Concurrent Session: SEC Legal Issues

Thursday, March 31st
2:45pm – 4pm
Marriott Marquis, Washington DC

Moderator:
Michael McTiernan, Partner, Hogan Lovells LLP

Panelists:
Sonia Barros, Assistant Director-Division of Corporation Finance, Securities and Exchange Commission
Judith Fryer, Shareholder, Greenberg Traurig, LLP
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March 30 - April 1 2016

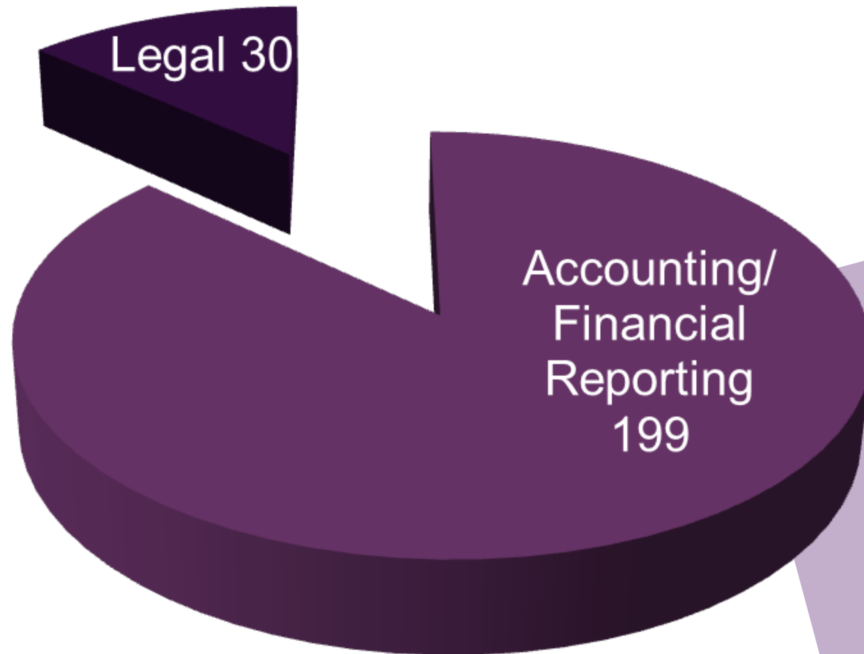
Analysis of 2015 SEC Comment Letters On Form 10-Ks Filed by REITs

Michael McTiernan, Partner
Hogan Lovells US LLP

Scope of Survey

- Reviewed Comment letters issued March 1, 2015 to September 30, 2015 on Form 10-Ks Filed in 2015
- Limited to Traded REITs (Equity and Mortgage)
- Review Covered 91 Letters and 229 comments

General Types of Comments



Summary of Legal Comments

- Most Frequent Topic of Comments:
  - Property Operating Metrics:
    - average rents
    - Occupancy
    - geographic/tenant diversification
- Other Topics:
  - Related Party Transactions
  - Certifications

Summary of Accounting/Financial Reporting Comments

- Most Frequent Topics of Comments:
  - Non-GAAP Measures
  - MD&A
    - results of operations
    - liquidity and capital resources
- Other Topics:
  - Significant Accounting Policies
  - Fair Value

Summary of Non-GAAP Comments

- Most Frequent Topics of Non-GAAP Comments:
  - Labeling issues—primarily clarifying whether FFO includes amounts allocable to unitholders
  - Questioning whether a particular Non-GAAP measure not disclosed in 10-K is a "key performance indicator" or "key liquidity indicator" that should be disclosed in MD&A
  - Failure to comply with Item 10(e) requirements
  - When FFO is identified as "NAREIT FFO", questioning whether certain adjustments are consistent with the NAREIT definition

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Supreme Court Guidance on Opinions in Registration Statements

From the Experts

Robert A. Horowitz, Steven M. Malina and Brian D. Straw

Faced with the new test enunciated by the U.S. Supreme Court this year in Omnicare v. Laborers District Council Construction Industry Pension Fund, corporate securities lawyers will have to make extremely difficult and subjective decisions when it comes to advising their clients whether to disclose opinions in registration statements and, if so, whether the opinions might be considered materially misleading if not accompanied by disclosure of facts that might contradict the opinion.

The case arose out of a registration statement Omnicare filed in connection with its 2005 stock offering. Two sentences expressed the company's opinion concerning its compliance with the law:

- "We believe our contract arrangements with other health care providers, our pharmaceutical suppliers and our pharmacy practice are in compliance with applicable federal and state laws."
- "We believe that our contracts with pharmaceutical manufacturers are legally and economically valid arrangements that bring value to the health care system and the patients that we serve."

The company's opinion turned out to be wrong. Several years after Omnicare filed the registration statement, the federal government commenced a civil False Claims Act suit alleging that its receipt of payments from drug manufacturers violated anti-kickback laws. Citing these suits, certain pension funds that purchased stock in Omnicare's public offering sued the company and certain directors and officers under Section 11, alleging that the company's statement of opinion about its legal compliance was false and misleading.

The district court granted Omnicare's motion to dismiss, holding that a statement of opinion is not actionable unless it was "subjectively false," i.e., the speaker did not honestly hold the opinion at the time. The U.S. Court of Appeals for the Sixth Circuit reversed, holding it sufficient for the pension funds to allege that the stated belief was "objectively false" as evidenced by the fact that it turned out to be false, regardless of whether the funds alleged that anyone at Omnicare disbelieved the opinion. The Supreme Court granted Omnicare's writ of certiorari to consider when statements of opinion are actionable under Section 11 of the Act.

The Court disagreed with both the district court and the Sixth Circuit. It announced a new test for determining whether a statement of opinion in a registration statement may give rise to liability for a material omission:

"[I]f a registration statement omits material facts about the issuer's inquiry into or knowledge concerning a statement of opinion, and if those facts conflict with what a reasonable investor would take from the statement itself, the § 11's omissions clause creates liability."

The Court stressed that a statement of opinion is not necessarily misleading merely because the issuer is aware of particular facts that cut against the

opinion. Only if the withheld facts would lead a reasonable investor to disregard the stated opinion would the issuer be liable for failing to disclose those facts.

The Court then went on to discuss the plaintiff's burden to plead a Section 11 violation based upon a statement of opinion that omits to state material facts that cut against the opinion:

"The investor must identify particular (and material) facts going to the basis for the issuer's opinion—facts about the inquiry the issuer did or did not conduct or the knowledge it did or did not have—whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context. . . That is no small task for an investor."

The difficulty in applying the Supreme Court's test is exemplified by the Omnicare facts with which the district court will have to deal on remand. Omnicare's opinions that it was in compliance with applicable federal and state law were accompanied by caveats. Omnicare cited several state-initiated enforcement actions against pharmaceutical manufacturers for offering payments to pharmacies that dispensed their products, and then cautioned that future interpretation and application of the laws relating to such rebates might be inconsistent with its current interpretation. Omnicare also noted that the federal government had expressed "significant concerns" about some manufacturers' rebates to pharmacies. However, Omnicare failed to disclose that an attorney warned that one of Omnicare's contracts presented a "heightened risk of legal exposure" under anti-kickback rules.

Faced with the warning, what should Omnicare have done? Expressed its opinion as it did without any reference to the warning? Expressed its opinion, but disclosed the attorney's warning as a third caveat? Refrained from expressing its opinion?

In light of the new test, if a company chooses to express an opinion in a registration statement, its corporate securities attorney must inquire as to the basis for the opinion and all facts that might undermine the opinion in any way, and then advise the company whether a reasonable investor might consider those facts to be material. How will that play out in practice?

After Omnicare, is the corporate securities lawyer supposed to advise his client that any time an attorney raises an issue that creates doubt as to the opinion expressed, the company must disclose the otherwise privileged communication? The Supreme Court addressed an easy example: the fact that an issuer did not disclose that a single junior attorney expressed doubts about a practice's legality when six of his more senior colleagues gave a stamp of approval would not make the opinion that the issuer is in legal compliance misleading.

But what if the attorney who expressed doubts about a practice's legality is outside counsel who specializes in the compliance issue at hand, but in-house counsel and the business folks conclude the practice is legal? Is the fact that outside counsel raised an issue a material fact that must be disclosed? If so, what would the disclosure look like? Perhaps: "We believe we are in compliance with federal and state regulations. Our outside counsel raised an issue concerning our compliance and we considered the concern he raised, but we continue to believe we are in compliance." Even if such a disclosure were otherwise realistic, disclosure of otherwise privileged communications is fraught with obvious dangers.

For those issuers concluding from this uncertainty that the better course might be not to consult an attorney before expressing the opinion, the Supreme Court anticipated that conclusion and knocked it down. The Court noted an issuer that states it believes its conduct is lawful without disclosing it did not consult counsel would be making a misleading statement actionable under Section 11. As Omnicare argued to the Supreme Court, the new test might simply cause companies not to express opinions in their registration statements.

While issuers can breathe a sigh of relief as a result of the Court's rejection of the Sixth Circuit's view that issuers can be held liable under Section 11 for sincerely held opinions that turn out to be false, the Supreme Court's decision creates enormous uncertainties as to when an issuer can safely state an opinion and what facts it would need to disclose to protect itself from Section 11 claims should its opinions prove to be false.

Fortunately, the Court made clear that reasonable investors should not expect every fact known to an issuer to support its opinions, and that such statements should be read in light of all its surrounding text, including hedges and disclaimers. Nevertheless, the prudent course for an issuer may be to refrain from offering any opinions, a result that would not be welcomed by investors and is not necessarily consistent with the disclosure-based regulatory regime underlying the '33 Act.

Robert A. Horowitz is co-chair of the securities litigation practice and a shareholder in the financial and regulatory compliance practice at Greenberg Traurig. Steven M. Malina is a shareholder in the securities litigation practice and financial services litigation practice at the firm. Brian D. Straw is an associate in the litigation practice at the firm.

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Deloitte.

SEC Comment Letters — Including Industry Insights
What "Edgar" Told Us

Ninth Edition
October 2015

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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. The ninth edition of *SEC Comment Letters — Including Industry Insights: What "Edgar" Told Us* offers such perspective. In addition to extracts of letters and links to relevant related resources, it contains analysis of staff comments to help registrants understand trends and improve their financial statements and disclosures.

Over the past year, the SEC staff has continued to address most topics discussed in our eighth edition, and it remains focused on the clarity of registrants' disclosures. This ninth edition reflects current SEC comments on registrants' financial statements and other aspects of their filings and includes the following appendixes: (1) Appendix A, which lists comment letter trends discussed in our eighth edition that no longer represent recent trends; (2) Appendix B, which gives a glimpse into the SEC staff's review and comment letter process; (3) Appendix C, which discusses best practices for managing unresolved SEC comments; (4) Appendix D, which provides helpful tips on searching the SEC's EDGAR database for comment letters; (5) Appendix E, which lists the titles (or links to titles) of the standards referred to in this publication; and (6) Appendix F, which defines the abbreviations we used.

Our ninth edition captures developments on relevant financial reporting topics through the date of publication. 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 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 9–11, 2015, and will be discussed in an upcoming issue of our *Heads Up* newsletter.

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

In keeping with recent SEC staff remarks about how registrants can make their disclosures more effective, 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,

Rob Comerford
Accounting Services

Christine Davine
SEC Services

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Acknowledgments

This ninth edition of *SEC Comment Letters — Including Industry Insights: What "Edgar" Told Us* would not have been possible without the significant contributions of the Accounting Services, Audit and Assurance Services, and SEC Services departments and the industry specialists at Deloitte & Touche LLP. Specifically, we wish to thank Lisa Mitrovich for the insights and dedication that she brings to this publication each year, as well as Jeff Naumann and Deloitte's Disclosure Analytics team for the insight into comment letter trend statistics that they provided this year. In addition, we are grateful to Ana Zelic for her tireless contributions and the many late nights that she dedicated to managing the development of this publication. We would also like to thank Teri Asarito, Geri Driscoll, David Eisenberg, Michael Lorenzo, Jeanine Pagliaro, and Lora Spickler-Alot for delivering the first-class editorial and production effort that we have come to rely on for all of Deloitte's financial reporting publications. Special thanks go to Derek Gillespie for supervising the overall development of this ninth edition with his trademark enthusiasm, creativity, and dedication. Finally, we want to acknowledge Joe DiLeo, whose supervision of past editions of this publication provided the foundation on which we have built this year's edition.

Executive Summary

As we approach the start of the 2015 annual reporting cycle, it seems natural to look back at the strategic priorities of the SEC over the past 12 months.

Since Mary Jo White took the helm of the SEC in April 2013 as its 31st chairman, the aggressive pursuit of investor protection has been a key focus of the Commission. The SEC recently announced that in its fiscal year ended September 2015, it filed 807 enforcement actions and obtained orders totaling approximately $4.2 billion in disgorgements and penalties. Further, as technology and business practices have continued to evolve, the SEC's Division of Enforcement has increased its focus on cybersecurity. For example, the SEC recently announced the settlement of a cybersecurity case against an investment adviser that had failed to establish the required cybersecurity policies and procedures before a breach.

Convergence of U.S. GAAP and IFRSs is another topic of interest for the SEC — particularly its Office of the Chief Accountant headed by James Schnurr, who continues to monitor this as well as the progress the FASB and the IASB are making in identifying and addressing implementation issues related to the new converged revenue standard. While the chief accountant seems generally pleased with the progress toward implementation that has been achieved to date, it appears from his remarks at the 2015 AICPA Banking Conference that he is focusing on the role of industry groups in the implementation process. Regarding whether and, if so, how to incorporate IFRSs in the U.S. financial reporting system, Mr. Schnurr has publicly stated that in the foreseeable future, continued collaboration between the boards seems to be the most realistic path forward.

The Division of Corporation Finance (the "Division") has been busy undertaking its own priorities over the past year. In the period leading up to the five-year anniversary of the Dodd-Frank Act, the Division continued to help the SEC fulfill its responsibilities under the Act's mandatory rulemaking provisions. For example, the SEC issued (1) a proposed rule[1] that would require disclosure of the relationship between executive compensation paid by a registrant and the registrant's financial performance ("pay versus performance") and (2) a proposed rule[2] that would require registrants to adopt clawback policies on executive compensation. The SEC also issued a final rule[3] on pay ratio disclosure that requires a registrant to disclose the ratio of the compensation of its CEO to the median compensation of its employees.

In addition, the Division facilitated the SEC's issuance of a concept release[4] in July 2015 that requested input on audit committee disclosure requirements with a focus on audit committees' oversight of independent auditors. The Division has also been working on the SEC's "disclosure effectiveness project,"[5] which began in earnest in December 2013 and resulted in the September 2015 issuance of a release[6] that requests public comment on the effectiveness of the financial disclosure requirements in Regulation S-X that apply to certain entities other than the registrant.[7]

Further, the Division continues to help the SEC meet its responsibilities under the Sarbanes-Oxley Act to review registrants at least once every three years. In this ninth edition of our publication, we, in turn, continue our tradition of highlighting trends in SEC staff comments by analyzing comments issued by the staff over the past year.

