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SEC Comment Letter Trends

PUBLIC COMPANIES
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Securities and Exchange Commission (SEC) Comment Letters are correspondence between the SEC's Division of Corporation Finance and a public company that has made a filing under the Securities Act of 1933 or the Securities Exchange Act of 1934. The SEC views the comment letter process as a dialogue between the SEC and a public company regarding its financial reporting disclosures. Generally, comments provide additional supplemental information so the SEC staff can better understand the disclosure, revise and/or add to a disclosure in a document that is on file with the SEC or provide additional or different disclosures in future filings.

According to *AuditAnalytics.com*, SEC comment letters have decreased in numbers since 2010, declining roughly 66% since 2010 and approximately 14% from 2015. *AuditAnalytics.com* notes that "Other trends related to the 10-K and 10-Q metrics also remained largely unchanged, including: the average length of the review was 45 days in 2016 in comparison to 45 days in 2015, and the number of letters per conversation was about 4 letters per conversation in both 2015 and 2016."

Trends in 2016 show that non-GAAP measures have dethroned results of operations (MD&A) and taken the front seat in the eyes of the SEC, as 409 letters regarding non-GAAP measures were issued in 2016 representing 16.42% of total letters issued (*Audit Analytics*). Comment letters issued relating to non-GAAP measures have increased since 2014, going from the 7th most frequent topic in 2014, to the 3rd most frequent topic in 2015, and emerging in the top spot in 2016. Specific comment trends that we are currently seeing include the undue prominence of non-GAAP measurements and the presenting of non-GAAP measures on a net of tax basis. The SEC makes it relatively clear that non-GAAP measures may not be shown more prominently than GAAP measures (e.g. presenting a full non-GAAP income statement). Additionally, presenting non-GAAP measures on a net of tax presentation is discouraged by the SEC. While some investors merely care about the bottom line, which has been adjusted for the appropriate tax provisions, this is not necessarily the case for all investors. Presenting both the pre- and post-tax amounts allows transparency for investors and also mitigates risk that the information disclosed is misleading to the reader. If considerations and changes are not made by filers in response to the SEC, one would expect the number of comment letters to rise.

We are also seeing the SEC focus on the following comment letter topics, which include, but are not limited to: (a) fair value measurement and estimates (b) results of operations (MD&A), (c) tax expense or benefit and tax deferrals, and (d) PPE Issues (intangible assets and goodwill).

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