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SEC Comment Letter Examples
Income Taxes

November 2014

Contents

Introduction

Under the Sarbanes-Oxley Act of 2002, the SEC must review every registrant's periodic filings at least once every three years. The SEC staff's comments on the disclosures in those filings and registrants' responses to them are posted on the SEC's Web site and provide valuable insight into the SEC staff's comment themes. Registrants can incorporate a review of the comments into their financial reporting process to help improve their financial statements and disclosures.

Accounting for income taxes continues to be one of the SEC's top areas of focus in its reviews of registrants' periodic filings. This edition of *SEC Comment Letter Examples — Income Taxes* contains extracts of SEC staff comments on topics including a registrant's assessment of the realizability of deferred tax assets (DTAs), undistributed earnings of foreign subsidiaries, foreign tax rate, uncertain tax positions, and disclosures.

The extracts in this publication have been reproduced from comments published on the SEC's Web site that were issued between July 1, 2013, and June 30, 2014. Dollar amounts and information identifying registrants or their businesses have been redacted from the comments.

The comments are organized by topic, as follows:

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For a discussion of SEC comment letters on additional topics, see the following Deloitte publications:

- *SEC Comment Letters — Including Industry Insights: A Recap of Recent Trends,* Eighth Edition (November 2014).
- *SEC Comment Letters on Foreign Private Issuers Using IFRSs — A Closer Look,* Third Edition (March 2012).

For examples of SEC income tax comments from 2012 and earlier in 2013, see *SEC Comment Letter Examples — Income Taxes* (January 2014).

Appendix A describes the SEC staff's review and comment letter process, Appendix B outlines leading practices for managing unresolved SEC comment letters, and Appendix C provides helpful tips on searching the SEC's database for comment letters.

We hope that you find this publication a valuable tool for improving your disclosures. We welcome your feedback. Please send us your thoughts and suggestions.

SEC Staff Remarks at Previous AICPA Conferences

When reporting on income tax matters, registrants may want to consider the remarks discussed below, which were made by SEC staff members at recent AICPA Conferences.[1]

Frequent Areas of Comment — Income Taxes

At the 2013 AICPA Conference, the SEC staff discussed registrants' income tax disclosures, primarily disclosures about (1) the reconciliation of statutory tax rates to effective tax rates (the "tax rate reconciliation"), (2) valuation allowances, and (3) registrants' assertions that foreign earnings are indefinitely reinvested.

The SEC staff noted the following issues with registrants' tax rate reconciliation disclosures:

- Labels related to reconciling items were unclear and disclosures about material reconciling items did not adequately describe the underlying nature of these items.
- For material reconciling items related to foreign tax jurisdictions, registrants did not disclose in MD&A (1) each material foreign jurisdiction and its tax rate and (2) how each jurisdiction affects the amount in the tax rate reconciliation.
- Registrants have inappropriately aggregated material reconciling items. The SEC staff reminded registrants that Regulation S-X requires separate-line-item disclosure for reconciling items whose amount is greater than 5 percent of the amount calculated by multiplying the pretax income by the statutory tax rate.
- Amounts reflected in the tax rate reconciliation were inconsistent with related amounts disclosed elsewhere in a registrant's filing.
- Corrections of errors were inappropriately reflected as changes in estimates.

In remarks related to registrants' disclosures about valuation allowances on DTAs, the SEC staff discouraged registrants from providing "boilerplate disclosures" in the critical accounting estimates section of MD&A and instead recommended that they discuss registrant-specific factors (e.g., limitations on their ability to use net operating losses and foreign tax credits). The SEC staff also stated that it has asked registrants to disclose the impact of each source of taxable income on their ability to realize a DTA, including the relative magnitude of each source of taxable income. In addition, the staff recommended that registrants consider disclosing the material negative evidence they evaluated, since such disclosures could provide investors with information about uncertainties related to a registrant's ability to recover a DTA.

The SEC staff also reminded conference participants about the disclosures a registrant is required to provide when it asserts that foreign earnings are indefinitely reinvested. These disclosures include either (1) the amount of the unrecognized deferred tax liability or (2) a statement that estimating an unrecognized tax liability is not practicable. The disclosures also include the amounts and descriptions of the related temporary differences and the events that will cause those differences to become taxable. In addition, the staff indicated that it evaluates such an assertion by taking into account registrants' potential liquidity needs and the availability of funds in U.S. and foreign jurisdictions.

At the 2012 AICPA Conference, Mark Shannon, associate chief accountant in the SEC's Division of Corporation Finance, reiterated remarks made by the SEC staff at the 2011 AICPA Conference about assessing the realizability of DTAs. The SEC staff had noted that it would have difficulty agreeing with a registrant's assertion that losses incurred during the economic downturn are aberrations but that it would base its conclusions on a registrant's specific facts and circumstances. Mr. Shannon also reminded registrants that in assessing the realizability of DTAs, they should consider cumulative losses in recent years to be significant negative evidence and that to avoid recognizing a valuation allowance, they would need to overcome such evidence with significant objective and verifiable positive evidence. He explained that although under U.S. GAAP it is theoretically possible to do so, overcoming negative evidence presented by cumulative losses is difficult.

[1] At the annual AICPA Conference on Current SEC and PCAOB Developments (the "AICPA Conference") each December, regulators and standard setters give preparers updates on recent accounting, auditing, and SEC rules as well as a look inside their areas of focus for the reporting season ahead. Each year, Deloitte prepares a comprehensive *Heads Up* newsletter covering remarks made at the conference.

Mr. Shannon also noted that because many registrants have begun returning to profitability, they are considering whether they should reverse a previously recognized valuation allowance. He indicated that factors for registrants to consider in making this determination would include:

- The magnitude and duration of past losses.
- The magnitude and duration of current profitability.
- Changes in the above two factors that drove losses in the past and those currently driving profitability.

He also indicated that registrants should bear in mind that the goal of the assessment is to determine whether sufficient positive evidence outweighs existing negative evidence. He emphasized the importance of evidence that is objectively verifiable and noted that it carries more weight than evidence that is not.

At the 2012 AICPA Conference, Nili Shah, deputy chief accountant in the SEC's Division of Corporation Finance, explained that in performing their analysis, registrants should (1) assess the sustainability of profits in the current economic environment and (2) consider their track record of accurately forecasting future financial results. She noted that any doubt about sustainability of profitability in a period of economic uncertainty may give rise to evidence that is less objectively verifiable. Likewise, an entity's poor track record of accurately forecasting future results would also result in future profit projections that are less objectively verifiable. Thus, such evidence would carry less weight in a valuation allowance assessment.

Ms. Shah also pointed out that registrants' disclosures should include a discussion of the factors or reasons that led to a reversal of a valuation allowance that effectively answers the question "why now." Such disclosures would include a comprehensive analysis of all available positive and negative evidence and how the entity weighed each piece of evidence in its assessment. She also reminded registrants that the same disclosures would be expected when there is significant negative evidence and a registrant concludes that a valuation allowance is necessary.

Comment Letter Themes — Foreign Private Issuers

At past AICPA conferences, Jill Davis, associate chief accountant in the SEC's Division of Corporation Finance, discussed comments frequently made by the staff in its reviews of the financial statements of foreign private issuers. She noted that the staff's comments were similar to those for domestic registrants and continued to be based on the economics of transactions rather than the underlying U.S. GAAP. Comments about income taxes focused mainly on rate reconciliations and the nature of items disclosed as well as on the completeness and adequacy of disclosures required by IAS 12[2] particularly regarding the amount of unrecognized DTAs.