1 SEC Proposed Rule Release No. 34-74835, *Pay Versus Performance*.

2 SEC Proposed Rule Release No. 33-9861, *Listing Standards for Recovery of Erroneously Awarded Compensation*.

3 SEC Final Rule Release No. 33-9877, *Pay Ratio Disclosure*.

4 SEC Release No. 33-9862, *Possible Revisions to Audit Committee Disclosures*.

5 For additional information, see Deloitte's August 26, 2014, *Heads Up*.

6 SEC Release No. 33-9929, *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant*.

7 For additional information, see Deloitte's October 6, 2015, *Heads Up*.

The table below summarizes comment letter trends in the 12-month periods ended July 31, 2015, and July 31, 2014:[8]

Topic	12 Months Ended July 31, 2015				12 Months Ended July 31, 2014		
	Number of 10-K and 10-Q Reviews With Comment Letters That Include a Comment on Topic	Percentage of All Comment Letter–Yielding 10-K and 10-Q Reviews That Include a Comment on Topic	Rank	Change in Rank From Prior Year	Number of 10-K and 10-Q Reviews With Comment Letters That Include a Comment on Topic	Percentage of All Comment Letter–Yielding 10-K and 10-Q Reviews That Include a Comment on Topic	Rank
MD&A:[9]			1	—			1
• Results of operations	379	23%			516	23%	
• Liquidity issues	187	11%			336	15%	
• Critical accounting policies and estimates	147	9%			248	11%	
Fair value measurement and estimates	358	22%	2	—	544	25%	2
Revenue recognition	246	15%	3	↑ 1	318	14%	4
Non-GAAP measures	235	14%	4	↑ 2	277	13%	6
Signatures, exhibits, and agreements	205	12%	5	↓ 2	370	17%	3
Income taxes	184	11%	6	↓ 1	291	13%	5
Segment reporting	164	10%	7	↑ 3	219	10%	10
Acquisitions, mergers, and business combinations	162	10%	8	↓ 1	254	12%	7
Property, plant, and equipment; intangible assets; and goodwill	146	9%	9	↓ 1	244	11%	8
Debt, warrants, and equity securities	134	8%	10	↑ 1	218	10%	11

In the 12 months ended July 31, 2015, there was a sharp decline from the previous 12-month period in the number of registrants that received a comment letter as a result of the SEC staff's review of Form 10-K and Form 10-Q filings. That significant decline is reflected in the reduced number of Form 10-K and Form 10-Q reviews that yielded comment letters that include a comment related to one of the top 10 topics noted in the table above.

As the table indicates, MD&A is again the leading 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." In reviewing registrants' analysis and disclosure of results of operations, the staff has continued to focus on encouraging registrants to (1) disclose 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.

[8] Comment letter trend information in the table was derived from data provided by Audit Analytics.

[9] Statistics related to three MD&A subtopics are noted below.

Highlights of comment letters issued over the past year also include:

- *Fair value* — The SEC staff continues to ask 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.
- *Revenue recognition* — Although many preparers are focused on the forthcoming 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 multiple-element arrangements, and (3) principal-versus-agent analysis (i.e., gross versus net reporting).
- *Non-GAAP financial measures and key metrics* — Staff comments on non-GAAP financial measures and key metrics have focused on asking registrants to (1) explain why such measures and metrics are useful to investors, (2) reconcile non-GAAP financial measures to the appropriate GAAP measures and avoid attaching "undue prominence" to the non-GAAP measures, and (3) explain how key metrics are calculated and describe how a key metric is related to current or future results of operations.
- *Income taxes* — The SEC staff remains focused on (1) the potential tax and liquidity ramifications related to the repatriation of foreign earnings, (2) valuation allowances, (3) rate reconciliation, and (4) unrecognized tax benefits.
- *Segment reporting* — The staff continues to ask registrants about (1) the identification of the chief operating decision maker (CODM); (2) the identification of operating segments; and (3) the analysis supporting the aggregation of operating segments, including consideration of qualitative factors (e.g., similar products and customers).
- *Business combinations* — M&A activity has remained high over the past couple of years, and so has the number of related SEC comments. Like past SEC staff comments on business combinations, recent ones have centered on (1) purchase price allocation, (2) contingent consideration, (3) bargain purchases, and (4) disclosures.

Many of the recent comment letter trends noted above and current industry-specific trends[10] are likely to continue in the coming year. In addition, while it is difficult to predict what new comment letter trends are on the horizon, history tells us that new trends are often prompted by events such as (1) the enactment of new rules and (2) changes in economic cycles and trends:

- *New rules* — Whether they are accounting- or reporting-related, new rules typically make for a comment letter–rich environment as registrants work through accounting and system implementation issues and familiarize themselves with the new requirements. Accordingly, since U.S. GAAP guidance on consolidation is once again in flux, an uptick in related comments is likely in the coming year.
- *Changes in economic cycles and trends* — As the economy fluctuates between periods of contraction and expansion and other economic trends develop on a global or regional basis, tension is placed on different accounting and reporting rules. Given the current state of play, we may see an increase in SEC staff comments related to (1) the release of loan allowances and DTAs (timing and amount) and (2) requests for additional disclosures when a registrant's results of operations are significantly affected by depressed commodity prices or hyperinflationary currencies.

[10] For a discussion of comment letter trends related to particular industries, see Industry-Specific Topics below.

Financial Statement Accounting and Disclosure Topics

Business Combinations

Purchase Price Allocation

Example of an SEC Comment

In regard to your preliminary purchase price allocation . . . , please provide further supporting disclosure for each purchase price adjustment to each tangible and intangible asset acquired and liability assumed. This disclosure should explain in greater detail what the adjustment represents and how the increase or decrease was determined, including a brief explanation of the factors and assumptions involved in the calculation. For example, please disclose and explain how you determined the increase in property, plant and equipment, franchises and customer relationships.

The SEC staff frequently asks registrants how they have assigned amounts to assets acquired and liabilities assumed in business combinations. In particular, the staff asks registrants that have recorded a significant amount of goodwill why they have not attributed value to identifiable intangible assets. The staff also compares disclosures provided in press releases, the business section, and MD&A to the purchase price allocation in the financial statements. For example, the SEC staff may ask why a registrant did not recognize a customer-related intangible asset if it discloses in MD&A that it acquired customers in a business combination. In addition, the SEC staff may ask detailed questions about (1) how a registrant determined that intangible assets would have finite or indefinite useful lives; (2) the useful lives of identified intangible assets determined to have finite useful lives; and (3) material revisions to the initial accounting for a business combination, including what significant assumptions have changed to support a revision to the value of intangible assets.

Contingent Consideration

Example of an SEC Comment

Please note that ASC 805-30-50-1(c) requires a description of contingent consideration arrangements in the financial statements including the basis for determining the amount of any payments. Also, disclosure of the changes in the range of outcomes and reasons for those changes is required to be disclosed in accordance with ASC 805-30-50-4. Given these disclosure requirements, please provide draft disclosure to be included in future filings to disclose both the nature and terms of the contingent consideration arrangement including the metrics which must be achieved for payments to occur, and the nature and timing of the changes in facts and circumstances that resulted in your reversal of the previously recorded expense for future incentive payments of $[X] during the fourth quarter of the fiscal year ended February 1, 2014. As part of your revised disclosure, please also explain why your determination that the financial metrics would not be achieved did not occur until the fourth quarter of your fiscal year ended February 1, 2014.

The SEC staff often asks registrants to provide additional disclosures about the nature and terms of a contingent consideration arrangement and the conditions that must be met for the arrangement to become payable. Since ASC 805 requires entities to recognize contingent consideration at fair value as of the acquisition date, the staff may ask registrants to disclose how they determined the fair value of the contingent consideration. In addition, the staff may ask whether the change in the fair value of contingent consideration should be reflected as a retrospective adjustment to the amount of goodwill (i.e., if the adjustment is due to new information obtained during the measurement period about facts or circumstances that existed as of the acquisition date) or in current earnings under ASC 805-10-25-13 through 25-19 and ASC 805-10-30-3. The staff may also ask for disclosure of the total amount of contingent consideration that could become payable under the terms of the arrangement.

Bargain Purchases

Example of an SEC Comment

Please fully explain to us how you determined the fair value of the property, plant and equipment you acquired from [Company A]. Please specifically address why the gain on bargain purchase you recognized was so significant relative to the purchase price. Please also address if you have performed any subsequent impairment analysis for the assets you acquired and, if applicable, tell us the significant assumptions you used.

When a registrant recognizes a gain related to a bargain purchase, the SEC staff will typically issue comments on how the registrant determined and reassessed the purchase price allocation. A gain from a bargain purchase occurs when the net of the acquisition-date fair value of the identifiable assets acquired and the liabilities assumed is greater than the sum of the acquisition-date fair value of (1) the consideration transferred,[1] (2) the noncontrolling interest in the acquiree, and (3) any equity interests previously held by the acquirer. Before recognizing the gain, a registrant is required to perform a reassessment of the bargain purchase gain by verifying that all assets acquired and liabilities assumed were properly identified. The SEC staff has asked registrants to (1) explain their process, (2) provide the results of the reassessment, and (3) disclose that a reassessment was performed. In addition, the staff has inquired about whether any subsequent impairment analyses for the assets acquired have been performed.

Disclosures

Example of an SEC Comment

Please revise [the notes] to disclose the amounts of revenue and earnings of [Company A] and [Company B] since the acquisition date which have been included in the consolidated income statement for the reporting period in which the acquisitions occurred. Also, please revise to disclose the revenue and earnings of the combined entity for the current reporting period as though the acquisition date for all business combinations that occurred during the period had been as of the beginning of the annual reporting period. Comparable information for the prior annual period should also be presented as if these acquisitions had occurred at the beginning of the comparable prior annual reporting period. Refer to the disclosure requirements outlined in ASC 805-10-50-2(h).

The SEC staff has commented when a registrant fails to provide pro forma disclosures under ASC 805-10-50 about the effects of an acquisition as of the beginning of a reporting period. ASC 805-10-50-2(h)(3) states that the disclosure requirements for comparative financial statements are as follows:

> [F]or a calendar year-end entity, disclosures would be provided for a business combination that occurs in 20X2, as if it occurred on January 1, 20X1. Such disclosures would not be revised if 20X2 is presented for comparative purposes with the 20X3 financial statements (even if 20X2 is the earliest period presented).

In accordance with ASC 805-10-50, registrants must also disclose the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combinations that are recognized in the reported pro forma information.

If certain criteria are met (e.g., if a significant business combination has occurred or is probable), registrants may also be required to (1) comply with Regulation S-X, Rule 3-05, and (2) provide pro forma financial information that complies with Regulation S-X, Article 11, in a registration statement, proxy statement, or Form 8-K. For additional information, see the SEC Reporting section.

[1] Certain share-based payment awards are not measured at fair value.

The SEC staff has also asked registrants:

- Whether an acquisition meets the definition of a business under ASC 805-10-20.
- To indicate which specific elements related to their use of the acquisition method of accounting are not yet complete and why they have not been finalized.
- To identify and disclose the income statement classification of acquisition-related costs they incurred (e.g., due diligence fees, legal fees).
- Whether individually immaterial acquisitions are collectively material, which would require them to disclose certain information.
- Whether a transaction is considered to be an acquisition of an entity under common control.

Other Deloitte Resources

September 30, 2015, *Heads Up*, "FASB Simplifies the Accounting for Measurement-Period Adjustments."

Consolidation

ASC 810 provides guidance on entities that are subject to consolidation under either the voting interest entity model or the variable interest entity (VIE) model. Recent SEC comments on this topic have focused primarily on the VIE model. For example, such comments have addressed:

- The consolidation conclusions reached under the VIE model, including those related to:
  - The determination of whether an entity is a VIE.
  - The determination of whether the reporting entity is the primary beneficiary of a VIE (including reassessment of whether the reporting entity continues to be the primary beneficiary).
- Presentation of assets and liabilities of consolidated VIEs.

Determining Whether an Entity Is a VIE and Whether the Reporting Entity Is a VIE's Primary Beneficiary

Examples of SEC Comments

- Please provide us with your detailed analysis of the accounting model and the authoritative accounting guidance you considered in your conclusion to consolidate [the legal entity]. Tell us whether [the legal entity] is subject to the consolidation guidance related to variable interest entities and what consideration was given to the guidance in ASC 810-10-15-14(b)(1). If it is subject to this guidance, explain how you determined that you have the characteristics of a controlling financial interest per ASC 810-10-25-38A.
- You disclosed that at December 31, 2013, you consolidated an investment in [an] LLC where you were determined to be the primary beneficiary due to a related party affiliation. At June 30, 2014, you were no longer considered the primary beneficiary of this LLC and therefore deconsolidated this LLC in accordance with ASC 810. Please tell us how you determined that it was appropriate to deconsolidate this LLC. Please also tell us how you accounted for this deconsolidation and tell us whether you recognized a gain or loss in net income attributable to the parent. Refer to ASC 810-10-40.
- We note that during the year ended December 31, 2013 and the subsequent quarterly period ended March 31, 2014, amendments of existing operating agreements governing certain properties resulted in you gaining control of these properties. Please tell us and describe the pre-existing terms and the changes that were made to these operating agreements. In addition, please cite the specific authoritative guidance within [ASC 810] relied upon that resulted in the change from equity method to consolidation treatment.

To determine whether it is required to consolidate another entity, a reporting entity must evaluate whether the other entity is a VIE under ASC 810-10 and, if so, whether the reporting entity is the VIE's primary beneficiary.[1] To be the primary beneficiary of a VIE and, therefore, the party that is required to consolidate it, the reporting entity must have (1) the power to direct the activities of the VIE that most significantly affect the VIE's economic performance and (2) the obligation to absorb losses of, or the right to receive benefits from, the VIE that could potentially be significant to the VIE.[2] Given that the SEC staff continues to focus on consolidation conclusions under ASC 810-10, it often asks registrants to (1) explain their involvement with, and the structure of, VIEs; (2) provide detailed support for their conclusions about whether an entity is a VIE (including the consolidation model they ultimately used); (3) discuss the basis for their determination of whether they are the primary beneficiary of a VIE; and (4) discuss any events affecting their previous consolidation conclusion (e.g., events that result in deconsolidation).

[1] The comment letter trends discussed in this section are applicable to consolidation analyses that do not qualify for the deferral under ASU 2010-10 and are subject to the consolidation guidance in ASC 810-10 as amended by ASU 2009-17.

[2] Registrants should consider whether consolidating a VIE meets the significance thresholds for reporting under Item 2.01 of Form 8-K and Rule 3-05 of Regulation S-X. For additional information about Rule 3-05, see the SEC Reporting section.

Presentation of Assets and Liabilities of Consolidated VIEs

Example of an SEC Comment

We note that you separately present the assets and liabilities held by variable interest entities on your balance sheet. In future filings, please recast your balance sheet to present the consolidated totals for each line item required by Rule 5-02 of Regulation S-X. Please note that you may state parenthetically after each line item the amount that relates to consolidated VIEs, or you may include a table following the consolidated balance sheets to present assets and liabilities of consolidated VIEs that have been included in the preceding balance sheet.

SEC staff comments have addressed the reporting entity's presentation of assets and liabilities of consolidated VIEs. When presenting assets, liabilities, and noncontrolling interests of a consolidated VIE, a reporting entity should present those items in the consolidated financial statements as if the basis for consolidating the VIE had been voting interests. ASC 810-10-45-25 requires a reporting entity to present on the face of the statement of financial position the (1) "[a]ssets of a consolidated [VIE] that can be used only to settle obligations of the consolidated VIE" and (2) "[l]iabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." A reporting entity must also satisfy the requirements related to (1) the elimination of intra-entity balances and transactions and (2) other matters discussed in ASC 810-10-45.

Other Deloitte Resources

- May 26, 2015, *Heads Up*, "FASB Amends Its Consolidation Model."
- December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."

Contingencies

Because registrants' contingency disclosures have improved, the SEC staff has commented on this topic less frequently than in prior years. However, the staff continues to monitor registrants' contingency disclosures, and it comments when such disclosures do not comply with U.S. GAAP or SEC rules and regulations.

The staff has continued to comment on:

- Lack of specificity regarding the nature of the matter.
- Lack of quantification of amounts accrued, if any, and possible loss or range of loss (or disclosure about why such an estimate cannot be made).
- Lack of disclosure or insufficient detail about what triggered a significant current-period accrual for a contingency when no loss or a significantly lower amount was accrued in prior periods.
- Insufficient detail about judgments and assumptions underlying significant accruals.
- Insufficient detail about (and untimely reporting of) new developments related to loss contingencies and the effect of such developments on current and future periods.
- Inconsistency among disclosures in the footnotes, in other sections of the filing (e.g., risk factors and legal proceedings), and outside the filing (e.g., in press releases and earnings calls). In addition, if different registrants are parties to a claim, the SEC staff may also review the counterparty's filings and comment if the information is not consistent.
- Use of unclear language in disclosures (e.g., not using terms that are consistent with accounting literature, such as "probable" or "reasonably possible") and failure to consider the disclosure requirements in ASC 450, SAB Topic 5.Y, and Regulation S-K, Item 103.
- Lack of disclosure of an accounting policy related to accounting for legal costs (when material) and uncertainties in loss contingency recoveries, including (1) whether ranges of reasonably possible losses are disclosed gross or net of anticipated recoveries from third parties, (2) risks regarding the collectibility of anticipated recoveries, and (3) the accounting policy for uncertain recoveries.

