Please tell us in more detail the specific assumptions and estimates used to determine the fair values of the customer relationships and acquired identified technology intangible assets. Include in your response an explanation of how you considered and determined the future economic returns expected from such assets including the analysis of future trends. Tell us if you used the same assumptions and estimates when deciding whether \$X million was a reasonable price for the acquired business. Based on your disclosures in your filings, it is unclear to us why the fair values of the customer relationships and acquired identified technology do not represent a significant amount of the total purchase price.

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

**5** Please provide variable interest entity disclosures required under ASC 810-10-50-2 through 50-15 or tell us why such disclosures are not required. In addition, tell us how you addressed your arrangement with the LLC in your previous registration statements and when you determined that you were the primary beneficiary. In this regard, we note your prior disclosure that you adopted the provisions of the guidance on variable interest entities prospectively beginning in 20XX, and its application had no impact on your consolidated financial statements.

**6** We note from your disclosure on page XX of your MD&A section that in July 20XX you entered into a joint venture named [Company A]. However, we note that your investment in [Company A] is not disclosed in Note X and does not appear to be included in your equity method investment amounts on your balance sheet. Please tell us the nature, amount and the accounting for such investment in [Company A]. As part of your response, please explain to us why this investment is not included in your equity method investments on your balance sheet.

**7** We note from the disclosure included in Note X that during fiscal 20XX, the Company paid cash totaling \$X to acquire the remaining interest in a consolidated subsidiary. We also note that the purchase price of \$X plus transaction costs were recorded directly to shareholder's equity, net of a deferred tax benefit of \$X. As it appears that this transaction represents the acquisition of a minority interest, please explain why no separate amount attributable to the minority interest was reflected in the Company's statement of shareholders' equity or statement of operations for fiscal 20XX.

## Goodwill Impairment

It has been more than a year since GAAP was revised to allow entities to first evaluate qualitative factors to determine whether it's necessary to perform the two-step quantitative goodwill test. Registrants are not required to calculate fair value of a reporting unit unless, based on a qualitative assessment, it is more likely than not that its fair value is less than its carrying value. Financial reporting of goodwill impairment already involves considerable judgment, given the amount of estimation and assumptions necessary to determine whether a reporting unit has been impaired. For reporting units that are "at risk" of failing step one of the goodwill impairment test, the SEC staff has requested registrants to include significant expanded disclosures: the percentage by which fair value exceeds carrying value as of the date of the most recent test, the amount of goodwill allocated to the reporting unit, and a qualitative discussion of assumptions used to determine fair value, including the inherent uncertainties and potential events and circumstances that could have a negative effect on the reporting unit's fair value.

The SEC staff frequently challenges the timing of a goodwill impairment charge, particularly when it results from the annual goodwill impairment test but factors and conditions may have existed in an earlier period. A depressed stock price for an extended period of time, a sustained decline in revenues, and operating income are just a few examples of situations where the SEC staff has challenged registrants on why they did not conclude there were triggering events requiring an interim impairment assessment.

**1** Please tell us whether you have any reporting units at risk of failure of step one of the goodwill impairment model.

**2** Per your disclosure, the continuing weak macroeconomic conditions and financial markets and/or the performance of your stock price in the second quarter of 20XX could require an interim impairment test of Licenses and/or Goodwill in the second quarter of 20XX, possibly resulting in impairment that "could be material depending on conditions at June 30, 20XX." Tell us in detail how such conditions have changed since your annual impairment test in November, 20XX and how they have affected your underlying assumptions. Tell us the nature of triggering impairment indicators which you anticipate in the second quarter of 20XX that could result in impairment that could be material. In this regard, we note on pages XX-XX per your MD&A in the 20XX Form 10-K that the fair values of all your reporting units exceeded their respective carrying values by significant amounts ranging from X% to X% for [A] reporting units and X% to X% for [B] reporting units.

Additionally, except for licenses with an aggregate carrying value of \$X million in units of accounting where the fair value exceeded the carrying value by amounts less than X% of the carrying value, your disclosure appears to suggest that the remainder of the licenses had fair values that exceeded their carrying value by X% or more. Please advise us.