[2] See Appendix D for the titles of citations used in this publication.

Examples of SEC Comments

Business Combinations

- We note that you received a tax assessment from [Country A] in [XX] of 2012 and, as a result, you recorded a reserve in the amount of $[X] in consideration of this matter. We also note that $[X] of this amount was recorded as an increase to goodwill with respect to your [XX] of 2012 acquisition of [Company A]. Please tell us why you believe a liability related to this tax assessment existed as of the acquisition date, and that an adjustment to the allocation of the purchase price is the correct treatment for this loss contingency. In your response, specifically address the existence and your knowledge of this action by [Country A] on the acquisition date of [XX], 2012. Further, please tell us how you determined and when you closed the measurement period for this acquisition. Refer to FASB ASC 805-10-25-13 through 18.
- You disclose in your business acquisition footnote on page [X] that you expect the mortgage servicing rights and goodwill to be treated as intangible assets acquired in connection with the purchase of a trade or business to be amortized over 15 years for tax purposes. However, you do not appear to disclose any deferred tax liabilities related to tax-deductible goodwill in your purchase price allocations. Please tell us why [you] have not recognized any deferred tax liabilities related to tax-deductible goodwill for any of your acquisitions.
- We note that you recognized the tax-basis amortization benefit of your [Subsidiary A] indefinite-lived tradename as a $[X] reduction of the tradename's carrying value during fiscal 2012. We also note that future tax-basis amortization benefits will continue to be recorded as reductions of the intangible's carrying value. Please tell us the specific guidance you relied upon in determining your accounting treatment.
- We note on page [X] that in 2010 you acquired [X%] of the total capital of [Company A] through your wholly owned subsidiary, [Company B], and that in 2011 and 2012 you concluded several subsequent transactions which resulted in the company owning [X%] of [Company A]. We further note that in June 2012 you legally merged [Company B] and [Company A], which caused the carrying amounts of the [Company A] acquired assets and liabilities in [Company B's] consolidated financial statements to become their tax basis. As a result, there were no longer any differences between the tax basis and carrying amounts of the net assets acquired in 2010; and consequently there was no longer a deferred tax liability to be recognized, and the outstanding balance of the initially recognized deferred tax liability was recycled through the December 31, 2012 income statement and recorded as a gain of US $[X]. Please address the following:
  - Describe in detail the substance of June 2012 legal merger between [Company B] and [Company A] and tell how you accounted for the legal merger, including whether this transaction represents a reorganization of entities under common control under ASC 805-50 or a transaction with noncontrolling shareholders.
  - Further explain to us what the original deferred tax liability that was recorded in the 2010 acquisition of [Company A] represents (e.g. inside basis difference or outside basis difference), and why the June 2012 legal merger caused the reversal of this deferred tax liability.
  - Tell us the generally accepted accounting literature that you followed to support your recycling of the deferred tax liability through the income statement as a result of the legal merger, and tell us how you considered the guidance in ASC 740-20-45-11(g) (changes in tax bases) and, by analogy, paragraphs 270-272 of FAS 109.

Disclosures

- Please add a discussion of capital [loss] carryforward and any limitations on the ability to use the capital losses.
- To [the] extent necessary to understanding the changes in your effective income tax benefit/expense for each period presented, please also provide revised MD&A disclosure, as applicable, to be included in future periodic reports.
- It is not clear how the amounts presented for "provision for income taxes" and "non-controlling interest" for each pro forma period presented are consistent with the corresponding rate or percentages indicated in the respective footnotes supporting these amounts. Please revise to expand the corresponding footnotes as appropriate to specifically disclose the details of how the adjustments presented were derived. In regard to the provision for income taxes, separately present the effect of each of federal, state, local and foreign taxes, and how each contributed to the effective tax rate indicated.

- Considering the significance of your "other" category to total deferred tax assets and liabilities as presented on the table on page [X], please revise future filings to disclose the nature of the items included in this category and discuss any geographic concentrations of the amounts. Please provide us with your proposed disclosure.
- Please tell us the total amount of legacy litigation expenses and non-cash income tax provisions included in Non-GAAP core operating income for all periods presented in your Form 10-K for the year ended December 31, 2012 and your most recently filed Form 10-Q. In addition, please clarify for us whether these charges have been incurred during the past two years. To the extent they have, we remain unclear how your disclosure complies with Item 10(e)(ii)(B) of Regulation S-K.
- We note your disclosure of your effective income tax rates excluding the effects of goodwill and trademark impairments on page [X], which appears to represent a non-GAAP measure. Please revise to provide the disclosures required by Item 10(e) of Regulation S-K in future filings and show us a draft of your proposed revisions.

Foreign Tax Rate and Other Reporting Issues

- Please revise to separately disclose the components of income/(loss) before income tax expense as domestic and foreign operations. We refer you to Rule 4-08(h) of Regulation S-X.
- 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 on page [X]. 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.
- Please tell us the significant components of the [X]% adjustment to the statutory federal income tax rate due to "foreign rate differences." We see that the differential significantly increased from prior periods.
- You indicate that your year to date effective tax rate for 2012 was [X]% as compared to [X]% in 2011. Please expand your discussion of income taxes to better discuss your effective tax rate for each period with reference to your reconciliation of the U.S. statutory income tax rate to the effective tax rate in your financial statements. Please also address the underlying material reasons for the change in your effective tax rate from period to period. You also disclosed that the lower effective tax rate was due to a higher proportion of pretax income being generated by your foreign operations where income tax rates are lower than in the U.S. Please discuss which foreign jurisdictions had the most significant impact on your effective tax rate, as applicable.
- We note from your reconciliation between the actual effective tax rate and the statutory U.S. federal income tax rate of [X]%, that the impact of the [Company A] transaction reduced the tax rate by [X]%. Please revise Note [X] to disclose why this transaction had such a significant effect on the income tax rate. Also, we note that the effect of foreign operations significantly reduced your effective tax rate for the year ended June 30, 2013. In light of the fact that it appears from Note [X] that a significant amount of your income before income tax for 2013 was attributable to foreign jurisdictions, please identify for us and in Note [X] the countries in which you have generated profits, but which have resulted in a reduction to your effective tax rate. We think this disclosure is important to notify investors if you are generating significant profits in countries that have very low tax rates. Please advise and revise accordingly.
- You disclose your tax rate for 2012 was lower than the expected domestic federal and state rate of approximately [X]% primarily due to the tax benefits attributable to non-U.S. subsidiary earnings in lower tax rate jurisdictions. To the extent material pre-tax income is attributed to a country or countries with a significantly low tax rate, we believe that fact should be disclosed in accordance with Item 303(a)(3)(i) of Regulation S-K. You should also discuss the relationship between domestic and foreign effective tax rates in greater detail. It appears that separately discussing foreign effective income tax rates may be material to an understanding of your business. Please provide us with a draft of the disclosures you intend to provide in future filings.

Intraperiod Tax Allocation

- Please expand your critical accounting policy or Note [X] – Summary of Significant Accounting Policies to address ASC 740's intraperiod tax allocation guidance and how this accounting model impacted how you allocated income taxes among continuing operations and the other components of your financial statements.

