

Heads Up

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Look Who’s Talking

Highlights of the “SEC Speaks in 2014” Conference

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In late February, the Practising Law Institute hosted its two-day “SEC Speaks in 2014” Conference. At the conference, SEC commissioners and staff members gave speeches on numerous topics of interest to the legal and accounting professions, including financial reporting developments.¹

This *Heads Up* discusses four main topics that were addressed at the “SEC Speaks in 2014” Conference:

- Disclosure efficiency.
- The staff’s observations about registrants’ filings.
- Cybersecurity.
- Audit committee considerations.

Disclosure Efficiency

Certain SEC staff members indicated that they preferred to use the term “disclosure efficiency” rather than “disclosure overload” to describe the SEC’s efforts to help registrants streamline their disclosures. The staff explained that registrants should not simply strive to reduce the number of disclosures in their filings. Rather, they should focus on providing tailored, clear, and concise disclosures about material issues. The staff stressed that it was important for registrants to continually assess their disclosures — including those that resulted from previous staff reviews — to ensure that they remain relevant and material. In addition, the staff cautioned against providing (1) disclosures about general or industry-specific SEC staff comment trends or (2) disclosures resulting from the staff’s questions during a filing review, unless such disclosures are pertinent.

The SEC staff further indicated that one of the easiest ways to promote disclosure efficiency is to reduce or eliminate redundant disclosures. As it has in the past, the staff noted that accounting policy and legal contingency disclosures from the financial statements are often repeated in the accounting and critical estimates discussion in MD&A and the legal proceedings section of the filing, respectively.

Editor’s Note: One step the staff has taken to foster disclosure efficiency is to clarify certain interpretive guidance (e.g., Section 9520 of the SEC Financial Reporting Manual (FRM), which was updated on February 6, 2014, and addresses “cheap stock” disclosures in initial public offerings).

In addition, while the SEC staff has historically updated the FRM on a calendar-quarter basis, the staff noted that, going forward, it will update the FRM when events and circumstances warrant doing so.

¹ Many of the topics discussed at the “SEC Speaks in 2014” Conference were also addressed at the 2013 AICPA Conference on Current SEC and PCAOB Developments. See Deloitte’s December 16, 2013, *Heads Up* for more information about the topics discussed at the 2013 AICPA Conference, which was held on December 9–11, 2013.

Furthermore, in December 2013, the staff issued a [report to Congress](#) in accordance with Section 108 of the JOBS Act,² which instructs the SEC to review Regulation S-K to determine how its requirements can be updated and modernized. In this report, the staff indicated that it could use either a targeted or comprehensive approach to develop its recommendations. The staff concluded that a comprehensive approach would better serve a larger cross-section of registrants, including emerging growth companies, and is currently working to define its review scope and determine methods of promoting disclosure efficiency. Such methods may include identifying (1) overlapping or outdated requirements, (2) redundant disclosures, and (3) rules that have resulted in disclosures that routinely include information beyond what is required or what was originally intended (e.g., risk factor disclosures).

Editor’s Note: Because the staff will be using a comprehensive approach in its review of Regulation S-K, it is expected that the review (and any resulting changes to Regulation S-K) will take longer than a more targeted approach. In response to a question, an SEC staff member noted that although the staff intends to consider potential changes to Regulation S-K more holistically, it will try to avoid over-focusing on details (or undertaking too broad a scope) that could result in extensive delays. The staff recognizes that it may need to make changes during the review, rather than waiting until a full review is complete.

The SEC staff noted that segment reporting involves significant management judgment and that the staff often asks registrants to provide supporting analyses so that it can better understand the basis for registrants’ conclusions.

