

Stay informed

2014 SEC comment letter trends

Technology

Technology institute
December 2014

*Highlights of SEC
comment letters issued to
companies in the
technology sector*



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Message from Cory Starr

To our clients and friends:

Year-end is approaching quickly and most companies are starting to prepare for another annual financial reporting period. Changes at the SEC and in the regulatory environment continue to have a significant impact on registrants. High-quality financial reporting, as well as effective and transparent communications with investors, remains of utmost importance.

We are pleased to introduce our second annual publication, which focuses on trends in SEC staff comment letters specific to companies in the technology sector. We have analyzed nearly 2,500 comments issued from July 1, 2013 to June 30, 2014 to companies in the following subsectors: computers & networking, semiconductors, and software & internet. While some comments are subsector specific, others are applicable to all companies in the technology space.

We hope that a better understanding of the latest trends, along with specific examples of comments, will provide you with helpful insights and aid in your production of high-quality annual reports for investors and other stakeholders.

Please don't hesitate to reach out to your engagement teams, the PwC contacts listed at the end of the publication or me to discuss this information in more detail. We look forward to working with you in 2015.

Best regards,

A handwritten signature in black ink that reads "Cory".

Cory Starr
U.S. Technology
Assurance Leader

SEC developments

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

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

The SEC staff has continued to focus on internal control over financial reporting, especially on how companies evaluate deficiencies relating to immaterial financial statement errors. The SEC staff signaled its intention to increase its focus in this area in late 2013, and this has led to more frequent comments and questions in 2014, with more likely to come in 2015.

Recognizing that full and fair disclosure is a central goal of the U.S. securities laws and is critical to the fulfillment of the SEC's core mission, during 2014 the SEC launched a "Disclosure Effectiveness" initiative. Through this

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

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



John A. May
SEC Services Leader

Problem review
Notes Traveler - iOS
Brief Issue Description: All 5 Traveler servers experience performance degrade.

Business/Service Impact: All users were unable to access their emails.

LoS Impacted / Countries Impacted: CN HK & SG users
Issue Reported Time: 02/22/2014 08:30
Issue Resolved Time: 02/22/2014 10:00

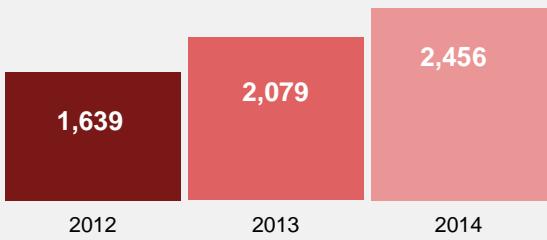
Current Status: Resolved

What's new

Even after a 27% increase in 2013, this year saw another significant jump in SEC staff comments received by technology companies.

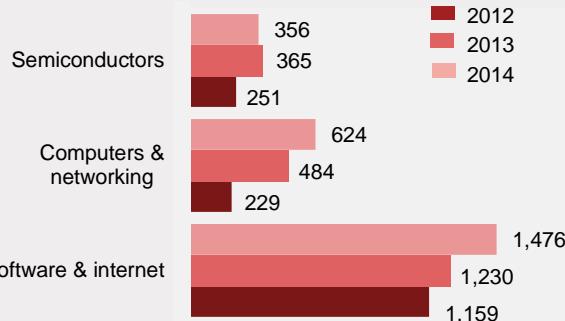
The number of comments received in 2014 increased 18% compared to 2013 (see Figure 1).

Figure 1. Overall volume of comments



The software & internet and computers & networking subsectors each experienced an increase of over 20% in the number of comments received from 2013 to 2014, while the semiconductor subsector remained substantially unchanged (see Figure 2).

Figure 2. Volume of comments by subsector



Our analysis shows that the overall increase in the number of comments received continues to be driven by an increase in the number of technology companies receiving comment letters, while the average number of comments per company was flat or even slightly down (see Figures 3 and 4).

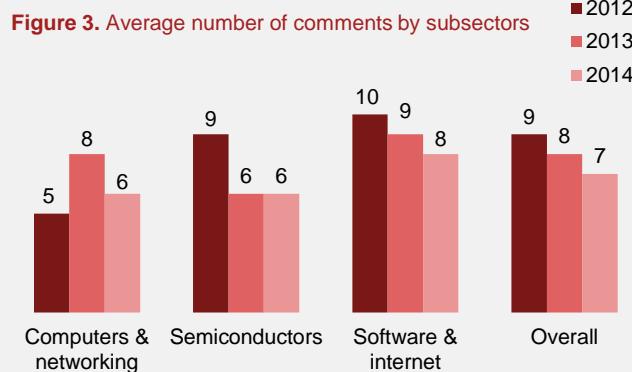
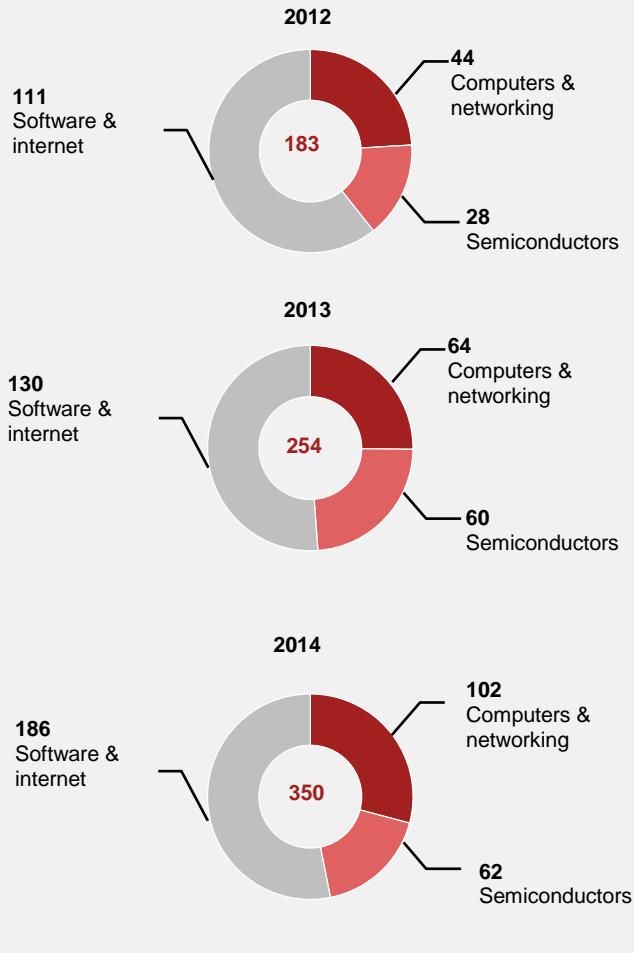
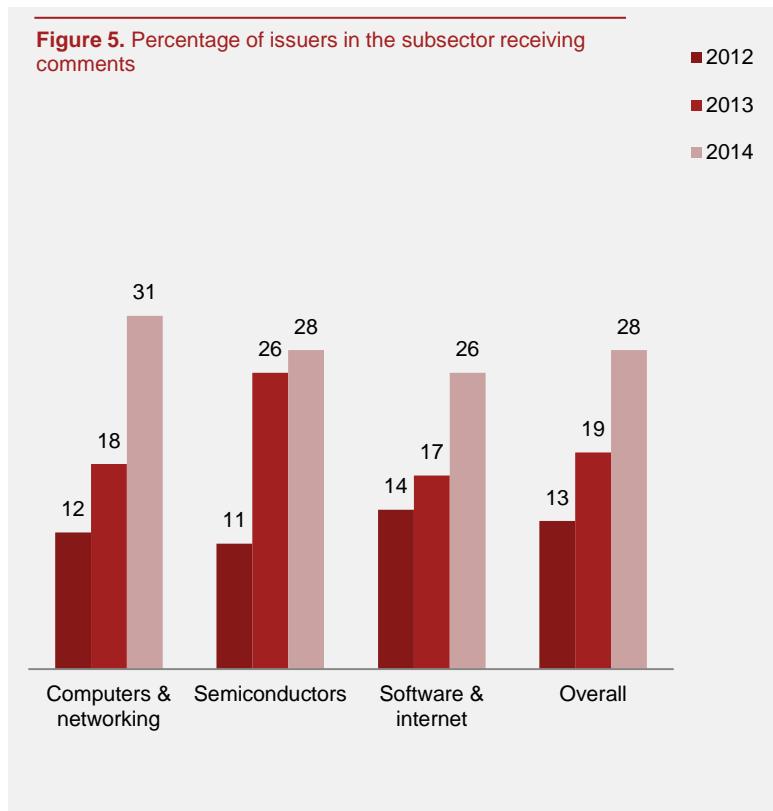


Figure 4. Numbers of companies reviewed



What's new

The SEC's renewed focus on accounting and financial reporting has resulted in, among other things, the formation of the Financial Reporting and Audit Task Force, charged with evaluating trends or patterns that may be indicators of financial fraud in areas such as revenue recognition, asset valuations, and management estimates. While the number of issuers in the sector has declined, the focus on financial reporting appears to have resulted, directly or indirectly, in an increase in the percentage of issuers in the technology sector receiving SEC staff comments (see Figure 5).



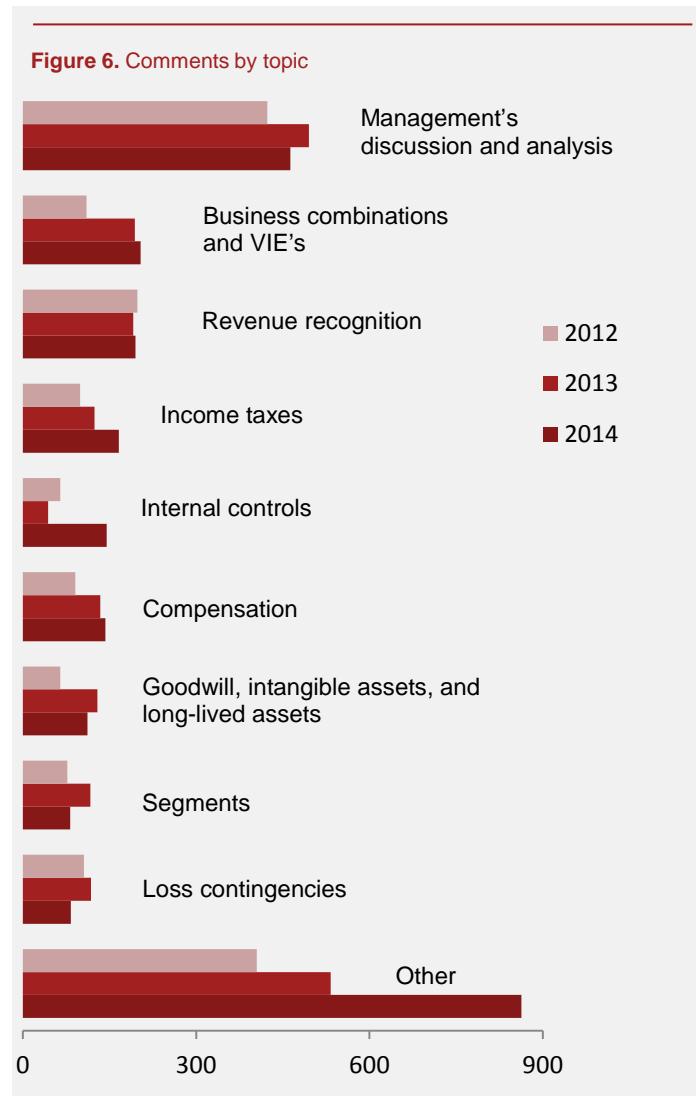
Perhaps the most notable trend this year is the increase in comments related to internal control over financial reporting, with the number of comments received by technology companies more than tripling since 2013 (see Figure 6). At the December 2013 AICPA Conference on Current SEC and PCAOB Developments, Brian Croteau, Deputy Chief Accountant of the Office of the Chief Accountant, indicated that the SEC was increasing the intensity of its focus in the area of internal control and expressed surprise that so few material weaknesses are reported in the absence of a financial statement restatement.