Loss Contingencies

Examples of SEC Comments

- We note [your assertion] that "given the uncertainty of litigation combined with the fact that such matters are each in their very preliminary stages[,]" you cannot provide the "range of potential losses." Please supplementally explain to us the procedures you undertake on a quarterly basis to attempt to develop a range of reasonably possible loss for disclosure and tell us the specific factors that are causing the inability to estimate a range for each material matter. We recognize that there are a number of uncertainties and potential outcomes associated with loss contingencies. Nonetheless, an effort should be made to develop estimates for purposes of disclosure, including determining which of the potential outcomes are reasonably possible and what the reasonably possible range of losses would be for those reasonably possible outcomes.

  Additionally, ASC 450 does not use the term "potential"; therefore, in future filings please provide disclosure relative to reasonably possible losses.
- You state that "At this time, no assessment can be made as to the likely outcome of these lawsuits or whether the outcome will be material to the Company." We do not believe that this disclosure meets the requirements of ASC 450-20-50-3 and 50-4. Please provide us proposed disclosure to be included in future periodic reports for all legal proceedings to include an estimate of the possible loss or range of loss or a statement that such an estimate cannot be made for loss contingencies that are at least reasonably possible but not accrued, either because it is not probable that a loss has been incurred or the amount of loss cannot be reasonably estimated.

The SEC staff often asks about estimates of reasonably possible losses or comments when a registrant omits disclosure of a loss or range of losses because its estimates lack "precision and confidence." If an estimate of the loss or range of losses cannot be made, the staff expects registrants to (1) disclose, in accordance with ASC 450-20-50-4, that such an estimate cannot be made and (2) demonstrate that they at least attempted to estimate the loss or range of losses before concluding that an estimate cannot be made. In such cases, the staff has commented that registrants should disclose the specific factors that limited their ability to reasonably estimate the loss or range of losses and has asked about registrants' quarterly procedures related to such estimates. The specific factors disclosed should be specific to the loss contingency in question and could include representations that (1) claims do not specify an amount of damages, (2) there are a large number of plaintiffs, or (3) the case is in its early stages.

Many comments from the SEC staff have focused on comparing current-year disclosures with those in prior-year filings. Staff questions commonly include (1) whether additional reasonably possible losses have been incurred since the initial disclosure of a reasonably possible loss, (2) why the accrual amount for the current year is different from that reported in previous filings, and (3) whether there are any changes in facts and circumstances that may affect the accrual amount. Further, if a registrant discusses a potential contingency in its earnings calls, the SEC staff is likely to seek more information about the contingency and to inquire about whether the related disclosures are appropriate. The SEC staff encourages registrants to clearly disclose the "full story" regarding their loss contingencies because recognition of such contingencies requires a high degree of professional judgment. Further, the staff has noted that disclosures related to loss contingencies should be continually evaluated over time as facts and circumstances change.

The SEC staff may also ask about (1) the basis for a registrant's accrual (e.g., factors supporting an accrual, such as trends in claims received and rejected), (2) the timing of a loss contingency's recognition, and (3) disclosure of a loss contingency. In addition, when a material settlement is disclosed during the period, the staff may review prior-period disclosures to determine whether such disclosures were appropriate

(i.e., whether the registrant should have provided early-warning disclosures about the possibility of incurring or settling a loss in future periods to help users understand these risks and how they could potentially affect the financial statements) or whether an accrual should have been recognized in a prior period. See the Management's Discussion and Analysis section for additional information about early-warning disclosures.

Litigation Contingencies

Example of an SEC Comment

We note your disclosure . . . regarding the [merger] litigation that the company believes the claims in the Illinois and Delaware actions are without merit. Your introductory disclosure regarding litigation . . . quantifies the accrued aggregate liability for pending legal matters, but does not address reasonably possible losses in excess of amounts accrued. If there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred, you must either disclose an estimate of the additional loss or range of loss that is reasonably possible, or state that such an estimate cannot be made. Such disclosure may be provided in the aggregate. Please tell us how your disclosures comply with paragraphs 50-3 through 50-5 of ASC 450-20-50 and SAB Topic [5.Y].

The SEC staff often asks registrants to expand their disclosures about litigation contingencies. If a registrant discloses that the impact of pending or threatened litigation is not expected to be material to its financial statements, the staff is likely to request that the registrant disclose the estimated loss or range of reasonably possible losses in excess of amounts accrued in accordance with ASC 450-20-50-4(b) and SAB Topic 5.Y.[1]

In addition to complying with ASC 450, public entities must separately meet the requirements of Regulation S-K, Item 103, when disclosing litigation matters because while those requirements are similar to the requirements of ASC 450, they are not identical. Also, to address concerns related to a registrant's contention that providing too much information may be detrimental to efforts to litigate or settle matters, the SEC staff has indicated that registrants do not need to separately disclose each asserted claim; rather, they may aggregate asserted claims in a logical manner as long as the disclosure complies with ASC 450.

[1] Specifically, the interpretive response to Question 2 of SAB Topic 5.Y indicates that "a statement that the contingency is not expected to be material does not satisfy the requirements of FASB ASC Topic 450 if there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred and the amount of that additional loss would be material to a decision to buy or sell the registrant's securities. In that case, the registrant must either (a) disclose the estimated additional loss, or range of loss, that is reasonably possible, or (b) state that such an estimate cannot be made."

Debt

Restrictions

Example of an SEC Comment

We note your disclosure . . . that credit facilities of certain subsidiaries include financial covenants. Please tell us whether these covenants and/or any other third party or regulatory restrictions on your subsidiaries or investments accounted for by the equity method restrict the ability to transfer funds to you in the form of loans, advances or cash dividends without consent. If so, please tell us: (i) the amount of restricted net assets of consolidated subsidiaries and your equity in the undistributed earnings of investments accounted for by the equity method as of the most recent balance sheet date and how you computed the amount; (ii) your consideration of providing the disclosures required by Rule 4-08(e)(3)(i) and (ii) of Regulation S-X; and (iii) your consideration of providing the condensed financial information prescribed by Rule 12-04 of Regulation S-X in accordance with Rule 5-04 of Regulation S-X.

When the transfer of assets (cash or other funds) to the parent company/registrant from its subsidiary (or subsidiaries) or equity method investee is materially restricted, limited, or in need of a third party's approval, Regulation S-X, Rules 4-08(e), 5-04, and 12-04, may require:

- Footnote disclosure of the restriction or limitation (Rule 4-08(e)).
- Presentation of condensed parent-company financial data in a financial statement schedule (i.e., Schedule I).
- Both footnote and Schedule I disclosures.

Rule 4-08(e) disclosures are intended to inform investors of restrictions on a registrant's ability to pay dividends or transfer funds within a consolidated group. Such restrictions may result from a contractual agreement (e.g., a debt agreement) or a regulatory body. Without appropriate disclosures of such restrictions, an investor may presume that the registrant (at the parent or subsidiary level) has more discretion to transfer funds or pay cash dividends than is actually the case.

If Rule 4-08(e) applies, registrants must disclose in the notes to the financial statements a description of "the most significant restrictions, other than as reported under [Rule 4-08(d)], on the payment of dividends by the registrant, indicating their sources, their pertinent provisions, and the amount of retained earnings or net income restricted or free of restrictions."

Disclosure is also required under Rule 4-08(e)(3) if the total restricted net assets of subsidiaries, plus the parent's equity in the undistributed earnings of 50 percent or less owned entities, exceed 25 percent of consolidated net assets. SAB Topic 6.K provides further guidance on determining the restricted net assets of subsidiaries. Disclosures required under Rule 4-08(e)(3) include:

- The "nature of any restrictions on the ability of consolidated subsidiaries and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances."
- Separate disclosure of "the amounts of such restricted net assets for unconsolidated subsidiaries and consolidated subsidiaries as of the end of the most recently completed fiscal year."

In addition, to give investors separate information about the parent company, registrants are required under Rule 5-04 to file Schedule I "when the restricted net assets [of the registrant's] consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year."

The calculations under Rule 4-08(e) are different from those under Rule 5-04, which governs Schedule I, so registrants must perform both tests to determine what is required. If Schedule I is required, footnote disclosures under Rule 4-08(e) are also required. However, if Rule 4-08(e) disclosures are required, Schedule I may not be required. In addition, a registrant's filing of Schedule I does not necessarily mean that the registrant has satisfied the disclosure requirements of Rule 4-08(e), which are separate and distinct.

Refinancing

Example of an SEC Comment

Please provide us your analysis under ASC 470-50-40 supporting your conclusion that the January 23, 2014 second amendment to the credit agreement was a modification and not an extinguishment.

The SEC staff's comments on refinancings have focused on registrants' (1) conclusions about whether debt refinancing transactions should be accounted for as debt extinguishments under ASC 470-50 and (2) disclosures about the significant components of the gains or losses recorded on a debt extinguishment and how registrants calculated the components.

Financial Covenant Disclosures

Example of an SEC Comment

We note you received a waiver from the Lender for non-compliance with a financial covenant and the lender modified various financial covenants relating to fiscal 2014. We further note your disclosure . . . that states the Credit Agreement requires maximum levels of cash usage and minimum levels of liquidity, as defined, and provides for increased liquidity levels if operating results are not achieved. It appears to us that your Credit Agreement is a material agreement, that the covenants are material terms of the Credit Agreement and that information about the covenants would be material to an investor's understanding of the Company's financial condition and liquidity. Please describe to us the nature of the waiver received from the Lender to cure non-compliance with the financial covenant. In addition, please provide us with draft disclosure of the following information to be included in future filings:

- The material terms of the debt covenants, including quantification of the amount or limit required for compliance with any financial covenants as compared to your actual results.
- The likelihood of failing a financial covenant or obtaining a waiver in the future.
- The actual or reasonably likely effects of compliance or non-compliance with the covenants on the Company's financial condition and liquidity.

It is important for a registrant to consider providing disclosures about covenant compliance in MD&A to illustrate its financial condition and liquidity. These disclosures may include a discussion of (1) the terms of the most severe covenants and how the registrant has complied with those covenants, (2) waivers obtained from lenders and the likelihood of failing a covenant or obtaining a waiver in the future, and (3) the impact of noncompliance on the registrant's financial condition and liquidity. In addition, a registrant may present a table that compares its most material actual debt covenant ratios as of the latest balance sheet date with the minimum and maximum amounts permitted under debt agreements. Such transparent disclosures will enable investors to better understand the risk of future covenant noncompliance by the registrant.

For additional discussion on liquidity, see the Management's Discussion and Analysis section.

Classification as Debt or Equity

Under ASC 480, certain financial instruments that embody an obligation of the issuer should be accounted for as liabilities even if their legal form is that of equity or they involve obligations to repurchase or issue the entity's equity shares. In addition, the guidance in ASC 480-10-S99-3A states that "ASR 268 requires preferred securities that are redeemable for cash or other assets to be classified outside of permanent equity if they are redeemable (1) at a fixed or determinable price on a fixed or determinable date, (2) at the option of the holder, or (3) upon the occurrence of an event that is not solely within the control of the issuer." ASC 480-10-S99-3A also notes the SEC staff's belief that ASR 268 can be applied analogously to other redeemable instruments.

Consequently, the SEC staff frequently asks registrants with redeemable securities — including registrants undergoing IPO transactions — to support the basis for their classification of such securities as either debt or equity. In addition, the staff often asks registrants about the accounting for conversion features in convertible instruments, including convertible preferred securities.

See the Noncontrolling Interests section for more information about redeemable NCIs. See the Financial Instruments section for considerations related to embedded conversion features.

Other Deloitte Resources

June 18, 2015, *Heads Up*, "FASB Simplifies Guidance on Presentation of Debt Issuance Costs."

Discontinued Operations, Assets Held for Sale, and Restructuring Charges

Discontinued Operations and Assets Held for Sale

Examples of SEC Comments

- We note the disclosure that as part of a strategic repositioning and refocusing of [Company A], a decision was made to sell [Facility A and Facility B] in 2013. In light of the fact that [Facility B has] not been sold as of December 31, 2014 and you expect a final determination for [Facility B] to occur in 2015, whereby [Company A] is currently weighing all of its disposal options, please tell us why [Company A] continues to believe that the fixed assets are appropriately classified as held for sale and the results of operations classified in discontinued operations as of December 31, 2014. Please tell us the specific considerations given to ASC 360-10-45-9 through ASC 360-10-45-11 in concluding that the assets continue to meet the held for sale criteria as of December 31, 2014.
- With reference to ASC 205-20-45-1, please tell us why your expected sale of [Component A] is not reflected as held for sale and discontinued operations. In this regard, we note . . . that you entered into a definitive agreement in December 2014 and the sale is expected to close in the first half of 2015 pending receipt of customary regulatory approvals. See also ASC 360-10-45-9.

The SEC staff continues to ask registrants whether the operations they have disposed of should be accounted for as discontinued operations. The staff may challenge whether the operations are a "component of an entity" under ASC 205-20. Specifically, it may ask whether the operations and cash flows "can be clearly distinguished, operationally and for financial reporting purposes, from the rest of the entity."

Whether components qualify as discontinued operations must be carefully considered.[1] Further, the staff has asked registrants to discuss whether assets meet the held-for-sale criteria in ASC 360 and to explain how they considered the related required disclosures. The staff may inquire about items such as:

- The timeline of events leading to an asset sale.
- The factors used to determine whether to present assets held for sale separately on the balance sheet.
- Sales agreements and how they affected the determination of whether particular assets should be classified as held for sale.

The SEC staff may also question the appropriateness and timeliness of a registrant's impairment tests when assets or components (1) are disposed of, (2) are discontinued, or (3) appear misclassified on the basis of other information in the filing. For example, the staff may ask whether assets that the registrant was expected to sell or dispose of were tested for impairment in prior periods or subject to an impairment charge in the current period (i.e., classified as held for use and thus not recorded at net realizable value). See the Impairments of Goodwill and Other Long-Lived Assets and Management's Discussion and Analysis sections for further discussion of long-lived-asset impairment testing and early-warning disclosures, respectively.

The SEC staff has also asked registrants about why they did not disclose the gain or loss on a sale after disposition.[2]

[1] See ASC 205-20-45.

[2] Before its amendment by ASU 2014-08, ASC 205-20-45-3 provided that gains or losses on disposal transactions "shall be disclosed either on the face of the income statement or in the notes to financial statements."

Restructuring Charges

Example of an SEC Comment

In your February 24, 2015 earnings call, your CEO indicated that you implemented approximately $[X] in cost reduction actions, including [an X]% head count reduction to your global workforce. You disclose . . . that you implemented a number of cost reduction actions during the quarter, including the planned closure of a manufacturing facility in [Location A]. Please describe to us the nature and extent of any workforce reduction actions undertaken during the year ended December 31, 2014 and the quarter ended March 31, 2015 and tell us how you considered providing the disclosures required by ASC 420-10-50.

The SEC staff has inquired about corporate reorganizations and restructurings and registrants' disclosures about such activities. Comments primarily stem from workforce reductions and facility closures.
In accordance with ASC 420-10-50-1, registrants should disclose specific information in "notes to financial statements that include the period in which an exit or disposal activity is initiated and any subsequent period until the activity is completed." Such information would include a description of the exit or disposal activity, its expected completion date, where in the income statement the amounts are presented, and quantitative information about each major type of cost associated with the activity and about each reportable segment. Further, in accordance with ASC 420-10-50-1(e), when "a liability for a cost associated with the activity is not recognized because fair value cannot be reasonably estimated," registrants should disclose "that fact and the reasons why." The SEC staff has also directed registrants to comply with the guidance in SAB Topic 5.P.4 on disclosures related to material restructuring activities.

Earnings per Share

Two-Class Method

> **Example of an SEC Comment**
>
> We note from your disclosure . . . that recipients of restricted stock receive all dividends with respect to the shares, whether or not the shares have vested. Please tell us whether you consider the restricted stock to be participating securities that would be included in your computation of earnings per share under the two-class method. Refer to ASC 260-10-45-61A.

Under ASC 260-10-45-59A, the two-class method applies to the following securities:

> a. Securities that may participate in dividends with common stocks according to a predetermined formula (for example, two for one) with, at times, an upper limit on the extent of participation (for example, up to, but not beyond, a specified amount per share)
>
> b. A class of common stock with different dividend rates from those of another class of common stock but without prior or senior rights.