Tax Credits

- [W]e refer you [to] page [X], please explain and clarify the nature of the significant tax incentive, and if it is an investment tax credit, please disclose the method of accounting for investment tax credits (deferral method or flow-through method) and related amount used in the determination of income tax expense.
- We note your disclosure that you are entitled to a refundable tax credit on qualified expenditures incurred in the province of [Country A]. Please clarify which expenditures qualify as refundable and your recognition policy to record the credits. Please also tell us why you believe the credit to property, plant and equipment is appropriate, including reference to any authoritative guidance you have used to base your conclusion. Please provide draft disclosure to be included in future filings.
- Revise to disclose the expiration dates of and tax credit carry forwards per ASC 740-10-50-3.
- In addition to disclosing the expiration dates of your tax credit carry forwards, please also disclose the amount of your tax credit carry forward.

Tax Holiday

- Please tell us, and revise future filings, as applicable, to describe in greater detail the "certain conditions" that apply to your [Country A] tax holiday. To the extent those conditions impose any material risks to your operational flexibility, please include appropriate risk factor disclosure.
- Please tell us why you have not also considered the effect of the adjustment for the prior year tax benefit, relating to the tax holiday granted to [Company A], in your disclosure of the aggregate dollar effect of your tax holidays on income tax benefit/expense recognized for the period, and the corresponding impact on earnings per share.
- We note that certain of your subsidiaries have tax holidays in [Country A] which resulted in lower income tax expense during the periods presented. Please tell us what consideration was given to disclosing the per share effects and the expiration dates of the tax holidays. Refer to SAB Topic 11.C.

Rate Reconciliation

- Please provide a reconciliation of the effective tax rate to the statutory tax rate as required by FASB ASC 740-10-50-12.
- Please provide us a proposed revised rate reconciliation table and associated clarifying disclosure to be included in future periodic reports that separately describes each reconciling item over [X]% of the expected income tax benefit or expense.
- We reference the disclosure on page [X] that the impact of the 2013 charges relating to litigation matters and a pension settlement reduced the effective tax rate in 2013 by [X] basis points. Please tell us where the impact of the litigation and pension matters are reflected in the rate reconciliation table on page [X].
- Please explain to us how the full utilization of net operating loss carryback opportunity in the prior year resulted in a lower Federal statutory rate.
- Although your disclosures identify general reconciling items that resulted in a difference between your U.S. federal statutory income tax rate and your effective tax rate, it is not clear which ones are significant as they are not quantified. Please revise your disclosure to discuss the significant reconciling items between your statutory rate and your effective tax rate that are specific for each period presented. For example, we note in your table on page [X], that the loss on change in fair value of warrants is one of the largest reconciling items for the year ended December 31, 2012, but this reconciling item is not discussed on page [X].

- Please disclose the reason for the variance in the effective tax rate between the interim periods presented as well as between annual periods in the respective sections of the filing where presented. Given the disparity in the effective tax rate in the periods presented in the filing, please disclose your expectations in regard to the effective tax rate for fiscal 2014 and the basis for such.
- Refer to the income tax expense reconciliation on page [X]. We note your reconciling item "Effect of non-[domestic] entities not subject to income tax". Please tell us and disclose the nature of this apparent permanent difference. Also explain to us how this non-taxable line item triggers an increase in your income tax expense.
- Please explain to us why state income taxes had such a significant impact on your statutory rate reconciliation for fiscal 2012.
- Please provide us proposed disclosure to be included in future periodic reports that addresses the following issues related to disclosure in your income tax rate reconciliation table on page [X]:
  - Please explain the significant prior year adjustments relative to expected tax benefit/expense in 2012 and 2010. Please separately tell us why these adjustments were recorded in the periods they were and why they are not indicative of errors in your previous period financial statements.
  - Please separately disclose each of the reconciling items that represent greater than [X]% of your expected income tax benefit/expense as required by Item 4-08(h)(2) of Regulation S-X. In this regard, the absolute value of your "other" reconciling item is approximately [X]% of the expected tax benefit in 2012.

Uncertain Tax Positions

- The uncertainty of the unrecognized tax benefits related to the timing of the deduction of certain acquired assets was resolved in the period ended June 30, 2013 as the Internal Revenue Service completed the audit of tax years 2010 and 2011. You expect to pay approximately $[X]. Please expand your disclosures to clarify the financial statement impact of this resolution during the six months ended June 30, 2013.
- Please tell us your consideration of the guidance in ASU 2013-11 regarding the potential impact on your accounting for unrecognized tax benefits and your net operating loss and research and development credit carryforwards deferred tax assets. To the extent appropriate, please revise your disclosure of recently issued accounting pronouncements to include this pronouncement.
- You disclose on page [X] that the addition of unrecognized tax benefits in 2012 of $[X] was primarily attributable to U.S. tax positions taken in the current year. Please explain in detail what these tax positions relate to by category and amount, including the facts and timing of the circumstances specific to these positions in the current year as compared to prior years. See FASB ASC 740-10-50.
- It is unclear how you determined that the impact of changes in the liability for uncertain positions is not significant to results of operations for each of the three year periods presented. Please [provide] us with the tabular reconciliation of the liability for uncertain tax positions and explain how you assessed the materiality of the changes. Also tell us the amount of interest and penalties recorded in each period.
- Reference is made to the discussion on page [X] regarding the [State A] audits of your tax returns and the related assessments. Please tell us your consideration of disclosing an estimate of the range of reasonably possible change in your unrecognized tax benefits or a statement that an estimate of the range cannot be made. Refer to ASC 740-10-50-15d.3. In addition, please tell us your consideration of expanding your critical accounting policy disclosure related to uncertain tax positions on page [X] to quantify the extent to which your estimate is sensitive to change.

Undistributed Earnings of Foreign Subsidiaries

- Please revise your disclosures on page [X] to state the amount of undistributed earnings from your foreign subsidiaries as of June 30, 2013 that are not subject to a U.S. tax provision because it is your intention to permanently reinvest such undistributed earnings outside of the U.S. We refer you to ASC 740-30-50.
- Please tell [us] whether you have any undistributed earnings from foreign subsidiaries and if so, please disclose the amount of the undistributed earnings and the unrecognized deferred tax liability related to the undistributed earnings. We refer you to ASC 740-30-50-2.

