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SEC Comment Letters — Statistics According to "Edgar"

Supplement to the Ninth Edition

October 2016

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To our clients, colleagues, and other friends:

We are frequently asked to provide our perspective on the topics the SEC staff focuses on in its comment letters to registrants. Over the past year, the SEC staff has continued to address most topics discussed in the ninth edition of our comment letter publication,[1] and there are few new trends to note. Accordingly, the aim of this current-year publication, which serves as a supplement to our ninth edition, is to provide (1) an update on some of the SEC's strategic priorities; (2) a summary of comment letter trends related to the top 10 topics of frequent comment, along with various comment letter statistics; and (3) an analysis of staff comments and corresponding comment letter extracts related to new trends that have emerged over the past year.

The SEC and its staff will continue to provide registrants with information that is pertinent to their filings by means of rulemaking and written interpretive guidance as well as speeches delivered at various forums, of which the AICPA Conference on Current SEC and PCAOB Developments is a prime example. Deloitte's US GAAP Plus Web site is a resource you can use to keep current on the SEC's latest activities related to financial reporting matters — including the SEC staff's participation at the next AICPA Conference, which is scheduled for December 5–7, 2016, and will be discussed in an upcoming issue of our *Heads Up* newsletter.

We hope you find this supplement as well as our ninth edition — and other publications on US GAAP Plus — useful resources as you prepare your annual reports and plan for the upcoming year.

In line with the Commission's disclosure effectiveness initiative, we encourage you to consider materiality, relevance, and redundancy as you assess whether to provide additional disclosures or enhance existing ones.

As always, we encourage you to contact us for additional information and assistance, and we welcome your feedback.

Sincerely,

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[1] *SEC Comment Letters — Including Industry Insights: What "Edgar" Told Us.*

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Acknowledgments

SEC Comment Letters — Statistics According to "Edgar," a supplement to the ninth edition of our comment letter publication, would not have been possible without the significant contributions of the Accounting Services, Audit Policy, Methodology and Standards, and SEC Services departments and the industry specialists at Deloitte & Touche LLP.

We also could not have completed the supplement without the assistance of Jeff Naumann and Deloitte's Disclosure Analytics team. Deloitte, specifically the Disclosure Analytics team in relation to this publication, continues to focus on innovation and technology to transform the audit; and the statistics developed in the supplement is an example of the results of that initiative, for which we are extremely appreciative.

In addition, we are grateful to Denise Lucas for her contributions and efforts in managing the development of the publication. We would also like to thank Geri Driscoll, David Eisenberg, David Frangione, Michael Lorenzo, and Sandy Zapata for delivering the first-class editorial and production effort that brings all of Deloitte's financial reporting publications to life.

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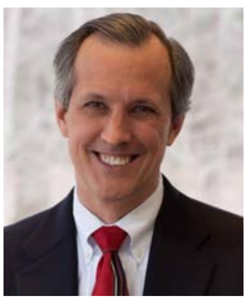

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Strategic Priorities

As we start the 2016 annual reporting cycle, we look back at the strategic priorities of the SEC over the past year. Since early 2016, the SEC has had only three commissioners, including Chair Mary Jo White; nominees to fill the two vacant commissioner seats have not yet been confirmed by the U.S. Senate. Nonetheless, the SEC continues to focus on various priorities.

Aggressive pursuit of investor protection continues to be a key focus of the Commission. The SEC recently announced that in its fiscal year ended September 2016, it filed 868 enforcement actions, a new single-year high, and obtained orders totaling more than $4 billion in disgorgements and penalties for a third year in a row. Among other activities, the SEC continues to combat financial fraud and prioritize issuer reporting and disclosure matters, prioritize awareness of cyber risks and enforcement of the rules related to cybersecurity, and focus on the role of auditors and other gatekeepers. The SEC's whistleblower program has continued to have a tremendous impact on the agency and has been extremely helpful in issuer reporting and disclosure cases, matters involving offering frauds and Ponzi schemes, and the SEC's enforcement of the Foreign Corrupt Practices Act. Since the program's inception, the SEC has awarded $111 million to 34 whistleblowers.

In addition, SEC officials over the past year started discussing non-GAAP measures as a result of several factors, including (1) the increased use and prominence of such measures, (2) the nature of the adjustments, and (3) the increasingly large difference between the amounts reported for GAAP and non-GAAP measures. In response to growing concerns about the use of such measures, the Division of Corporation Finance (DCF) updated its Compliance and Disclosure Interpretations (C&DIs)[1] on non-GAAP measures in May 2016 to provide additional guidance on what it expects from registrants that use these measures. Since the release of the updated C&DIs, the SEC staff has acknowledged that registrants have made progress when using non-GAAP measures; however, the staff continues to monitor the use of these measures closely. While Deloitte's *A Roadmap to Non-GAAP Financial Measures*, which was published in September 2016, provides the staff's current thinking on the topic, a few new themes related to non-GAAP measures have recently emerged; such themes are summarized in the Comment Letter Trends and Statistics section below.

Further, the SEC staff has continued to emphasize that successful implementation of new accounting standards, including the new revenue, lease, and credit loss accounting standards, is critical to the financial reporting system given the pervasiveness of the expected changes. The SEC staff has (1) encouraged timely investor education on the anticipated effects of the standards before adoption, (2) reminded registrants that SAB Topic 11.M requires disclosure of a registrant's current assessment of the timing and extent of the new standards' impact on the registrant's business, (3) stated that it expects registrants to provide more detailed (and more quantitative) disclosures as the effective dates of the new standards approach, and (4) discussed the importance of implementing or redesigning controls as necessary in connection with the application of the new standards. Refer to Deloitte's

[1] C&DIs are not rules, regulations, or statements of the SEC; instead, they provide general guidance on the views of the SEC staff on a variety of issues. The C&DIs are available on the SEC's Web site.

Financial Reporting Alert 16-3[2] and *A Roadmap to Applying the New Revenue Recognition Standard* for additional information.

Internal control over financial reporting (ICFR) continues to capture the attention of regulators, preparers, and auditors. In a June 2016 speech, then SEC Deputy Chief Accountant (and current Interim Chief Accountant) Wesley Bricker discussed both the importance of ICFR to investors and the SEC staff's resulting continued focus on ICFR assessments and reporting. Mr. Bricker also provided key takeaways from a recent enforcement case, including the importance of having sufficient competent accounting staff resources and the need for management to take responsibility for (1) evaluating the severity of identified control deficiencies, (2) timely reporting material weaknesses, and (3) its assessment of ICFR.