In calendar 2014, the SEC also stepped up its enforcement activity related to internal control over financial reporting. Some of the more well-publicized cases have related to ineffective controls in the areas of revenue recognition, expense recognition, inventory valuation, and even audit committee oversight. Consistent with prior years, Foreign Corrupt Practices Act enforcement actions against some very large companies have included findings that the company lacked sufficient internal controls to prevent unauthorized transactions. Interestingly, there were several enforcement actions charging issuer executives with providing false certifications, which are required by the Sarbanes-Oxley Act to be filed with each periodic report, and one case charging management with filing a false management report on the effectiveness of internal control over financial reporting.

Aside from internal controls, our review of the comment letter trends for technology companies shows continued focus on familiar areas such as revenue recognition, management's discussion and analysis, business combinations, impairments, income taxes, executive compensation disclosures, segments, and commitments and contingencies (see Figure 6).

What's new

In revenue specifically, we saw questions related to the accounting for multiple-element arrangements, an increased level of comments regarding service arrangements, and a continuation of the theme from last year about gross vs. net presentation. We explore all of these areas in greater detail in this publication.



Methodology

This study of comment letter trends was based on an analysis of comments posted on the SEC's EDGAR website from July 1, 2013 to June 30, 2014 (referred to as "2014") related to technology companies (domestic and foreign registrants reporting under U.S. GAAP) specific to their periodic filings on Forms 10-K, 10-Q, 20-F, 8-K and 6-K. The comparative periods referred to as 2013 and 2012 represent our analysis of comments posted on the SEC's EDGAR website from July 1, 2012 to June 30, 2013 and July 1, 2011 to June 30, 2012, respectively.

Each subsector includes the following SIC codes:

- Software & internet—7370, 7371, 7372, 7373, 7374, and 7389
- Computers & networking—3570, 3571, 3572, 3576, 3577, 3578, 3661, 3663, 3669, 3812, 3825, 3861, 4899, 5045, and 5065
- Semiconductors—3670, 3672, 3674, and 3679

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

Internal controls and procedures

The volume of comments related to internal control over financial reporting (ICFR) received by technology companies has more than tripled in the past year.

The SEC staff's comments have challenged registrants' conclusions regarding the existence or severity of internal control deficiencies.

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

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

2 We continue to question your evaluation of the deficiencies in ICFR and your determination that it was not reasonably possible that a material misstatement of your financial statements would not be prevented or detected on a timely basis as a result of certain control deficiencies.

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

Companies sometimes assess control deficiencies with a priority focus on the Control Activities component of COSO. It is important to evaluate the implications of

control deficiencies on all COSO components. The SEC staff has asked for additional information about the company's consideration of specific components within the COSO framework.

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

The SEC staff has also questioned registrants when there is no explicit conclusion about the effectiveness of DC&P or when management has concluded that ICFR is ineffective but DC&P is effective. Under Rule 13a-15(b) of the Exchange Act, management must evaluate the effectiveness of DC&P as of the end of each fiscal quarter. This evaluation includes assessing the controls and other procedures designed to ensure that information required to be disclosed by the registrant in its filings is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Item 307 of Regulation S-K requires disclosure of management's *conclusions* with respect to the effectiveness of DC&P. Furthermore, very few controls would not be included within the definition of DC&P but would be within the definition of ICFR – such as controls relating to safeguarding of assets. Therefore, it would be rare that a material weakness in ICFR would not also result in DC&P being considered ineffective.

5 In light of the ineffectiveness of your internal controls over financial reporting at June 30, 20X3 it is unclear to us how you determined that your disclosure controls and procedures were effective. Please explain.

6 Exchange Act Rule 13a-15(b) or 15d-15(b) requires that management evaluate, with the participation of the principal executive and principal financial officers, the effectiveness of disclosure controls and procedure as of the end of each fiscal quarter. Please revise to disclose that your principal executive and financial officer participated in the evaluation. Item 308(a) of Regulation S-K.

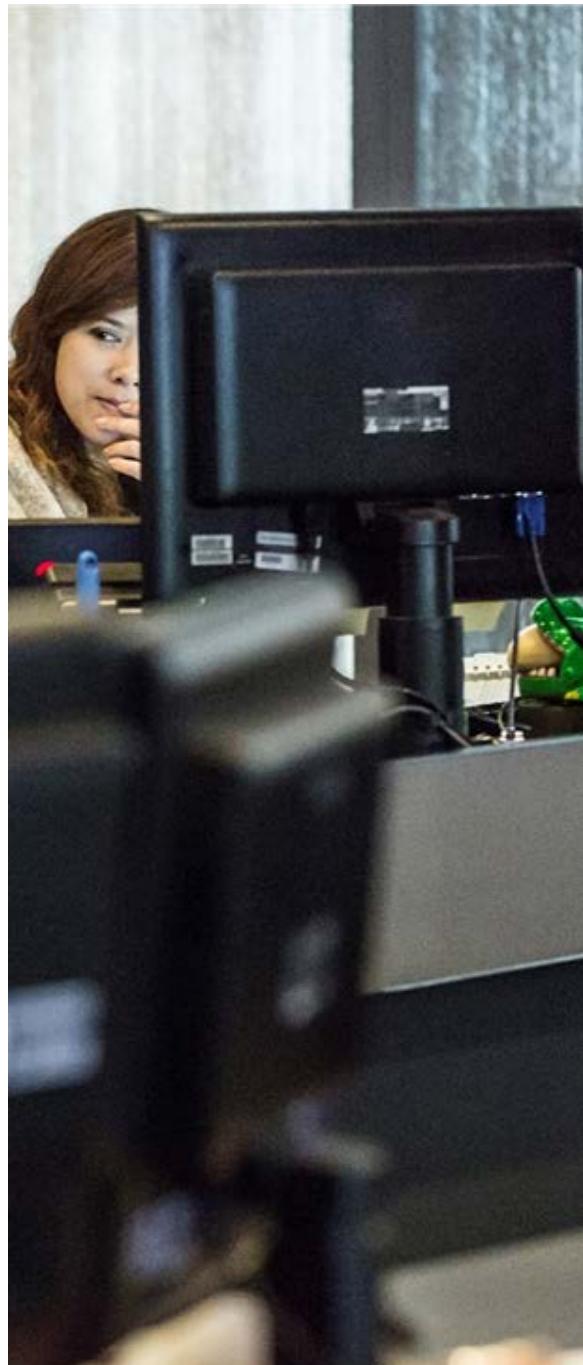
Internal controls and procedures

Item 308 of Regulation S-K requires registrants to disclose any change in the company's ICFR that has materially affected, or is reasonably likely to materially affect, the registrant's ICFR each quarter. Changes requiring disclosure include changes in internal control made in the process of remediating previously identified material weaknesses, as a result of the integration of significant acquisitions, or due to the implementation of new information technology systems. The SEC staff often looks to information contained in companies' current reports, on their websites, and in other sources to identify potential changes in ICFR. SEC staff comments in this area have focused on the timeliness and completeness of the disclosures in periodic filings.

7 We see you assessed your disclosure controls and procedures as of December 31, 20X2 as "not effective" due to the material weakness that resulted in the restatement of your financial statements. Subsequently, you conclude that as of March 31, 20X3, disclosures controls and procedures are effective and state that there have been no changes in internal control over financial reporting in the fiscal quarter ended March 31, 20X3. Please tell us how disclosure controls and procedures are now effective at March 31, 20X3 without any changes in internal control over financial reporting. Please also reconcile the statement that there were no changes in internal control over financial reporting in the quarter ended March 31, 20X3 with the disclosure of the remediation efforts to address the material weakness subsequent to year-end in your Form 10-K.

If a registrant has identified one or more material weaknesses in its internal control over financial reporting, the SEC staff may ask that the registrant include a risk factor (in accordance with Item 503(c) of Regulation S-K) to explain the potential adverse effects resulting from these circumstances and how it could impact the company's financial reporting, results of operations and market value.

8 In light of the disclosure regarding disclosure controls and procedures in your quarterly reports, please revise this section to provide a risk factor to alert investors to your ineffective controls and procedures. The risk factor should disclose all material risks resulting from these circumstances. In this regard, consider addressing the risk to the Company if it is unable to adequately correct any material weaknesses in its internal controls and procedures. Alternatively, if you have determined that a risk factor is unnecessary, tell us the basis for your conclusion.



Revenue recognition

Despite new revenue recognition rules on the horizon, the SEC staff has continued to issue comments in this area accounting for 8% of all comments received by technology companies.

Multiple-element arrangements

Technology companies often provide multiple products or services to their customers as part of a single arrangement. These deliverables may include software, hardware and services; can be delivered upfront or over a period of time; and may be labeled “free.” Given the complexities of the arrangements, it can sometimes be challenging to determine the most appropriate technical guidance to apply. For arrangements with multiple deliverables, Accounting Standards Codification (ASC) 605, *Revenue Recognition*, requires that companies allocate arrangement consideration among deliverables using its best estimate of selling price (BESP) when vendor-specific objective evidence (VSOE) or third-party evidence (TPE) of the selling price is not available. Registrants’ critical accounting estimates and judgments related to multiple-element arrangements continue to be among the most common revenue-related comments in the technology sector. They include questions about determining the appropriate units of accounting and the valuation techniques and assumptions used to arrive at their respective values, as well as the periods over which revenue should be recognized.

1 Tell us how your revenue recognition policy addresses your multiple-element arrangements, including the disclosures in ASC 605-25-50. Specifically, you should disclose the nature of and significant deliverables within your multiple-deliverable arrangements, the separate units of accounting, the general timing of delivery or performance of service for the deliverables within the arrangements, and the significant factors, inputs, assumptions, and methods used to determine selling price for each significant deliverable within these types of arrangements.

2 We note from your disclosure that you determine the selling price of your hardware products containing undelivered non-software services based upon VSOE, third-party evidence of selling price, or best estimate of the selling price using a hierarchy. Please tell us what consideration was given to disclosing significant factors, inputs, assumptions, and methods used to determine the selling price of each deliverable. Refer to ASC 605-25-50-2(e).

3 We note that you determine the fair value of each delivered and undelivered element using VSOE and allocate the total price among the various elements. You also disclose that you determine VSOE based on historical stand-alone sales to third parties provided that a substantial majority of the selling prices fall within a reasonably narrow pricing range. Please tell us for which elements in these arrangements you are able to establish VSOE. Further, tell us what you deem to be a substantial majority and a reasonably narrow pricing range. In addition, tell us how frequently you are unable to determine VSOE for the undelivered elements and therefore, how often you defer revenue.

Software revenue recognition

Software licensing arrangements and related questions regarding revenue recognition continue to present challenges to the preparers of financial statements. The primary accounting guidance is included in ASC 985-605, Software-Revenue Recognition. The SEC staff’s comments have been focused on the following areas:

More-than-incidental considerations: Determining whether a software element is more than incidental to the overall arrangement is a matter of judgment. The staff’s comments in this area have asked for an explanation of how the software and hardware components function together and for more transparent disclosure of the company’s accounting policy.

4 Please tell us whether you sell your non-software related products and services (i.e., hardware containing essential software) and your software products and services as part of a multi-element arrangement and if so, please tell us and revise your revenue recognition policy to disclose how you allocate revenue to the deliverables in these arrangements. Please refer to ASC 985-605-25-10(f).