- We note that you have significant foreign operations which resulted in tax obligations. In this regard, please tell us whether you hold significant cash amounts in foreign jurisdictions with favorable tax rates. If so, please tell us the impact that repatriating such amounts would have on your income taxes and results of operations, or clearly indicate that such amounts are permanently reinvested. In addition, please tell us whether you previously repatriated funds as well as whether you can meet your obligations, including dividend payments, with available funds, without repatriating such amounts. If meeting such obligations is not possible without the repatriating amounts held in jurisdictions with favorable tax rates, please revise to include appropriate disclosure in your dividend policy section, on page [X], as well as in your liquidity and capital resources discussion within MD&A.
- Discuss the fact that if the foreign cash and short-term investments are needed for your operations in the U.S., you would be required to accrue and pay U.S. taxes to repatriate these funds but your intent is to permanently reinvest these foreign amounts outside the U.S. and your current plans do not demonstrate a need to repatriate the foreign amounts to fund your U.S. operations.
- We see from pages [X] and [X] that [X%] of your revenue is generated from customers located outside of the United States and that deferred tax liabilities have not been recognized for $[X] of undistributed earnings of foreign subsidiaries due to your intention to permanently reinvest such earnings. Please revise future filings to disclose the amount of cash and cash equivalents as well as liquid investments held by your foreign subsidiaries at year end and quantify any amounts that would not be available for use in the U.S. without incurring U.S taxes.
- In future filings, please disclose as of each balance sheet date the cumulative amount of undistributed earnings of foreign subsidiaries that you intend to permanently reinvest and have not currently provided for in your U.S. income taxes. Please provide us with your proposed revised disclosures. Refer to ASC 740-30-50-2.
- Based on your disclosure on page [X] it does not appear that you repatriated any foreign earnings during fiscal 2013, though we note the relatively small impact therefrom in the tax rate reconciliation on page [X]. However, you indicated that you repatriated $[X] at year end in the CFO's prepared remarks of the earnings call transcript. Please clarify or reconcile.
- We note from your disclosure on page [X] that if you are required to pay the arbitration award, the award would be paid from one of your foreign subsidiaries using cash that is currently intended to be indefinitely reinvested. Please tell us whether you have accrued U.S. income tax on the funds that will be repatriated to pay the arbitration award. If you have, please clarify your disclosures in future filings. If you have not accrued taxes, please tell us why you do not believe it is necessary to do so considering that you believe it is probable that the award will be paid. See ASC 740-30-25-19.
- Given your significant foreign operations, please enhance your liquidity disclosures to address the following:
  - Disclose the amount of cash and short-term investments held by foreign subsidiaries as compared to your total amount of cash and short-term investments as of December 31, 2012;
  - Disclose whether or not you would need to accrue and pay taxes if these amounts are repatriated;
  - Disclose, if true, that you do not intend to repatriate these amounts; and
  - Disclose the nature and extent of any legal or economic restrictions on the ability of your subsidiaries to transfer funds to you in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on your ability to meet cash obligations.

  Refer to Item 303(a)(1) of Regulation S-K, SEC Release 33-8350 Section IV and Financial Reporting Codification 501.06.a.
- In light of the fact that your foreign subsidiary has paid significant dividends to the parent company in each of the last three years it is unclear how you have determined that all of the undistributed earnings of foreign subsidiaries are considered permanently reinvested. Please tell us and provide proposed disclosure detailing what sufficient evidence you have to support your assertion per ASC 740-30-25-17.

Valuation Allowance

- Please revise future filings to discuss why you recorded a deferred tax asset valuation allowance related to state low-income housing tax credits. Also disclose the facts and circumstances that would allow you to realize the benefit from these deferred tax assets. Please provide us with your proposed disclosure.

- We note the disclosure on page [X] of foreign net operating loss carry-forwards and their related valuation allowances for certain jurisdictions. We also note the disclosure on page [X] of the significant foreign income before income taxes. Please tell us how the valuation allowances recorded against foreign net operating loss carry-forwards were determined in light of the levels of foreign income in each of the three fiscal years ended June 29, 2013. In future filings please provide the disclosures about undistributed earnings of foreign subsidiaries required by FASB ASC 740-30-50.
- We note the increases in your deferred tax asset during 2011 and 2012. Please explain to us, and disclose in future filings, the significant assumptions regarding your ability to fully utilize your deferred tax asset.
- We note on page [X] that you recorded a $[X] valuation allowance for deferred tax assets due to a periodic evaluation of the future realization of deferred tax assets. Please expand the discussion in future filings to explain the reason for the amount of the valuation allowance recorded in greater detail.
- We note you have recorded a partial allowance for your deferred tax assets. Please explain your basis for concluding that only a partial allowance is needed. Specifically tell us the facts and circumstances you used to determine whether each significant deferred tax asset was more likely than not to be realized. Tell us and revise to disclose the nature of the positive and negative evidence you considered in your determination, how that evidence was weighted, and how that evidence led you to determine it was not appropriate to record a valuation allowance on the remaining deferred tax assets.
- We note you have only recorded a small deferred tax valuation allowance at December 31, 2012 related to the OTTI loss at the holding company. We also note that you have recorded losses in recent years and that your determination that it is more likely than not that you will realize the net deferred tax asset is based on "forecasted earnings and is supported by a strong earnings history exclusive of the loan losses that occurred during 2008, 2009, 2010, 2011 and 2012 which created the future deductible amount. Management believes the magnitude of loan losses occurred because of the current economic downturn and the situation is unusual and infrequent and an aberration rather than a continuing condition."

  In determining the need for a deferred tax asset valuation allowance and considering the guidance in paragraphs 21–23 of ASC 740-10-30, forming a conclusion that a valuation allowance is not needed is difficult when there is negative evidence such as cumulative losses in recent years, which is considered a significant piece of negative evidence that is difficult to overcome. The weight given to the potential effect of negative and positive evidence should be commensurate with the extent to which it can be objectively verified.

  Please provide us an accounting analysis that details the specific positive and negative evidence you considered in determining that your deferred tax assets will more likely than not be realized at December 31, 2013. . . . Please tell us how [Company A] determined the fair value of the deferred tax asset for the purchase price allocation in the pro forma financial information.
- We note that you reduced your valuation allowance for deferred tax assets during fiscal years 2012 and 2011 by $[X] and $[X], respectively. Considering the materiality of the tax benefit to income from continuing operations, please include a discussion and analysis of the specific deferred tax assets the change in valuation allowance relates, and the specific positive and negative evidence considered for each deferred tax asset. We further note that you continue to maintain a valuation allowance of $[X] as of December 31, 2012. Please disclose the specific deferred tax assets that the valuation allowance relates and the specific positive and negative evidence considered when concluding that realizability of these deferred tax assets remains not more likely than not. Please provide us with the disclosures you would have included in your 2012 Form 10-K in response to this comment.

  We note that if you are "able to realize [y]our deferred tax assets in excess of [y]our net recorded amount, an adjustment to the valuation allowance would increase income in the period such determination was made." We further note from disclosure in Note [X] that you have a valuation allowance of $[X] against deferred tax assets of $[X] as of December 31, 2012. Please tell us and revise future filings to disclose the specific deferred tax assets to which your valuation allowance relates and the potential circumstances that may cause you to adjust your valuation allowance in future periods. To the extent your estimates and assumptions are reasonably likely to change in the future, for example if additional taxable income in an upcoming quarterly period would cause you to release of all or a portion of your valuation allowance, you should address this in your disclosures. Refer to Section V of SEC Release 33-8350.