In addition to helping the SEC focus on non-GAAP measures, the DCF has been busy with the Commission's disclosure effectiveness initiative, a broad-based staff review of the disclosure requirements in the SEC's rules as well as the presentation and delivery of those disclosures. In September 2015, the SEC issued a request for comment[3] on the effectiveness of financial disclosures required under Regulation S-X about certain entities other than the registrant. Since that time, the SEC has issued (1) an April 2016 concept release[4] on Regulation S-K and (2) a July 2016 proposed rule[5] to eliminate outdated and duplicative disclosure requirements.[6]

Further, the DCF continues to help the SEC meet its responsibilities to review registrants. In the Comment Letter Trends and Statistics section below, we, in turn, continue our tradition of highlighting trends in SEC staff comments by analyzing comments issued by the staff over the past year.

[2] Financial Reporting Alert 16-3, "SEC Reminds Registrants of Best Practices for Implementing New Revenue, Lease, and Credit Loss Accounting Standards."
[3] See Deloitte's October 6, 2015, *Heads Up* for more information about the request for comment.
[4] See Deloitte's April 18, 2016, *Heads Up* for more information about the concept release.
[5] See Deloitte's July 18, 2016, *Heads Up* for more information about the proposed rule.
[6] See the Disclosure Effectiveness spotlight page on the SEC's Web site for further information about the disclosure effectiveness initiative.

Comment Letter Trends and Statistics

To help the SEC "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," the DCF ensures that "investors are provided with material information in order to make informed investment decisions."[1] One way in which the DCF has continually demonstrated that it is "living its mission" is via its filing review process, in which it selectively reviews filings made under the Securities Act and Exchange Act. The filing review process is a requirement of the Sarbanes-Oxley Act, under which the SEC is required to perform some level of review of each registrant at least once every three years (referred to as a "filing review"). Many registrants are reviewed more frequently, and they may or may not receive a comment letter.

The comment letter trends and statistics discussed below[2] are generated from an analysis of the comment letters issued by the DCF in connection with its filing reviews of Forms 10-K and 10-Q (and any amendments to those respective forms). Filing reviews that resulted in one or more comment letters are referred to herein as "reviews with comment letters" or simply "reviews."

Top 10 Topics in Reviews

The following table summarizes comment letter trends by topic in the 12-month periods ended July 31, 2016 ("review year 2016" or the "current year"), and July 31, 2015 ("review year 2015" or the "prior year"):[3]

[1] Quoted from the SEC's Web site.

[2] Unless specifically noted otherwise, comment letter trend information in this publication:
- Was derived from data provided by Audit Analytics.
- Is related to reviews of Forms 10-K, 10-K/A, 10-Q, and 10-Q/A (which are referred to generally as "filings").
- Is based on SEC uploads (i.e., comment letters that the SEC issued to registrants) and does not include registrant responses.
- Does not include the SEC's "closing letter" communicating that its review is complete.
- Only includes information related to reviews that have been closed and subsequently posted to EDGAR. Accordingly, the statistics presented in the tables and charts below may be affected by reviews that are still ongoing or have recently been closed.
- Pertains to 12-month periods ended July 31 ("review years").

[3] Reviews that generated more than one comment letter are counted only once in the statistics below and only in the year in which the initial comment letter was issued.

Topic	Review Year 2016				Review Year 2015[4]		
	Number of Reviews With a Comment on Topic	Percentage of All Reviews	Rank	Change in Rank From Prior Year	Number of Reviews With a Comment on Topic	Percentage of All Reviews	Rank
MD&A			1	—			1
Results of operations	232	23%			381	26%	
Liquidity	107	11%			171	12%	
Critical accounting policies and estimates	94	9%			119	8%	
Contractual obligations	26	3%			32	2%	
Non-GAAP measures	229	23%	2	↑1	246	17%	3
Fair value	184	18%	3	↓1	277	19%	2
Segment reporting	137	14%	4	↑3	166	11%	7
Income tax	130	13%	5	↑1	189	13%	6
Revenue recognition	126	13%	6	↓2	211	14%	4
Intangible assets and goodwill	116	12%	7	↑1	160	11%	8
Signatures, exhibits, or agreements	84	8%	8	↓3	192	13%	5
Acquisitions, mergers, and business combinations	82	8%	9	—	142	10%	9
ICFR	79	8%	10	↑4			

In the current year, the top 10 topics were generally the same as those in the prior year, with non-GAAP measures moving to the second spot closely behind MD&A. In review year 2016, ICFR moved into the top 10, which is not surprising given the increased focus on this topic in speeches delivered by SEC staff over the past year. We also can see that during the current year, there was a sharp decline in the number of reviews that included a comment on a top 10 topic. That significant decline is consistent with the overall reduction in reviews that have resulted in comment letters, as discussed below.

The top 10 topics in reviews with comment letters issued in review year 2016 are ranked as follows:

1. *MD&A* — As the table above indicates, MD&A is a top source of SEC staff comments, many of which reflect the staff's continuing sentiment that registrants should "tell their story" in MD&A to allow investors to see the company "through the eyes of management." The SEC staff continues to comment on registrants' disclosures related to (1) results of operations, (2) critical accounting policies and estimates, (3) liquidity and capital resources, (4) tabular disclosure of contractual obligations, and (5) early-warning disclosures. In reviewing registrants' analysis and disclosure of results of operations, which topped the charts within MD&A yet again, the staff has continued to focus on encouraging registrants to (1) disclose material known trends or uncertainties, (2) quantify components of overall changes in financial statement line items, and (3) enhance their analysis of the underlying factors that cause such changes. Comments often center on

[4] Additional 2015 reviews have been closed and posted to EDGAR since the ninth edition of our comment letter publication was issued. Further, the method we used to develop the top 10 rankings in this supplement to the ninth edition is a refinement of the method used in that edition.

enhancing the executive overview to provide a balanced summary of key drivers, challenges, and risks that affect a registrant's liquidity and results of operations.

2. *Non-GAAP measures* — In light of the Commission's increased focus on non-GAAP measures highlighted in the Strategic Priorities section above, it is no surprise that non-GAAP measures have taken over the number 2 spot in the top 10. Comments on non-GAAP measures were included in 23 percent of reviews with comment letters in review year 2016, compared with 17 percent in the prior year. We expect this percentage to continue to rise, particularly if registrants do not proactively address the Commission's concerns.

   Over the past year, staff comments on non-GAAP measures have continued to focus on (1) undue prominence of a non-GAAP measure (e.g., by including a full non-GAAP income statement), (2) when a non-GAAP measure is not appropriately reconciled to the most directly comparable GAAP measure, (3) disclosures about the purpose and use of non-GAAP measures and clear labeling, (4) liquidity versus performance measures, and (5) the nature of reconciling adjustments and the related disclosures.

   A few new themes have emerged as well. In addition to comment letters issued on Forms 10-K and 10-Q, we have recently observed comment letters issued on press releases furnished to the SEC on Forms 8-K, and many of those comment letters include comments on non-GAAP measures. Comments issued on press releases as of late have also asked registrants about (1) specific adjustments (e.g., restructuring charges and legal settlements) and whether those adjustments may be considered normal, recurring expenses, which may be prohibited under the C&DIs; and (2) certain industry metrics to ensure that the metrics do not use individually tailored accounting principles (e.g., non-GAAP measures that adjust for proportionate consolidation of joint ventures, which are common in the real estate industry, among other industries).