Revenue recognition

VSOE: For arrangements accounted for under the software revenue recognition guidance, registrants must use VSOE to allocate the consideration among the multiple elements in an arrangement. The SEC staff frequently challenges companies about how they are able to determine VSOE and has requested enhanced disclosure to that effect in the financial statements.

5 Your disclosures indicated that you market and sell software tools that enable your customers to capture and customize content using your printers as well as reverse engineering and inspection software. Please clarify your disclosures that indicate the software is sold separately and is not part of a multiple-element arrangement. Please indicate whether customers also purchase post sale support (i.e., PCS). Describe the methodology and assumptions you use to establish VSOE of fair value for PCS in these arrangements. Further, tell us how you establish VSOE for software if customers also acquire PCS.

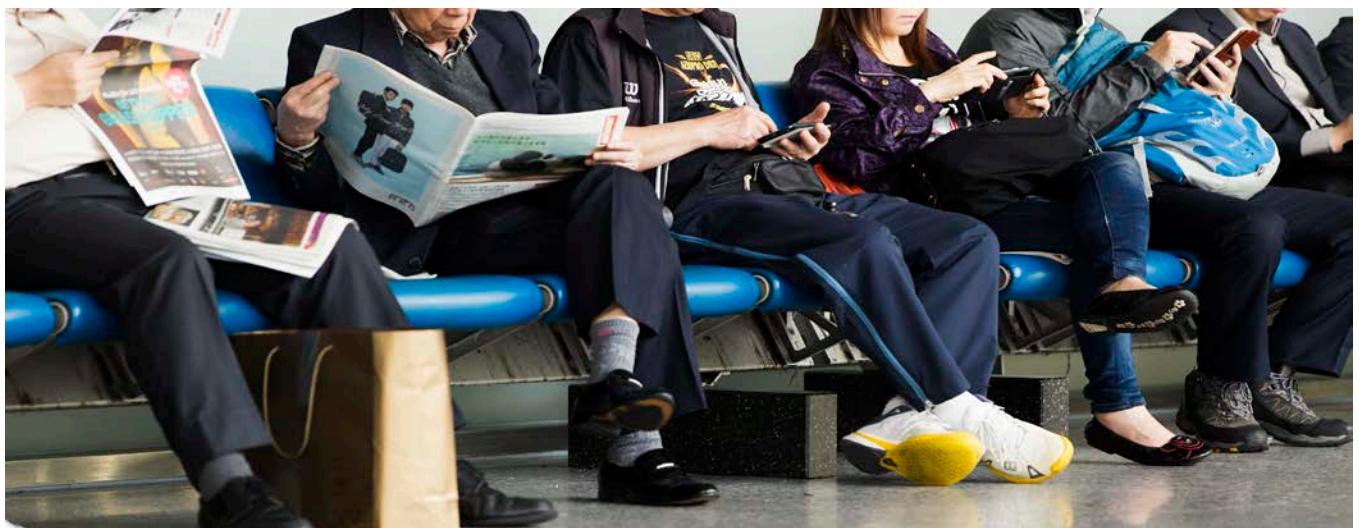
6 We note that you have established VSOE of fair value for your support services based on stated renewal prices paid by your customers when the services are sold on a standalone basis. Please tell us how you determined the renewal rates are substantive. In this regard, please provide the range of renewal rates and tell us what percentage of your customers actually renew at such rates. Please refer to ASC 985-605-25-67.

Services revenue: Revenue recognition for companies delivering services continues to be a challenging area. Whether the services revenue relates to software-as-a service arrangements, set-up fees, training, licenses, or customer support, the staff has raised questions about the timing of revenue recognition and whether the

service has stand-alone value in a multiple-element arrangement. In addition, comments focus on the appropriate period over which to recognize services revenue: the term of the contract or the estimated term of the customer relationship more broadly. The SEC staff has also inquired about whether companies capitalize or expense the costs associated with delivering the services. With the recent exposure draft issued by the FASB describing how *purchasers* of hosted computing services should evaluate whether such arrangements contain a software license that should be accounted for separately, we expect the focus on accounting for software-as-a-service in particular, for both the vendor and the purchaser, to continue.

7 We note that you offer set-up services associated with your cloud subscription services and that set-up fees are recognized ratably over the longer of the contract period or the estimated average life of the customer. Please tell us whether these services have stand-alone value. Also, please explain your basis for recognizing these services over the longer of the contract period or the estimated average life of the customer.

8 We note that in many situations, you enter into arrangements with customers to provide conversion and implementation services in addition to the processing services and you have determined that such services do not have standalone value. You further state that conversion or implementation services are recognized as the related processing services are performed. Please clarify whether you recognize the fees for such services over the term of the contract or over the estimated customer life and tell us how you considered the guidance in footnote 39 of SAB Topic 13.A.3(f) in accounting for such arrangements.



Revenue recognition

9 You indicate that you provide both on premise software and cloud-based offerings through the same agreement. Clarify whether you are accounting for the two offerings as a single multiple-element arrangement or as separate arrangements. Tell us how your revenue recognition policy addresses your multiple-element arrangements, including the disclosures in ASC 605-25-50. In addition, you should clarify the timing of revenue recognition for your cloud-based services accounted for as subscriptions.

10 Your disclosure indicates that you are capitalizing certain personnel and other costs related to the implementation of your solutions. Please expand your disclosure to clarify the nature of these costs. That is, explain why these costs should be capitalized. Cite the accounting literature that supports your accounting. Disclose how you analyze these costs to assess their recoverability and the frequency of this evaluation. Further, tell us how you assess impairment for these implementation costs. Please tell us your consideration of providing a schedule that shows the amount of implementation costs that will be recognized as expense in future years.

Revenue recognition in a virtual environment

Online gaming has been a rapidly growing segment of the technology industry. One of the key challenges in this area continues to be accounting for virtual goods and virtual currency, which was highlighted by the SEC staff during the 2012 AICPA National Conference on Current SEC and PCAOB Developments.

The SEC staff emphasized their expectation that companies provide clear and transparent disclosure about their accounting policies for recognizing revenue from the sale of virtual goods, including the related critical assumptions. Companies should be clear about whether they recognize revenue from the sale of virtual goods (for example, premium features) and currency over the life of the virtual goods, the average life of the gamer, or the term of the game itself, and how the chosen term best reflects the consumption of the virtual benefit. Additionally, the SEC staff has asked registrants to disclose more clearly the nature of premium features and how these features are being consumed by the gamers.

11 Please tell us how you determine the consumption dates for your consumable virtual goods and how you are able to differentiate revenue attributable to durable virtual goods from consumable virtual goods. Please explain how you determine the estimated average playing period for your durable virtual goods and tell us how you considered periods of inactivity in determining these periods. As part of your response, please tell us how you have sufficient historical experience to determine these periods, considering it appears

that you started entering into these arrangements during the fiscal year 20X2. Finally, please tell us what consideration you gave to disclosing the factors considered when determining the average playing period.

12 We note from your statements in the fourth quarter of 20X3 earnings call, that you are now receiving revenue from in-game purchases of virtual goods, both in front-line titles and in mobile and online titles. Please tell us what percentage of your revenue in fiscal year 20X3 was generated from such in-game purchases of virtual goods in total and by product platform, such as consoles compared to mobile and PC. Tell us how you account for in-game purchases and how that accounting may differ by platform. Also tell us your consideration for disclosing these amounts and the related accounting policies in future filings.

Other trends related to revenue recognition

Reseller arrangements: In addition to selling directly to end customers, registrants also sell their products through resellers, distributors, and channel partners. Such arrangements are typical for semiconductor companies that sell their products not only to original equipment manufacturers (OEMs) but also to electronic contract manufacturers (ECMs) and distributors.

Revenue may be recognized either upon the initial sale ("sell-in" model) or it may be deferred until the distributor resells the product to the end customer ("sell-through" model). The decision to use the "sell-in" model or the "sell-through" model depends on whether the selling price is fixed or determinable at the time of sale and whether collectability is reasonably assured. "Sell-in" arrangements typically include no or very limited price adjustments and price protection. Under "sell-through" arrangements, on the other hand, companies allow for significant return rights, price protection, and adjustments subsequent to the initial product shipment. As semiconductor companies face rapid product obsolescence and declining prices over the product life cycle, returns and pricing adjustment uncertainties increase, making it more challenging for companies to produce reliable estimates. In their comments, the SEC staff has requested that registrants disclose material arrangements with resellers, including the nature and extent of return rights and price protection privileges, and how these arrangements impact companies' revenue recognition policies.

Revenue recognition

13 Please tell us the factors used to determine that recognition of revenue for devices sold to your distributor is appropriate upon delivery to the distributor and not at a later time, such as upon delivery to the end consumer.

14 We note from your disclosures that you recognize revenue on sales to resellers at the time of sale when the reseller has economic substance apart from the company and you have completed your obligations related to the sale. Explain in greater detail how you recognize revenue generated through resellers and distributors. If revenue is recognized based on a sell-through model, tell us how you confirm that an end-user has purchased your product and the product has been delivered. Describe the type of evidence obtained from the reseller and the timeliness of this evidence. In addition, indicate whether there are any rights of return held by the reseller or end-user. If so, tell us how your accounting complies with ASC 605-15-25-1 and 3.

Gross vs. net: Registrants in the technology sector may act as intermediaries between other companies and end customers. For example, they could be fulfilling obligations to deliver IT equipment and parts, selling internet media

services on behalf of another company, or hosting game software on their platform. In these cases, registrants need to determine whether to present revenue on the gross or net basis, which requires analysis of the arrangement using criteria specified 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. SEC staff comments frequently ask for registrants' detailed analysis of the factors listed in the authoritative guidance and, while the ultimate conclusion is an area of significant management judgment, greater emphasis is placed on who is the primary obligor, who has the ability to set prices, and who bears inventory risk.

15 You disclose that revenue for digital marketing media sales is recorded based on the gross amount billed to the client as revenue when key indicators suggest the company acts as a principal. Please update us as to the amount of revenue recognized on a gross basis for digital marketing media sales for each period presented, if any. To the extent revenue recognized on a gross basis is material, please explain how you considered each of the factors presented in ASC 605-45 and determined that gross accounting was appropriate.



Management's discussion and analysis

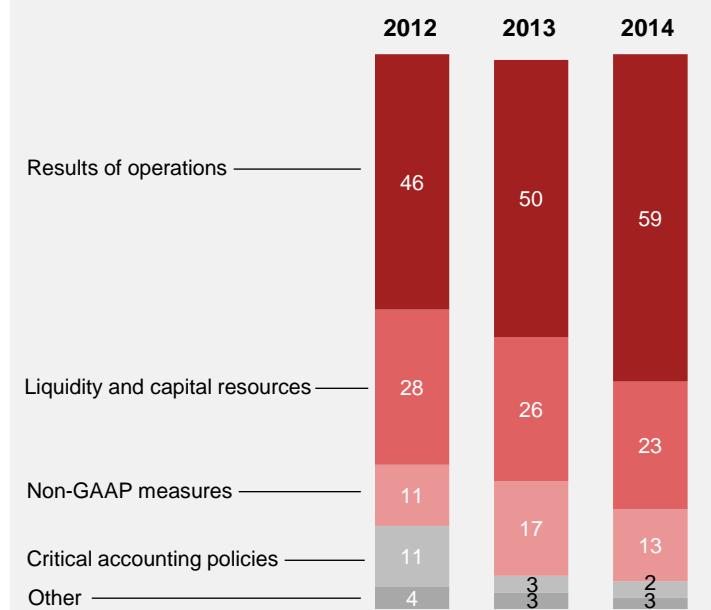
Management's discussion and analysis (MD&A) of financial condition and results of operations is a critical component of registrants' communications with investors.