- We note your response to comment [X] in our letter dated [XXXXX], 2013. Please provide us with the following specific detailed information to support the realizability of the net deferred tax asset at December 31, 2012, June 30, 2013 and any future quarterly periods (September 30, 2013):
    - Detailed tax effects of temporary differences related to the deferred tax asset as of June 30, 2013 and any future quarterly period (September 30, 2013), similar to the information presented in your response and in the S-1 on page [X] as of December 31, 2012 and 2011;
    - Provide us with your forecasted 2013 projections, including all assumptions considered;
    - Detailed information comparing actual vs. forecasted results for the fiscal year ended December 31, 2012 and for the six month period ending June 30, 2013 and any future quarterly period (September 30, 2013). In regard to any projections and assumptions utilized, provide us with specific evidence to support the assumptions, such as the number of years in the projections, estimated growth rates, net interest margins considered, estimated loan loss provision rates, efficiency ratio as well as revenue and expense growth rates utilized.
- Given the significant amount of your deferred tax assets as well as your material loss from operations for the year ended June 30, 2012 and the nine months ended March 31, [2013], please disclose how you have determined that as of March 31, [2013,] it is more likely than not that you will realize these assets. Provide a detailed description of the factors considered in assessing the realizability of these assets. For example, if you are relying on the recognition of future pre-tax income, please disclose the amount of pre-tax income that you need to generate to realize the deferred tax assets. If you are relying on tax planning strategies, please disclose the nature of your tax planning strategies, how each strategy supports the realization of deferred tax assets, the amount of the shortfall that each strategy covers, and any uncertainties, risks, or assumptions related to these tax-planning strategies. Refer to paragraphs 16-25 of ASC 740-10-30 and Section 501.14 of the Financial Reporting Codification for guidance.
- We note your disclosure on page [X] regarding the deferred income tax benefit of $[X] recognized for the fiscal year ended December 31, 2012. Please tell us and revise future filings to explain the following:
    - How you determined that a valuation allowance was no longer necessary for deferred tax assets related to conversion of [Company A] to a limited liability partnership.
    - Explain in further detail how you considered the fact that [Company A] is in a three-year cumulative loss position as of December 31, 2012 and September 30, 2013 in reaching your conclusion that a full deferred tax asset valuation allowance is not required.
- We note your statement that "due to a lack of significant positive evidence" you established a valuation allowance on all U.S federal and certain U.S. state and foreign deferred tax assets. Please explain in greater detail here, and in your Critical Accounting Policies, the negative evidence you evaluated leading you to conclude that an allowance was needed on all U.S. and certain U.S. state and foreign deferred tax assets. Furthermore provide disclosures on how you arrived at the estimate, including the assumptions and estimates used to determine the valuation allowance.
- We note you released a significant portion of your U.S. deferred tax valuation allowance during 2012. In future filings, please revise your disclosure to provide a more detailed explanation as to how you determined it is more likely than not that you will realize total deferred tax assets. Please ensure your disclosure address each of the following points, as appropriate:
    - Disclose the amount of pre-tax income that needs to be generated to realize the deferred tax assets to the extent you are relying on future income. Include an explanation of the anticipated future trends included in your projections of future taxable income. Confirm to us that the anticipated future trends included in your assessment of the realizability of your deferred tax assets are the same anticipated future trends used in estimating the fair value of your reporting units for purposes of testing goodwill for impairment and any other assessment of your tangible and intangible assets for impairment.
    - Disclose that the deferred tax liabilities you are relying on in your assessment of the realizability of your deferred tax assets will reverse in the same period and jurisdiction and is of the same character as the temporary differences giving rise to the deferred tax assets to the extent you are relying on deferred tax liabilities.

- If you are also relying on tax-planning strategies, please disclose the nature of your tax planning strategies, how each strategy supports the realization of deferred tax assets, the amount of the shortfall that each strategy covers, and any uncertainties, risks, or assumptions related to these tax-planning strategies.

- We note that you maintain a significant valuation allowance and you appear to be reducing it over time. Please tell us the factors you considered when determining that a valuation allowance was necessary in light of your historical pre-tax income. If you are changing the valuation allowance for only the amount of the NOL used during the period, please tell us the basis for determining that this change in the valuation allowance is appropriate and how you determined that it was more likely than not that your NOLs and other deferred tax assets will not be realized. See ASC 740-10-30-17 for guidance. As part of your response, please tell us how you considered disclosing, here and in your discussion of operating results on page [X] and [X], the circumstances that led to the valuation allowance reversals.

- We note your disclosure stating that after considering all available positive and negative evidence, you reversed $[X] of the remaining valuation allowance on your [Country A] and [Country B] deferred tax assets as of February 29, 2012, as you determined that it was more likely than not that these benefits would be realized.

  Given the impact of the reversal of the valuation allowance on your 2012 net income, please provide draft disclosure to be included in future filings that expands discussion on the material positive and negative evidence you considered, along with how it was weighted, in determining that it is more likely than not that your deferred tax assets will be realized. Your response should provide a detailed analysis regarding how you determined that the realization of the [Country A] deferred tax asset. Specifically address the positive and negative evidence considered for your [Country B] subsidiary, including your consideration of the restructuring activities in 2012. Refer to the guidance in ASC 740-10-30-16 through 30-25.

- We note you have recorded a partial allowance for your deferred tax asset at December 31, 2012 and June 30, 2013 and have released a portion of the valuation allowance during fiscal 2012 and in the interim period of June 30, 2013. Please provide us with specific detailed information to support the realizability of the net deferred tax asset, and your accounting, at December 31, 2012 and June 30, 2013. Please make sure to address the following in your response:

  We note that you have recognized significant cumulative losses from continuing operations during the fiscal 2008-2011 periods, and only minor income from taxes during 2012 and the 6-months ended June 30, 2013. In determining the need for a valuation allowance, forming a conclusion that a valuation allowance is not necessary is difficult when there is negative evidence such as cumulative losses from continuing operations, which is considered a significant piece of negative evidence that is difficult to overcome (refer to paragraphs 21–23 of ASC 740-10-30). Furthermore the weight given to the potential effect of negative and positive evidence should be commensurate with the extent to which it can be objectively verified, specifically concerning forecasts of future taxable income. Please provide us with specific evidence to support the realizability of the net deferred tax asset at June 30, 2013 and December 31, 2012.

Appendix A: SEC Staff Review Process

The SEC's Division of Corporation Finance (the "Division") selectively reviews filings made under the Securities Act of 1933 and the Securities Exchange Act of 1934. In January 2009, the SEC staff issued an overview that explains its filing review and comment letter process.[1] The overview aims to increase transparency in the review process and expresses the staff's willingness to discuss issues with registrants. For example, the overview indicates that the "[staff] views the comment process as a dialogue with a company about its disclosure" and that a "company should not hesitate to request that the staff reconsider a comment it has issued or reconsider a staff member's view of the company's response to a comment at any point in the filing review process."

The overview is divided into two main sections:

- *The Filing Review Process* — This section explains that the Division comprises 12 offices staffed by experts in specialized industries, accounting, and disclosures. The section includes background on the different types (required and selective) and levels of review and covers the comment process, indicating that "[m]uch of the [staff's] review [process] involves reviewing the disclosure from a potential investor's perspective and asking questions that an investor might ask when reading the document." The section also addresses how to respond to staff comments and close a filing review.
- *The Reconsideration Process* — This section emphasizes that "staff members, at all levels, are available to discuss disclosure and financial statement presentation matters with a company and its legal, accounting, and other advisors." In addressing a registrant's potential request for the SEC staff to reconsider a staff member's comment or view on a registrant's response, the staff emphasizes that registrants do not have to "follow a formal protocol." However, the staff explains where registrants should start and the steps involved in the normal course of the reconsideration process. The staff also specifies contact information for each office for both accounting and financial disclosure matters and legal and textual disclosure matters.

Registrants may involve the SEC's Office of the Chief Accountant (OCA) during any stage of the review process. Unlike the Division's role, which is to address matters related to the age, form, and content of registrants' financial statements that are required to be filed, the OCA's role is to address questions concerning a registrant's application of GAAP. Guidance on consulting with the OCA is available on the SEC's Web site.