   As previously indicated, our statistics noted above do not reflect the comments solely on Forms 8-K, which show the additional emphasis that the SEC staff has been placing on non-GAAP measures. Therefore, we would expect non-GAAP measures to top the chart in the near term if our statistics were to include Forms 8-K. Given the increased attention this topic has drawn, we expect scrutiny of non-GAAP measures to persist. Therefore, registrants should continue to monitor developments related to this topic.

3. *Fair value* — Fair value has remained a hot topic for the SEC staff, as evidenced by the fact that in review years 2015 and 2016, approximately one in five reviews included a comment on fair value. The SEC staff still asks registrants about (1) valuation techniques and inputs used to determine fair value, (2) sensitivity of Level 3 measurements, (3) categorization of assets and liabilities in the fair value hierarchy, and (4) the use of third-party pricing services.

4. *Segment reporting* — Although the guidance in ASC 280 was originally issued almost 20 years ago, segment reporting remains a perennial topic of focus for the SEC staff and moved up three spots from its position in review year 2015. The staff continues to ask registrants about (1) the identification and aggregation of operating segments,[5] with a particular focus on identifying the chief operating decision maker; (2) the analysis supporting the aggregation of operating segments, including consideration of qualitative factors (e.g., similar products and customers); (3) changes in reportable segments; (4) identification of product and service revenue by segment and disclosure of total "revenues from external customers for each product and service or each

[5] The identification and aggregation of operating segments, along with the role and importance of ICFR in identifying and aggregating segments, were discussed at the 2015 AICPA Conference by then OCA Professional Accounting Fellow Courtney Sachtleben. See Deloitte's December 15, 2015, *Heads Up* for more information about Ms. Sachtleben's remarks at the conference.

group of similar products and services";[6] and (5) information related to geographic areas when information was not disclosed but may need to be.

5. *Income taxes* — Although the framework for accounting for income taxes has also been in place for many years, it continues to be a focus of SEC comment letters and rounds out the top 5 in the current year. The SEC staff still asks registrants about (1) the potential tax and liquidity ramifications related to the repatriation of foreign earnings, (2) valuation allowances, (3) rate reconciliations, and (4) unrecognized tax benefits. Refer to Appendix F in Deloitte's *A Roadmap to Accounting for Income Taxes* for additional information, including examples of SEC comments.

6. *Revenue recognition* — While many preparers are focused on the forthcoming implementation of the new revenue recognition standard, application of the current standard continues to draw the staff's attention. Revenue recognition issues addressed in comment letters include (1) the completeness and consistency of disclosures about revenue recognition policies, (2) accounting for and disclosures related to sales returns, (3) accounting for multiple-element arrangements, (4) principal-versus-agent analysis (i.e., gross versus net reporting), and (5) revenue recognition for long-term construction- and production-type contracts.

7. *Intangible assets and goodwill* — Although the number of reviews with a comment related to intangible assets and goodwill has decreased by over 25 percent since review year 2015, this topic remained in the top 10 in the current year. The SEC staff continues to comment on (1) whether or why an interim impairment test was performed; (2) disclosures made after an interim goodwill impairment test was performed; (3) disclosures related to goodwill, including early-warning disclosures required by Regulation S-K; and (4) asset grouping for goodwill impairment testing (e.g., the identification and composition of reporting units).

8. *Signatures, exhibits, and agreements* — The SEC has specific requirements related to certain signatures, exhibits, and agreements that must be filed with a registrant's financial statements. With respect to those rules, the SEC staff continues to issue comments related to (1) the form and content of a registrant's quarterly and annual certifications and (2) material contracts, including requests for them to be filed as exhibits.

9. *Acquisitions, mergers, and business combinations* — M&A activity has remained high over the past couple of years, and so has the number of related SEC comments. Similar in emphasis to comments in review year 2015 on business combinations, comments in the current year centered on (1) purchase price allocation, (2) contingent consideration, (3) bargain purchases, and (4) omission of required disclosures. Incremental to those continuing trends, a new trend related to identifying the accounting acquirer, which is discussed in the New Comment Letter Trends section below, emerged in comment letters issued in review year 2016.

10. *ICFR* — The SEC staff's heightened emphasis on this topic is evident in the many themes seen in ICFR comment letters, including (1) the evaluation of the severity of control deficiencies, (2) the evaluation of control deficiencies related to immaterial misstatements, (3) the evaluation of deficiencies identified in COSO components, (4) disclosures of material changes in ICFR, (5) disclosures about the impact and remediation of material weaknesses, (6) conclusions that ICFR remains effective after a restatement, (7) disclosure of the framework used to evaluate ICFR, and (8) an incomplete or missing ICFR evaluation.

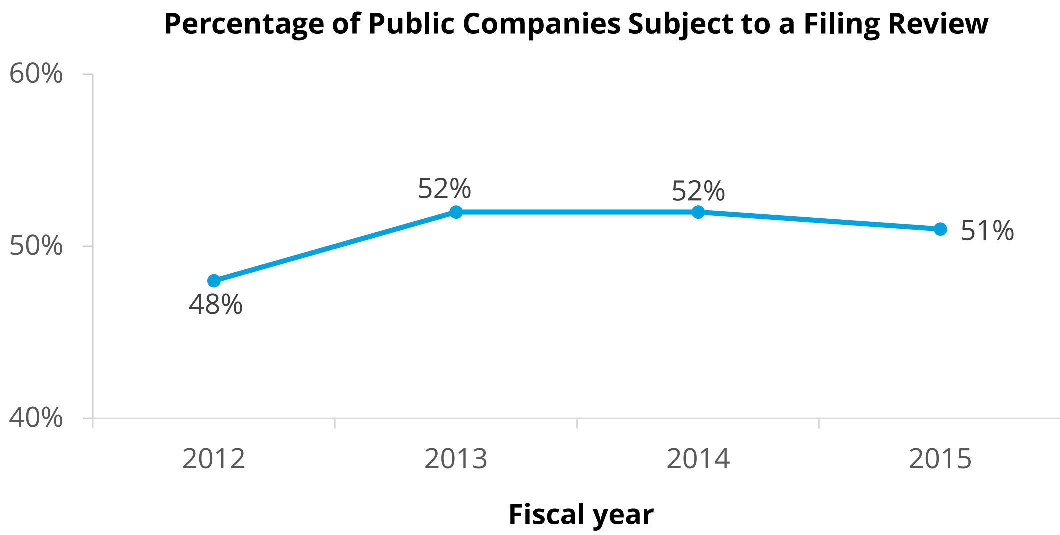
As noted above, only ICFR was added as a new trend in our top 10 for review year 2016. A number of the aforementioned trends are likely to continue in years to come given the consistency of topics seen year over year. Further, while it is difficult to predict what new comment letter trends are on the horizon,

[6] Quoted from ASC 280-10-50-40.

we look to the Commission's strategic priorities to help us predict topics of focus in the coming year. In light of those strategic priorities, we may see future comments focus on disclosures related to (1) new accounting standards, as required by SAB Topic 11.M, and (2) cybersecurity, as set forth in CF Disclosure Guidance: Topic No. 2.