When a filing indicates that the registrant has two classes of common stock (or one class of common stock and participating securities) that have been treated as a single class in the calculation of EPS, the SEC staff often asks whether application of the two-class method in the computation of EPS under ASC 260-10-45-59A through 45-70 is required.

The SEC staff may ask a registrant to substantiate the method used to calculate EPS (e.g., the two-class method or the if-converted method), and it may request additional information or disclosures about each of the registrant's classes of common stock, preferred stock, and common-stock equivalents (such as convertible securities, warrants, or options).

Further, the SEC staff expects that a registrant with two classes of common stock will present both basic and diluted EPS for each class regardless of whether either class has conversion rights. See the Financial Instruments section for more information about conversion features.

In assessing registrants' conclusions related to the two-class method, the SEC staff has focused on understanding the terms of arrangements, including (1) classes and types of common (or preferred) stock, (2) such stock's dividend rates, and (3) the rights and privileges associated with each class (or type) of stock. When a registrant has preferred shares, the SEC staff may seek to determine whether the preferred stockholders have contractual rights to share in profits and losses of the registrant beyond the stated dividend rate. Similarly, the SEC staff may ask registrants about the dividend rights of restricted stock unit awards or other share-based payment awards and how those rights are considered in the calculation of EPS.

EPS Disclosures

> **Example of an SEC Comment**
>
> We note your diluted [EPS] reflect the potential reduction in EPS using the treasury stock method to reflect the impact of common stock equivalents if stock options, [stock appreciation rights,] and warrants were exercised. Related to your reconciliation of basic and diluted EPS computations . . . , please confirm that you will disaggregate the dilutive [effect] of these share based awards by the award type (e.g., options, warrants, etc.) in future filings similar to the illustration provided in ASC 260-10-55-51 and [55-52].

The SEC staff may comment on whether a registrant has met the requirements of ASC 260-10-50-1, under which an entity must disclose all of the following for each period in which an income statement is presented:

> a. A reconciliation of the numerators and the denominators of the basic and diluted per-share computations for income from continuing operations. . . .
>
> b. The effect that has been given to preferred dividends in arriving at income available to common stockholders in computing basic EPS.
>
> c. Securities . . . that could potentially dilute basic EPS in the future that were not included in the computation of diluted EPS because to do so would have been antidilutive for the period(s) presented.

In addition, the SEC staff may ask registrants to elaborate on their calculation of EPS by disclosing:

- How unvested shares, unvested share units, unvested restricted share units, and performance shares are treated in basic and diluted EPS.
- Whether unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (paid or unpaid) are treated as participating securities and factored into the calculation of EPS.
- The nature of incentive distribution rights.

Fair Value

Valuation Techniques and Inputs

Examples of SEC Comments

- [P]lease provide us, for each "class" of level 2 fixed maturity securities, the valuation technique(s) and inputs used in your fair value measurement. To the extent that you use more than one technique in a class, tell us:
  - [T]he extent to which you use each technique for the class;
  - [W]hat determines when each technique is used in the class; and
  - [T]he inputs for each technique in the class.
- Please tell us, and revise future filings, to include the disclosure requirements of ASC 820-10-50-2.bbb, specifically quantitative information about the significant unobservable inputs used in the fair value measurement for fair value measurements categorized within Level 3 of the fair value hierarchy for impaired loans and other real estate owned. Refer to ASC 820-10-55-103 for a proposed template for disclosing this information in future filings.

The SEC staff has requested more specific information from registrants related to valuation techniques and inputs used in fair value measurements. Registrants should consider how the fair value disclosure requirements in ASC 820-10-50 apply to their recurring and nonrecurring fair value measurements. More specifically, registrants should provide information about (1) the methods and techniques used to determine fair value and (2) the inputs to those models.

Under ASC 820-10-50-2(bbb), entities are required to disclose quantitative information about the significant unobservable inputs used in Level 3 fair value measurements. Although this provision contains no explicit guidance on the types of quantitative information an entity should disclose, the example in ASC 820-10-55-103 illustrates quantitative information an entity "might disclose" to meet the requirement in ASC 820-10-50-2(bbb). According to the example, such information includes the entity's valuation technique, its significant unobservable inputs, and the range and weighted average of those inputs.

Some may have interpreted from the example in ASC 820-10-55-103 that an entity is not required to disclose the weighted average of significant unobservable inputs used in a Level 3 fair value measurement. However, the SEC staff may inquire about weighted averages when registrants do not disclose them.[1] The staff has suggested that if a weighted average would not be meaningful, a registrant could instead present qualitative information about the distribution of the range of values. Ideally, such qualitative disclosures would address each significant input and describe the reason for the wide range, the drivers of dispersion (e.g., a particular position or instrument type), and data point concentrations within the range.

Sensitivity of Level 3 Measurements

Example of an SEC Comment

You disclose the significant unobservable inputs used in developing the fair value of your warrants which are classified as a Level 3 measurement. Given that your warrants carried at fair value are a critical accounting policy, please revise your future filings to address the sensitivity disclosures required by ASC 820-10-50-2(g).

[1] Such inquiries are consistent with SEC staff remarks at the 2012 AICPA Conference. For more information about the conference, see Deloitte's December 11, 2012, *Heads Up*.

The SEC staff continues to comment when a registrant omits disclosures about the sensitivity of Level 3 measurements and may ask for disclosures about changes in significant unobservable inputs to be more granular and transparent. In addition, the staff has noted that it may be helpful for registrants to discuss the specific inputs that changed in the sensitivity analysis and the effect of changing those significant unobservable inputs.

Fair Value Hierarchy

> **Example of an SEC Comment**
>
> We note your disclosure . . . that you estimate the fair value of your "non-centrally cleared" interest rate swaps using inputs from counterparty and third-party pricing models to estimate the net present value of the future cash flows. We further note that these assets and liabilities are classified within Level 2 of the fair value hierarchy. Please provide us with additional details to support your Level 2 classification.

The SEC staff has asked registrants for additional information that supports their categorization of assets and liabilities in the fair value hierarchy. In addition, when assets or liabilities are transferred between levels in the fair value hierarchy, the staff has requested expanded disclosures to explain the amounts of any transfers, the reasons for those transfers, and the registrant's policy for determining when transfers between levels are deemed to have occurred.

Use of Third-Party Pricing Services

> **Example of an SEC Comment**
>
> We note that you use third-party pricing services to determine the fair value of your investments in [available-for-sale] securities. Please revise your future filings to disclose if you adjust prices obtained from pricing services and if so, the underlying reason for the adjustment and methods used to determine the adjustment. Please also revise to describe the procedures you perform to validate the valuations received from such third-party pricing services. Please refer to ASC 820-10-50-2(bbb) for further guidance.

The SEC staff continues to ask registrants to describe the procedures they perform to validate fair value measurements obtained from third-party pricing services. The staff has also asked registrants to clarify when and how often they use adjusted rather than unadjusted quoted market prices and to disclose why prices obtained from pricing services and securities dealers were adjusted. If multiple quotes were obtained, the SEC staff may request information about how the registrant determined the ultimate value used in the financial statements.

Financial Instruments

Because of the complexity associated with determining whether certain financial instruments should be accounted for as derivatives, debt instruments, or equity, SEC staff comments related to financial instruments have focused on (1) accounting for embedded derivatives in hybrid instruments,[1] (2) classification of warrants on a company's own stock, and (3) identification and calculation of beneficial conversion features (BCFs).

Embedded Derivatives in Hybrid Financial Instruments

Examples of SEC Comments

- It appears the exchangeable senior notes issued in August 2014 contain redemption features. Provide us your analysis that supports your conclusion that none of the redemption features are required to be bifurcated in accordance with ASC 815-15. Specifically address whether the debt involves a substantial discount in accordance with ASC 815-15-25-40 through [25-43].
- We note your disclosure that the 1.25% Notes contain an embedded cash conversion option and that you have determined that this option is a derivative financial instrument that is required to be separated from the notes. Please provide us with the details of your analysis in determining that this conversion option should be accounted for separately as a derivative and refer to the specific accounting literature you relied on.

The SEC staff continues to focus on whether registrants have reached appropriate accounting conclusions regarding whether embedded features in hybrid instruments should be bifurcated from the host contract. ASC 815-15-25 provides guidance on whether an embedded feature (e.g., a put option embedded in a company's preferred stock) should be separated from the host contract and accounted for as a stand-alone derivative instrument in accordance with ASC 815-10. If it is determined that an embedded feature is not clearly and closely related to the host contract, the embedded feature may need to be bifurcated from the host contract depending on whether certain other criteria are met and whether the embedded feature qualifies for any scope exceptions. For example, if the features in a hybrid instrument are predominantly debt-like, the entity would conclude that the host contract is more akin to debt; in such a case, an equity-like feature (e.g., a conversion option) would not be considered clearly and closely related to a debt host. Given the complexity involved in determining whether a host contract is debt-like or equity-like, registrants can expect the SEC staff to continue asking about the terms and features of convertible instruments to determine whether the registrant has (1) properly determined the nature of the host contract and (2) accounted for embedded features as stand-alone financial instruments when necessary. After adopting the guidance in ASU 2014-16, registrants should consider the ASU's disclosure requirements when making disclosures about the nature of the host contract.

Classification of Warrants on a Company's Own Stock

Example of an SEC Comment

Please tell us why the warrants you sold in this transaction are properly classified in equity and reference for us the authoritative literature you relied upon to support your accounting. In your response, specifically tell us how the strike price of these warrants can be adjusted and why these adjustments do not trigger derivative accounting.

[1] The ASC Master Glossary defines a hybrid instrument as a "contract that embodies both an embedded derivative and a host contract."

If certain criteria are met, warrants issued in connection with debt and equity offerings are accounted for on a separate basis (i.e., as freestanding financial instruments[2]). Under U.S. GAAP, an issuer of a stock purchase warrant is required to first determine whether the warrant should be classified as a liability under ASC 480. If the warrant is not classified as a liability under ASC 480, liability classification may still result under ASC 815. Specifically, the warrant's classification as either a liability or equity may hinge on whether the instrument meets the definition of a derivative and qualifies for any scope exceptions under ASC 815-10-15. When a warrant is accounted for as a freestanding financial instrument, the manner in which offering proceeds are allocated to the issued instrument and to the warrant depends on whether the warrant is classified as an equity instrument or as a liability instrument. Consequently, the SEC staff has asked registrants to explain the basis for their determination of how warrants should be classified, including the application of relevant accounting literature.

Identification and Calculation of BCFs

Examples of SEC Comments

- Please submit the analyses you performed in determining whether these classes of preferred shares contain [BCFs].
- Please tell us how you calculated the [BCF] you recorded in connection with the issuance of [convertible shares]. Further, please provide to us your accounting analysis which supports recognizing the BCF as a non-cash distribution that is recognized ratably from the issuance date through the conversion date in equity.

The SEC staff frequently comments on the recognition and calculation of BCFs. ASC 470-20 requires the issuer of a convertible security to measure the amount of any embedded BCF at the intrinsic value of the embedded conversion option, which is computed on the basis of the effective conversion price (i.e., the issuer computes the intrinsic value of the embedded conversion option by multiplying (1) the amount by which the fair value of the common stock or other securities into which the security is convertible exceeds the effective conversion price by (2) the number of shares into which the security is convertible). Accordingly, registrants can expect the SEC staff to ask how they calculated the value of a BCF that was recorded in connection with the issuance of a hybrid financial instrument. In addition, the SEC staff frequently asks registrants to provide the accounting analysis that supports the BCF calculation.

[2] The ASC Master Glossary defines a freestanding financial instrument as a financial instrument that either (1) "is entered into separately and apart from any of the entity's other financial instruments or equity transactions" or (2) "is entered into in conjunction with some other transaction and is legally detachable and separately exercisable."

Financial Statement Classification, Including Other Comprehensive Income

The SEC staff frequently comments on registrants' classification of items in the financial statements, namely on whether their balance sheets, income statements, statements of cash flows, and statements of comprehensive income comply with the requirements of Regulation S-X and U.S. GAAP.

Balance Sheet Classification

Separate Presentation

> **Example of an SEC Comment**
>
> We note that "Other accrued expenses" comprises more than 13% of total current liabilities as of November 30, 2014. Please tell us what consideration you gave to separately presenting any individual items within this category that were in excess of 5% of total current liabilities pursuant to Regulation S-X Rule 5-02(20).

In accordance with Regulation S-X, Rule 5-02, commercial and industrial registrants should state separately on the face of the balance sheet or in a note to the financial statements (1) other current assets and other current liabilities in excess of 5 percent of total current assets and total current liabilities, respectively, and (2) other noncurrent assets and other noncurrent liabilities in excess of 5 percent of total assets and total liabilities, respectively. Consequently, the SEC staff may ask a registrant to confirm whether the reported balances of other current assets and other current liabilities (or other noncurrent assets and other noncurrent liabilities) include any items in excess of 5 percent of total current assets and total current liabilities (or total assets and total liabilities). If the registrant confirms that any such items are included, the SEC staff will ask the registrant to state those items individually on the face of the balance sheet or in the notes.

Restricted Cash

> **Example of an SEC Comment**
>
> Please refer to Rule 5-02 of Regulation S-X and tell us how you considered presenting or disclosing restricted cash associated with the company's participation in programs administrated by the Department of Education and Department of Defense.

Rule 5-02 includes a provision requiring commercial and industrial registrants to (1) separately disclose cash and cash items that are subject to restrictions on withdrawal or usage and (2) describe the provisions of those restrictions in a note to the financial statements. Consequently, the SEC staff has issued comments asking registrants to explain how they considered presenting or disclosing restricted cash in accordance with Rule 5-02.

Income Statement Classification

The SEC staff has commented on registrants' compliance with the technical requirements of Regulation S-X, Rule 5-03, which lists the captions and details that commercial and industrial registrants must present in their income statements. For example, the SEC staff has asked registrants to explain why they have excluded certain line items required by Rule 5-03 from the face of their income statements. In addition, the SEC staff has reminded registrants that when alternative classifications are permissible, they should disclose their policies and apply them consistently in accordance with ASC 235-10.

Separate Presentation

> **Example of an SEC Comment**
>
> To the extent that Other expenses remains material to the income statement, please consider disaggregating its components on the face of the statement or in a note to the financial statements.

Among the requirements of Rule 5-03 is separate presentation of certain material (1) other operating costs and expenses and (2) other general expenses. The SEC staff frequently comments when registrants present material amounts in "other expenses" (or similarly phrased line items) and, in certain instances, has asked registrants to consider disaggregating the components of such line items on the face of the income statement or in the notes to the financial statements.

Further, the SEC staff has focused on the distinction between product and service revenue. Under Rule 5-03, if product or service revenue is greater than 10 percent of total revenue, disclosure of such component is required as a separate line item on the face of the income statement, and costs and expenses related to the product or service revenue should be presented in the same manner. Accordingly, registrants that combined the presentation of product and service revenue when such revenue met the separate presentation threshold have received SEC staff comments directing them to revise their consolidated statement of operations.

Cost of Sales

> **Example of an SEC Comment**
>
> We note that you present a subtotal for gross profit on your consolidated statements of income and that this profit measure reflects revenues less the cost of food and retail merchandise sold, which you label as "Cost of goods sold." We note that costs of goods sold does not reflect certain costs of goods and services such as labor, benefits, rent, depreciation, and amortization, among others. Please tell us the basis for your determination of the types of costs included in cost of goods sold and your consideration of S-X Rule 5-03.2, S-K Item 302, and SAB Topic 11.B.

The SEC staff often asks registrants to disclose the types of expenses that are included in or excluded from the cost-of-sales line item. For example, the SEC staff has issued comments to registrants that did not allocate depreciation and amortization to cost of sales. SAB Topic 11.B states, in part:

> If cost of sales or operating expenses exclude charges for depreciation, depletion and amortization of property, plant and equipment, the description of the line item should read somewhat as follows: "Cost of goods sold (exclusive of items shown separately below)" or "Cost of goods sold (exclusive of depreciation shown separately below)." [D]epreciation, depletion and amortization should not be positioned in the income statement in a manner which results in reporting a figure for income before depreciation.

Most of the SEC staff's comments on this matter have stemmed from registrants' lack of awareness or incorrect application of the guidance in SAB Topic 11.B, particularly their inappropriate reporting of an amount for gross profit before depreciation and amortization.