**3** We note from your disclosure in Note XX that the [A] segment has incurred a loss for the three months and nine months ended September 30, 20XX. We also note that the majority of the goodwill is allocated to this segment. If this reporting unit (or any other reporting unit) is at risk of failing step one of the goodwill impairment analysis, please revise your MD&A disclosure to provide the following information: Percentage by which fair value exceeded carrying value as of the date of the most recent test; Amount of goodwill allocated to the reporting unit; Description of the methods and key assumptions used and how the key assumptions were determined; Discussion of the degree of uncertainty associated with the key assumptions.

The discussion regarding uncertainty should provide specifics to the extent possible (e.g., the valuation model assumes recovery from a business downturn within a defined period of time); and description of potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions.

**4** Please discuss the primary underlying factors that resulted in the goodwill impairment charge.



## 5. Segments



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

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

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

- 1** *In light of your increasing sales outside of the U.S., please tell us whether the CODM continues to review only a single set of discrete financial information on a consolidated basis that encompasses your entire operations for purposes of making operating decisions and assessing financial performance. Furthermore, besides international selling and marketing costs, tell us whether the CODM reviews any financial information regarding costs paid to developers in European and Asian markets.*
- 2** *We note that you have identified the board of directors as your chief operating decision maker. We also note that your chief executive officer is also the chairman of the board of directors. Please tell us the basis for your conclusion that the board of directors is the chief operating decision maker. Referencing the guidance in ASC Topic 280, tell us the key factors you considered in your analysis.*
- 3** *We note that while you discuss certain factors to which changes are attributable, you do not quantify certain of these factors nor analyze the underlying business reasons for the changes. For example, you attribute an increase of X% in the X segment's operating income primarily to revenue increases, lower releasing costs and lower production amortization costs, partially offset by the inclusion of expenses at X. However, you do not quantify these factors nor analyze the underlying reason for the change in lower releasing costs and lower production amortization costs. Where there are material fluctuations individually or in aggregate, we believe your disclosures could be improved by ensuring that all material factors are quantified and analyzed. To the extent applicable, this type of disclosure should be applied to all material line items included in your consolidated statement of income. Please refer to Item 303(a)(3) of Regulation S-K and our Release No. 33-8350.*
- 4** *We note that you have X data centers that operate in Y discrete markets in countries that appear to have different market risks, profiles, and economic characteristics. Please provide us with your analysis of how you determined your reportable segments including your operating segments. In addition, tell us how you met the aggregation criteria under ASC 280-10-50-11 and determined you have only Z reportable segments. We note that your measure of profit and loss is adjusted EBITDA.*
- 5** *We note that you have determined there is one operating segment. We also note that your sales are geographically dispersed between the United States, China, Europe, Japan, and Other. Please provide us the financial reporting packing provided to your CODM for the allocation of resources and the assessment of your operational and financial performance.*



## 6. *Income taxes*

As EMC companies increase their global footprint, questions surrounding international taxation, such as permanent reinvestment of foreign earnings, the impact of different tax rates, and tax holidays become more relevant. Additionally, the prolonged global economic recession continues to raise questions about realization of net operating losses and other tax credits. The most notable comment letter trends in the area of income taxes are:

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

**Deferred tax assets:** The assessment of recoverability of deferred tax assets involves significant management judgment. In their comment letters, the SEC staff has asked companies to explain and disclose in their filings their considerations related to the recoverability of deferred tax assets, including analysis of both positive and negative evidence, especially when a prolonged history of losses exists. Additionally, any time a company records or reverses a valuation allowance against its deferred tax assets, they should be prepared to respond to a challenge from the SEC staff as it relates to the timing of the charge/reversal (i.e., why now or why not last quarter/year?) including previous foreshadowing language or lack thereof.

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

**1** You indicate that you did not provide for income taxes on approximately \$X million of undistributed foreign earnings, as such earnings are not intended to be repatriated in the foreseeable future. Tell us your consideration to quantify the amount of cash and investments that are currently held outside of the U.S. in jurisdictions where earnings are permanently reinvested. We refer you to Item 303(a)(1) of Regulation S-K and Section IV of SEC Release 34-48960.