Percentage of Public Companies Reviewed Remains Steady

The following chart reflects the percentage of public companies that were subject to a filing review each year from 2012 through 2015:[7]

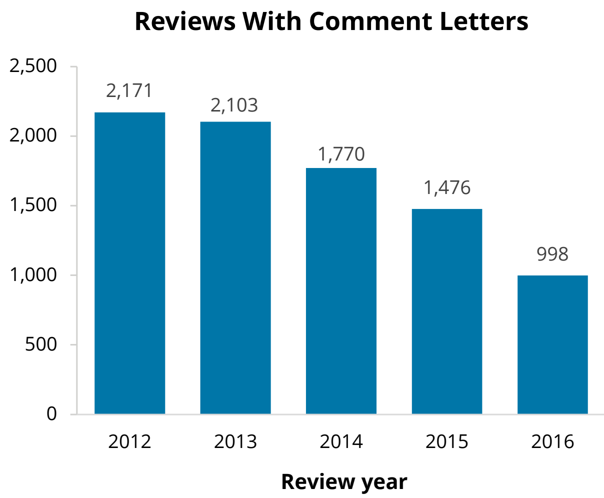


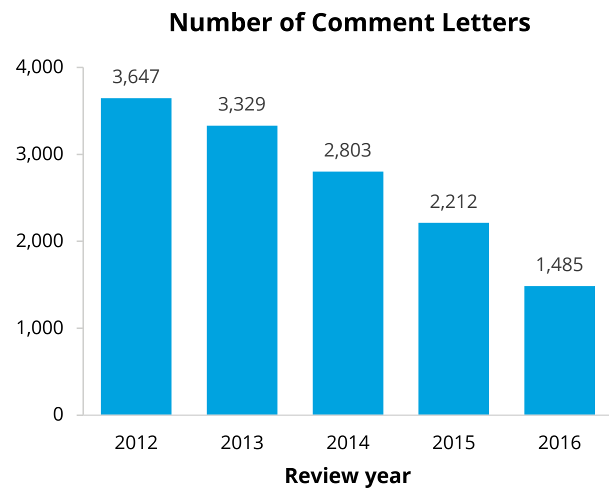
The DCF performed filing reviews for approximately 50 percent of public companies per year during its fiscal years 2012 through 2015. As previously noted, not all filing reviews result in the issuance of a comment letter. Notwithstanding that the DCF has performed filing reviews for approximately the same percentage of public companies in recent years, the number of reviews with comment letters and the average number of comment letters issued for each corresponding review have decreased in recent years, as discussed in the next two sections below.

[7] The data presented in the chart were obtained from the SEC's *FY 2015 Annual Performance Report and FY 2017 Annual Performance Plan*. Further, the SEC's fiscal year ends on September 30.

Reviews With Comment Letters and Number of Comment Letters Trending Downward

The following charts show, for each of the review years 2012 through 2016, (1) the number of reviews with comment letters[8] and (2) the total number of SEC comment letters issued:





As the charts above illustrate, there has been a significant decline over the past five years in both the number of reviews with comment letters and the number of comment letters issued. The SEC staff made a similar observation at the Practising Law Institute Conference in October 2015, noting that whereas approximately 70 percent of filing reviews resulted in a comment letter in the early 2000s, only about 35 percent of filing reviews resulted in a comment letter in 2015. The SEC staff further noted that the decline demonstrates the effectiveness of the review process and improved financial reporting by registrants, which the staff suggested may have resulted from the following:

- *Registrants' ability to view comments published on EDGAR and subsequently improve their reporting and disclosures* — To enhance that ability, law firms and accounting firms have issued publications (similar to the ninth edition of our comment letter publication and this supplement) that highlight comment letter trends and financial reporting best practices.
- *More frequent filing reviews* — While the Sarbanes-Oxley Act requires the SEC to review registrants at least once every three years, we know that the DCF reviews registrants more often. As a result, the DCF may be less likely to issue comments from year to year on a particular registrant.
- *Registrants' expectation of review* — Even if no review is conducted in a given year, the potential of being reviewed is incentive for registrants to continually improve their financial reporting.

While we cannot pinpoint exactly what contributes to year-over-year declines in reviews with comment letters and total comment letters, we believe that such declines over the past five years could be attributable to some or all of the following factors in addition to those listed above:

- *More selective use of comments* — Given the SEC's focus on its disclosure effectiveness initiative and the impact that comment letters may have on disclosures in registrants' filings, the DCF may be issuing comments more selectively to concentrate on key topics and material disclosures.

[8] See footnote 3.

- *Less significant changes to accounting and reporting rules* — The SEC staff is likely to scrutinize the accounting and disclosures associated with changes to accounting and reporting rules (e.g., the issuance of a new accounting standard), and the nature and extent of comment letters may be affected by the level of complexity of new standards in a given reporting cycle. Declines in comment letters may be a result of less significant changes to accounting and reporting rules in the most recent review periods noted above. In this regard, we note that recent accounting and reporting rules have been focused on simplification with few additional disclosure requirements rather than on rules with significant financial reporting implications.
- *More effective communication of the SEC's expectations* — The SEC is increasingly focused on transparency with respect to communicating expectations, an emphasis reflected in SEC staff speeches and remarks. In addition, the DCF has consistently maintained its interpretive guidance by routinely updating the FRM and expanding its library of C&DIs. While these do not constitute SEC rules, they do provide insight into the SEC staff's views on reporting rules and their application and often address topics that have been the subject of comment letters.
- *Fewer registrants filing a Form 10-K* — Although the DCF has continued to review approximately 50 percent of public companies since 2012, the number of Forms 10-K filed has decreased by approximately 10 percent since 2012.