Operating Versus Nonoperating Income

> **Example of an SEC Comment**
>
> We note that you classified the net gain of $[X] from the sale of your microphone product line within non-operating income. We also note that the microphone product line was not considered to be a component of the company. Please tell us why you classified the amount as non-operating income and not within operating income. Include a discussion of your consideration of FASB ASC 360-10-45-5.

The SEC staff has commented about items that registrants have included in, or excluded from, operating income. Under Rule 5-03, a subtotal line item for operating income is not required on the face of the income statement. However, if a registrant presents a subtotal for operating income, it should generally present the following items (which are sometimes incorrectly excluded) in operating income:

- Gains or losses on asset sales.
- Litigation settlements.
- Insurance proceeds.
- Restructuring charges.

The following items should generally be excluded from operating income (but are sometimes incorrectly included):

- Dividends.
- Interest on securities.
- Profits on securities (net of losses).
- Interest and amortization of debt discount and expense.
- Earnings from equity method investments (or unconsolidated affiliates).
- Noncontrolling interest in income of consolidated subsidiaries.

Cash Flow Statement Classification

Category Classification

> **Example of an SEC Comment**
>
> We note you classified dividends received from your banking subsidiary of $[X] in 2014, $[X] in 2013, and $[X] in 2012 as cash flows from investing activities. Please tell us why you classified these cash inflows to the parent company as investing cash flows as opposed to operating cash flows. Please refer to ASC 230-10-45-16(b) for specific guidance on how to classify dividends received on a statement of cash flows.

Many of the SEC staff's comments are related to misclassification among the three cash flow categories: operating, investing, and financing. ASC 230 distinguishes between returns **of** investment, which should be classified as inflows from investing activities (see ASC 230-10-45-12(b)), and returns **on** investment, which should be classified as inflows from operating activities (see ASC 230-10-45-16(b)). Under ASC 230-10-45-16(b), cash inflows from operating activities include "[c]ash receipts from returns on loans, other debt instruments of other entities, and equity securities — interest and dividends."

At the 2014 AICPA Conference, the SEC staff noted that it has observed an increased number of classification errors in registrants' statements of cash flows. Further, such errors are generally not attributable to complex fact patterns. The SEC staff identified various actions that registrants could take when preparing the statement of cash flows to potentially reduce the likelihood of errors, including:

- Evaluating the completeness and accuracy of the information collected for preparation of the statement.
- Standardizing and automating required reports and other information.
- Separately considering the effect of nonrecurring transactions in the statement.
- Preparing the statement earlier to allow for adequate review.
- Selecting employees that have the appropriate expertise to prepare the statement of cash flows and providing them with sufficient training on the accounting requirements related to the statement.
- Incorporating risk assessment and monitoring controls in addition to control activities.

For information about SEC staff comments on how registrants' errors could affect their conclusions about DC&P and ICFR, see the Disclosure Controls and Procedures and Internal Control Over Financial Reporting sections.

Net Versus Gross Presentation

Example of an SEC Comment

Please note that borrowings and payments on your revolving credit facility should be recorded on a gross basis in the statement of cash flows unless the original maturity of the borrowings is three months or less. Refer to ASC 230-10-45-9 and advise us why the borrowings and payments were not reflected on a gross basis.

The SEC staff may challenge whether it is appropriate to report the net amount of certain cash receipts and cash payments on the face of the statement of cash flows. ASC 230-10-45-7 through 45-9 state that although reporting gross cash receipts and cash payments provides more relevant information, financial statement users sometimes may not need gross reporting to understand certain activities. The SEC staff may ask a registrant to revise the presentation or to explain (in accordance with ASC 230) why it is appropriate to report certain cash flows on a net basis rather than on a gross basis.

Comprehensive Income — Disclosure

Examples of SEC Comments

- Please tell us your consideration of disclosing in the notes to the financial statements the gross changes, along with the related tax expense or benefit, of each classification of other comprehensive income. Refer to ASC 220-10-45-12 and [ASC] 220-10-45-17.
- Please provide the disclosures required by ASU 2013-02 related to amounts reclassified out of accumulated other comprehensive income or tell us why this authoritative literature does not apply to you.

Entities are required to report components of comprehensive income in either (1) a continuous statement of comprehensive income or (2) two separate but consecutive statements.

The SEC staff has commented when registrants have not provided information required by ASC 220 (ASU 2013-02) about the amounts reclassified out of accumulated OCI. For example, the staff frequently reminds registrants to "present the amount of income tax expense or benefit allocated to each component of other comprehensive income, including reclassification adjustments," for each reporting period either on the face of the statement where those items are presented or in the footnotes.

Foreign Currency

Quantification of Foreign Currency Adjustments

Example of an SEC Comment

Throughout MD&A, you indicate that results were negatively impacted by the effects of foreign currency translation. Please expand your discussion to quantify the impact of foreign currency translation on each segment, where applicable. Please also discuss any trends related to foreign currency currently impacting your results of operations and indicate whether they are expected to continue (i.e. whether currency has strengthened or weakened from period to period).

The SEC staff's comments on quantitative disclosures related to foreign currency adjustments reflect published staff views[1] on the topic, under which registrants should:

- "[R]eview management's discussion and analysis and the notes to financial statements to ensure that disclosures are sufficient to inform investors of the nature and extent of the currency risks to which the registrant is exposed and to explain the effects of changes in exchange rates on its financial statements."
- Describe in their MD&A "any material effects of changes in currency exchange rates on reported revenues, costs, and business practices and plans."
- Identify "the currencies of the environments in which material business operations are conducted [when] exposures are material."
- "[Q]uantify the extent to which material trends in amounts are attributable to changes in the value of the reporting currency relative to the functional currency of the underlying operations [and analyze] any materially different trends in operations or liquidity that would be apparent if reported in the functional currency."

The foreign operations of many registrants may be subject to material risks and uncertainties that should be disclosed, including those related to the foreign jurisdiction's political environment, its business climate, currency, and taxation. The effects on a registrant's consolidated operations of an adverse event related to these risks may be disproportionate relative to the size of the registrant's foreign operations. Therefore, the registrant's segment information or MD&A may need to describe the trends, risks, and uncertainties related to its operations in individual countries or geographic areas and possibly supplement such disclosures with disaggregated financial information about those operations.

A registrant's assessment of whether it needs to provide disaggregated financial information about its foreign operations in its MD&A would need to take into account more than just the percentage of consolidated revenues, net income, or assets contributed by foreign operations. The registrant also should consider how the foreign operations might affect the consolidated entity's liquidity. For example, a foreign operation that holds significant liquid assets may have an exposure to exchange-rate fluctuations or restrictions that could affect the registrant's overall liquidity.

Accounting and Disclosure Considerations Related to Venezuelan Operations

The SEC staff continues to focus on accounting and disclosure considerations related to the foreign currency exchange environment in Venezuela. Business operations in Venezuela may give rise to accounting questions about (1) which exchange rate is appropriate for remeasurement and (2) whether such operations should be deconsolidated or considered impaired. For additional accounting and disclosure considerations related to the foreign currency exchange environment in Venezuela, see (1) the October 2, 2015, Deloitte Accounting Journal entry and (2) Deloitte's Financial Reporting Alerts 15-1,[2] 14-5,[3] and 14-1.[4]

[1] Division of Corporation Finance: Frequently Requested Accounting and Financial Reporting Interpretations and Guidance, Section II.J.

[2] Financial Reporting Alert 15-1, "Foreign Currency Exchange Accounting Implications of Recent Government Actions in Venezuela."

[3] Financial Reporting Alert 14-5, "Consolidation and Disclosure Considerations Related to Venezuelan Operations."

[4] Financial Reporting Alert 14-1, "Foreign Currency Exchange Accounting Implications of Recent Government Actions in Venezuela."

Impairments of Goodwill and Other Long-Lived Assets

Goodwill

Disclosures

> **Example of an SEC Comment**
>
> We note your disclosure . . . that the fair value of [Reporting Unit A] substantially exceeded the related carrying value as of your annual assessment in the fourth quarter of fiscal 2014. We also note that operating income of [Reporting Unit A] declined [X]%, from $[X] million to $[X] million, during fiscal year 2014 primarily as a result of a decrease in gross margin rates and increases in buying, distribution and occupancy costs and depreciation expense. Please provide the following:
>
> - [T]he percentage by which [Reporting Unit A]´s fair value exceeded its carrying value as of June 26, 2014;
> - [A]n explanation of how the decline in operating income that occurred during fiscal year 2014 was considered in your goodwill impairment analysis. Please specifically address the fact that the lower gross margin rate was mainly attributable to higher promotional markdowns, which resulted from increased promotional activity required to sell through seasonal merchandise; and
> - [W]hether you believe the continued decline in [Reporting Unit A]'s operating income through the quarter ending October 25, 2014 puts it at risk for potential impairment of its related goodwill as of October 25, 2014.

Section 9510 of the FRM discusses the SEC staff's views on when goodwill impairment disclosures in the critical accounting estimates section of MD&A are appropriate and the extent of such disclosures. The SEC staff has commented on a registrant's compliance with the disclosure requirements in Regulation S-K, Item 303(a)(3)(ii), to discuss a known uncertainty — specifically, to disclose the potential for a material impairment charge — in light of potential impairment triggers. The staff has noted that it may use these disclosures to assess whether a registrant's goodwill impairment analysis is reasonable or whether the registrant should have performed an interim goodwill impairment analysis.

While registrants often provide the appropriate disclosures before incurring an impairment charge, the SEC staff has noted instances in which registrants did not disclose the specific events and circumstances that led to the charge in the period of impairment. After performing an interim impairment test, a registrant should consider disclosing (1) that it performed the test, (2) the event that triggered the test, and (3) the test result regardless of whether goodwill was determined to be impaired. Further, registrants should avoid attributing an impairment charge to general factors such as "soft market conditions" or expected reductions in sales price or sales volume. Instead, the disclosures should discuss (1) why the changes occurred, (2) why the change in forecasts or results occurred in the particular period of the impairment charge, and (3) what known developments or other doubts could affect the reporting unit's fair value estimate.

Reporting Units

Example of an SEC Comment

Please revise [your critical accounting policy discussion of goodwill and other intangible assets as follows]:

- Clarify the number of reporting units identified for impairment testing and how they were determined (e.g., operating segments or components) and how goodwill is assigned to reporting units;
- If you aggregate more than one component into a single reporting unit, provide the specific facts and circumstances supporting a conclusion that aggregation is appropriate;
- Clarify whether the optional qualitative assessment was performed for any reporting units;
- Please disclose whether or not your reporting units' fair value is substantially in excess of [their carrying value]. To the extent that any of your reporting units have estimated fair values that are not substantially in excess of the carrying value and to the extent that goodwill for these reporting units, in the aggregate or individually, if impaired, could materially impact your operating results, please provide the following disclosures for each of these reporting units:
    - Identify the reporting unit;
    - The percentage by which fair value exceeds the carrying value as of the most recent step-one test;
    - The amount of goodwill;
    - A description of the assumptions that drive the estimated fair value;
    - A discussion of the uncertainty associated with the key assumptions; and
    - A discussion of any potential events and/or circumstances that could have a negative effect on the estimated fair value.

The SEC staff continues to comment on asset grouping for goodwill impairment testing (e.g., the identification and composition of reporting units), especially when a registrant does not clearly state that it tests goodwill at the reporting-unit level or when changes appear to have been made to a registrant's reportable segments (e.g., as the result of a reorganization or acquisition). Given the interaction between the guidance on reporting units in ASC 350-20 and the guidance on operating segments in ASC 280, the staff may also ask questions to better understand (1) how the reporting units were identified; (2) how many reporting units were identified; (3) how the reporting units align with the registrant's segment reporting; (4) whether and, if so, how the registrant aggregated reporting units to perform goodwill impairment testing; and (5) how the fair value of the reporting units was determined. For additional information about the identification and aggregation of operating segments, see the Segment Reporting section.

Interim Impairment Tests

Example of an SEC Comment

We note your goodwill impairment charge of $[X] recorded in the fourth quarter of 2014 as a result of your annual goodwill impairment test. Please tell us whether you performed an interim goodwill test as a result of a triggering event described in ASC 350-20-35-3C. If an interim impairment test was performed, please tell us the triggering event that caused the evaluation, the results of the impairment test and the percentage that fair value exceeded carrying value for each of your reporting units. If no interim impairment test was completed, please confirm that there were no triggering events described in ASC 350-20-35-3C and explain in detail why each factor did not trigger an interim impairment test. Please be specific when explaining the factor in ASC 350-20-35-3C(d). Refer to 350-20-35-30.

ASC 350-20 requires entities to test goodwill for impairment annually and also between annual tests if facts and circumstances indicate that goodwill may be impaired. The SEC staff has asked registrants about negative trends that could trigger the requirement to test for impairment between annual tests and often asks them to describe the events leading up to the recording of an impairment charge, including how circumstances changed from prior quarters and from when the registrant had performed its previous annual goodwill impairment test. The SEC staff may also request an explanation of how the impairment had not been reasonably foreseen during management's prior-period assessments. Specifically, the staff may question why management did not identify an impairment during a previous quarter.

Other Long-Lived Assets

Example of an SEC Comment

We note that in the second quarter 2014 earnings conference call you stated that you plan to close [X] stores with a majority of the closures occurring in the fourth quarter of 2014. In light of the planned closures, please tell us if you have tested the related long-lived assets for impairment and reviewed their depreciation estimates, as of August 2, 2014. See ASC 360-10-35-21 and 35-22. If so tell us the outcome of your evaluations. If you have not [recorded an impairment] or revised depreciation estimates for these assets, please tell us your accounting basis for not doing so. We have reviewed your policy for impairment testing; however, it does not appear to address long-lived assets associated with planned store closings.

In its comments on impairments of long-lived assets, the SEC staff may ask a registrant that is recording, or is at risk of recording, impairment charges to either disclose or inform the SEC staff about the following:

- The adequacy and frequency of the registrant's asset impairment tests, including the date of its most recent test.
- The factors or indicators (or both) used by management to evaluate whether the carrying value of other long-lived assets may not be recoverable.
- The methods and assumptions used in impairment tests, including how assumptions compare to recent operating performance, the amount of uncertainty associated with the assumptions, and the sensitivity of the estimate of fair value of the assets to changes in the assumptions.
- The timing of the impairment, especially if events that could result in an impairment had occurred in periods before the registrant recorded the impairment. In these circumstances, the SEC staff may ask registrants to justify why the impairment was not recorded in the previous period.
- The types of events that could result in impairments.
- In the critical accounting policies section of MD&A, the registrant's process for assessing impairments.
- The facts and circumstances that led to the impairments, along with a reminder that a registrant may be required to disclose in MD&A risks and uncertainties associated with the recoverability of assets in the periods before an impairment charge is recorded. For example, even if an impairment charge is not required, a reassessment of the useful life over which depreciation or amortization is being recognized may be appropriate.

Other Deloitte Resources

- March 20, 2014, *Heads Up*, "Highlights of the 'SEC Speaks in 2014' Conference."
- December 16, 2013, *Heads Up*, "Highlights of the 2013 AICPA Conference on Current SEC and PCAOB Developments."
- May 2012, *Qualitative Goodwill Impairment Assessment — A Roadmap to Applying the Guidance in ASU 2011-08*.

Income Taxes

The SEC staff's comments about income taxes continue to focus on (1) the potential tax and liquidity ramifications related to the repatriation of foreign earnings, (2) valuation allowances, (3) rate reconciliation, and (4) unrecognized tax benefits.

Further, the staff continues to ask registrants to provide early-warning disclosures to help financial statement users understand these items and how they potentially affect the financial statements. For additional information about early-warning disclosures, see the Management's Discussion and Analysis section.

At the 2014 AICPA Conference, the staff stated that boilerplate language should be avoided with respect to income tax disclosures within MD&A and that approaches more conducive to effective disclosure would include:

- Using the income tax rate reconciliation as a starting point and describing the details of the material items.
- Discussing significant foreign jurisdictions, including statutory rates, effective rates, and the current and future impact of reconciling items.
- Providing meaningful disclosures about known trends and uncertainties, including expectations regarding the countries where registrants operate.