The key objectives of MD&A are to provide a narrative explanation of the financial statements that enables investors to see the company through the eyes of management, to offer context to the financial statements, and to provide information that allows investors to assess the likelihood that past performance is indicative of future performance. We have found that the majority of SEC staff comments in this area are not aimed at meeting specific technical requirements but rather at enhancing the quality of disclosures to meet these objectives.

The requirements themselves are set forth in Item 303 of Regulation S-K, which identifies five categories of disclosure in MD&A: liquidity, capital resources, results of operations, off-balance-sheet arrangements, and contractual obligations. Additional guidance is also contained in Financial Reporting Release (FRR) 36 and FRR 72. More recently, following the release of its December 2013 Report on Review of Disclosure Requirements in Regulation S-K mandated by the JOBS Act, the SEC has indicated that the Division of Corporation Finance will pursue a project to develop recommendations focused on improving and streamlining disclosure requirements. While this project may result in reduced costs and burden on companies and eliminate duplicative disclosures in MD&A, its primary objective is to improve the quality and transparency of information provided to investors, which may lead to new disclosure requirements.

In the meantime, the comment letter process has reinforced the well-established MD&A objectives that disclosures should be: 1) transparent in providing relevant information, 2) tailored to the company's facts and circumstances, 3) consistent with the financial statements and other public communications, and 4) comprehensive in addressing the many business risks that exist in today's economic environment. Results of operations, liquidity and capital resources, and non-GAAP measures are the primary areas of MD&A that have received the most attention in SEC comment letters relative to these objectives.

Figure 7. Breakdown of MD&A comments by area, %



Results of operations

SEC staff comments have reminded registrants that the results of operations section should provide readers with a clear understanding of the significant components of revenues and expenses and events that have resulted in or are likely to cause a material change in the relationship between costs and revenues.

The SEC staff has frequently issued comments specifying 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. Increasingly, registrants are being challenged to quantify the impacts that such factors have had, especially when an account has been impacted by multiple factors. There are four primary themes of SEC staff comments in this area:

Management's discussion and analysis

Disclosing known trends: The SEC staff has asked registrants to disclose known trends affecting the business, in particular, 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 products or services 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.

1 Please explain why disclosing the number of unit shipments sold and average sales price for product X would not be material to an investor's understanding of your results. We note that your most recent Form 10-Q also excluded this information. It appears that this information could be analyzed on a sequential basis and would provide meaningful trend data.

2 Although we note your disclosure that the 20X2 revenue decrease was due to broad-based declines across all end markets, please better explain the reason for the significantly lower overall unit demand and lower average sales prices for your products during each of the years presented and through the first quarter 20X3. Please also indicate whether these trends are expected to continue. We note from analyst reports, for example, that your declining revenues and lower average sales prices for your products may be due to losing market share and commoditization of certain of your product lines. If true, please disclose in future filings, as applicable, these or any other known trends or uncertainties that have had or that you reasonably expect will have a material favorable or unfavorable impact on net sales, revenues or income from continuing operations. Please refer to Regulation S-K Item 303(a)(3)(iii).

Drivers behind fluctuations: Many comments relate to improving registrants' disclosures of significant fluctuations between periods, including pricing, volume, the impact of acquisitions, and currency movements. The SEC staff has asked for more detailed descriptions related to the specific factors driving such fluctuations and for registrants to quantify each significant factor separately, even when they net to an insignificant change overall.

3 When individual line items disclosed in your statements of operations significantly fluctuate in comparison to the comparable prior period, management should quantify and disclose the nature of each item that caused the significant change. For example, please quantify each material factor, i.e. such as price changes and/or volume changes, separately disclose the effect on operations attributable to each factor causing the aggregate change from year to year in your total revenues and disclose the nature of or reason for each factor causing the aggregate change. Your disclosures should discuss the underlying material causes of the factors described as well as the known or expected future impact of any referenced factors on operating results. Please revise future filings to incorporate the above comment to all of the disclosures herein related to the analysis of your results of operations. For further guidance, please refer to Item 303 and the related instructions in Regulation S-K as well as SEC Interpretive Release No. 34-48960 (December 19, 2003).

4 Total revenues materially increased period over period, yet your explanation for this material increase cites three factors that typically drive revenue at most businesses, and does not demonstrate the impact of new customers versus expanded sales to existing customers. In that regard, it is unclear why a quantitative breakdown is not meaningful, or material to an understanding of the key drivers of revenue during the periods presented.

Consistency of information: The SEC staff has been known to review 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 may question why such events are not also addressed in MD&A.

5 We note management's references to your bookings growth in your earnings calls for the fourth quarter of fiscal 20X2 and the first and second quarter of fiscal 20X3. In the second quarter 20X3 earnings call, management indicates that your success in booking larger deals is a key metric used in evaluating your business. Please tell us in your response letter how you calculate bookings, and tell us what consideration you gave to discussing metrics related to your bookings in your Management's Discussion and Analysis. Refer to Item 303(a) of Regulation S-K and Section III.B of SEC Release No. 33-8350.

Management's discussion and analysis

6 We note that the Chief Executive Officer noted in the Q4 20X3 earnings call and the Q1 20X4 earnings call that the mix of property under the contract with customer X has shifted to higher volume of lower value, smaller-size items, which require the company to rent more space, incur higher transportation and handling costs, and increase your staff size. We also note that the Chief Executive Officer notes that this is a structural change that is likely to maintain itself through the year. Given that your contract with customer X accounted for approximately 30%, 25%, and 25% of total revenue for the fiscal years 20X1, 20X2 and 20X3, respectively, please tell us what consideration you gave to discussing this trend under the overview of this section.

Segment discussion: SEC staff comments have 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.

7 Please tell us what consideration you gave to disclosing explanations for changes in your segment net revenues and direct costs. We refer you to Item 303(a) of Regulation S-K and Section III.F.1 of SEC Release No. 33-6835.

8 We note your proposed segment disclosures regarding your three reportable segments. However, the disclosures do not appear to be in a form consistent with the objective of providing investors an opportunity to look at the company through the eyes of management. If management has determined that they operate, manage, and evaluate the company in three major reportable segments, then the MD&A should separately analyze revenues, profitability, and the cash needs of these reportable segments. Please explain whether the current presentation of the Results of Operations is consistent with the company's internal management report, and whether or not a more detailed presentation and discussion by reportable segment would be necessary for a comprehensive understanding of the business.

Liquidity and capital resources

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

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.

9 Please revise your disclosure to discuss any known trends, demands, or uncertainties that will result in your liquidity increasing or decreasing in any material way and indicate the course of action you have taken or propose to take to remedy any material liquidity deficiency. In doing so, please discuss your lines of credit and other debt obligations, your ability to continue as a going concern, your ability to generate cash flows necessary to meet your obligations as they become due and your ability to raise additional debt and or equity financing. Please refer to Item 303(a)(1) of Regulation S-K.

10 Please expand this section to discuss known material trends and uncertainties that will have, or are reasonably likely to have, a material impact on your revenues or income or result in your liquidity decreasing or increasing in any material way. For example, we note that your most recent Form 10-Q for the quarter ended March 31, 20X3 discusses that cash provided by operating activities from continuing operations for the six months ended March 31, 20X3 declined \$30 million compared with the same period in fiscal year 20X2. We note that you explain the reason for this decline is due to payment delays. In future filings, please discuss whether you expect that trend to continue. Please provide additional analysis concerning the quality and variability of your earnings and cash flows so that investors can ascertain the likelihood or the extent past performance is indicative of future performance. See Item 303 of Regulation S-K and SEC Release No. 33-8350.



Management's discussion and analysis

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 violation with regard to covenant compliance, registrants should provide a detailed description of the covenants, the target and actual covenant measures for the most recent reporting period, and an indication of the sensitivity of those measurements, if applicable. Other items potentially impacting the availability of credit should also be made clear, including limitations on the ability to draw on existing lines of credit, or other borrowing limitations.

11 We noted that your credit facility is approximately 70% of total liabilities. Please disclose the amount of each financial covenant based on the terms of your credit facility and the actual amount based on your financial statements for the current and prior fiscal years. In addition, discuss the reasonably likely effects of non-compliance with the covenants on your financial condition and liquidity.

12 Your discussion regarding debt covenants appears to be limited to your Credit Facility. However, based on the disclosures included in your Form 8-K, it appears that your Senior Notes also contain certain covenants that, among other things, may restrict your ability to incur additional debt, pay dividends, sell assets, redeem or repurchase capital stock, create liens or engage in sale and leaseback transactions, etc. Please tell us your consideration to include a discussion of these debt covenants as well as any covenants included in your other debt issuances (i.e., Convertible debentures). Also, please confirm that at September 30, 20X2 you were, and continue to be, in compliance with the covenants included in all your debt issuances. Also, consider disclosing the specific terms of your debt covenants such as significant required ratios as compared to the actual ratios for each reporting date. We refer you to Sections I.D and IV.C of Release No. 33-8350.

Stranded cash: For companies with foreign operations, the SEC staff has focused on the registrant's ability to repatriate cash to the United States in order to meet significant upcoming obligations, such as debt repayments or mandatory pension contributions. Comments have focused on the relationship between liquidity needs and the income tax assertion about management's intent to permanently reinvest 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, that would be recorded if cash were to be repatriated. This is also a common topic in SEC staff comments related to income taxes.

13 Tell us your consideration of providing liquidity disclosures to discuss the potential tax impact associated with the repatriation of undistributed earnings of foreign subsidiaries. In this regard, consider disclosing the amount of cash and investments that are currently held by your foreign subsidiaries and disclose the impact of repatriating the undistributed earnings of foreign subsidiaries. We refer you to Item 303(a)(1) of Regulation S-K and Section IV of SEC Release 33-8350.

Cash flow analysis: One of the common criticisms in the liquidity analysis is that registrants simply repeat information readily found on the face of the statement of cash flows. Instead, registrants should disclose the underlying factors driving changes in operating assets and liabilities and the related cash flows.

14 Please revise your disclosure 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. Refer to Section IV of our Release 33-8350.

15 The disclosures in this section do not appear to address changes in your balance sheet that materially affected your operating cash flows. For example, we note that accrued expenses and other current and long-term liabilities and prepaids and other current assets increased significantly from December 31, 20X1, however, the reasons for such increases are not evident from your disclosures. Tell us how you considered disclosing the underlying reasons for material changes in your operating cash flows to better explain the variability in your cash flows. We refer you to Section IV of SEC Release No. 33-8350 for guidance.

16 In future filings, please revise your disclosures to focus on the primary drivers of and other material factors necessary to an understanding of your cash flows and the indicative value of historical cash flows. As an example, please consider revising to disclose the day's sales outstanding ("DSO") at each balance sheet date and the impact it has on your cash flows. We refer you to Section IV.B of SEC Interpretive Release 33-8350.

Management's discussion and analysis

Non-GAAP measures

Companies often supplement their GAAP financial reporting with non-GAAP information that is intended to provide additional insight into the financial performance or liquidity of the business. A non-GAAP financial measure is a numerical measure that adjusts the most directly comparable measure determined in accordance with GAAP. Common non-GAAP financial measures in the technology industry include earnings before interest, taxes, depreciation and amortization (EBITDA), adjusted EBITDA, free cash flow, adjusted earnings and adjusted earnings per share. For more information about these frequently used non-GAAP measures and the most common adjustments refer to our recent publication: *Stay informed: 2014 technology financial reporting trends*.