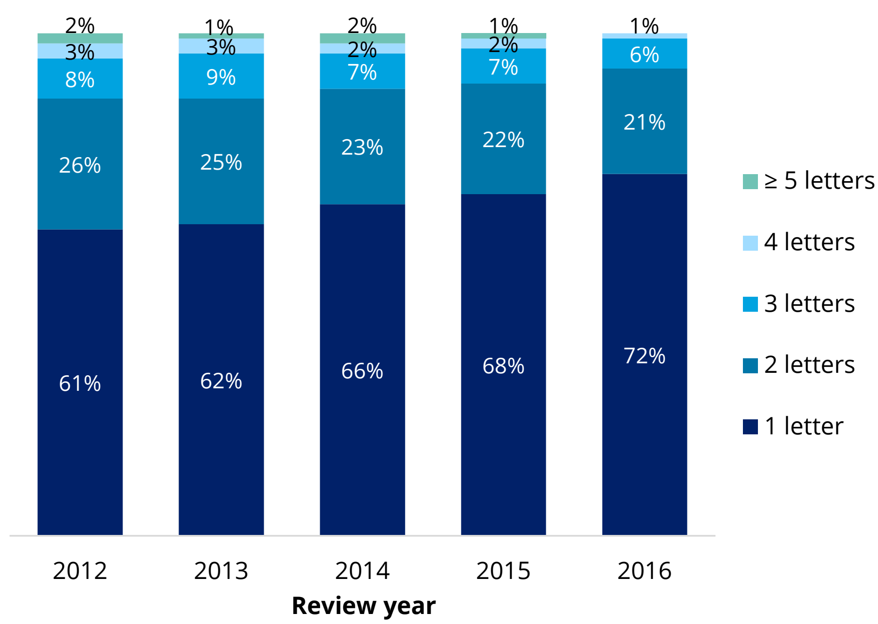
Comment Letters per Review and Days to Complete a Review Continue to Trend Downward

Comment Letters per Review

The following charts show, for each of the review years 2012 through 2016, (1) the average number of comment letters per review and (2) the percentage breakdown of completed reviews by number of comment letters per review:

Number of Comment Letters per Review

Average Number of Comment Letters per Review	
2012	1.59
2013	1.59
2014	1.53
2015	1.47
2016	1.36



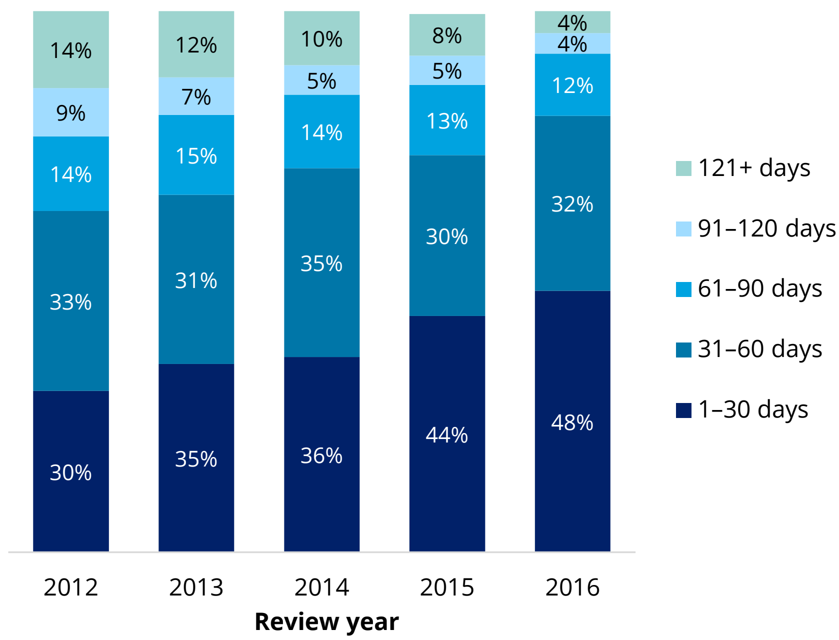
The average number of comment letters issued per review has steadily decreased over the past several years, from 1.59 letters per review in review year 2013 to 1.36 letters per review in the current year. In review year 2016, more than 90 percent of all reviews were resolved after one or two comment letters. The decline in the average number of comment letters per review may be partly attributable to some of the reasons noted above for the overall decrease in reviews with comment letters and the number of comment letters (e.g., improved financial reporting by registrants). Further, this trend is consistent with the decrease in the average number of days to complete a review, as illustrated below.

Days to Complete a Review

The following charts present, for each of the review years 2012 through 2016, (1) the average number of days to complete a review[9] and (2) the percentage breakdown of reviews by the number of days to complete them:

Number of Days to Complete a Review

Average Number of Days to Complete a Review	
2012	66
2013	62
2014	54
2015	51
2016	41



In a manner similar to other trends discussed above, the average number of days to complete a review has continued to decline over the past five years, from 66 days in review year 2012 to 41 days in review year 2016. Further, in the current year, approximately 80 percent of reviews were completed within 60 days, an increase from approximately 63 percent in review year 2012.

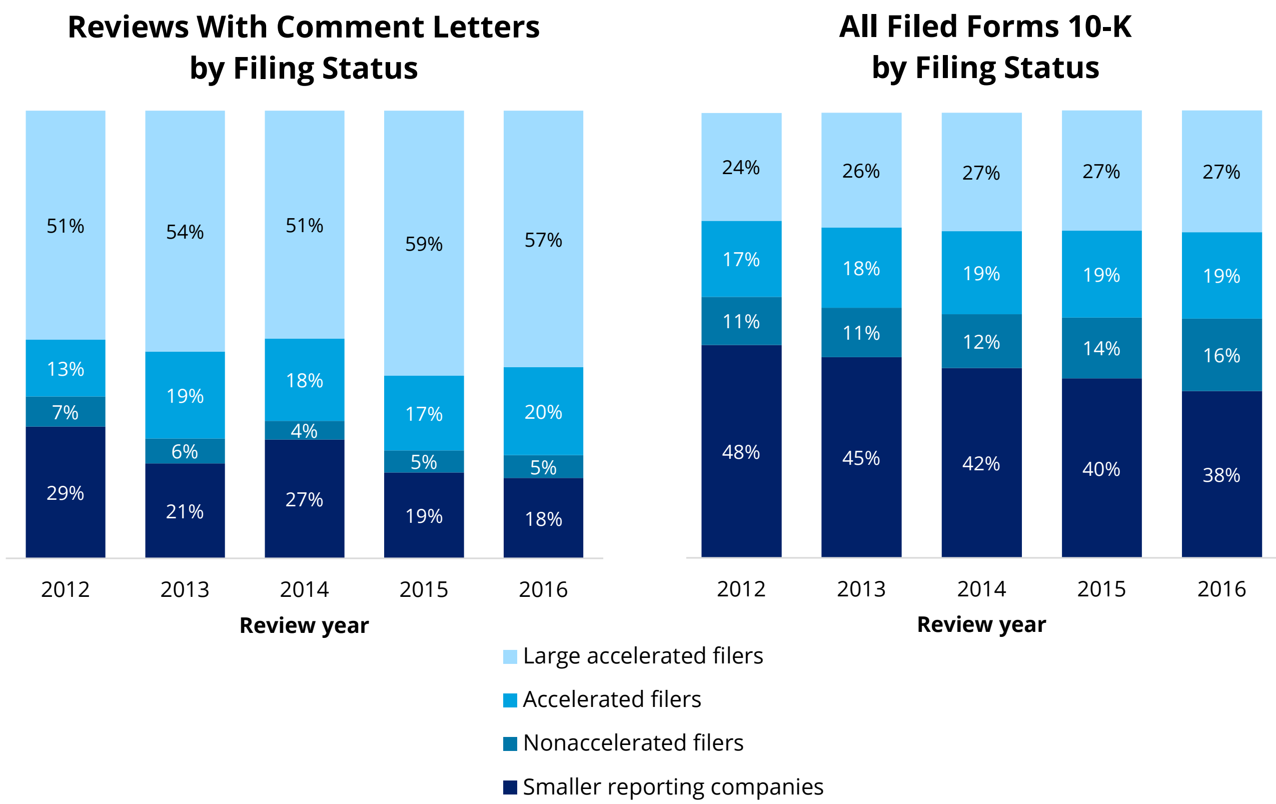
Quick resolution of the comment letter process is important. Applying our best practices for managing unresolved SEC comment letters, as discussed in Appendix C of the ninth edition of our comment letter publication, may help registrants resolve any staff comment letters in a timely manner.