Repatriation of Foreign Earnings and Liquidity Ramifications

Example of an SEC Comment

You disclose that during fiscal 2014, 2013 and 2012, you provided for U.S. and non-U.S. income and withholding taxes in the amount of $[X], $[X] and $[X], respectively, on earnings that were or are intended to be repatriated. You further indicate that, in general, the remaining earnings of your subsidiaries are considered to be permanently reinvested and that you have approximately $[X] of undistributed earnings that are considered to be permanently reinvested. Please quantify the amounts repatriated for each period presented and tell us the facts and circumstances for repatriating your subsidiaries earnings. Substantiate how your assertion that the remaining portion will be permanently reinvested meets the indefinite reinvestment criteria in ASC 740-30-25. In this regard, since you did or intend to repatriate earnings in each of the periods presented and indicated the related tax amounts for each of those periods, please tell us why your assertion that it is not practicable to determine the cumulative amount of tax liability that would arise if these earnings were remitted is reasonable.

In accordance with ASC 740, when the earnings of a foreign subsidiary are indefinitely reinvested, registrants should disclose the nature and amount of the temporary difference for which no deferred tax liability (DTL) has been recognized as well as the changes in circumstances that could render the temporary difference taxable. In addition, registrants should disclose either (1) the amount of the unrecorded DTL related to that temporary difference or (2) a statement that determining that liability is not practicable.

Registrants may need to repatriate cash from foreign subsidiaries. ASC 740-30-25-19 states that "[i]f circumstances change and it becomes apparent that some or all of the undistributed earnings of a subsidiary will be remitted in the foreseeable future but income taxes have not been recognized by the parent entity, [the parent entity] shall accrue as an expense of the current period income taxes attributable to that remittance."

The SEC staff continues to (1) ask for additional information when registrants claim that it is not practicable to determine the amount of unrecognized DTL and (2) request that registrants expand disclosures in MD&A about their indefinitely reinvested foreign earnings. In addition, the staff has 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. Recently, the staff has focused on situations in which registrants have repatriated a portion of their foreign earnings but continue to assert that the remaining earnings are considered to be permanently invested.

Disclosures in an MD&A liquidity analysis should include:

- The amount of cash and short-term investments held by foreign subsidiaries that would not be available to fund domestic operations unless the funds were repatriated.
- A statement that the company would need to accrue and pay taxes if the funds are repatriated.
- If true, a statement that the company does not intend to repatriate those funds.

Valuation Allowances

Examples of SEC Comments

- We note . . . that during 2014, you released $[X] of the valuation allowance that existed at the beginning of the year. We further note that you considered your income from operations and reduction in interest expense as a result of refinancings as positive evidence supporting this release. Given that you have three years of cumulative losses from pre-tax income, please help us better understand how you determined it was appropriate to release the valuation allowance during 2014. Your response should tell us how you weighted all of the positive and negative evidence, including your consideration of the extent to which it can be objectively verified, in reaching the conclusion to reverse the valuation allowance. Refer to paragraphs 30-21 through 30-23 of ASC 740-10-30.
- Given your recurring losses before income taxes, please disclose in future filings the nature of the deferred tax assets that have not been offset by a valuation allowance and how you determined they would be realized. Please also disclose the following:
    - The nature of the positive and negative evidence you considered, 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;
    - The amount of any pre-tax income you need to generate to realize the deferred tax assets;
    - The anticipated future trends included in any projections of future taxable income; and
    - State, if true, 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 are of the same character as the temporary differences giving rise to the deferred tax assets.

ASC 740-10-30-5(e) requires entities to reduce deferred tax assets (DTAs) by "a valuation allowance if, based on the weight of available evidence, it is more likely than not (a likelihood of more than 50 percent) that some portion or all of the [DTAs] will not be realized. The valuation allowance shall be sufficient to reduce the [DTA] to the amount that is more likely than not to be realized." ASC 740-10-30-16 through 30-23 provide additional guidance. In light of this guidance, the SEC staff has commented when registrants' filings indicate that no valuation allowance has been recorded, or when it seems that the valuation allowance recorded is insufficient. More recently, the staff has asked registrants about reversals of, or other changes in, their valuation allowances.

The staff has 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.

The SEC staff has indicated that factors for registrants to consider in making a determination about whether they should reverse a previously recognized valuation allowance 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.

Further, the staff has noted that registrants should bear in mind that the goal of the assessment is to determine whether sufficient positive evidence outweighs existing negative evidence. The staff has emphasized the importance of evidence that is objectively verifiable and has noted that such evidence carries more weight than evidence that is not. In addition, registrants should (1) assess the sustainability of profits in jurisdictions in which an entity was previously in a cumulative loss position and (2) consider their track record of accurately forecasting future financial results. Doubts about the sustainability of profitability in a period of economic uncertainty may give rise to evidence that would carry less weight in a valuation allowance assessment. Likewise, a registrant's poor track record of accurately forecasting future results would also result in future profit projections that may be very uncertain and should carry less weight in the overall assessment.

The SEC staff has also pointed out that registrants' disclosures should include a discussion of the specific factors or reasons that led to a reversal of a valuation allowance to effectively answer the question, why now? Such disclosures would include a comprehensive analysis of all available positive and negative evidence and how the registrant weighed each piece of evidence in its assessment. In addition, the SEC staff has 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.

Rate Reconciliation

Examples of SEC Comments

- We note your tax benefit from non-U.S. net earnings as depicted in the tax reconciliation table. Please discuss and disclose in your MD&A the identities of specific jurisdictions that materially affect your effective tax rate (currently, [X]%), the tax rates and incentives in those specific jurisdictions, earnings within those jurisdictions and information about the effects of such foreign jurisdictions (e.g., magnitude, mix), including but not limited to [Country A], on the current and future effective tax rate.
- We note the foreign tax rate differential is significantly lower than the federal statutory rate in the income tax rate reconciliation. In light of the significantly lower impact of taxes imposed on foreign earnings to your operating results, in future filings please explain in MD&A the relationship between foreign pre-tax income and the foreign effective tax rate in greater detail. We refer you to Section III.B of SEC Release 33-8350. Please provide us with your proposed revised disclosure.

In accordance with ASC 740 and Regulation S-X, Rule 4-08(h)(2), registrants must disclose a reconciliation that uses percentages or dollar amounts of income tax expense or benefit attributable to continuing operations with the amount that would have resulted from applying domestic federal statutory tax rates (the regular rate, not the alternative minimum tax rate) to pretax income from continuing operations.

Further, registrants should disclose the estimated amount and the nature of each significant reconciling item. ASC 740-10-50 does not define “significant.” However, Rule 4-08(h) states that public entities should disclose (on an individual basis) all reconciling items that constitute 5 percent or more of the computed amount (i.e., income before tax multiplied by the applicable domestic federal statutory tax rate). Reconciling items may be aggregated in the disclosure if they are individually less than 5 percent of the computed amount.

The SEC staff has noted the following issues related to 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 that are greater than 5 percent of the amount they 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.

Unrecognized Tax Benefits

Example of an SEC Comment

We note [an $X] increase in unrecognized tax benefits related to additions for prior year tax positions. Please describe for us in greater detail the significant components of this increase in unrecognized tax benefits. Please also describe whether this increase relates to the tax audit by the [Country A] tax authorities . . . . In this regard, please tell us how you have concluded that no other major jurisdictions outside the U.S. are required to be disclosed under FASB ASC 740-10-50-15(e).

Under ASC 740-10-25-6, entities cannot recognize a tax benefit related to a tax position unless it is “more likely than not” that tax authorities will sustain the tax position solely on technical merits. The tax benefit recognized is measured as the largest amount of the tax benefit that is more than 50 percent likely to be realized. The difference between a tax position taken or expected to be taken in a tax return and the benefit recognized and measured under ASC 740-10 is referred to as an “unrecognized tax benefit.” Generally, if the unrecognized tax benefit would be settled by offsetting it with an available loss or tax credit carryforward in the same jurisdiction, it should be netted against the related DTA. Otherwise, the amount of the unrecognized tax benefit is presented as a liability in the statement of financial position. The SEC staff has commented when registrants omit disclosures required under ASC 740-10-50-15 and 50-15A about unrecognized tax benefits, which include a tabular reconciliation of such benefits.

In addition, the SEC staff may ask registrants about their conclusions regarding disclosures about reasonably possible changes in unrecognized tax benefits. Because the guidance on the acceptable level of aggregation of information for these disclosures is not prescriptive and permits judgment, the SEC staff evaluates a registrant’s level of disclosure on a case-by-case basis.

Examples of what registrants should disclose under ASC 740-10-50-15(d) include:

- Information related to scheduled expiration of the tax position's statute of limitations. A registrant should disclose this information if (1) the statute of limitations is scheduled to expire within 12 months of the financial statement's date and (2) management believes it is reasonably possible that the statute's expiration will cause the total amounts of unrecognized tax benefits to significantly increase or decrease.
- Significant unrecognized tax benefits for tax positions that the registrant believes will be effectively settled within 12 months in accordance with ASC 740-10-25-9.

Other Deloitte Resources

January 2015, *A Roadmap to Accounting for Income Taxes*.

Leases

Lease Classification

Examples of SEC Comments

- We note your disclosure that during fiscal 2014 you entered into [X] agreements covered under a master lease agreement to lease back the equipment. Please provide us with your analysis of the guidance in ASC 840-10-25-1 supporting your classification of these as operating leases, including your consideration of the renewal option and transfer of ownership at the end of the lease term.
- [T]ell us how you determine that the exercise of a bargain renewal option is reasonably assured, including whether you consider historical experience in determining such exercises. Further, quantify for us the number of leases in your portfolio that have bargain renewal options. In your response, tell us the accounting literature relied upon and the basis for your conclusions.

The lease classification criteria in ASC 840-10-25-1 are based on the concept that a lease that transfers substantially all of the benefits and risks incident to the ownership of property should be accounted for (1) as the acquisition of an asset and the incurrence of an obligation by the lessee and (2) as a sale or financing by the lessor. All other leases should be accounted for as operating leases. The evaluation of the four lease classification criteria in ASC 840-10-25-1 and the subsequent conclusion about whether to classify a particular lease as an operating lease or a capital lease can have material effects on an entity's financial statements and disclosures. A lessee recognizes a capital lease as an asset and obligation on its balance sheet. Operating leases, on the other hand, are not recognized on the balance sheet but result in charges to expense by the lessee (reported as income by the lessor) over the lease term.

The SEC staff has asked registrants to further explain their considerations of the lease classification criteria. Many of the comments have focused on criteria (a) and (b) of ASC 840-10-25-1, which are related to transfer of ownership by the end of the lease term and bargain purchase options, respectively. If a lease transfers title to the lessee by the end of the lease term or shortly thereafter for no additional consideration or for nominal consideration, the lease would be classified by the lessee as a capital lease. Further, if the lease contains a bargain purchase option, it also would be classified by the lessee as a capital lease. Determining whether a purchase option is a bargain requires judgment (e.g., determining whether the exercise price is sufficiently lower than the expected fair value of the asset at the date of exercise to make exercise of the option reasonably assured), and there are no bright lines in this regard. The SEC staff may ask questions related to how the registrant determined that a bargain purchase option is reasonably assured or, in turn, how the registrant determined that it has not met the bargain purchase option criteria.

Sale-and-Leaseback Transactions Involving Fixed-Price Renewal Options

In the past, the SEC staff has commented on how registrants considered fixed-price renewal options in evaluating whether a real estate transaction qualifies for sale-and-leaseback accounting. A fixed-price renewal option in a leaseback may preclude a real estate transfer from qualifying for sale accounting (in which case, the real estate would remain on the seller's books and be treated as a financing arrangement). Renewal options that cover substantially all of the useful life of the real estate and enable the seller-lessee to participate in the appreciation of the underlying property (i.e., through favorable rental rates) are a prohibited form of continuing involvement.

Although comments have focused on fixed-price renewal options, the SEC staff may ask about any renewal terms that allow the seller-lessee to participate in increases in the value of the underlying real estate, including fixed base rents during the renewal period that a registrant calculates by using an inflationary index to adjust the current base rents. While these are not technically fixed-price renewals, they do have the potential to give the seller-lessee upside participation to the extent that market rates for rents exceed the rate of inflation.

Materiality

Example of an SEC Comment

We note that you concluded that the errors related to deferred tax assets were immaterial to the previously reported amounts contained in your periodic reports. Please tell us the following concerning these errors:

- Explain to us in greater detail the nature of the errors and how they were determined and remediated;
- Tell us if there was any impact on the evaluation of your disclosure controls and procedures and your conclusion on Internal Control over Financial Reporting; and
- Provide us with your SAB 99 materiality analysis beginning with the initial time period in which the errors were detected, addressing how you concluded that these errors were immaterial to the previously reported amounts contained in your periodic reports.

Registrants perform materiality analyses to determine the impact of identified misstatements on their (1) financial statements and (2) previous conclusions about ICFR and DC&P.

ASC 250-10-45-27 provides guidance on materiality determinations related to the correction of errors, and SAB Topics 1.M (SAB 99) and 1.N (SAB 108) contain the SEC staff's guidance on assessing the materiality of misstatements identified as part of the audit process or during the preparation of financial statements.

SAB Topic 1.M indicates that a "matter is 'material' if there is a substantial likelihood that a reasonable person would consider it important." The definition of materiality is based on FASB Concepts Statement 2[1] and on legal precedent in interpretations of the federal securities laws. The SEC staff has noted that in Supreme Court cases, the Court has followed precedent regarding materiality — namely, that the materiality requirement is met when there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."

SAB Topic 1.M also indicates that registrants should consider (1) each misstatement individually and (2) the aggregate effect of all misstatements. SAB Topic 1.N provides guidance on how a registrant should consider the effects of prior-year misstatements when quantifying misstatements in current-year financial statements.

To understand registrants' materiality assessments and conclusions, the SEC staff frequently asks registrants about the nature of an error, the quantitative and qualitative factors that registrants considered, and an error's impact on their conclusions about (1) the effectiveness of their ICFR and DC&P and (2) other reporting requirements, such as the need to file a Form 8-K. Similarly, the staff challenges registrants' conclusions that errors are immaterial (e.g., whether the method of correcting the error is appropriate; whether restatement language is presented; and whether an Item 4.02 Form 8-K, indicating nonreliance on previously issued financial statements, was required).

Accordingly, a registrant should first decide whether an individual error is material by considering (1) the affected line item subtotals and totals in the financial statements and (2) the financial statements as a whole. Then, if the registrant concludes that an individual error has not caused the financial statements as a whole to be materially misstated, it should consider other errors, including offsetting errors, in determining whether the errors taken as a whole are materially misleading. In reaching this conclusion, the registrant should consider individual line items, subtotals and totals in the financial statements, and the financial statements as a whole. The SEC staff has cautioned registrants to avoid bright-line rules or litmus tests and "not to succumb" to rules of thumb or percentage thresholds when determining materiality because no one factor can be viewed as determinative.[2]

SAB Topic 1.M specifies quantitative and qualitative factors a registrant should consider when assessing the materiality of known errors to its financial statements. However, in observing that registrants' materiality assessments are often presented in a "checklist" fashion in which only the factors in

[1] FASB Concepts Statement 2, which has been superseded by FASB Concepts Statement 8, defined materiality as the "magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement."

[2] The SEC commented on this topic at the 2011 AICPA Conference. See Deloitte's December 14, 2011, *Heads Up* for additional information.

SAB Topic 1.M are considered, the SEC staff has indicated that registrants should (1) describe all factors that are relevant to their materiality assessment (i.e., not just those factors noted in SAB Topic 1.M) and (2) explain how each of those factors was considered. That is, a registrant should provide a detailed, thoughtful analysis that takes into account the registrant's specific circumstances and is relevant to its investors and financial statement users.[3] In addition, the SEC staff has stressed that quantitative considerations in registrants' materiality assessments continue to be overemphasized while qualitative factors are often insufficiently evaluated.[4]

The SEC staff has also indicated that registrants should consider company-specific trends, performance metrics that may influence investment decisions, and the effects of unrelated circumstances on factors that are important to reasonable investors (such as the magnification of an error in the income statement simply because it occurs in a period in which net income is "abnormally small" relative to historical and expected trends).

In considering company-specific trends and performance metrics, a registrant should address in its materiality assessments what metrics it deemed important enough to include in press releases and earnings calls as well as what analysts cover in their reports. The SEC staff often considers analysts' reports and investor calls as it assesses the registrant's assertion of what is important to investors.