**2** We note your disclosure that U.S. income taxes were not provided on undistributed earnings from Australian and UK subsidiaries as those earnings are considered to be permanently reinvested in accordance with accounting guidance. In this regard, please revise your liquidity section of MD&A to disclose a statement that the company would need to accrue and pay taxes if repatriated; and a statement that the company does not intend to repatriate the funds. Also, please revise Note X to disclose the cumulative amount of earnings of foreign subsidiaries in which U.S. income taxes have not been provided because they are considered to be permanently reinvested pursuant to ASC 740-30-50

**3** We refer to your disclosure indicating you determined a valuation allowance should be provided for substantially all of the net deferred tax assets. We see that for the nine months ended December 31, 20xx, you reported pre-tax income of \$Xx million and as of March 31, 20xx, reported a net operating loss deferred tax asset of \$X million. Please help us better understand the analysis you performed in reaching the conclusion that it was not appropriate to release a portion of your valuation allowance. In that regard: provide your taxable income or loss for the last three fiscal years and nine months ended December 31, 20xx; tell us the expiration dates of your loss carryforwards and how much of the loss carryforwards you anticipate utilizing when you file your 20xx tax returns; describe the positive and negative evidence you evaluated, including how you considered and weighted that evidence under the requirements of FASB ASC 740-10-30-16 to 25; and tell us whether you are projecting future taxable income and the basis for your assumptions.

**4** We note the significant increase in your unrecognized tax benefit balance from the prior year. Please expand your discussion under the provision for income taxes in MD&A to describe the reason for the increase. Also, tell us how you considered providing a discussion in the critical accounting policies and estimates section in the MD&A. Provide us with your proposed disclosure.

**5** We note you cite certain recent positive developments as a basis for concluding an additional amount of your deferred income tax assets were recoverable in 20xx "considering the more likely than not standard." In light of the company's three consecutive years of taxable income and the developments cited in your disclosure, it is unclear why you did not consider the entire balance of your deferred tax assets fully recoverable in 20xx. Please advise us and expand your disclosure here and within your income tax footnote to disclose the specific negative evidence identified by management that outweighed the positive evidence, when concluding that it is more likely that a portion of the deferred tax assets would not be realized.

**6** With respect to each of your remaining tax obligations as a result of tax audits, please clarify what you mean by stating that you have adequately provided for the obligation, and fully comply with the disclosure requirements of FASB ASC 450-20, including an estimate of the possible loss or range of loss. In this regard, please tell us whether you have considered both asserted and unasserted claims when accruing for probable contingent liabilities and when disclosing reasonably possible losses.

## 7. Revenue recognition

Revenue recognition continues to be a significant focus area; however, there was a 7% decline in revenue comments as compared with 2012. Included below are some general comments as well as some more specific comments related to gross vs. net and multiple element arrangements.

### General comments:

**1** We note from your disclosure that you recognize revenue when title transfers. Please tell us and revise to disclose how your policy complies with the guidance within SAB Topic 13.A.1 for determining revenue recognition. Your response and revised disclosure should discuss in detail how each criterion (i.e. persuasive evidence of an arrangement, fixed and determinable, collectability and delivery) is met when revenue is recognized.

**2** Expand your revenue recognition policy to explain in more detail the type, nature and terms of your advertising contracts, how you determine that a contract has been fulfilled and how you determine the amount of make-good provisions. Explain what actions or events in your business lead to a conclusion that the appropriate revenue recognition criteria have been met. In your response, please provide us with your proposed disclosures.



### Gross vs. net:

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

## Multiple element arrangements

EMC companies, primarily video gaming, often provide multiple products or services to their customers as part of a single arrangement. These deliverables can include software, hardware, and services; can be delivered up-front or over a period of time; and may be labeled “free.” It can sometimes be challenging to determine the most appropriate technical guidance to apply, given the complexities of the arrangements. The FASB’s guidance for arrangements with multiple deliverables was effective for arrangements entered into or modified in fiscal years beginning on or after June 15, 2010. Under that guidance, a company is required to allocate the arrangement consideration using its best estimate of selling price (BESP) for the deliverables in an arrangement when vendor-specific objective evidence (VSOE) or third-party evidence (TPE) of the selling price is not available. The residual method of allocating arrangement consideration is no longer permitted. Registrants’ critical accounting estimates and judgments related to multiple-element arrangements continue to be among the most common revenue-related comments in the EMC sector from the SEC staff. They include questions about determining appropriate units of accounting, determining appropriate valuation techniques and assumptions to arrive at values for each of the units of accounting, and periods over which revenue should be recognized.