9 The number of days to complete a review was calculated by determining the number of days between the initial comment letter date and the closing comment letter date.

Observations About Reviews by Filing Status and Revenue

By Filing Status

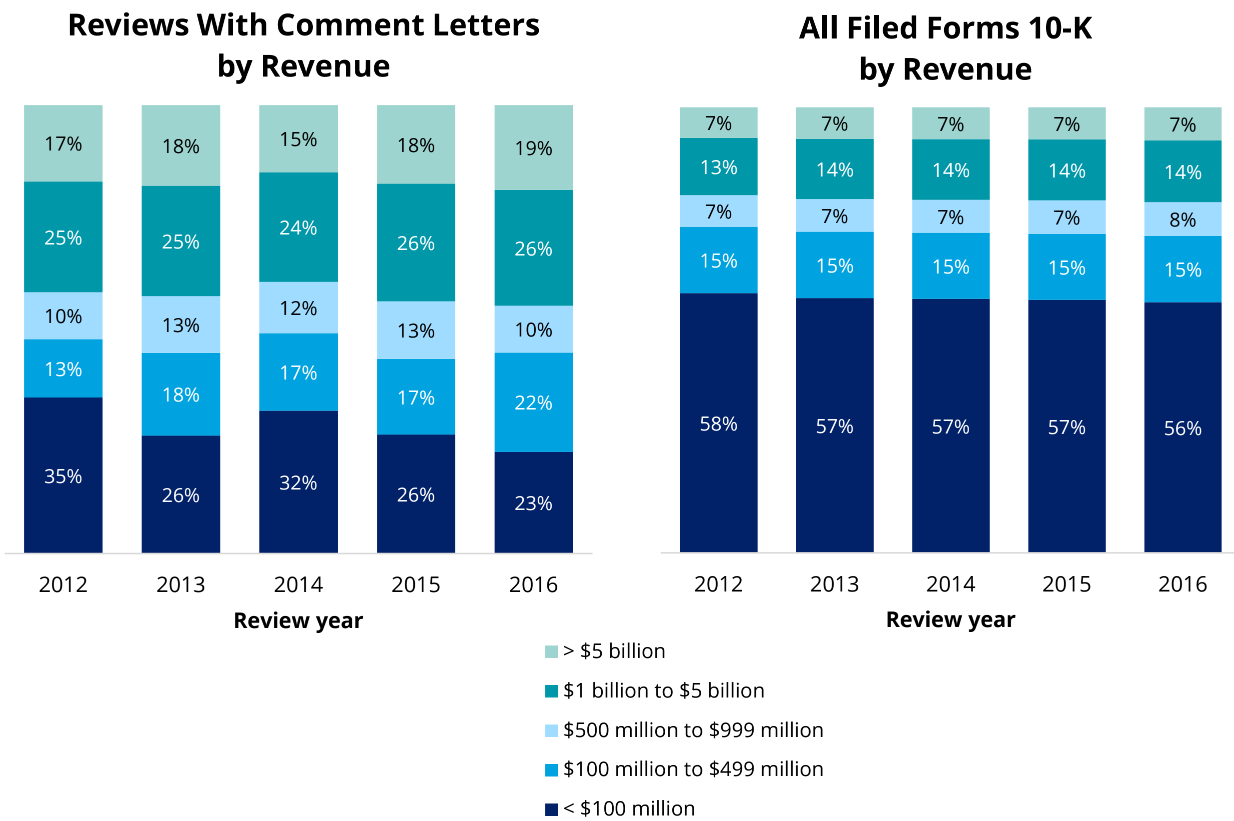
The charts below show, for each of the review years 2012 through 2016, the percentage breakdown of reviews with comment letters and all filed Forms 10-K by filing status (i.e., large accelerated filers, accelerated filers, nonaccelerated filers, and smaller reporting companies):



It is interesting to consider the filing status of registrants in the evaluation of comment letter trends and statistics. For example, as noted above, large accelerated filers have been subject to the most reviews with comment letters over the past five years, followed by smaller reporting companies, accelerated filers, and nonaccelerated filers. That information, however, is more meaningful when considered in relation to the percentage of registrants within each filing status classification. For example, since 2012, large accelerated filers have consistently been subject to a disproportionately higher number of reviews, whereas smaller reporting companies have been subject to disproportionately fewer reviews. More specifically, over the past five years, on average, (1) large accelerated filers were subject to approximately 54 percent of reviews with comment letters although they represented only about 26 percent of the Forms 10-K that were eligible for a filing review, and (2) smaller reporting companies were subject to approximately 23 percent of reviews with comment letters although they represented approximately 43 percent of the Forms 10-K that were eligible for a filing review.

By Revenue

The charts below show, for each of the review years 2012 through 2016, the percentage breakdown of reviews with comment letters and all filed Forms 10-K by revenue reported in registrants' most recent Forms 10-K (i.e., greater than $5 billion, $1 billion to $5 billion, $500 million to $999 million, $100 million to $499 million, and less than $100 million):



Although a registrant's filing status is determined on the basis of its public float rather than its revenue, companies with larger public floats generally produce more revenue. As a result, it is no surprise that companies that generate more revenue have been party to a disproportionately higher number of reviews with comment letters than companies that generate less revenue. More specifically, over the past five years, on average, (1) registrants generating $1 billion or more of revenue were subject to approximately 43 percent of reviews with comment letters although they represented only about 21 percent of the Forms 10-K that were eligible for a filing review, and (2) registrants generating less than $500 million in revenue were subject to approximately 46 percent of reviews with comment letters although they represented approximately 72 percent of the Forms 10-K that were eligible for a filing review.

One factor that may be contributing to these trends is that while the Sarbanes-Oxley Act requires the SEC to review registrants at least once every three years, large accelerated filers are likely to be subject to more frequent review than smaller reporting companies. Since registrants that have larger market caps and generate higher levels of revenue make up a larger share of the capital markets than smaller companies, the SEC may take a risk-based approach and select larger companies for a filing review more frequently than smaller companies.