When considering whether net income is abnormally small, management should determine whether a decline in operating performance is an abnormal event or whether it represents a new normal. Management should also determine whether "unusual" or infrequent events or transactions, such as an asset sale or impairment that would affect trends, are reflected in the results. In those instances, it sometimes may be appropriate to evaluate the relative significance of the identified error by using adjusted or "normalized" metrics, which may cause an otherwise quantitatively significant error to be less significant. Documentation of such considerations should be included in management's analysis.

The SEC staff has also observed that certain registrants have argued that a quantitatively large error in the GAAP financial statements is immaterial when it has a quantitatively small impact on non-GAAP metrics. While the staff has indicated that it may be appropriate for a registrant to look at metrics other than those that are GAAP-based in determining whether the financial statements taken as a whole are materially misstated, the SEC staff will most likely focus on the GAAP metrics until a registrant can demonstrate why other metrics are more important to its investors. In addition, the SEC staff has acknowledged that while it is possible for quantitatively small errors to be material and for quantitatively large errors to be immaterial,[5] a quantitatively material GAAP error does not become immaterial simply because of the presentation of non-GAAP measures.[6] Further, there may be circumstances in which an error that is otherwise immaterial to the GAAP financial statements — when taken as a whole and depending on the focus that management, investors, and financial statement users have historically placed on non-GAAP information — is material in the context of non-GAAP information.[7]

In addition to inquiring about a registrant's materiality analysis under SAB Topics 1.M and 1.N, the SEC staff often asks questions about the errors themselves. Registrants should consider the impact that misstatements (and immaterial restatements) may have on their previous conclusions about ICFR and DC&P. As a result of such misstatements, the SEC staff may question whether a material weakness existed at the time of the initial assessment. For additional considerations, see the Disclosure Controls and Procedures and Internal Control Over Financial Reporting sections.

After reaching a materiality conclusion, registrants should also consider whether they are required to file Form 8-K. Under Item 4.02(a) of Form 8-K, a registrant must file Form 8-K when it has concluded that previously issued financial statements, covering either an annual or interim period, should no longer be relied on because of an error.

3 In an October 2010 joint webcast with the CAQ, the SEC staff provided its views about registrants' materiality assessments.

4 The SEC staff discussed qualitative and quantitative factors at the 2012 AICPA Conference. For more information, see Deloitte's December 11, 2012, *Heads Up*.

5 At the 2007 and 2008 AICPA conferences, the SEC staff addressed these topics. For more information, see Deloitte's December 20, 2007, and December 18, 2008, *Heads Up* newsletters.

6 At the 2010 AICPA Conference, the staff expressed its views on this topic. See Deloitte's December 16, 2010, *Heads Up* on the conference.

7 In its October 2010 joint webcast with the CAQ, the SEC staff also discussed non-GAAP financial measures in the context of materiality.

Noncontrolling Interests

Examples of SEC Comments

- We note the reconciliation of net income (loss) to net loss attributable to [your stockholders] on your consolidated statements of income (loss). Please tell us the basis for the attributing amounts to the parent and the non-controlling interests and tell us how amounts are calculated as it relates to your non-controlling interests, such as net (income) loss attributable to non-controlling interests on the consolidated statements of income (loss).
- We note that your non-controlling interests of the [consolidated entities include] both redeemable non-controlling interests reported outside of the permanent capital section (when investors have the right to redeem their interest) and equity attributable to non-controlling interests of [the consolidated entities] reported inside the permanent capital section (when investors do not have the right to redeem their interests). In the interest of transparency, please revise throughout your filing to label your redeemable non-controlling interests as redeemable non-controlling interests of [the consolidated entities].

SEC staff comments related to noncontrolling interests (NCIs) continue to focus on the allocation of net income (loss) to the NCI and the parent. Consequently, the staff frequently asks registrants to provide it with detailed information about how the registrant determined the allocation, particularly when the allocation is disproportionate to the NCI holder's investment.

The SEC staff also continues to comment on registrants' accounting for redeemable NCIs since SEC rules still prohibit registrants from including redeemable equity in any caption titled "total equity." ASC 480-10-S99-3A(2) indicates that equity instruments are required to be classified outside of permanent equity if they are redeemable for cash or other assets in one of the following ways:

- "[A]t a fixed or determinable price on a fixed or determinable date."
- "[A]t the option of the holder."
- "[U]pon the occurrence of an event that is not solely within the control of the issuer."

Thus, the SEC staff has indicated that "registrants with redeemable noncontrolling interests, redeemable preferred stock or other redeemable equity classified outside permanent equity should not include these items in any total or subtotal caption titled 'total equity.'" Further, changing "the caption in the statement of changes in shareholders' equity [from] 'total equity' to 'total' does not make the inclusion of redeemable equity acceptable."[1]

For additional information about classification of redeemable securities, see the Debt section.

[1] Quoted text is from the highlights of the June 2009 CAQ SEC Regulations Committee joint meeting with the SEC staff.

Pensions and Other Postretirement Benefits

The SEC staff continues to comment on disclosures related to how registrants account for pension and other postretirement benefit plans and how key assumptions and investment strategies affect their financial statements. Further, registrants may be asked how they concluded that assumptions used for their pension and other postretirement benefit accounting are reasonable relative to (1) current market trends and (2) assumptions used by other registrants with similar characteristics.

Critical Accounting Estimates

Examples of SEC Comments

- In future filings, please provide a more robust discussion of your critical accounting policies and estimates to focus on the assumptions and uncertainties that underlie your critical accounting estimates rather than duplicating the accounting policy disclosures in the financial statement footnotes. Please quantify, where material, and provide an analysis of the impact of critical accounting estimates on your financial position and results of operations for the periods presented. In addition, please include a qualitative and quantitative analysis of the sensitivity of reported results to changes in your assumptions, judgments, and estimates, including the likelihood of obtaining materially different results if different assumptions are applied. For example, if reasonably likely changes in the discount rate or long-term rate of return used in accounting for your pension plans would have a material effect on your financial condition or results of operations, the impact that could result given the range of reasonable outcomes should be disclosed and quantified. Please refer to SEC Release No. 34-48960. In your response, please show us what your disclosure would have looked like if these changes were made in your most recently filed Form 10-K.
- Please tell us how you determined the discount rates used in the measurement of plan obligations at the most recent balance sheet date and why you believe the discount rates are reasonable based on the expected dates and amounts of cash outflows associated with retiree pension benefits.

Because of factors such as the low-interest-rate environment, optionality in U.S. GAAP accounting methods, and significant assumptions used in benefit obligation valuation, the SEC staff has continued to ask registrants about assumptions related to their pension and other postretirement benefit plans. For example, the staff has requested more quantitative and qualitative information about the nature of registrants' assumptions. In particular, the staff has focused on the discount rate and the expected return on plan assets. Further, the staff has asked registrants how their disclosures in the critical accounting estimates section of MD&A align with their accounting policy disclosures in the notes to the financial statements.

In addition, the SEC staff has indicated that it may be appropriate for a registrant to disclose the following:

- Whether a corridor[1] is used to amortize the actuarial gains and losses; and, if so, how the corridor is determined and the period for amortization of the actuarial gains and losses in excess of the corridor.
- A sensitivity analysis estimating the impact of a change in expected returns on income. This estimate should be based on a reasonable range of likely outcomes.
- Regarding the extent to which historical performance was used to develop the expected rate of return assumption, if use of the arithmetic mean to calculate the historical returns yields results that are materially different from the results yielded when the geometric mean is used to perform this calculation, it may be appropriate for the registrant to disclose both calculations.
- The reasons why the expected return has changed or is expected to change in the future.

[1] ASC 715-30-35-24 provides guidance on net periodic pension benefit cost and defines the corridor as "10 percent of the greater of the projected benefit obligation or the market-related value of plan assets." Similarly, ASC 715-60-35-29 provides guidance on net periodic postretirement benefit cost and defines the corridor as "10 percent of the greater of the accumulated postretirement benefit obligation or the market-related value of plan assets."

- The effect of plan asset contributions during the period on profit or loss, when this effect is significant. The SEC staff has indicated that additional plan asset contributions reduce net pension costs even if actual asset returns are negative because the amount included in profit or loss is determined through the use of expected and not actual returns. Consequently, such information can provide an understanding of unusual or nonrecurring items or other significant fluctuations so that investors can ascertain the likelihood that past performance is indicative of future performance.

Liquidity and Capital Resources

Example of an SEC Comment

We note . . . that you had changes in both your discount rate and mortality assumptions during 2014 that have significantly affected your benefit obligations and related funding status. Particularly, your unfunded obligations have increased by approximately $[X] since 2013. We further note from your risk factor . . . that you "could" experience increases in your pension expense due to such changes as decreases in discount rates. In this regard, please revise your Liquidity section of MD&A to identify and discuss any known trends, demands, commitments, events, or uncertainties that will result in or that are reasonably likely to result in your liquidity increasing or decreasing in any material way. Your revised disclosure should clearly explain the significant increase in both your benefit obligations at December 31, 2014 and your unfunded status and the related impacts on your financial statements and liquidity. Please refer to Item 303(a)(1) of Regulation S-K.

Registrants should sufficiently disclose how changes to their plan assets and obligations may affect their liquidity and capital resources. The SEC staff has encouraged registrants to explain the trends and uncertainties related to pension or other postretirement benefit obligations (e.g., a registrant's funding requirements may be affected by changes in the measurement of its plan obligations and assets). A registrant also may want to disclose in both qualitative and quantitative terms what its plan contributions have been in the past and the expected changes to those contributions.

Registrants may take steps to "de-risk" their pension plans by acquiring bonds for their plan asset portfolios whose expected maturities match the expected timing of the plans' obligations. The SEC staff has reminded registrants that they are required to disclose their plan investment strategy. MD&A should inform investors about any changes to that investment strategy, the reasons for those changes, and how a change in strategy affects the underlying plan assumptions and the registrant's ability to fund the plans. For example, a decision to invest more in fixed-income securities could be expected to lower the overall rate of return on plan assets.

When a pension plan is funded with a noncash transaction (e.g., the registrant's own stock), it may be appropriate to disclose how management funded the pension plan, with a reference to the associated cash flow statement line items.

When commenting on other postretirement benefit plans, which are usually funded as the related benefit payments become due, the SEC staff has noted that the footnote disclosures should include the plan's expected future benefit payments for each of the next five years and in the aggregate for the five years thereafter. This information may provide insight into a registrant's expected liquidity requirements, which could then warrant discussion in the liquidity section of MD&A or in the contractual obligations table.

Fair Value of Plan Assets

The disclosures required by ASC 715 for fair value measurements for retirement plan assets are similar to the disclosures about fair value measurements required by ASC 820. These disclosures include employers' investment strategies, major categories of plan assets, concentrations of risk within plan assets, and valuation techniques used to measure the fair value of plan assets. The SEC staff may ask registrants about their compliance with such disclosure requirements. For more information, see the Fair Value section. A registrant also should disclose whether the fair value or calculated value[2] of plan assets is used to determine the expected return on plan assets and, if the calculated value is used, how this value is determined.

Immediate Recognition of Gains and Losses

The SEC staff has noted instances in which registrants have changed their method of accounting for the amortization of actuarial gains and losses in net periodic pension or other postretirement benefit cost. For example, some registrants have decided to move to an approach under which they immediately recognize all actuarial gains and losses or, alternatively, all actuarial gains and losses outside the corridor, as a component of net periodic pension cost. In accordance with ASC 250, such registrants have retrospectively applied this change in accounting principles to their financial statements.

Once an entity adopts a policy of immediately recognizing gains and losses, changing to a less preferable method (i.e., a subsequent change to a method that results in slower amortization) would be difficult to support. When entities adopt a policy of immediately recognizing actuarial gains and losses as a component of net periodic pension cost, they often present non-GAAP financial measures that "remove the actual gain or loss from the performance measure and include an expected long-term rate of return."[3] The SEC staff will generally comment when (1) the disclosures are not clear and the pension-related adjustment (e.g., actuarial gains or losses) is not labeled; (2) an adjustment is labeled as a "noncash" pension expense, because the pension liability will ultimately be settled in cash; and (3) context about adjustments related to actuarial gains and losses is not provided.

Mortality Assumption

Example of an SEC Comment

We understand that the Society of Actuaries developed an update[d] set of mortality assumptions presented in its RP-2014 Mortality Tables Report issued in October 2014. We also understand that the RP-2014 mortality tables represent the most current and complete benchmarks of U.S. private pension plan mortality experience. Please tell us what consideration you gave to changing the mortality table used to calculate the present value of pension and postretirement plan liabilities. If you did not adopt the new mortality assumptions, please tell us the mortality table used to calculate the present value of pension and postretirement plan liabilities and why you believe the mortality rate assumptions [reflect] the best estimate of expected mortality rates for your participant population. If you adopted the RP-2014 mortality tables, please tell us the impact on pension and postretirement plan liabilities.

The SEC believes that the RP-2014 mortality tables released by the Society of Actuaries (SOA) in October 2014 should not be disregarded in the development of the best estimate[4] of mortality since entities have historically used the data issued by the SOA. Further, since a change in the mortality assumption may have a significant effect on the entity's result of operations, registrants should consider the requirement in ASC 715-20-50-1(r) to disclose an "explanation of any significant change in the benefit obligation or plan assets not otherwise apparent in the other disclosures required by [ASC 715-20]." In addition to footnote disclosures, registrants should consider the need to highlight in MD&A the effects of a change in the mortality assumption.[5]

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[2] ASC 715-30-20 defines the market-related value of plan assets as follows: "A balance used to calculate the expected return on plan assets. The market-related value of plan assets is either fair value **or a calculated value** that recognizes changes in fair value in a systematic and rational manner over not more than five years. Different ways of calculating market-related value may be used for different classes of assets" (emphasis added).

[3] For more information, see the highlights of the June 2012 CAQ SEC Regulations Committee joint meeting with the SEC staff.

[4] Under ASC 715-20 and ASC 715-60, each assumption should represent the "best estimate" for that assumption as of the current measurement date.

[5] For more information, see Deloitte's December 15, 2014, *Heads Up* on the 2014 AICPA Conference.

Disclosures Related to Non-U.S. Plans

ASC 715-20-50-4 states that a "U.S. reporting entity may combine disclosures about pension plans or other postretirement benefit plans outside the United States with those for U.S. plans unless the benefit obligations of the plans outside the United States are significant relative to the total benefit obligation and those plans use significantly different assumptions." The SEC staff may ask registrants to explain the basis for combining pension and other postretirement benefit plan disclosures related to U.S. and non-U.S. plans. When there are significant differences in trends and assumptions between the U.S. and non-U.S. plans and the benefit obligation of the foreign plan is significant, the SEC staff has required registrants to provide disaggregated footnote disclosure for the U.S. and non-U.S. plans.

Other Deloitte Resources

- Financial Reporting Alert 15-3, "Employers' Accounting for Defined Benefit Plans — Alternatives for Applying Discount Rates to Measure Benefit Cost."
- August 14, 2015, *Heads Up*, "FASB Issues ASU on Employee Benefit Plan Accounting."
- Financial Reporting Alert 14-4, "Financial Reporting Considerations Related to Pension and Other Postretirement Benefits."
- Financial Reporting Alert 11-2, "Pension Accounting Considerations Related to Changes in Amortization Policy for Gains and Losses in the Market-Related Value of Plan Assets."

Revenue Recognition

Revenue Recognition Disclosures

Examples of SEC Comments

- We see that your revenue recognition policy cites the four general criteria from SAB Topic 13. Please tell us how you apply the criteria from your disclosure in determining the appropriate timing of revenue recognition. For instance, describe what you consider to be pervasive evidence of an arrangement, tell us when title and risk of loss transfer to your customers, and describe the factors you consider in concluding that the price is fixed and determinable and that collection is reasonably assured.
- Please tell us and revise to clarify how your revenue recognition policy addresses each type of revenue discussed . . . . In this regard, [you describe] data analytics, subscriptions and data-driven intervention platform services but your revenue recognition policy [in your financial statements] describes data analytics and data-driven intervention platforms and multiple element arrangements. Clarify how each of the revenue components . . . is accounted for [in your financial statements], the nature of the services being subscribed for and which product and service offerings are subject to software accounting under ASC 985-605.