A registrant that receives an SEC comment letter should generally respond within the time frame indicated in the letter. See Appendix B for more information about responding to SEC comment letters. The registrant should continue to respond to any requests for more information until it receives a letter from the Division stating that the Division has no further comments. A registrant that does not receive a completion letter within a reasonable amount of time after submitting a response letter should call its SEC staff reviewer (named in the letter) to ask about the status of the review. If the review is complete, the registrant should request a completion letter.

To increase the transparency of the Division's review process, comment letters are made public, via the SEC's Web site, no more than 20 days after the review is completed. See Appendix C for tips on searching the SEC's comment letter database.

[1] An overview of the legal, regulatory, and capital markets offices is also available on the SEC's Web site.

Appendix B: Leading Practices for Managing Unresolved SEC Comment Letters

The leading practices below are intended to help registrants resolve any staff comment letters in a timely manner. Unresolved comments may affect a registrant's ability to issue financial statements and an auditor's ability to issue the current-year audit report. In addition, when responding to staff comment letters, registrants should be mindful of their responses because all responses to staff comment letters are made publicly available and become part of a registrant's "total mix of information" and disclosure records (i.e., investors may read such responses similarly to how they interpret a registrant's other filings and publicly available information).[1] A registrant should do the following:

- Consider the impact the comment letter may have on its ability to issue the financial statements.
- Consult with its SEC legal counsel about the impact the comment letter may have on the certifications contained in its Form 10-K.
- Consult with its auditors to discuss the impact the comment letter may have on their ability to issue the current-year audit report.
- Review the comment letter immediately and respond to the SEC staff reviewer (named in the letter) within the time indicated in the comment letter (usually 10 business days). If possible, the registrant should not request an extension, since this may delay resolution of the comment letter. However, in certain circumstances, the registrant should consider requesting an extension to provide a more thorough and complete response that addresses all of the staff's comments.
- If the registrant does not fully understand any specific comment, the registrant should contact its SEC staff reviewer quickly for clarification so that it can provide an appropriate response.
- Include in the response a discussion of supporting authoritative accounting literature and references to the specific paragraph(s) from the standard(s).
- Because some comments may request disclosure in future filings, the registrant should consider including such disclosure in the response letter to potentially eliminate additional requests from its SEC staff reviewer.
- If an immaterial disclosure is requested, the registrant should consider explaining why the disclosure is immaterial instead of including the immaterial disclosure in future filings.
- Maintain contact with its SEC staff reviewer and make the reviewer aware of the registrant's required timing (on the basis of its current-year filing deadlines).
- If the registrant has not received a follow-up letter or been contacted within two weeks of filing the initial response letter, the registrant should contact its SEC staff reviewer to determine the status of the comments. The registrant should promptly address any follow-up questions.
- If the registrant is uncertain about whether its review has been completed without further comments, it should ask the SEC staff reviewer about the status of the review. If the review is complete, the registrant should ask the reviewer for a completion letter.

Oral Comments

In limited circumstances, the SEC staff may provide oral comments to a registrant instead of a written comment letter. The registrant should ask the SEC staff reviewer how he or she would like to receive the registrant's response to the oral comments. If the reviewer requests a response via EDGAR, a registrant should respond with a written letter. If the reviewer requests an oral response or identifies no preference, a registrant should still, although it is not required to do so, consider responding to the staff's comments with a letter to formally document the registrant's understanding of the staff's comments and the discussions held as well as the registrant's response.

Disclosure Requirements

Under the Securities Offering Reform, large accelerated filers, accelerated filers, and well-known seasoned issuers must disclose in their Forms 10-K the substance of any material unresolved SEC staff comments that were issued 180 or more days before the end of the current fiscal year.

[1] The SEC staff discussed this topic at the 2012 AICPA Conference. Refer to Deloitte's December 11, 2012, *Heads Up* for more information.

Appendix C: Tips for Searching the SEC's Database for Comment Letters

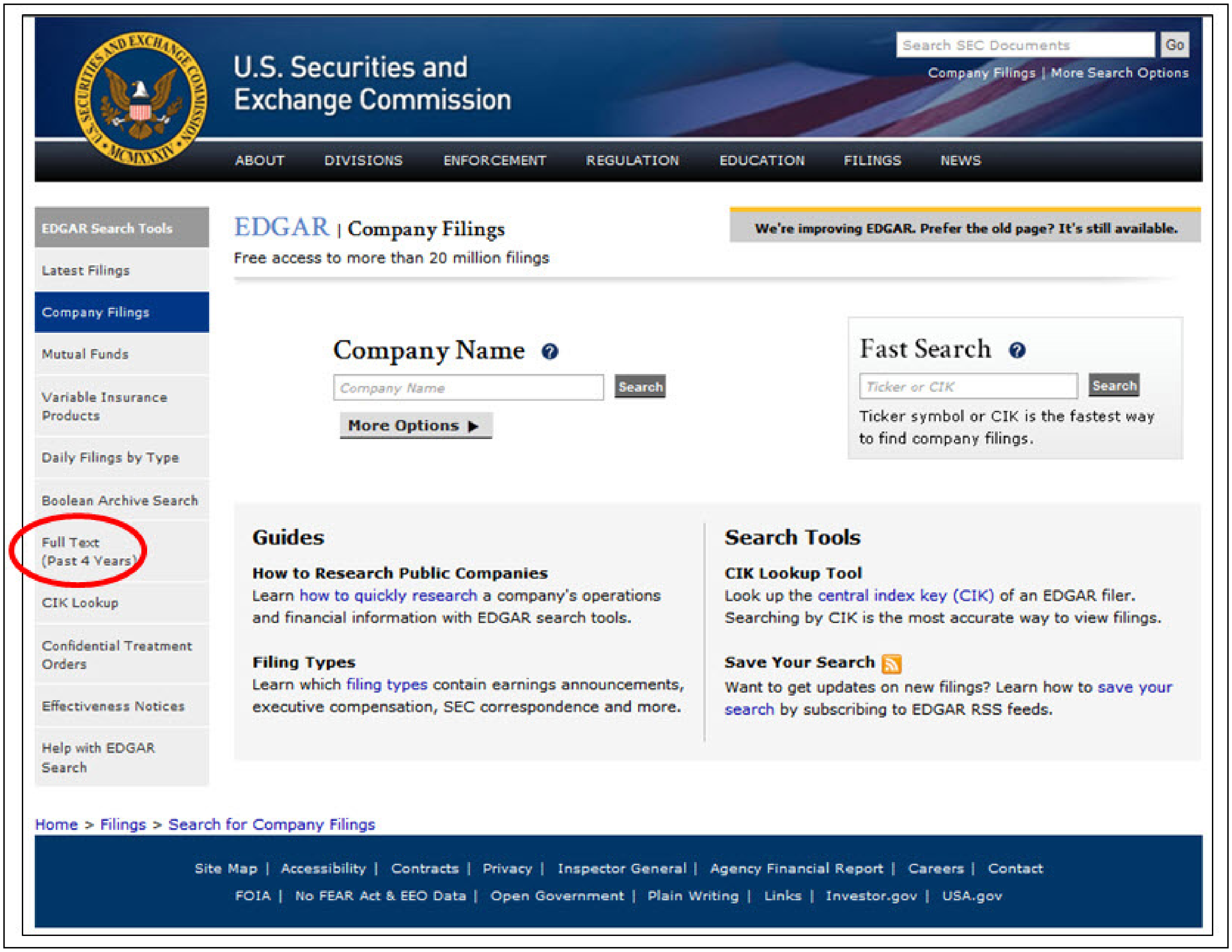
The SEC adds comment letters (and responses from registrants) to its EDGAR database no earlier than 20 days after its review of a filing is complete. Registrants can refer to such comments as part of their financial statement review process and to improve their own accounting and overall disclosure.