New Comment Letter Trends

While many comment letter trends of the 12 months ended July 2015 have remained a focus of the SEC staff, trends related to the following topics have emerged since that time:

- Accounting for business combinations.
- Lease accounting.
- Accounting for pension plans.

Examples of SEC comments that reflect these trends are provided below, together with related analysis.

Business Combinations

Determining the Accounting Acquirer

Examples of SEC Comments

- We note that you disclose that the merger with [Company A] was completed on July 31, 2015 and accounted for as a business combination. Please provide us with a detailed analysis of your considerations for determining the accounting acquirer to be [Company B] versus [Company A] under the guidance in ASC 805-10-55-11 through 55-15.
- We note your disclosure indicates that [X] million shares were issued to [Company C] in connection with the 2014 acquisition transaction and that [Company C] has approximately [an X percent] interest in your common stock at December 31, 2014 (including interest held in the stock prior to the acquisition transaction). Please provide a discussion which summarizes how you determined which party was the accounting acquirer in the 2014 business combination. Within your response, please cite guidance which you considered in reaching your conclusion under [ASC] 810 and [ASC] 805-10, as applicable . . . . Additionally, within your response, please summarize the general terms of the agreement that you have with [Company C] such that [Company C] will limit its vote to no more than [X percent] of the outstanding voting securities and discuss the general nature of why this agreement was established, [as well as] whether there are any exceptions, time expirations, or assignment provisions that may allow [Company C] to vote above the [X percent] level.

The SEC staff has asked registrants for their analysis on how they determined the accounting acquirer in a recent business combination. When it is difficult to determine which entity has obtained control in accordance with ASC 810,[1] the SEC staff may ask registrants to explain how they considered the additional factors in ASC 805-10-55-11 through 55-15 in determining the accounting acquirer. In performing their analysis, registrants must consider all pertinent facts and circumstances as of the acquisition date and may be required to exercise considerable judgment when making the determination. The SEC staff may also ask similar questions when a business combination is probable and is reflected in pro forma financial statements.

[1] ASC 810 indicates that one entity controls another if it holds a "controlling financial interest." In addition, ASC 810 prescribes criteria for determining which entity has obtained control.

Leases

Build-to-Suit Transactions

Examples of SEC Comments

- Please tell us your consideration of disclosing a general description of your leasing arrangements, including build-to-suit leasing arrangements in accordance with ASC 840-10-50-2. In addition, regarding build-to-suit leasing arrangements please tell us . . . why you are considered the owner of leased stores during the construction period and why leasing arrangements entered into to date do not qualify for sale-leaseback accounting.
- Please tell us specifically how you determined that you are the deemed owner of the asset under construction, citing how you meet the criteria detailed in the maximum guarantee test contemplated by ASC 840-40-55. In addition, please tell us who funds the construction and modification costs incurred for the asset under construction. If the costs are not funded by you, then please explain to us how you determined that you bear substantially all of the construction risk.

In build-to-suit leasing arrangements, an entity (as lessee) will engage another party (as lessor) to build a new asset (or modify an existing one) that the entity will lease after construction is completed. In such transactions, the SEC staff has asked registrants how they determined that they are the deemed owner of the asset during the asset's construction period.

EITF 97-10 (codified in ASC 840-40) requires a lessee to evaluate whether it is considered the deemed owner of an asset during the asset's construction period (i.e., whether the lessee has substantially all of the construction period risks). If the lessee is the deemed accounting owner, it would be required to recognize the asset during the period of construction. Once construction is complete, the lessee may only derecognize the asset if it meets the criteria in ASC 840-40 for determining that a sale-leaseback has occurred.

An entity (as lessee) is determined to be the deemed owner of an asset in one of two ways:

- The entity performs the maximum guarantee test in accordance with ASC 840-40-55-2 and concludes that it could be required to pay 90 percent or more of the total project costs (excluding land acquisition costs) at any point in time during the construction period.
- The entity meets any of the automatic indicators of ownership in ASC 840-40-55-15.

The build-to-suit guidance in ASC 840-40 has been viewed to be punitive because once a lessee determines that it is the deemed owner of the asset under construction, particularly in cases involving real estate assets, it is very difficult for the arrangement to qualify for sale-leaseback accounting. Commonly, sale-leaseback accounting is not achieved because there is a prohibited form of continuing involvement; therefore, lessees are often unable to derecognize the real estate asset at the end of the construction period.

Consequently, SEC staff comments have focused on understanding a registrant's consideration of the build-to-suit guidance, including how the registrant (1) performed the maximum guarantee test (including the assessment of "soft" and "hard" costs), (2) considered the automatic indicators in the guidance, and (3) evaluated whether sale-leaseback accounting was achieved. In addition, the staff has asked registrants about who funded the construction of the asset.

Pensions and Other Postretirement Benefits

Alternatives to Applying Discount Rates for Defined Benefit Plans

Example of an SEC Comment

We note your disclosure that you changed the method you use to estimate the service and interest components of net periodic benefit costs for pension and other postretirement benefits. You disclose that you have elected to utilize a full yield curve approach in estimation of these components. Please compare and contrast for us in greater detail the previous method with the current method, and explain to us how the current method complies with ASC 715-10-35 and ASC 715-60-35.

Recently, as noted in Deloitte's Financial Reporting Alert 15-3,[2] entities and their actuaries have started to use alternative approaches for measuring the interest and service cost components of net periodic benefit cost for defined benefit retirement plan obligations under ASC 715. Traditionally, entities have used a single weighted-average discount rate approach, also referred to as the aggregated approach, to measure the interest and service cost components of net periodic benefit cost. Now, rather than estimating interest and service cost by using a single weighted-average discount rate, entities are adopting an approach of using individual spot rates (the "spot rate approach") derived from an acceptable high-quality corporate bond yield curve and matched with the separate cash flows for each future year. Under the spot rate approach, an entity measures interest cost by applying duration-specific spot rates to the year-by-year projected benefit payments.

The amounts of service cost, interest cost, and actuarial gains and losses recognized under the spot rate approach would generally differ from those recognized under the single weighted-average discount rate approach. For example, in an upward-sloping yield curve environment, the spot rate approach would generally result in lower interest cost and higher actuarial loss (or lower actuarial gain) than the single weighted-average discount rate approach. Because the measurement of the benefit obligation as of each measurement date under the single weighted-average discount rate approach is the same as that under the spot rate approach, any change in the service cost or interest cost component would result in a different expected benefit obligation, which — compared with the remeasured benefit obligation (as of the next measurement date) — gives rise to an additional actuarial gain or loss so that the beginning-of-the-year benefit obligation is reconciled to the end-of-the-year benefit obligation. This actuarial gain or loss is included with the other gains or losses and then is recognized in net income in accordance with the entity's accounting policy for recognizing actuarial gains and losses in earnings (i.e., either immediate recognition or some other acceptable method of amortization under ASC 715). Accordingly, a change to the spot rate approach for measuring service cost and interest cost and the resulting differences in service cost, interest cost, and actuarial gains and losses could materially affect an entity's financial statements as well as a registrant's non-GAAP financial performance disclosures (to the extent that those items are reflected in non-GAAP measures). For entities that use a yield curve approach (rather than bond matching or another method) to measure their defined benefit obligation, the SEC staff has indicated that it would not object to a change from the single weighted-average discount rate approach to a spot rate approach for measurement of interest cost.[3] The staff has further indicated that it would not object to accounting for that change in approach as a change in estimate in such circumstances.