**1** Your multiple elements arrangement disclosure appears to quote accounting literature, but does not provide specific qualitative and quantitative information about your revenue arrangements. Please refer to the guidance in ASC 605-25-50. Provide us with your proposed disclosures.

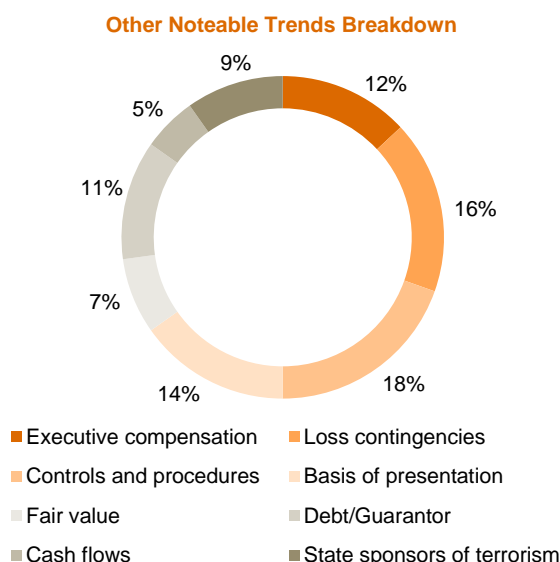
**2** We note that appropriate revenue recognition guidance is followed in accordance with ASC 605 and 985 regarding your gaming devices and software. We further note that gaming equipment sales typically include ancillary equipment necessary for the full functionality of the player terminals in a casino. Given that the ancillary equipment and software appear essential for the full functionality of the products delivered, it would appear as though revenue recognition would be deferred until all essential elements necessary for the full functionality of the product have been delivered.

In this regard, it is unclear at what point you are recognizing revenue for the ancillary equipment and software given your discussion of multiple element arrangements. Please tell us, and revise to clarify, what products, services, or software you are able to account for as a separate deliverable and recognize revenue prior to the gaming device being delivered. Your response should specifically address if such elements have stand-alone value to the customer and discuss if such elements are essential to the functionality of the gaming device. We may have further comment upon receipt of your response.



## 8. Other notable trends

Included below is an analysis of the remaining categories of SEC staff comments received by EMC companies in 2013.



### Controls and procedures

The controls and procedures comments are focused on the companies' conclusions with regards to the effectiveness of internal control and the filing of the Section 302 and Section 906 certifications.

**1** We note in your disclosure that you concluded there was a "material weakness in the design and operating effectiveness of (y)our internal control over financial reporting as defined in SEC Regulation S-X." You further describe the material weakness as one that "relates to our financial statement close process." Please explain in more detail each of the three "primary factors" that contributed to this material weakness, the specific accounts impacted by these "factors," and how you determined that these three "factors" indicated that there was only one material weakness and it was limited to the financial close process. Additionally, please describe the considerations made in determining to aggregate control deficiencies.

**2** Please revise paragraph number four to state that you are also responsible for establishing and maintaining internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). Please refer to Item 601(b)(31) of Regulation S-K.

### Loss contingencies

Financial reporting of commitments and contingencies remains a focus area of the SEC staff. Although the quality of disclosures has improved over the past several years, some registrants continue to resist providing the required disclosures for fear that they may divulge too much information that could adversely affect the outcome of litigation. To that end, the SEC staff will accept disclosure of estimated exposures on an aggregate basis rather than requiring it separately for individual matters.

GAAP requires companies to record an accrual for a contingency when it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Even if the criteria for accrual have not been met, disclosure may still be required if the loss is reasonably possible. The disclosure should provide the nature of the contingency and an estimate of the possible loss or range of loss. It has been fairly common for the SEC staff to request that registrants explain their estimation process and the specific factors, if applicable, precluding a reasonable estimate at the reporting date. Additionally, the SEC staff commonly asks whether there was a reasonable possibility that a loss exceeding amounts already recorded may have been incurred and that amounts materially greater than the amounts accrued should also be disclosed.

When a loss is assessed as being probable, but no one number within the estimated range of exposure is considered to be a better estimate than any other number in the range, the accounting guidance requires companies to record the low end of the range.