Although the SEC has recently updated the EDGAR search engine to simplify searches of corporate filings, users may still wish to use the "full-text" search feature to find the text of specific comment letters posted within the last four years and to generally narrow their search results. The process of performing a full-text search is discussed below.

Full-Text Searching

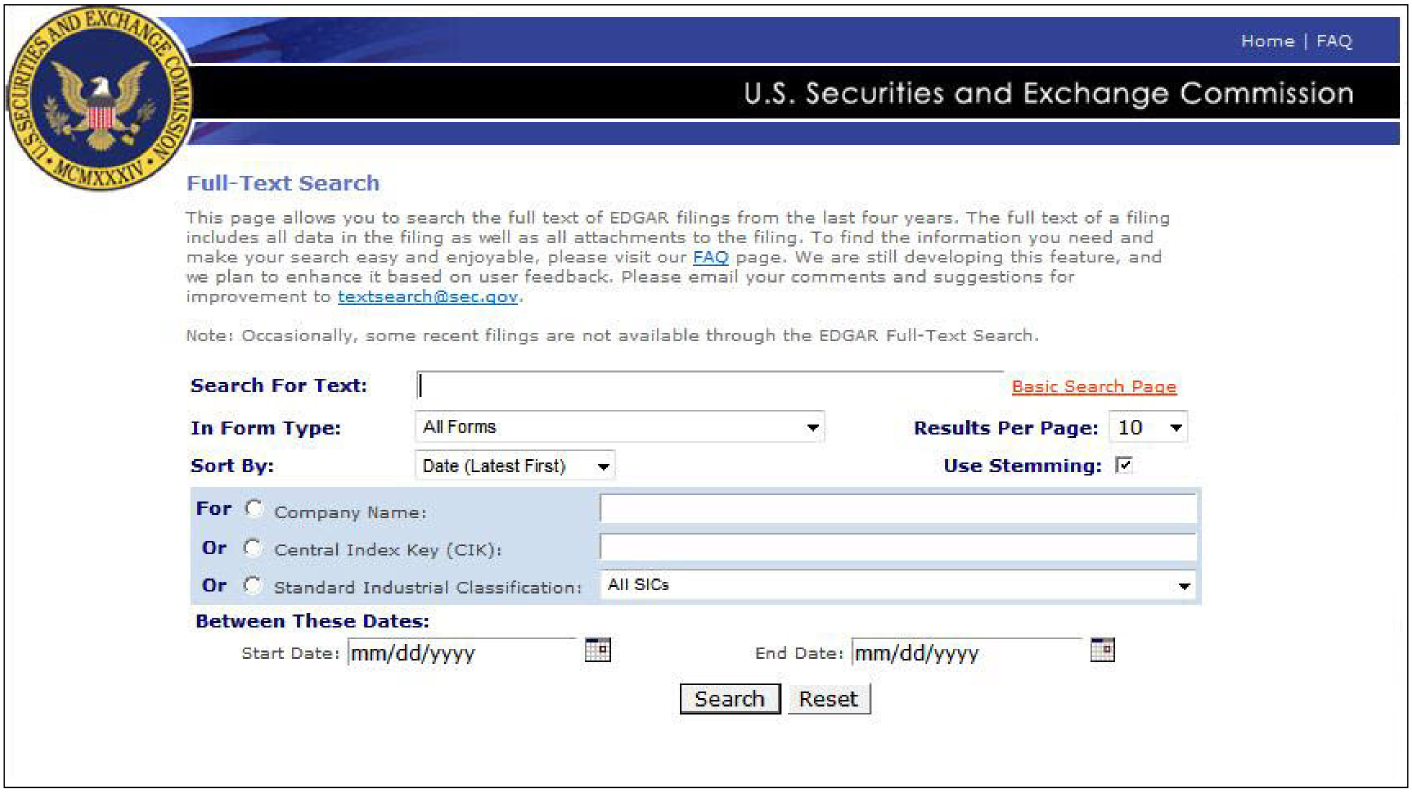
To perform a full-text search, first go to the SEC's home page (www.sec.gov) and click the "Search EDGAR for Company Filings" image:

Then, click the “Full Text” link in the left sidebar on the “EDGAR l Company Filings” page:



On the “Full-Text Search” page, select “Advanced Search Page”:

This brings up the following form:


Home | FAQ

U.S. Securities and Exchange Commission

Full-Text Search

This page allows you to search the full text of EDGAR filings from the last four years. The full text of a filing includes all data in the filing as well as all attachments to the filing. To find the information you need and make your search easy and enjoyable, please visit our FAQ page. We are still developing this feature, and we plan to enhance it based on user feedback. Please email your comments and suggestions for improvement to textsearch@sec.gov.

Note: Occasionally, some recent filings are not available through the EDGAR Full-Text Search.

Search For Text: Basic Search Page

In Form Type: All Forms **Results Per Page:** 10

Sort By: Date (Latest First) **Use Stemming:**

For Company Name:

Or Central Index Key (CIK):

Or Standard Industrial Classification: All SICs

Between These Dates:

Start Date: mm/dd/yyyy End Date: mm/dd/yyyy

Search Reset

In the form, limit the search results to SEC comment letters by using the drop-down menu next to **"In Form Type"** and choosing "UPLOAD" (or select "CORRESP" to include registrant responses as well).

Then, enter search terms in the **"Search for Text"** field. The documents found will contain at least one of the words entered as well as variations of the key word(s). To search for specific phrases, enclose the phrase in quotation marks (e.g., "management's discussion and analysis"). Results will include documents that contain the quoted phrase as well as conceptually related phrases, such as "managerial discussion & analysis."

Enhancing Search Results

Searches can be further refined by using Boolean operators such as AND, OR, and NOT (capitalization of these terms is required). For an operator to work effectively, a key word or phrase generally must be included before and after it (e.g., investments AND temporary). Searches in which operators are used will produce results as follows:

- *AND* — Documents will contain **all** terms connected (but not necessarily in the same sentence or paragraph) by the AND operator. The terms can appear in any order in the document.
- *OR* — Documents will contain **any** terms connected by the OR operator.
- *NOT* — Documents will contain one term but **not** another term.

Using wildcards or the "nearness" feature can also enhance search results:

- *Wildcards* — While certain variations of key words are automatically included in search results, using an asterisk (*) can ensure that all variations are included. For example, the wildcard "impair*" can be used to find documents that contain the words impair, impaired, impairing, impairment, or impairs.
- *Nearness* — Key words or phrases within a certain distance of each other can be searched by stipulating a range. The range is determined by using the term "NEARn," with "n" representing the maximum number of words in the range (e.g., "impairment NEAR5 test" would find documents with impairment and test within five words of each other).

Advanced search features can frequently be combined. For example, quotations used to find a specified phrase can be combined with Boolean operators (e.g., investments AND "temporary decline").

Note that numbers are ignored in searches. Thus, a search for "Final Rule 108" will only locate documents that contain the terms "Final" and "Rule." Searches can, however, be sorted by other criteria, such as dates, as discussed below.