As a result of these alternative approaches, the SEC staff may comment on a registrant's disclosures about the approaches for measurement of interest costs, particularly when a change in approach occurs. In discussions held in September 2015 with representatives of the Big Four accounting firms, the

[2] Financial Reporting Alert 15-3, "Employers' Accounting for Defined Benefit Plans — Alternatives for Applying Discount Rates to Measure Benefit Cost."

[3] For example, see the speech delivered by Ashley Wright, then professional accounting fellow in the OCA, at the 2015 AICPA Conference.

SEC staff stressed that it is important for registrants that change to the spot rate approach to comply with the disclosure requirements in the following Codification paragraphs:

- ASC 250-10-50-4, which requires disclosure of the material effect of changes in accounting estimates on income statement and earnings-per-share measurements.
- ASC 715-20-50-1(k) and ASC 715-20-50-1(r), as supplemented by ASC 715-30-35-45, which require disclosure of the discount rates used for the benefit obligation and net periodic benefit cost.

In addition, the staff highlighted the required MD&A disclosures under Regulation S-K, Item 303, regarding changes in results of operations as well as trends or events that will materially affect income from continuing operations.

Finally, the staff discussed the transparency of required non-GAAP disclosures under Regulation G. The staff highlighted that it expects registrants to disclose any significant impact of a change in the approach used to measure net periodic benefit cost on any non-GAAP measures. Specifically, registrants should explain how the change in approach affected components of net periodic benefit cost and actuarial gains and losses in the current period and on a prospective basis to the extent that those items are reflected in non-GAAP measures.

In accordance with these guidelines from the SEC staff, entities should consider quantifying and disclosing the impact of a change to the spot rate approach in the year the change in estimate is recognized. Specifically, an entity should consider disclosing the difference between service cost, interest cost, and actuarial gains and losses under the current approach (e.g., spot rate approach) and those under the prior approach (i.e., aggregated approach). Because ASC 715 requires disclosure of weighted-average discount rates used to determine the benefit obligation and net periodic benefit cost, an entity should consider that the weighted-average rate used to determine the benefit obligation is likely to be different from the weighted-average rates associated with service cost and interest cost components under the spot rate approach. In thinking about the financial statement disclosure requirements related to assumptions under ASC 715 as well as disclosures by registrants regarding critical accounting policies under Section II.J of the SEC's *Current Accounting and Disclosure Issues in the Division of Corporation Finance* (updated November 30, 2006), entities should consider disclosing a narrative description of how discount rates were determined along with the approach for how such discount rates have been applied to measure service cost and interest cost components.

Most recently, in August 2016, the SEC staff further communicated to representatives of the Big Four accounting firms that it would object to a proposed approach to adapting bond matching that would facilitate the use of a similar spot rate method for measuring interest cost. For additional information about developments related to this proposed approach, refer to Deloitte's Financial Reporting Alert 16-2.[4]

[4] Financial Reporting Alert 16-2, "Employers' Accounting for Defined Benefit Plans — Alternatives for Applying Discount Rates in the Measurement of Benefit Cost Under a Bond-Matching Approach."

Appendix A: Glossary of Standards and Other Literature

The following are the titles of standards and other literature mentioned in this publication:

FASB ASC Topics and Subtopics

ASC 250-10, *Accounting Changes and Error Corrections: Overall*

ASC 280, *Segment Reporting*

ASC 280-10, *Segment Reporting: Overall*

ASC 715, *Compensation — Retirement Benefits*

ASC 715-10, *Compensation — Retirement Benefits: Overall*

ASC 715-20, *Compensation — Retirement Benefits: Defined Benefit Plans — General*

ASC 715-30, *Compensation — Retirement Benefits: Defined Benefit Plans — Pension*

ASC 715-60, *Compensation — Retirement Benefits: Defined Benefit Plans — Other Postretirement*

ASC 805-10, *Business Combinations: Overall*

ASC 810, *Consolidation*

ASC 810-10, *Consolidation: Overall*

ASC 840-10, *Leases: Overall*

ASC 840-40, *Leases: Sale-Leaseback Transactions*

EITF Issue

97-10, "The Effect of Lessee Involvement in Asset Construction"

SEC C&DI Topic

Non-GAAP Financial Measures

SEC Concepts Release

33-10064, *Business and Financial Disclosure Required by Regulation S-K*

SEC Division of Corporation Finance CF Disclosure Guidance Topic

Topic No. 2, "Cybersecurity"

SEC Proposed Rule

33-10110, *Disclosure Update and Simplification*

SEC Regulation G

General Rules Regarding Disclosure of Non-GAAP Financial Measures

SEC Regulation S-K

Item 303, "Management's Discussion and Analysis of Financial Condition and Results of Operations"

SEC Staff Accounting Bulletin

SAB Topic 11.M, "Disclosure of the Impact That Recently Issued Accounting Standards Will Have on the Financial Statements of the Registrant When Adopted in a Future Period" (SAB 74)

SEC Reports and Publications

FY 2015 Annual Performance Report and FY 2017 Annual Performance Plan

Current Accounting and Disclosure Issues in the Division of Corporation Finance (November 30, 2006); Section II.J, "Pension, Post Retirement, and Post Employment Plans"

Appendix B: Abbreviations

Abbreviation	Description
AICPA	American Institute of Certified Public Accountants
AICPA Conference	AICPA Conference on Current SEC and PCAOB Developments
C&DI	SEC Compliance and Disclosure Interpretation
COSO	Committee of Sponsoring Organizations of the Treadway Commission
DCF	SEC's Division of Corporation Finance
EDGAR	SEC's Electronic Data Gathering, Analysis, and Retrieval system
EITF	Emerging Issues Task Force
FASB	Financial Accounting Standards Board
FRM	SEC's Financial Reporting Manual

Abbreviation	Description
GAAP	generally accepted accounting principles
ICFR	internal control over financial reporting
M&A	mergers and acquisitions
MD&A	Management's Discussion and Analysis
OCA	SEC's Office of the Chief Accountant
PCAOB	Public Company Accounting Oversight Board
SAB	SEC Staff Accounting Bulletin
SEC	Securities and Exchange Commission
SPAC	special-purpose acquisition company
VIE	variable interest entity

The following is a list of short references for the Acts mentioned in this publication:

Abbreviation	Act
Exchange Act	Securities Exchange Act of 1934
Sarbanes-Oxley Act	Sarbanes-Oxley Act of 2002
Securities Act	Securities Act of 1933