In the spirit of keeping the investors apprised of significant contingencies, the nature and amount of a settlement should generally not be disclosed for the first time in the period in which it is recorded, but rather early-warning disclosures should be provided as soon as they are appropriate. As with goodwill impairments, the SEC staff will challenge registrants about whether such losses should have been recorded in an earlier period and what the triggering event was for current recognition (i.e., why now?). In instances when a contingency has been settled, the SEC staff is likely to review prior filing disclosures and inquire as to whether those disclosures were appropriate in light of the final outcome, and whether a charge should have been recorded in an earlier period. The SEC staff will expect that loss contingency disclosures are updated regularly, both qualitatively and quantitatively, for developments in the related matters.

**1** *You disclose that you believe the claims in the shareholder class action lawsuit are without merit. If there is at least a reasonable possibility that a loss exceeding amount already recognized (or not recognized) may have been incurred, you must disclose an estimate of the possible loss or range of loss or a statement that such an estimate cannot be made, or if true, state that the estimate is immaterial with respect to your financial statements as a whole. Please refer to ASC 450-20-50 and Interpretive Response to Question 2 of SAB Topic 5Y. Similar disclosures should be made to your discussion regarding the other legal proceedings, claims and litigations arising in the ordinary course of your business. Please provide us with your proposed disclosures you plan to include in future filings.*

## **Executive compensation disclosures and incentive plans**

Item 402 of Regulation S-K requires extensive disclosures on executive compensation for proxy statements, Form 10-K filings, and registration statements, the objective of which is to provide users of financial statements with robust and transparent information. The SEC staff continues to focus on this area. Recently, the SEC issued a proposal to require companies to disclose the ratio of the annual total compensation of its chief executive officer to the median of the annual total compensation of all employees of the company (excluding the chief executive officer) as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. This proposal is out for public comment. If the proposal is adopted next year, the registrant would first need to include the ratio for fiscal year 2015 in either its proxy or its information statement for 2016. Comment letters issued by the SEC staff have required registrants to disclose the specific performance targets and thresholds that employees have to achieve in order to earn their compensation awards. Many registrants have used the “competitive harm” argument; however, the SEC staff remains skeptical, especially when such information is based on actual company results and the performance target will occur after the fiscal year has ended. Additionally, where peer benchmarks are used in the evaluation of compensation, the SEC staff has required registrants to add specific peer group data.



**1** In your current disclosure, while you indicate that targets relating to annual non-GAAP operating income were used to determine amounts awarded in the executive bonus plan, you do not disclose the target or targets. Please amend your Form 10-K to disclose the amount of such targets.

**2** It appears that you have identified only three named executive officers including your chief executive officer, chief financial officer, and president. Please tell us how you determined that the other individuals listed on the company's website under "Leadership Team," including the Group Presidents, are not executive officers within the definition of "executive officer" in Rule 405 under the Securities Act and Rule 402(a)(3) of Regulation S-K. Rule 405 defines an executive officer as the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the company.

### **Disclosure of operations in locations identified as state sponsors of terrorism**

As EMC companies expand their operations internationally, some find themselves doing business, directly or indirectly, with countries that have been listed by the U.S. government as state sponsors of terrorism: Syria, Cuba, Iran, and Sudan. The SEC staff has asked registrants to disclose quantitative and qualitative factors that a reasonable investor would regard as important in making an investment decision. These include the nature and extent of contacts with the aforementioned countries (directly or indirectly), including the amount of revenues derived and assets associated with each country (without any materiality threshold) and a description of equipment and technology that the company has provided to these countries. The comments are often triggered by as little as a thorough review of the issuer's website, which may contain references to one of the countries designated as state sponsors of terrorism. The Iran Threat Reduction and Syria Human Rights Act of 2012 was signed into law last year, and issuers are now required (as of February 6, 2013) to provide disclosure in their periodic reports if, during the reporting period, they or any of their affiliates have knowingly engaged in certain specified activities involving contacts with or support for Iran.

If such activity is reported in a periodic report, the issuer is also required to file a separate form on Edgar (IRANNOTICE).

**1** Please discuss the materiality of your contacts with Cuba, Sudan and Syria 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 Cuba, Sudan and Syria.

### **Cash flows**

Cash flow-related comments typically center around (1) the classification of certain items as operating, investing, or financing; (2) the presentation of net rather than gross cash activity; and (3) supplemental cash flow disclosures. While the classification of certain transactions is explicitly prescribed in the authoritative accounting guidance, in many other cases, transactions have to be analyzed in accordance with the general principles in the standard. Cash flows are required to be presented gross because that information is generally more relevant to financial statement users, unless the turnover is very quick (three months or less), in which case net information would be sufficient.