Staff Observations About Registrants’ Filings

The SEC staff outlined key points that registrants should consider when determining the nature and extent of their disclosures. Aspects of registrants’ disclosures that the staff is continuing to focus on include the following:

- *Non-GAAP financial measures* — The SEC staff reminded registrants that non-GAAP measures (1) should be presented with sufficient context, (2) should not be displayed with undue prominence relative to GAAP measures, and (3) should be clearly labeled (e.g., if a non-GAAP measure is titled similarly to one that is commonly understood, a registrant should describe how it is different). Above all, non-GAAP measures should not be misleading.
- *Segment reporting* — The SEC staff noted that segment reporting involves significant management judgment and that the staff often asks registrants to provide supporting analyses so that it can better understand the basis for registrants’ conclusions. However, the staff clarified that registrants are not necessarily required to provide more disclosures in such circumstances. Moreover, the staff reminded registrants that they should evaluate their segments regularly and that such an evaluation could be affected by changes in the chief operating decision maker (i.e., because new decision makers may evaluate the business differently than their predecessors), acquisitions, dispositions, and restructuring activities. The staff also stressed that it often comments on a registrant’s aggregation of operating segments — particularly when geographical segments are identified — as well as on missing disclosures about, or overly broad categorizations in, products and services.
- *Goodwill impairment* — The staff reminded registrants of the goodwill-related disclosure guidance in FRM Section 9510 and noted that the staff often comments when it observes significant indicators, such as adverse business conditions, that may not have been considered. As with its remarks on segment reporting, the staff noted that it often asks for supporting analyses but that such requests do not automatically equate to requests for additional disclosures.
- *Uncertain tax positions* — The staff reminded registrants to consider disclosures about repatriation of foreign funds (e.g., if material, whether a registrant has disclosed the existence of a tax strategy to repatriate funds without tax implications and any risks or uncertainties related to its strategy).

² The Jumpstart Our Business Startups Act, which was signed into law on April 5, 2012.

Cybersecurity

The SEC staff noted that cyber incidents continue to make headlines in the press and that the SEC will host a roundtable devoted to cybersecurity considerations on March 26, 2014. The staff clarified that there are currently no SEC rules that explicitly require registrants to disclose cybersecurity-related matters in their filings. However, registrants were reminded that the staff has issued CFDG Topic 2,³ which provides interpretive guidance about potential disclosures related to material cybersecurity matters. CFDG Topic 2 notes that registrants may need to provide disclosures in various sections of an SEC filing, including risk factors, MD&A, and the financial statements.

In addressing recent questions about the amount of detail needed in cybersecurity disclosures, the staff reiterated that it would not expect disclosures to be so detailed that they constitute a “roadmap” that would expose a registrant to cyber-attack. The staff also understands that there will be situations in which a registrant may need to limit information in its disclosures (e.g., when the registrant is working with law enforcement officials after a cybersecurity breach). However, the staff indicated that a registrant should avoid boilerplate cybersecurity disclosures and instead should include such information as (1) the aspects of the business that are subject to risks, (2) updates for new information, and (3) cost estimates, if possible and material. The staff also reminded registrants that they should not state that there is a risk of a cybersecurity breach after the occurrence of an actual cyber-attack; rather, such registrants should disclose that they have experienced security breaches or cyber-attacks.

Audit Committee Considerations

As it had done at the 2013 AICPA Conference, the SEC staff emphasized the importance of audit committees. The staff indicated that its remarks about audit committees are not intended to create new requirements but to provide considerations (or reminders) related to how audit committees may perform their duties. For example, the SEC staff suggested that audit committees could actively monitor registrants’ independent audits by (1) developing appropriate metrics to judge the success of the audit, (2) monitoring auditor independence, and (3) understanding the composition of audit fees (i.e., how time is spent during the audit).

The staff also provided the following key takeaways for audit committees:

- “Audit committees are in a unique position to represent investors and play an important role in promoting high-quality, transparent financial reporting to investors.”
- “Monitoring independence is an ongoing responsibility of the audit committee.”
- “Frequent dialogue with management and a direct line of communication with the auditor are an important part of the oversight role.”
- “Audit committees are encouraged to think critically about disclosures to investors about the committee’s work.”

Editor’s Note: Paul Beswick, chief accountant in the SEC’s Office of the Chief Accountant, presented a detailed [slide deck](#) as he delivered his remarks. Registrants and members of audit committees are encouraged to read the slide deck.

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³ Corporation Finance Disclosure Guidance Topic No. 2, *Cybersecurity*.

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