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

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

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

Regulation G requires a similar reconciliation between the non-GAAP measure and the most comparable financial measure calculated in accordance with GAAP, and is applicable to all public disclosures of non-GAAP measures. Such reconciliation is required for historical periods for which non-GAAP measures are presented as well as for forward-looking non-GAAP information if available without unreasonable effort.

SEC staff comments related to the use of non-GAAP financial measures have been centered on the following themes:

- Use of terminology that implies a non-GAAP measure is a standard measure, e.g., a measure that includes adjustments to the standard definition of EBITDA should not be labeled "EBITDA"
- Inappropriate use of a non-GAAP measure that excludes normal cash expenses necessary to operate the business, e.g., advertising costs or salaries
- Giving greater prominence to non-GAAP results over GAAP results
- Presentation of a full non-GAAP statement of operations
- Incorrectly describing items excluded from a non-GAAP measure as "non-cash" when they require cash payment or "non-recurring" when they are repeated for two or more years.



Management's discussion and analysis

17 We note that the measure you have presented as EBITDA appears to exclude items, such as stock compensation expense and acquisition costs, that are not contemplated in Exchange Act Release No. 47226. Please rename this measure Adjusted EBITDA or another appropriate name. Refer to Question 103.01 of our Compliance and Disclosure Interpretation related to non-GAAP financial measures.

18 We note your discussion of the non-GAAP measure free cash flow in your fourth quarter 20X2 earnings call; however, we are unable to locate the reconciliation of this non-GAAP measure to the most comparable GAAP measure on your website or in your earnings release. Please tell us your consideration for including a reconciliation of this non-GAAP measure in accordance with the guidance in Item 100 of Regulation G.

19 The discussion under First Quarter Financials appears to focus on the non-GAAP financial measures adjusted gross margin and free cash flow rather than the GAAP measures. In future filings, please discuss the most directly comparable financial measure determined in accordance with GAAP with equal or greater prominence than the non-GAAP measure. Refer to Item 10(e)(1)(i) of Regulation S-K, as required by Item 2.02 of Form 8-K.

20 We note that you exclude pension settlement and mark-to-market adjustments from Adjusted EBITDA and that this adjustment is described as "non-cash". As this adjustment appears to include items that were settled in cash, we do not believe it is appropriate to characterize it as "non-cash."

21 We note that you present the non-GAAP information and the related reconciliation required by S-K Item 10(e) in the form of non-GAAP statements of operations. Please tell us how your presentation considers the guidance set forth in Compliance and Disclosure Interpretation 102.10. Under the cited guidance, it is generally not appropriate to present a non-GAAP income statement for purposes of reconciling non-GAAP measures to the most directly comparable GAAP measures.

22 We note you disclose a number of forward-looking non-GAAP measures, including non-GAAP gross profit margin and non-GAAP tax rate. Regulation G requires that you provide a reconciliation of the forward-looking non-GAAP measures to the appropriate forward-looking GAAP measure. If the forward-looking GAAP measure is not accessible, you are required to disclose that fact and provide reconciling information that is available without an unreasonable effort. Further, you must identify the information that is unavailable and disclose its probable significance. Please revise future filings to provide the information required by Regulation G.



Compensation

Accounting and disclosures for compensation arrangements require significant judgments related to key inputs and assumptions.

Stock-based compensation plans are prevalent in today's business world. The accounting guidance requires detailed disclosures of the methodologies used to determine the assumptions underlying option pricing models used to estimate the fair value of share-based compensation awards, which in turn drives significant expense charges in the income statement.

1

We note that you use the Black-Scholes option-pricing model in determining the fair value of your option grants. Please revise future filings to disclose your methodologies for determining the significant assumptions in your Black-Scholes model or tell us why no revision to future filings is necessary. Refer to FASB ASC 718-10-50-2(f)(2).

The accounting guidance provides for certain accommodations in those circumstances where a company does not have sufficient reliable historical data of its own. For example, to estimate the expected term for "plain vanilla" options, management can use a simplified approach, which takes the mid-point between the vesting date and contractual expiration date in lieu of the actual experience of the company with its own employees exercising stock options. Also, a newly public company typically does not have robust information about the volatility of its own stock price. In that case, management is allowed to use the volatility of a peer group instead. These accommodations are expected to be used for a limited time. After accumulating sufficient historical experience, a company should not rely solely on peer information for the volatility assumption or use the simplified method for the expected term assumption. While there is no bright line as to what constitutes sufficient company-specific historical experience, based on comments issued by the SEC staff to registrants, that period should generally not exceed three years.

2

We note your disclosure that you use the simplified method to estimate the expected term of your stock options. Considering the extent of exercise activity since your initial public offering, please explain to us why you continue to believe that it is appropriate to use the simplified method rather than using historical information. Also tell us when management expects that sufficient historical information will be available. Refer to Question 6 of SAB Topic 14.D.2.



Item 402 of Regulation S-K requires extensive disclosures related to executive compensation in 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. Comment letters issued by the SEC staff in the past year have focused on how registrants determine amounts awarded to executive officers. While registrants may disclose the data points used, such as peer group or salary survey data, the SEC staff has criticized registrants for generic disclosures in this area. In many cases, comment letters have requested that registrants explain how specific awards to each executive officer were determined.

Compensation

Comment letters issued by the SEC staff have also required that registrants disclose the specific performance targets and thresholds that employees must achieve in order to earn their compensation awards. Some registrants have claimed “competitive harm” if such disclosures are made; however, the SEC staff remain skeptical, especially when such information is based on actual company results and the performance target is disclosed after the fiscal year has ended.

3 You state that you make periodic adjustments to the base salaries of your named executive officers based on individual performance and contributions, market trends, competitive position and your financial situation. However, your disclosure fails to provide investors with meaningful information regarding how you set base salaries in fiscal 2012 based on each officer’s performance against the factors identified. In future filings, please disclose how you chose to set salaries based on these factors for the respective fiscal year. Please refer to Item 402(b)(iv) and (v) of Regulation S-K.

4 It appears that you have not disclosed your corporate targets in reliance on Instruction 4 to Item 402(b) of Regulation S-K. These targets are based on GAAP revenue and Adjusted EBITDA, company-wide financial results publicly disclosed in your annual report. It is unclear how disclosure of these targets, after you have already disclosed GAAP revenue and Adjusted EBITDA for fiscal 20X2, will result in competitive harm. Please advise.

5 Your discussion of the various elements of compensation does not explain how the actual amounts paid to each named executive officer compare to the benchmarks used in setting such compensation, nor does it address the reasons for any material variations where actual payments were above or below the benchmark. Please provide this information as it applies to 2012 compensation in your response and confirm that you will expand your disclosure in future filings as applicable.



Impairments

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

Goodwill and indefinite-lived intangible assets

SEC staff comments during the 2014 comment letter cycle reflect themes similar to prior years. For example, the staff has requested additional details about the goodwill and indefinite-lived intangible asset impairment tests performed. For reporting units whose fair values are not substantially in excess of their carrying amounts ("at risk" reporting units), the SEC staff has asked registrants to disclose:

- 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
- The amount of goodwill allocated to the reporting unit
- A description of the methods and key assumptions used in the impairment assessment and how they were determined
- A discussion of the degree of uncertainty associated with key assumptions
- A description of potential events and circumstances that could have a negative effect on the reporting unit's fair value

This request for disclosure is consistent with guidance outlined in the Division of Corporation Finance Financial Reporting Manual Section 9510.3.

The SEC staff has challenged whether companies have recognized impairment charges in the appropriate period. 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.

1 To the extent each of your reporting unit's estimated fair value is not substantially in excess of the carrying value and is potentially at risk of failing step one of your goodwill impairment analysis, please tell us and disclose the following: the percentage by which the fair value of the reporting unit exceeded the carrying value as of the date of the most recent test; discuss the degree of uncertainty associated with the key assumptions; and describe the potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions used in determining fair value; If you have determined that the estimated fair value substantially exceeds the carrying value for your reporting unit, please disclose this determination.

2 Your response indicates that if the excess fair value over the carrying value falls below 10% of its carrying value that you will determine whether additional disclosure is appropriate. Please tell us how you determined that 10% was substantially in excess and therefore not at risk of failing step one of the impairment test. In this regard, we note that we do not believe that 10% is substantially in excess.

3 We note that you disclosed that certain indicators of impairment were present, as evidenced by a sustained decrease in your stock price during the third quarter resulting in a market capitalization significantly below the carrying value of your net equity and a lower than planned rate of revenue growth to-date for your online publishing segment. Please explain why these indicators were not present during your first and second quarterly filings. Indicate whether those filings discussed and analyzed the possibility of an impairment assessment (i.e., a known trend or uncertainty). We refer you to Item 303(a)(3) of Regulation S-K.

4 In light of your significant losses and negative cash flows from operations in each of the last three fiscal years, it is unclear why your Trademark intangible asset is not impaired. Please advise us and tell us if you tested this asset for recoverability in accordance with the guidance in ASC 360-10-35-21. Also please explain to us, in detail, your methodology and assumptions when measuring for impairment loss. Refer to the guidance in ASC 360-10-35-17.

Impairments

Long-lived assets

While the staff has continued to scrutinize the timing and recording of impairment charges for goodwill and other indefinite-lived intangible assets, the focus on other long-lived assets has been on registrants' determination of the estimated useful lives of such assets. When a registrant has changed the estimated useful life of a long-lived asset, the SEC staff has requested a more robust discussion about how the company evaluated the remaining useful life. In addition, when the change in the estimated useful life of an asset has a material effect on the financial statements, registrants should consider including the disclosures required by ASC 250-10-50-4.

We note that you experienced significant operating and cash flow losses during the year ended

December 31, 20X2, which you cite as an indicator of impairment. Please clarify for us whether you performed an assessment of the recoverability of your long-lived assets in 20X2. If so, please provide us with details regarding your assessment, including significant assumptions utilized in the determination of the fair value of your long-lived assets and a summary of the information you considered that supports the recoverability of your long-lived assets at December 31, 20X2. If you did not perform an assessment of the recoverability of your long-lived assets in 20X2, please explain to us your basis for concluding that you did not need to perform such analysis.

We note that during 20X2 you changed your estimate of the useful life of your computer equipment and hardware assets from 3 years to 4 years. Please tell us the impact this change had on your financial statements and your consideration for the disclosure requirements in ASC 250-10-50-4.



Income tax

As technology companies continue to expand globally, questions related to foreign taxes continue to increase.

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

Income tax provision disclosures: Comments frequently ask registrants to enhance their disclosure of how the results of operations are impacted by having proportionally higher or lower earnings in jurisdictions with different tax rates and the extent to which foreign effective tax rates differ from the domestic rate. In addition, the SEC staff's comments remind registrants that they should disclose the breakdown of pre-tax income or loss between domestic and foreign.

1 Please revise future filings to disclose the components of income (loss) before income tax expense (benefit) as either domestic or foreign. Refer to Rule 4-08(h) of Regulation S-X.

2 We note the significance of the foreign tax rate differential as disclosed on the statutory rate reconciliation. In light of the increasingly significant impact of lower taxes on foreign earnings to your operating results, please consider describing the relationship between foreign pre-tax income and the foreign effective tax rate in greater detail in future filings. It appears as though separately discussing the foreign effective income tax rate is important information material to an understanding of your results of operations. Please also consider disclosing information about the specific jurisdictions that materially affect your effective tax rate. We refer you to Item 303(a)(3)(i) of Regulation S-K and Section III.B of SEC Release 33-8350. Tell us how you plan to address this comment.

3 We refer to your statutory federal income tax rate reconciliation. We note the reconciling item of True ups and other adjustments of 14% in the rate reconciliation. Please tell us and disclose the nature of this reconciling item.