Sorting by Dates and Other Specific Criteria

On the full-text search form, selections can also be made to limit results to a specified:

- Company name.
- Central index key (CIK).[1]
- Standard industrial classification (SIC) code.[2]
- Date range.

Note that clicking the SIC code in the list of search results will display a list of additional companies that have the same SIC code:

Example	
08/13/2013	SC 13G/A for CAPITALSOURCE INC
	COMPANY NAME(s) - [**CAPITALSOURCE INC (CIK - 1241199 /SIC - 6022), WELLS FARGO COMPANY MN (CIK - 72971 /SIC - 6021)**]
	UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 SCHEDULE 13G Under the Securities Exchange Act of 1934 (Amendment No. 3) CAPITALSOURCE INC (Name of Issuer) COM (Title of Class of Securities) 14055X102 (CUSIP Number) July 31, 2013 (Date of Event Which Requires Filing of this

Controlling and Displaying Search Results

The **Results Per Page** drop-down list can be used to limit the number of search results that display. To open a comment letter, click on the underlined title of the form to the right of the date. The comment letters will include any attachments or exhibits.

Example of the Benefits of Using Full-Text Search Features

Assume that a user is interested in SEC comments issued over the past two years that are related to results of operations in the hotel industry. By searching for the words "results" and "operations" with "All Forms" selected and no dates specified, the user would obtain over 8,000 results, many of which are not relevant.

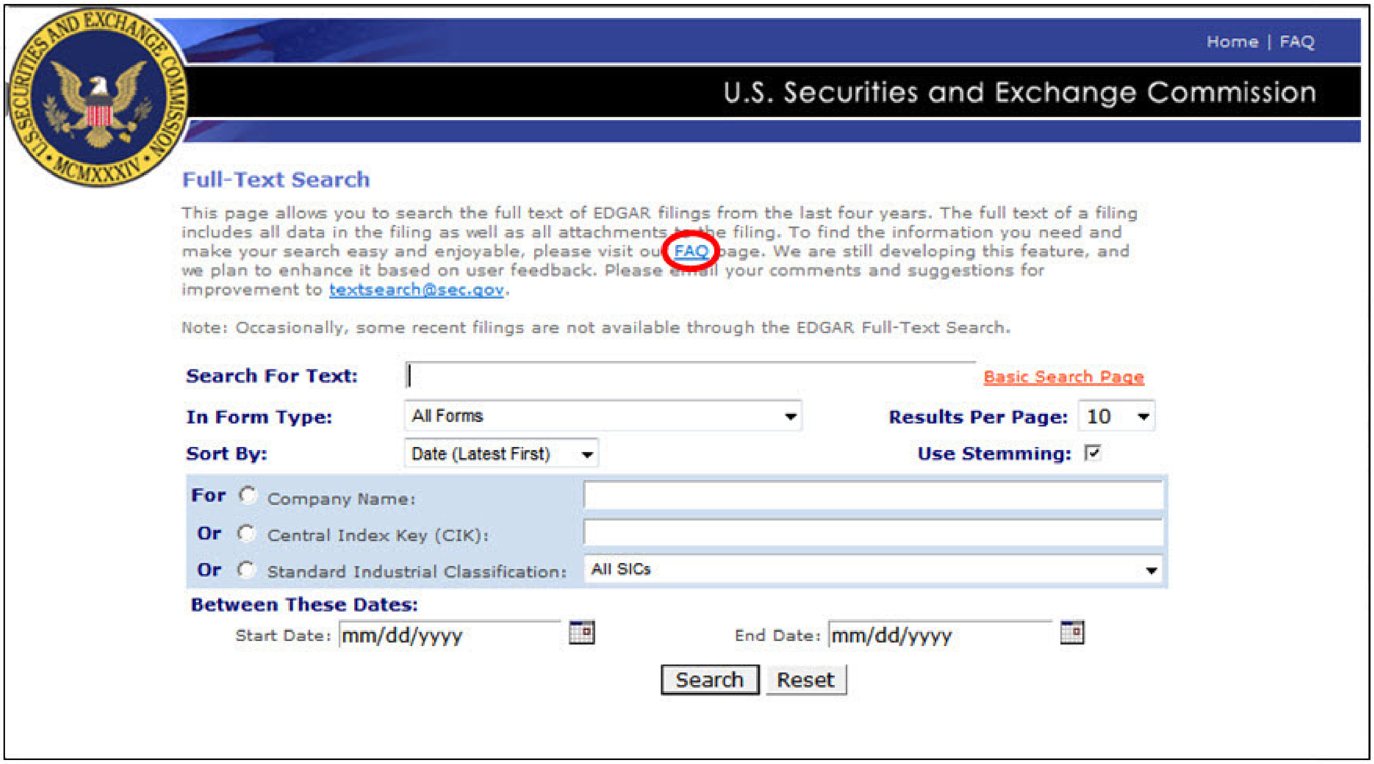
However, if the user narrowed his or her search by (1) selecting the form type UPLOAD, (2) entering the search term "results of operations" in quotation marks, (3) entering the industry code for the hotel/motel industry (SIC 7011), and (4) providing a date range spanning the last two years, the number of results will be more relevant and manageable.

[1] According to the SEC's Web site, "a CIK is the unique number that the SEC's computer system assigns to individuals and corporations who file disclosure documents with the SEC. All new electronic and paper filers, foreign and domestic, receive a CIK number."

[2] A SIC code is an industry designation. Note that some of the SIC code descriptions are similar, so narrowing results by SIC code may not include certain issuers that are in a similar industry yet have a different assigned SIC code.

Additional Information

For more information about full-text searching, click the FAQ link on in the search form:



Appendix D: Glossary of Standards and Other Literature

The standards and literature below were cited or linked to in this publication.

FASB ASC References

For titles of *FASB Accounting Standards Codification* references, see Deloitte's "Titles of Topics and Subtopics in the *FASB Accounting Standards Codification*."

FASB Literature

See the FASB's Web site for titles of FASB literature used in this publication.

International Standards

See Deloitte's IAS Plus Web site for titles of international standards used in this publication.

SEC Guidance

Form 10-K, "General Form of Annual Report"

Form 10-Q, "Quarterly Reports"

Financial Reporting Codification Section 501, "Management's Discussion and Analysis"

Interpretive Release 33-8350, *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*

Regulation S-K, Item 10, "General"

Regulation S-K, Item 303, "Management's Discussion and Analysis of Financial Condition and Results of Operations"

Regulation S-X, Rule 4-08, "General Notes to Financial Statements"

SAB Topic 11.C, "Tax Holidays"

Appendix E: Abbreviations

Abbreviation	Description
AICPA	American Institute of Certified Public Accountants
AICPA Conference	The annual AICPA National Conference on Current SEC and PCAOB Developments
ASC	FASB Accounting Standards Codification
CFO	chief financial officer
CIK	central index key
DTA	deferred tax asset
EDGAR	SEC's Electronic Data Gathering, Analysis, and Retrieval system
FAQ	frequently asked questions
FASB	Financial Accounting Standards Board
GAAP	generally accepted accounting principles
IAS	International Accounting Standard
IFRS	International Financial Reporting Standard
MD&A	Management's Discussion and Analysis
NOL	net operating loss
OCA	SEC's Office of the Chief Accountant
OTTI	other-than-temporarily impaired
PCAOB	Public Company Accounting Oversight Board
SEC	Securities and Exchange Commission
SIC	standard industrial classification