**1** We note noncash investing and financing activities in recent years such as conversion of debt, issuance of stock for acquisitions, and issuance of shares for services. In this regard, please revise your statements of cash flows in future filings to present the schedule of noncash investing and financing activities required by ASC 230-10-50-3.

**2** We note the presentation in the statement of cash flows of the line item "transfer of leased gaming equipment to inventory" as a component of cash flows from investing activities. As it appears that such transfers would be a non-cash activity, please revise to eliminate such transfers from your cash flows from investing activities. However, such transfers should be included in your supplemental disclosure of non-cash investing and financing activities. Refer to the guidance outlined in ASC 230-10-50.

**3** Reference is made to the financing activities section where you report net payments on long-term obligations. It is unclear why you report the cash inflows and cash outflows on long-term debt obligations on a net (and not a gross) reporting basis. Please note that the guidance in ASC Topic 230-10-45-14(b) and 20-10-45-15(b) for financing activities provide separate reporting of cash inflows on proceeds from issuing short or long-term borrowings and cash outflows on repayments of amounts borrowed. It appears from the guidance in ASC Topics 230-10-45-8 and 230-10-45-9 that the only exception for net reporting of cash flows on debt agreements is where the maturity of debt is short and specifically where the original maturity of the liability (debt) is three months or less. Therefore, please consider the guidance above and separately report cash inflows and cash outflows on long-term borrowing proceeds and repayments where the original maturity of the debt is longer than three months, as applicable.

### Guarantor disclosures

Over the last couple of years, many EMC companies accessed the debt markets, which have provided an attractive cost of financing in this environment of sustained, historically low interest rates. A registered offering of guaranteed securities requires full financial statements for the issuer of the securities and each guarantor, unless one of the exemptions in Rule 3-10 of Regulation S-X applies, thereby allowing for significantly reduced disclosures generally in the form of condensed consolidating financial information. We have seen an increased level of comments from the SEC staff relating to the application of Rule 3-10. One category of comments is directed at identifying whether the specific structure is eligible for relief, the guarantors are 100% owned by the parent, or the

guarantee is full and unconditional, subject only to certain customary releases. The SEC staff has asked for details related to any releases in order to evaluate whether they meet the limited exceptions permitted under the rules. Another subset of comments has been targeted at potential errors in the preparation of the consolidating financial information; for example, the SEC staff has asked about the proper presentation of intercompany balances on the balance sheet (grossing up receivables and payables, presenting balances as current and long-term) and the cash flow statement (depending on the nature of the payments as loans, operating balances or dividends).

**1** To help us better understand the reconciliation for net loss and operating cash flows for the parent company, guarantor subsidiaries and non-guarantor subsidiaries for fiscal year 20XX and for the three months ended December 31, 20XX provided, please also provide us with disaggregated intercompany accounts that distinguish between equity investments, intercompany loans, and any intercompany receivables/payables generated by transactions involving the transfer of goods and services for the parent company, guarantor subsidiaries and non-guarantor subsidiaries as of October 31, 20X2, October 31, 20X1, and December 31, 20XX. Please classify the intercompany accounts between current and long-term and explain to us how you determined the classifications.

**2** Please disclose the guarantors of the Notes. In addition, provide all the disclosures under Rule 3-10 of Regulation S-X or tell us why such disclosures are not required.

**3** Please revise your disclosure to clarify that all of the guarantor subsidiaries are 100% owned by the parent as defined in Article 3-10(h)(i) of Regulation S-X, if correct. Please also refer to Article 1-02(aa) of Regulation S-X regarding the definition of a wholly owned subsidiary. With regards to full and unconditional guarantees, if there are any circumstances in which a subsidiary may be released from the guarantee, please note these provisions when disclosing that the guarantees are full and unconditional and provide a description of the release provisions.

**4** There is a presumption that distributions from subsidiary entities to parent entities would be dividends first to the extent of available retained earnings, and would then become return of capital. Review the return of capital transactions in the statements of cash flows and characterize them as dividends paid rather than returns of capital if the subsidiary had adequate retained earnings.

## ***Acknowledgments***

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