4 We note the significance of the benefit from foreign income taxed at other than U.S. rates as disclosed in the income tax rate reconciliation. We also note the significant difference between the U.S. statutory rate and your

foreign effective tax rate. In light of the significant impact of lower taxes on foreign earnings to your operating results, in future filings please explain the relationship between foreign pre-tax income and the foreign effective tax rate in greater detail. In that regard, please disclose the foreign effective tax rate, with accompanying description of the primary jurisdictions where your foreign income is earned for tax purposes and the statutory rates and incentives in those jurisdictions. It appears that separately discussing the foreign effective income tax rate is important information material to an understanding of your results of operations. Refer to Item 303(a)(3)(i) of Regulation S-K and Section III.B of SEC Release 33-8350.

Valuation allowances: The SEC staff continued to scrutinize registrants' assessments of the realizability of deferred tax assets. These assessments involve significant judgment. In comment letters, the SEC staff asked registrants to explain the nature and weight of the positive and negative evidence considered. When significant changes occurred in the realizability of deferred tax assets, comments often requested registrants to explain the circumstances that lead to the change in the valuation allowance and to justify the timing of when the charge or reversal was recorded (i.e., why now or why not last quarter or year). When changes in circumstances impacting the realizability of net deferred tax assets can be anticipated, registrants should consider foreshadowing disclosures in periods preceding the change.

5 We note from your disclosure that you have not recognized a valuation allowance against the deferred tax assets associated with the U.S. component's net operating losses. We also note that the U.S. component has incurred pre-tax losses for the years ended December 31, 20X2, 20X1 and 20X0. Please tell us the factors that led you to conclude that it is more likely than not that you will be able to generate enough taxable income to utilize the respective net operating losses and that a valuation allowance was not necessary. In your response please describe, in reasonable detail, the nature of the positive and negative evidence that you considered when assessing the likelihood of realizing the deferred tax assets and indicate how the positive and negative evidence was weighted. Refer to paragraphs 16 through 23 of ASC 740-10-30.

Income tax

6 We note you released your valuation allowance during fiscal 2012 as you determined that a recent three-year period of cumulative profitability and your business plan showing continued profitability provided assurance it was more likely than not that your future tax benefits would be realized. Please tell us if you also had three years of cumulative profitability as of the end of fiscal 20X1, and if so, how you considered this in your determination of the valuation allowance as of that date. Further, we note that it appears your U.S. operations had a pretax loss adjusted for permanent differences in fiscal year 20X2. Tell us how you considered the amount and trend of this loss in projecting your future.

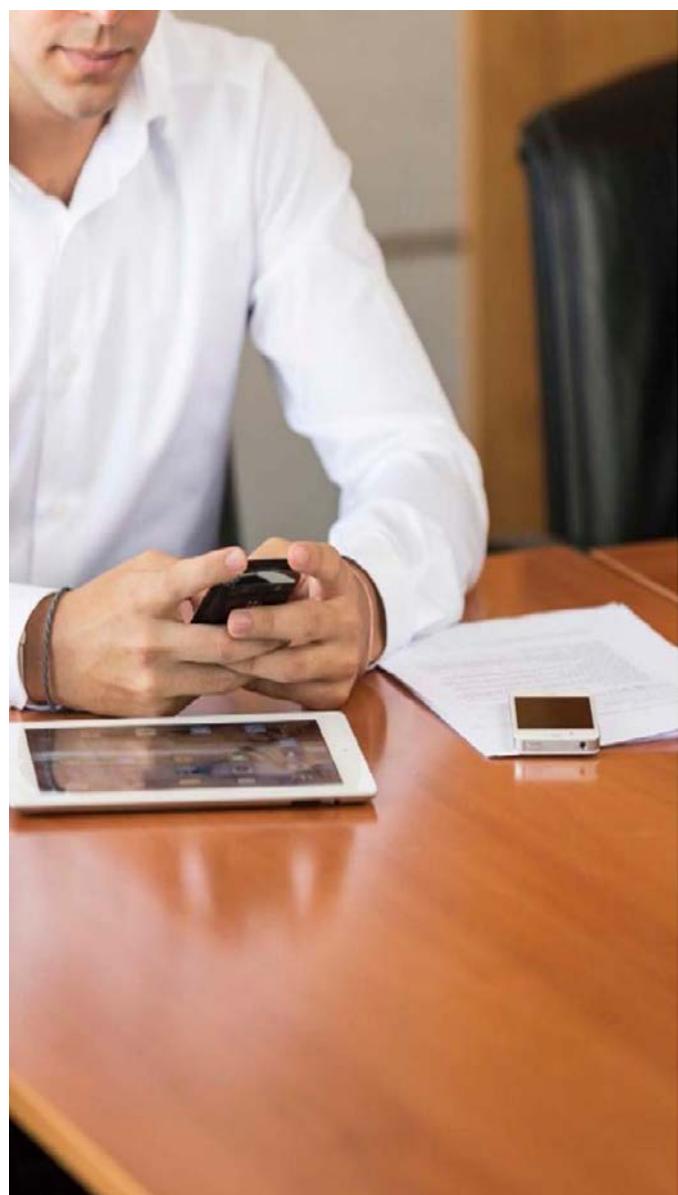
Indefinite reinvestment assertion and related liquidity disclosures:

If a registrant determines that its foreign earnings will be indefinitely reinvested outside of the U.S., it does not have to record a deferred income tax liability related to bringing back these earnings. The SEC staff has frequently asked registrants to explain the factors supporting their indefinite reinvestment assertion, including a description of their plans in each foreign jurisdiction and consideration of significant upcoming domestic liquidity needs. In addition, the SEC staff reminded registrants that 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.

The interplay between a registrant's indefinite reinvestment assertion and liquidity has continued to be an area of SEC staff comment. Registrants have been asked to disclose the amount of cash and cash equivalents in jurisdictions with an indefinite reinvestment assertion, the estimated tax consequence of potential repatriation, and a description of events that may cause such foreign earnings to become taxable. The SEC staff has indicated that highlighting the amount of cash that may not be available to fund domestic operations or obligations without paying a significant amount of taxes upon repatriation is an important element of transparent liquidity disclosures.

7 We note that you have not provided deferred taxes on unremitted earnings attributable to foreign subsidiaries because these earnings are intended to be permanently reinvested outside the United States. Please tell us what consideration you gave to disclosing the amount of unrecognized deferred tax liability, if practicable, or a statement that such determination is not practicable. We refer you to ASC 740-30-50-2(c).

8 We note from your response that you considered various factors in accordance with ASC 740-30-05-4 when evaluating the criteria for indefinite reinvestment under ASC 740-30-25-17. Please explain, in detail, how each factor was considered in overcoming the presumption that all undistributed earnings will be transferred to the parent. Also, please describe to us, in detail, the company's specific plans for reinvestment of your undistributed foreign earnings.



Loss contingencies

To keep investors apprised of material developments associated with the nature, timing and amount of a loss contingency, such details should generally not be disclosed for the first time in the period in which a liability is recorded.

Accounting guidance requires companies to record an accrual for a loss contingency when it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Even if the criteria for accrual have not been met, disclosure may still be required if the loss is reasonably possible. For loss contingencies that meet the criteria for disclosure, registrants should disclose the nature of the contingency and an estimate of the possible loss or range of loss (or a statement that such estimate cannot be made). Some registrants may not be forthcoming with these disclosures for fear that they may divulge information that could adversely affect the outcome of litigation. To that end, the SEC staff has indicated that they will accept disclosure of estimated exposure on an aggregated basis, rather than requiring separate disclosure for each individual matter.

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

1 In a related matter, we note disclosures in this note that you are party to a suit filed by Company X. FASB ASC 450 requires disclosure of the amount or range of reasonably possible loss as that term is defined in the standard. Please revise future filings to disclose an estimate of the reasonably possible loss or range of loss for the referenced



contingency. If such an estimate cannot be made, you should include disclosures in future filings that specifically refer to your inability to estimate the reasonably possible loss or range of loss. Please refer to FASB ASC 450-20-50.

2 You announced that you had settled a lawsuit brought by Company X for alleged patent infringement. Supplementally tell us the amount and terms of the settlement agreement, any amounts accrued, the periods in which they were recognized, and the timeline of the negotiations with Company X that led to the settlement agreement. Also, tell us whether you considered including a discussion regarding this matter in your MD&A disclosures and advise why you did not disclose the settlement agreement in a Form 8-K.

3 Please explain to us the facts and circumstances which resulted in the litigation being settled in December 20X3 and why no amounts had previously been accrued for the litigation. Additionally, in Management's Discussion and Analysis in future filings, please disclose the actual and expected impact this settlement had and will have on your trends in legal and licensing expenses. Refer to Item 303(a)(3) of Regulation S-K.

Segments

The purpose of segment disclosures is to provide investors the ability to see the company through the eyes of management.

Segment reporting 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.

Segment reporting continues to be a hot topic for comment letters across all industries, including the technology industry. The most common comments issued by the SEC staff have been on the proper identification of operating segments and the aggregation of operating segments into reportable segments. It is not unusual for the SEC staff to request documentation supporting the registrant's identification of operating segments. 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). It is important to remember that the SEC staff reviews publicly available information for consistency between segment disclosures and the types of other information provided to the public. For example, the SEC staff may listen to a registrant's earnings calls, read press releases and investor presentations and review information on a company's website to identify inconsistencies.

The SEC staff has also challenged registrants to explain how the operating segments meet the "economic similarities" criterion for purposes of aggregation. Comment letters may request information from registrants to demonstrate that the operating segments exhibit similar long-term financial performance, sometimes requesting an analysis of the historical gross margins for each operating segment.

As it relates to enterprise-wide disclosures, registrants may receive comments about disclosing revenue by product or service or by groups of similar products or services. These questions are usually based on the way management describes the registrant's business or discusses the results of operations in MD&A.

The FASB and SEC have both suggested that segment reporting guidance may warrant updating given changes in technology and how information can be accessed and used. Until and unless changes are made, registrants should assess their segments based on the existing standard, and continually reassess their segment conclusions, especially when there is a change in the registrant's business and management reporting structure.

1

We note you indicate that you have one reportable segment. Given your recent acquisitions and changes in the mix of revenue, tell us what consideration you gave to the existence of more than one reportable segment, such as based on pricing model, seller mix, or geography. Refer to ASC 280-10-50.



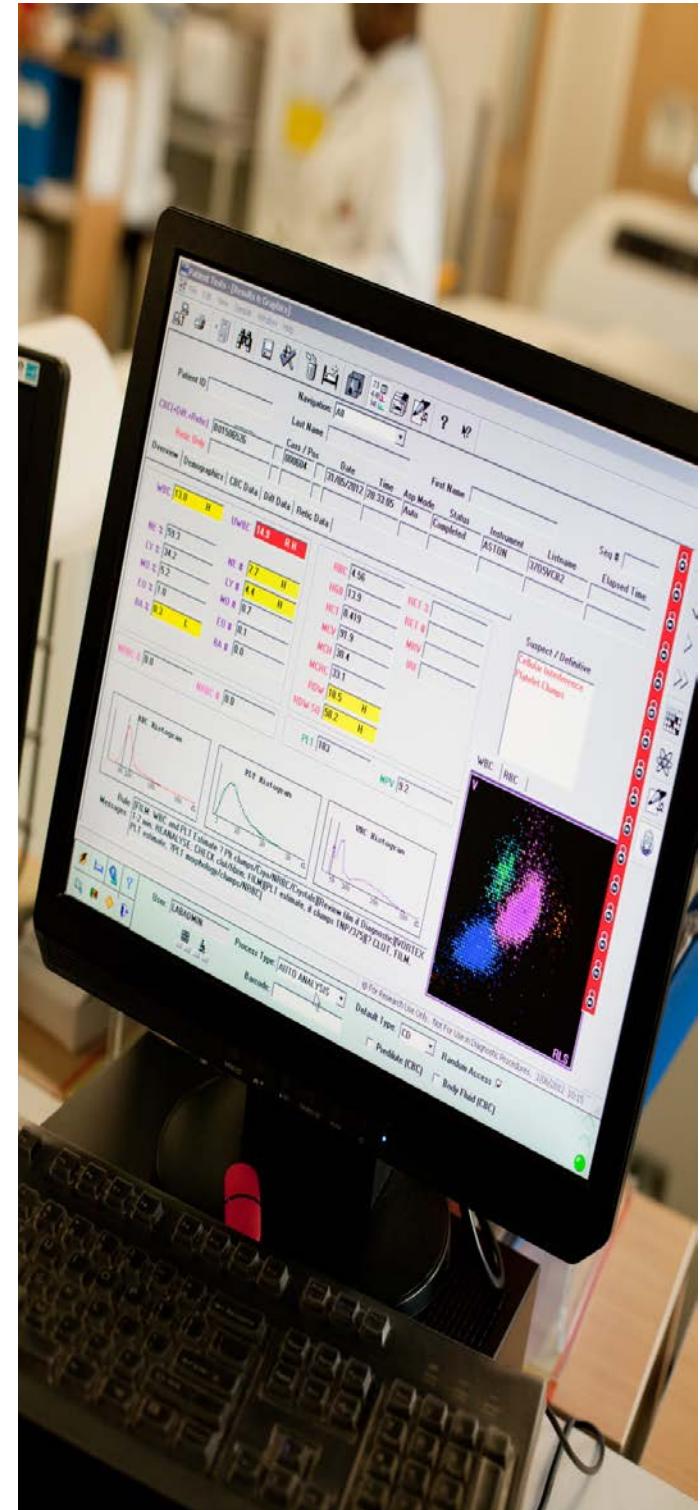
Segments

2 We note that you provide revenue information in your earnings conference calls and investor presentations related to your three industry verticals. Please refer to ASC 280-10-50 and provide us with the following information with respect to your organization and business units as it relates to your industry vertical markets: Describe for us the company's internal management reporting process, including organization and reporting structure; Identify any segment managers; Describe how resources are allocated and performance is evaluated throughout your organization and for the vertical market focus areas; and Describe for us the internal management reports, including the level of detail of financial information gathered and reviewed for your different vertical markets.

3 We note you have concluded you have one reportable segment that results from the aggregation of five operating segments. Please provide us with a detailed analysis supporting your conclusion that aggregation of the five operating segments is appropriate. Specifically, provide us with your quantitative analysis of whether the operating segments have similar economic characteristics. Refer to FASB ASC 280-10-50-11.

4 Provide us with representative copies of the package of information regularly provided to your CODM and Board of Directors.

5 We see from your Business description in Item 1, Management's Discussion and Analysis in Item 7, and your earnings calls that you identify various product lines in connection with the description of your operations and segments. Please tell us how you evaluated the guidance from ASC 280-10-50-40 in assessing whether the notes to your financial statements should include disclosure about revenues from product lines.



Business combinations and variable interest entities

As technology companies continue to seek growth opportunities through acquisitions, the SEC staff continues to comment on acquisition accounting and disclosure items.

Merger and acquisition activity in the technology industry has been on the upswing over the past couple of years, driven by new highs in the U.S. equity markets, increased venture capital investments, positive interest rate environment and modest optimism about the U.S. economy. Software & internet companies are looking to get ahead through inorganic growth in that subsector's fast-paced race, while the semiconductor subsector, which has been experiencing pricing pressures, is focused on consolidation aimed at realizing cost and other synergies. Acquisition-related accounting and disclosure requirements can be complex and vary based on the deal terms and the nature of the assets acquired and liabilities assumed.

Business combinations: ASC 805, Business Combinations, requires extensive disclosures to enable users to evaluate the nature and financial effects of a business combination. Companies 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 technology industry, the SEC staff comments have focused on both the accounting and the disclosure requirements including:

- How fair value was determined and the key assumptions used
- How goodwill was allocated to reporting units and the interplay with the company's reportable segment disclosures

Pro forma and actual revenue and earnings information for acquisitions that were material individually or in the aggregate.

1 We note goodwill was 60% of the purchase price in the Company X Transaction. In that regard, please explain to us and disclose how you determined the purchase price allocations, including the details of your valuation methodologies and key assumptions used in determining the fair values of the various assets acquired and liabilities assumed. Specifically address each identifiable intangible asset recognized. Please provide the basis for the assumptions and valuation methodologies used. Tell us whether recent sales of similar types of transactions were used to value or justify any internal derived valuation or whether you engaged the services of an independent valuation firm to assist with the valuations.

2 We note that the acquisition of Company X resulted in the recognition of approximately \$13 million in goodwill. Please tell us whether or not you have identified more than one reporting unit to which acquired assets that is, including goodwill will be assigned. If so, please also tell us the specific reporting unit(s) to which you plan to assign the goodwill, as well as the acquired developed technology, attributable to this acquisition.

3 Additionally, tell us how you considered the requirements of ASC 805-10-50-2-h to disclose the revenue and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period (supplemental pro forma information). Additionally, the nature and amount of any material, nonrecurring pro forma adjustments directly attributable to the business combination(s) included in the reported pro forma revenue and earnings (supplemental pro forma information) should be disclosed. Please provide us with this information in your response.

4 We note that in connection with your acquisition of Company X you furnished audited financial information and unaudited pro forma information in your Form 8-K. Please provide us with your calculation of significance under Rule 3-05(b)(2) of Regulation S-X and clearly explain how you concluded that two years of financial statements were required to be furnished.

Business combinations and variable interest entities

Variable Interest Entities (VIEs): Accounting guidance requires that a reporting entity consolidate any entity in which it has a controlling financial interest. A variable interest is an investment or another interest that will absorb portions of a VIE's expected losses or receive portions of the entity's expected residual returns. The identification of variable interests represents one of the more challenging aspects of the VIE model. A VIE is consolidated by the primary beneficiary, which is the party that has the power to direct the entity's most significant economic activities and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the entity. This party could be an equity investor, some other capital provider, or a party with certain rights pursuant to a contractual arrangement. In the technology industry, there continues to be significant focus on VIE structures in China and, specifically, the enforceability of the contractual terms in light of existing government regulations in the country, management actions that demonstrate that the contractual terms are being adhered to, country laws which can affect the operations, and related parties in the structure.

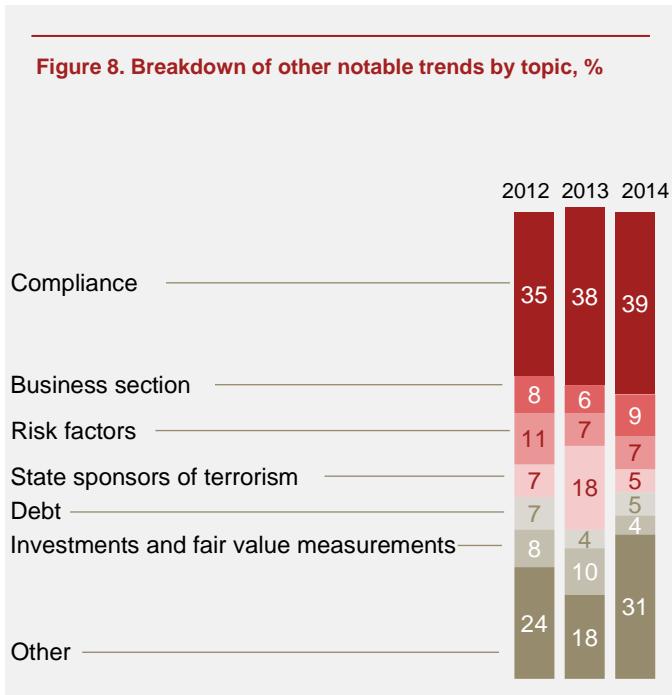
The VIE model requires that both the primary beneficiary of a VIE and a reporting entity with a variable interest in a VIE disclose certain information about their involvement with a variable interest entity. These extensive disclosures are intended to enable users to evaluate the nature and financial effects of VIEs. Accordingly, it is important that companies develop, monitor and maintain systems, processes and internal controls to ensure compliance with these requirements in a timely and complete manner.

The SEC staff comments have requested registrants to:

- Enhance disclosure of the types of structures in which the company participates and the accounting policy and determination of which entities are consolidated and which ones are not,
 - Describe the methodology used in evaluating whether the company is the primary beneficiary of a VIE, including a description of the significant judgments and assumptions made,
 - Describe the qualitative factors considered and also provide the quantitative analysis used, if any, to determine whether the rights to receive benefits could potentially be significant, and
- Disclose the primary factors that cause a change in the conclusion about consolidating a VIE and the effect on the financial statements.
- 5** We note that you disclose total current and non-current assets and liabilities. Please expand your disclosure to present the carrying amounts and classification of the VIEs' assets and liabilities on a more disaggregated basis, including the intercompany payable to the WOFE for accrued service fees. In addition, disclose how your involvement with the VIEs affects your cash flows. We refer you to paragraphs 2AA.d and 3.bb of FASB ASC 810-10-50.
- 6** FASB ASC 810-10-50-5A.d requires disclosure of qualitative information about the involvement with the VIE. Please describe the recognized and unrecognized revenue-producing assets that are held by the VIE. These assets may include licenses, trademarks, other intellectual property, facilities or assembled workforce.
- 7** Please provide us with an organizational chart that includes the identities of the VIE shareholders and their ownership percentages in the VIEs and Listco and describe any relationships between the parties. Further, please consider including this information in future filings.
- 8** Tell us how you determined that you have a controlling financial interest in the VIEs through a voting rights agreement. In your response tell us how you evaluated the criteria in ASC 810-10-25-38A in determining whether you have the power to direct the activities of the VIEs that most significantly impact the VIEs' economic performance, the obligation to absorb the VIEs' losses that could be significant to the VIEs and the right to receive benefits from the VIEs. In addition, please explain the basis for consolidation for periods prior to the date you entered into the voting agreements.
- 9** We note your disclosure that as a result of the VIE agreements, Company X has the power to direct the VIE's activities that most significantly impact the VIEs' economic performance and the obligation to absorb the VIEs' losses that could be significant to the VIEs. However, please revise your disclosure to prominently discuss that your contractual arrangements with Company Y and Company Z and its shareholders, do not provide you with ownership interests in Company Y and Company Z. Discuss that if Company Y and Company Z or its shareholders fail to perform their respective obligations under these contractual arrangements, you may have to legally enforce such arrangements and your business, financial condition and results of operations may be materially and adversely affected if these contractual arrangements cannot be enforced. Please also provide appropriate risk factor disclosure addressing this issue.

Other notable trends

In addition to the areas highlighted so far, there were several other notable trends in SEC comment letters.



Compliance

The SEC staff continues to raise numerous compliance-related questions, including requests to file copies of material agreements, inquiries about the determination of a registrant's filing status and eligibility to use certain Securities Act forms, and inquiries about the content of the auditors' reports on financial statements.

Business section and risk factors

The SEC staff has continued to request that registrants include specific information about their business in both the Business and Risk Factors sections of filings. The SEC staff has been critical of registrants who include general discussions of the business and risk factors applicable to the industry without specifically focusing on the unique operations and business of the registrant. Further, the SEC staff has also asked questions of

registrants in instances where there is a lack of consistency among any significant business matters or potential risk factors disclosed and other sections of its periodic filings or other publicly available information.

1 We note the reference in the introductory paragraph to your reliance on equipment from a specific vendor and the potential for hardware or software problems associated with such equipment. We also note the statement in your financial statements regarding your reliance upon one equipment vendor for the majority of your network equipment. Please tell us what consideration you gave to providing business and risk factor disclosure regarding your relationship with, and reliance on equipment from, the specific vendor. Refer to Items 101(c)(1) and 503(c) of Regulation S-K.

2 Please revise your risk factors disclosure as necessary to tailor them to your new business. As drafted, many of your risk factors appear to be overly generic and not tailored to your business. By way of example only, please refer to the following risk factors: "We have inadequate capital and need for additional financing to accomplish our business and strategic plans," "Our limited operating history does not afford investors a sufficient history on which to base an investment decision," "Recent worldwide and domestic economic trends and financial market conditions could adversely impact our financial performance."

Disclosure of operations in locations identified as state sponsors of terrorism

There has been a measurable decline in SEC staff comments regarding registrants' business conducted with state sponsors of terrorism (Syria, Cuba, Iran and Sudan). Nonetheless, the SEC staff continues to ask 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 a review of the issuer's website, which may contain references to one of the countries designated as state sponsors of terrorism.

Other notable trends

Investments and fair value measurements

Investments and fair value measurements comments include requests to disclose methods and key assumptions used to determine fair values, transparent disclosures with respect to credit quality of investments, management's consideration of temporary versus other-than-temporary investment losses and detailed disclosures about unobservable fair value measurements (Level 3), such as reconciliation of beginning and ending values for the period and sensitivity of fair values to changes in assumptions.

1 In future filings, please disclose the fair value for each major category, as well as the valuation techniques used to measure fair value and a discussion of changes in valuation techniques, if any, during the period, consistent with FASB ASC 820-10-50. Also in future filings, consistent with FASB ASC 820-10-50-8, present the required quantitative disclosures using a tabular format.

2 We note you disclose the significant unobservable assumptions used in the fair value measurement of your auction rate securities. Please tell us what consideration was given to providing quantitative information about the significant unobservable inputs and a narrative description of the sensitivity of the fair value measurement to changes in unobservable inputs. Please refer to ASC 820-10-50-2(bbb) and (g).

Other

Comprehensive income: Registrants are required to disclose the components of other comprehensive income and the associated tax effects, changes in accumulated balances for each component of other comprehensive income, and reclassification adjustments into net income for each component of other comprehensive income. The SEC staff's comments have focused on the completeness of the information presented.

3 We note the disclosure provided in this footnote regarding the components of accumulated other comprehensive loss. Please tell us what consideration you gave to disclosing the activity related to the changes in the balances of each component of accumulated other comprehensive loss (i.e., current period reclassifications out of accumulated other comprehensive loss and other amounts of current-period other comprehensive income) as required by the amendments to ASC 220-10-45-14A (as illustrated in ASC 220-10-55-15) brought on by ASU No. 2013-02.

4 Please tell us your consideration of disclosing the income tax expense allocated to each component of other comprehensive income, including reclassification adjustments. Refer to FASB ASC 220-10-45-12.

Cash flows: Cash flow-related comments typically center around (1) the classification of certain items in the statement of cash flows as operating, investing, or financing, and (2) the presentation of cash activity on a net rather than gross basis. 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.

5 Tell us what consideration you gave to including the tax benefit related to equity instruments within cash flows from financing activities. Refer to ASC 230-10-45-14e and 17c.

6 We note your presentation of Purchases of property and equipment, net. Please explain how this line item meets the criteria for net presentation within the consolidated statements of cash flows. See FASB ASC 230-10-45-7 through 230-10-45-9.



Other notable trends

Materiality: The SEC's guidance on evaluating materiality is included in SAB Topics 1.M and 1.N. 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 an error is not material simply because it falls below a certain dollar or percentage threshold. A qualitative analysis must also be performed to address considerations such as whether the error impacts management's compensation, whether it was intentional or the result of a fraudulent act and, if the error impacts reported trends or analysts' expectations. The materiality analysis should be robust and balanced (reflecting both positive and negative factors) and should be contemporaneously documented, as the SEC staff often asks registrants to provide their materiality analysis.

7 We note your disclosure that you corrected an error in the fourth quarter of 20X2 related to the inappropriate revenue recognition of a long-term software contract and provided the impact of the adjustments. Please provide us with a quantitative and qualitative analysis describing management's determination that the effects of these errors were not material to the respective prior annual and interim financial statements and current results. Refer to ASC 250-10-SS9-1.

The staff also challenges registrants as to whether certain adjustments, which are described as reclassifications, may be, in fact, errors. Similarly, when errors are deemed by management to be immaterial and are recorded in the period in which they were identified as out-of-period adjustments, the staff has challenged that conclusion and asked registrants to restate or revise their previously issued financial statements.

8 Based upon the discussion within the Form 8-K, it appears that you consider this change to be a reclassification. Please provide your consideration of the guidance within ASC 250 including your assessment of whether amounts previously reported contained an error and your basis for omitting disclosure regarding the new reporting methodologies, including quantification of the change for all periods presented within this Form 10-Q. As part of your response, please provide us with an analysis quantifying the impact on the relevant line items for each of the three years ended December 31, 20X2.

9

We reference the disclosure during the year ended December 31, 20X2, that you corrected certain errors that overstated net loss by \$8 million for the year ended December 31, 20X1, with such correction having the effect of reducing net loss by \$8 million for the year ended December 31, 20X2. Please tell us the nature and gross amounts of the errors that you identified, including whether the adjustment related to one error or a collection of multiple errors. In addition, please clarify how you concluded that the correction of the error did not have a material impact on current or prior periods.



SEC comment letter process

The SEC's Division of Corporate Finance (CorpFin) has a long history of reviewing selected filings made under the Securities Act of 1933 and the Securities Exchange Act of 1934. The intent of the review is to monitor and enhance compliance with applicable disclosure and accounting requirements.

Until Sarbanes-Oxley, these reviews were periodic and not subject to specific intervals. Section 408 of the Sarbanes-Oxley Act requires the SEC to review those who issue Exchange Act reports no less frequently than once every three years. A significant number of companies are selected more frequently.

CorpFin does not publicly disclose the criteria it uses to select companies and filings for review, but Section 408 asks the SEC to consider the following selection criteria:

- Issuers with material restatements of financial results
- Issuers that experience significant volatility in their stock price as compared to other issuers
- Issuers with the largest market capitalization
- Emerging companies with disparities in price to earnings ratios
- Issuers whose operations significantly affect any material sector of the economy
- Any other factors that the SEC may consider relevant

Once a company or filing is selected, the extent of the review may be (1) a full cover-to-cover review, (2) a review of the financial statements and related disclosures (e.g., MD&A), or (3) a targeted review of one or more specific items of disclosure. The identified reviewer concentrates on critical disclosures that appear to conflict with SEC rules or the applicable accounting standards and on disclosure that appears to be materially deficient in explanation or clarity. They evaluate the disclosure from an investor's perspective and ask questions that an investor might ask when reading the document.

CorpFin performs its reviews through 12 Assistant Director (AD) offices organized based on specialized industry, accounting, and disclosure expertise. Technology company filings are typically reviewed by AD offices No. 3 (Information Technologies and Services) and No. 10 (Electronics and Machinery). An issuer's AD assignment is shown in EDGAR following the basic company information that precedes the company's filing history. This organizational structure can sometimes explain why multiple companies in the same industry receive very similar comments around the same time.

Responding to SEC Comment Letters

The SEC staff's comments are based primarily on a company's disclosure and other public information, such as information on the company's website, in press releases, discussed on analysts calls, etc. (nonpublic information, such as whistleblower tips and PCAOB inspection findings, can also be a source of comments). SEC staff comments reflect their understanding of the applicable facts and circumstances. In comments, the SEC staff may request that a company provide supplemental information so the staff can better understand the company's disclosure, or may ask that the company provide additional or different disclosure in a future filing or change the accounting and the disclosure by filing an amendment.

When responding to the SEC staff, keep these best practices in mind:

- *Own the process*—Companies should leverage the knowledge and experience of their auditors and SEC counsel, but it's important to maintain ownership. As with any project, there should be a clear owner and project manager coordinating the input from various sources and developing a response.
- *Don't rush*—Companies should evaluate how long they believe it will take to respond. Although the letter from the SEC staff will request a response in 10 business days, it is acceptable for management (usually through a call by counsel to the SEC staff) to request more time if 10 days is

SEC comment letter process

not sufficient. A thoughtful and complete response is better than a quick reply.

- *Think about future filings*—Companies should discuss letters received shortly before it is planning to file a registration statement with its auditors and counsel to determine if there are any implications to the content and timing of the registration statement. Questions about timing can also be discussed with the SEC staff as well as the possibility of an expedited review of the company's response.
- *Ask the SEC staff*—Companies can call the SEC staff if they do not understand the comment. The objective should not be for the company to explain their position, but to gain clarification when a comment or aspects of the comment is unclear.
- *Remember that comments become public*—Comments become part of the public domain once submitted and resolved. Comments and the related responses are posted to the SEC's website no earlier than 20 days after the review is completed or the registration statement is declared effective. Even those comment letters related to Emerging Growth Companies that have submitted confidentially are eventually made public. CorpFin will redact any information subject to a Rule 83 confidential treatment request without evaluating the substance of that request.
- *Don't rely solely on precedent*—Previous comments and responses of other companies may provide useful information but should not be the primary basis of the response. Each comment is based on specific facts and circumstances and may involve different levels of materiality. Accordingly, the reason the staff accepted a response for one company may not be applicable in another situation. Make sure the response is appropriate based on the company's specific facts and applicable accounting literature.

- *Address the intent of the question*—Consider, if possible, the objective of the SEC staff comment. Sometimes providing a complete answer that addresses the intent of the question can stave off future comments.
- *Provide planned disclosures*—Many comments will request additional disclosure in future filings. To ensure there is a meeting of the minds, provide the SEC staff with a draft of the applicable disclosure, even if the data used is from a prior period. This will allow the SEC staff to assess whether the narrative sufficiently addresses their comment and may prevent future comments on the same disclosure.

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

Closing a Filing Review

When a company has resolved all SEC staff comments on an Exchange Act registration statement, a periodic or current report, or a preliminary proxy statement, CorpFin provides the company with a letter to confirm that its review of the filing is complete.

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

A more detailed discussion of the filing review process used by the Division of Corporate Finance can be found on the SEC's website at:

<http://www.sec.gov/divisions/corpfin/cffilingreview.htm>

About PwC's Technology Institute

The Technology Institute is PwC's global research network that studies the business of technology and the technology of business with the purpose of creating thought leadership that offers both fact-based analysis and experience-based perspectives. Technology Institute insights and viewpoints originate from active collaboration between our professionals across the globe and their first-hand experiences working in and with the technology industry.

Let's talk

Please reach out to any of our technology leaders to discuss this or other challenges. We're here to help.

Tom Archer

U.S. Technology Industry Leader
408 817 3836
thomas.archer@us.pwc.com

Kayvan Shahabi

U.S. Technology Advisory Leader
408 817 5724
kayvan.shahabi@us.pwc.com

Cory Starr

U.S. Technology Assurance Leader
408 817 1215
cory.j.starr@us.pwc.com

Diane Baylor

U.S. Technology Tax Leader
408 817 5005
diane.baylor@us.pwc.com

Visit our website at:

www.pwc.com/us/en/technology/

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The following PwC professionals contributed their experience and knowledge to produce this paper.

Mila Petrova

Partner, SEC Services
973 236 5601
mila.p.petrova@us.pwc.com

Courtney Blum

Senior Manager, SEC Services
973 236 7726
courtney.blum@us.pwc.com

www.pwc.com

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