In addition to requesting general policy information, the SEC staff often asks that registrants clearly state whether and, if so, how a revenue recognition policy complies with SAB Topic 13, particularly the four criteria that generally must be met for revenue to be recognized. The staff may also ask how a criterion has been applied in the context of a particular transaction or group of transactions. For example, the SEC staff may inquire about whether collectibility is "reasonably assured" and whether the sales price the registrant charges resellers for products is "fixed or determinable."

When reviewing the disclosures in a registrant's revenue policy footnote, the SEC staff often checks for completeness and consistency with the revenue streams described in the business section, in MD&A, and on the registrant's Web site. Registrants should consider expanding or clarifying their revenue recognition disclosures to include:

- The type, nature, and terms of significant revenue-generating transactions.
- The specific revenue recognition policy (including the manner in which revenue is recognized) for each type of revenue-generating transaction, including policies related to discounts, promotions, sales returns, post-shipment obligations, customer acceptance, warranties, credits, rebates, and price protection.
- The specific events or actions that trigger revenue recognition (i.e., avoid "boilerplate language").
- Relevant information about significant uncertainties related to revenue recognition (e.g., rights of return or variable consideration).
- A detailed breakdown of revenue by product/service line or business segment when the disclosure of revenue in the filing is less granular than the discussion of the registrant's results of operations in other publicly available information in or outside the filing.

The SEC staff may request more specific disclosures on the basis of the complexity or subjectivity of registrants' revenue recognition policies.[1]

[1] The SEC staff discussed its expectations related to the completeness and consistency of revenue policy footnotes at the 2013 AICPA Conference.

Sales Returns

Examples of SEC Comments

- Please tell us whether your wholesale customers have the right to return goods and, if so, confirm to us that you record an estimate for anticipated returns when sales are recorded. Also confirm to us that you will revise your revenue recognition disclosure in future filings to clarify your wholesale customers' return rights and your policy for estimating returns on wholesale sales; and provide us with your draft disclosure in your response letter.
- We note your statement that the sales return reserve represents the gross profit effect of sales returns. Please explain to us in more detail how you determine and record your sales return reserve. It is unclear to us if you are reducing sales for the gross profit of expected returns or if you are reducing sales and cost of sales to reflect estimated returns. Please refer to ASC 605-15-45-1.

The SEC staff continues to comment on registrants' failure to separately present or disclose information about their sales returns, particularly when other information in a registrant's filing or in other public communications suggests that sales returns may be material. In addition, the SEC staff will comment if it appears that a registrant has accounted for sales returns as a reduction in revenue on the basis of the gross profit of the related transactions instead of as a reduction in both sales and cost of sales as required by ASC 605-15. Comments on these topics are particularly prevalent in the retail industry.

Multiple-Element Arrangements

Examples of SEC Comments

- We note that you have multiple-element arrangements. . . . In future filings please disclose the following as required by FASB ASC 605-25-50-1:
  - o Disclose the significant deliverables within the arrangement including your maintenance and service agreements or tell us why the maintenance and service agreements are not part of the arrangements;
  - o Disclose the general timing of delivery or performance of services for the deliverables in the arrangement;
  - o Discuss the significant factors, inputs, assumptions, and methods used to determine selling price for the significant deliverables; and
  - o Disclose whether the significant deliverables in the arrangement qualify as separate units of accounting, and the reasons that they do not qualify as separate units of accounting, if applicable.

  Please provide us with your proposed disclosure.
- Your disclosure . . . indicates that some of the revenue from non-refundable upfront fees is recognized over the estimated customer life . . . . If any of the non-refundable upfront fees are recognized over the estimated customer life, please tell us whether the non-refundable upfront fees have standalone values and are considered separate units of account and tell us your basis for recognizing the revenue over the estimated customer life. If you do not have non-refundable upfront fees that are recognized over the estimated customer life, please remove the reference from your disclosure in future filings.

The SEC staff often asks registrants about the nature of, and accounting for, their multiple-element arrangements and whether they evaluated these arrangements under ASC 605-25. The staff typically asks for additional information, and sometimes requests more disclosure, about multiple-element arrangements, including:

- A description of the registrant's rights and obligations under the arrangement.
- The registrant's method for determining whether certain deliverables in an arrangement qualify as separate units of accounting and the factors the registrant considered in making this assessment.
- The registrant's accounting policy for allocating and recognizing revenue for each deliverable.
- The registrant's support for its conclusion that a delivered item has stand-alone value.
- An analysis of how the transaction price was allocated to each deliverable, including how the selling price used for each unit of accounting was determined (i.e., VSOE, TPE, or estimated selling price).
- The period over which each unit of accounting is recognized.

The SEC staff has also focused on registrants' accounting for up-front fees. It has asked registrants to explain whether such fees are related to specific performance obligations and how they determined the period over which the up-front fees are recognized.

Principal-Versus-Agent Considerations

Example of an SEC Comment

We note your disclosure . . . that you act as a billing and collection agent for many nominees. We specifically note that you collect the fees and remit to nominees any difference between the fees that the nominees are entitled to collect and the amount that the nominees have agreed to pay you for your services. Please tell us how you recognize revenues from these transactions and how you considered including disclosures in your revenue recognition accounting policies explaining whether you record such revenues gross as a principal or net as an agent. Please refer to ASC 605-45.

The SEC staff often inquires about principal-versus-agent considerations. ASC 605-45 discusses factors that an entity should consider in determining whether it acts as a principal (and records revenue at the gross amount billed to a customer) or as an agent (and records revenue at the net amount retained). The staff has asked registrants to explain how they determined gross or net reporting to be appropriate for certain revenue transactions under ASC 605-45. In addition, the SEC staff may request detailed information about the rights and obligations of the parties involved in a registrant's revenue transactions. The staff may ask registrants to provide expanded disclosures that describe the nature of these transactions and the factors they considered when determining whether revenue from such transactions should be recorded on a gross or a net basis.

The focus of these disclosures is to provide information that would enable an investor to understand whether title is transferred and who is the primary obligor. The SEC staff has stated that the analysis it applies to identify the primary obligor focuses on (1) identifying the product or service that is desired by the customer and (2) determining whether the registrant is responsible for providing that product or service.

Revenue Recognition for Long-Term Construction-Type and Production-Type Contracts

Examples of SEC Comments

- For the long-term [Product X] manufacturing contracts you enter into, please tell us the following:
  - The nature and terms of these contracts;
  - The amount of revenue recognized for each period presented related to these contracts; and
  - Expand your disclosure to include the method of measuring the extent of progress toward completion for your percentage of completion contracts in accordance with ASC 605-35-50-2.
- It appears $[X] of operating income . . . resulted from a change in estimates underlying your percentage-of-completion accounting on long-term contracts. [P]lease provide a discussion of the underlying reasons for the significant changes in estimates, including quantified information where available and useful for an investor's understanding of contract performance, the impact on operations, and the potential impact on future operations.

ASC 605-35 provides guidance on how and when to recognize revenue and costs for certain long-term construction-type and production-type contracts. The SEC staff may ask registrants to clarify their treatment of these contracts under ASC 605-35. For instance, the staff may inquire about:

- How the registrant developed its estimate of total contract costs and how those costs are directly related to contract performance.
- How the registrant treated precontract and early-stage contract costs, which should normally be expensed.
- The nature, status, amounts, and types of change orders and claims that occurred during the periods presented and how the registrant accounted for those change orders and claims.
- Policy disclosures, including which contract accounting method was used (i.e., percentage-of-completion or completed-contract) and which method was used to measure progress toward completion (e.g., cost-to-cost, units of work).
- The historical accuracy of the registrant's past estimates and the likelihood of changes in its estimates in the future.
- The amount of contract losses recorded during each period presented.
- Disclosures (under ASC 250-10-50-4) related to the effect of any changes in estimates in the financial statements (e.g., the estimate of percentage complete or amount of profit recognized on claims).
- For transactions for which revenue is recognized under the completed-contract method, the specific criteria used to determine when a contract is substantially completed.

In addition, registrants that use the percentage-of-completion method should be aware that the SEC staff has asked some registrants to enhance their disclosures in MD&A about the effect of changes in contract estimates. For example, the SEC staff may ask registrants to add disclosures in MD&A about gross aggregate favorable and gross aggregate unfavorable changes in contract estimates for each period presented.

Other Deloitte Resources

- February 2015, *Revenue From Contracts With Customers — A Roadmap to Applying the Guidance in ASU 2014-09*.
- December 2011, *Software Revenue Recognition — A Roadmap to Applying ASC 985-605*.
- July 2010, *Multiple-Element Arrangements — A Roadmap to Applying the Revenue Recognition Guidance in ASU 2009-13*.

SAB Topic 11.M (SAB 74) — Disclosures About the Impact of Recently Issued Accounting Pronouncements

Example of an SEC Comment

Please revise to include a discussion of the potential effects that recently issued accounting standards will have on your financial statements when adopted in a future period. Refer to SAB Topic 11.M. For example, please revise to disclose the potential effect of ASU No. 2014-09, Revenue from Contracts with Customers.

SAB Topic 11.M (SAB 74) indicates that a registrant should disclose the effects of recently issued ASUs and SABs that are not yet effective "unless the impact on [the registrant's] financial position and results of operations is not expected to be material" (footnote omitted). These disclosures are meant to help financial statement users assess the effect that new standards will have once adopted. Disclosure is not required when a registrant will adopt a new accounting standard that will not affect the reported results (i.e., when only enhanced disclosures would be required by the new accounting standard).

According to SAB Topic 11.M, a registrant should consider including the following disclosures in MD&A and the footnotes to the financial statements:

- A brief description of the new standard, the date that adoption is required and the date that the registrant plans to adopt, if earlier.
- A discussion of the methods of adoption allowed by the standard and the method expected to be utilized by the registrant, if determined.
- A discussion of the impact that adoption of the standard is expected to have on the financial statements of the registrant, unless not known or reasonably estimable. In that case, a statement to that effect may be made.
- Disclosure of the potential impact of other significant matters that the registrant believes might result from the adoption of the standard (such as technical violations of debt covenant agreements, planned or intended changes in business practices . . .).

The SEC staff does not expect the disclosures to include a "laundry list" of new standards that registrants state will have no material effect on their financial statements; only those ASUs that are expected to have a material impact should be described in the financial statements. Further, the staff expects disclosures about the potential effects of a new standard to be increasingly clear and precise as the standard's effective date approaches.

Accordingly, the SEC staff has commented on the following items related to SAB Topic 11.M disclosures:

- Failure to provide the required disclosures.
- Inadequate discussion of the accounting changes and how they will be adopted (i.e., whether retrospectively or prospectively and what periods will be affected).
- Disclosures about prospective accounting standards that are exactly the same in both the notes to the financial statements and MD&A. For example, registrants may consider the effect of adoption on their operations, financial condition, or liquidity in future periods and provide related disclosures in their MD&A. Disclosures in the financial statements should focus on whether the historical financial information will change (e.g., as a result of the retrospective application of the standard).

Segment Reporting

Segment reporting remains a perennial topic of SEC staff comments. Like those issued in previous years, recent SEC staff comments have specifically addressed (1) the identification and aggregation of operating segments, (2) changes in reportable segments, (3) product and service revenue by segment, (4) operating segments and goodwill impairment, and (5) information about geographic areas.

Identification and Aggregation of Operating Segments

In asking registrants about the identification and aggregation of their operating segments, the SEC staff's comments have focused on (1) the identification of the chief operating decision maker (CODM), (2) how registrants identify operating segments and support their process for identifying them, (3) the quantitative and qualitative factors used to support the aggregation of operating segments, and (4) how registrants have considered whether their previous conclusions about the identification and aggregation of operating segments remain appropriate (i.e., how they have continued to assess such conclusions in light of changes in their management or operations).

Example of an SEC Comment

We note that your [CODM] is provided an income statement overview by business unit and that your CODM holds team meetings with your functional leaders and segment managers for [Segment A] and [Segment B]. In order to assist us with our evaluation of how you considered the guidance in FASB ASC 280, please address the following comments:

- Please provide to us the names of your business units and a summary of how these business units are structured. Discuss who manages the business units and describe their role with the company.
- Please describe to us the nature of interactions between the CODM and the business unit managers.
- Clarify for us the role of the segment managers and describe how the segment managers interact with the business unit managers and the CODM.
- Describe to us how the business unit manager's responsibilities differ from the segment manager's responsibilities.
- Clarify the roles and responsibilities of the functional leaders within the company and if they are different from the business unit managers and segment managers.
- Provide to us more information about your budgeting process. Within your discussion, describe who is involved with each level of review and approval during the budgeting process. Also discuss who is responsible for assessing actual performance versus budgeted performance. Clarify who is responsible for discussing any excesses or shortfalls and who is involved in these discussions and to what level of detail.
- Please explain to us if there are situations where the [Segment A] or [Segment B] managers are responsible for any elements of the business units. Within your response discuss if each business unit is aligned solely under one segment manager or if certain business units report to both segment managers.

ASC 280 prescribes the "management approach" for the presentation of segments in a public entity's financial statements. The objective of the management approach is to allow financial statement users to (1) see through the eyes of management the entity's performance, (2) assess the entity's prospects for future cash flows, and (3) make more informed judgments about the entity as a whole. It is presumed that investors would prefer disaggregated information. Consequently, operating segments should not be aggregated unless providing more detailed information would not enhance an investor's understanding of the entity.

Determining an entity's operating segments is the first step in the assessment of what segment information needs to be reported in the entity's financial statements. An operating segment is a component of the business (1) that engages in business activities from which it may earn revenues and incur expenses, (2) whose operating results are regularly reviewed by the public entity's CODM, and (3) that has discrete financial information available. When challenging a registrant's conclusion about its operating segments, the SEC staff has historically placed a great deal of weight on the information regularly provided to, and reviewed by, the CODM (i.e., the CODM package). The SEC staff would frequently request copies of the CODM package to determine whether the information in the CODM package supports how operating segments are identified and aggregated.

However, technology advancements in registrants' financial reporting systems allow the CODM to easily access additional information that may not be reflected in the CODM package. These advancements have led the SEC staff to revisit its views on the relative importance of the CODM package to the segment identification analysis. At the September 2014 AICPA Banking Conference and December 2014 AICPA Conference, the SEC staff noted that while it may have previously emphasized the importance of using the information in a registrant's CODM package to identify operating segments, the staff's views on how it should weight information in a registrant's CODM package have evolved. The staff indicated that instead of viewing the CODM package as the determinative factor in the identification of operating segments, it would now treat the CODM package as only one of many factors to be considered. Similarly, the staff noted that it would not view the CODM package as a safe harbor for registrants. In other words, the staff would not be supportive of an assertion that information in the CODM package automatically nullifies other information (i.e., information that might suggest different operating segments). Other factors that may be considered in the identification of operating segments include (1) a registrant's organizational chart, (2) a registrant's overall management structure, (3) the basis on which budgets and forecasts are prepared, and (4) the basis on which executive compensation is determined. A registrant should expect that the staff will review other publicly available information for consistency with the registrant's segment disclosures; such information may include the forepart of Form 10-K (i.e., the business section and MD&A), the registrant's Web site, analysts' reports, and press releases.

As used in ASC 280, the term "chief operating decision maker" identifies a function, not an individual in the company who has the specific title. The CODM determines the allocation of resources and assesses the performance of the operating segments. While the CODM is usually an individual, sometimes the function is performed by a group.

Accordingly, at the September 2014 AICPA Banking Conference and December 2014 AICPA Conference, the SEC staff further noted that it has placed a renewed emphasis on the determination of a registrant's CODM. The staff remarked that although most registrants identify their CEO as the CODM, questions from the staff sometimes engender a change in the registrant's conclusion about its CODM's identity, which in turn affects the registrant's determination of operating segments. In light of this, the staff encouraged registrants to reassess their determination of the CODM and, when doing so, to focus on understanding management's structure (e.g., through organizational charts or other information).

Under ASC 280-10-50-11, entities may aggregate operating segments into reportable segments if the operating segments exhibit (1) similar economic characteristics (e.g., similar historical and expected future performance, such as through similar long-term average gross margins) and (2) other similar characteristics, including:

a. The nature of the products and services

b. The nature of the production processes

c. The type or class of customer for their products and services

d. The methods used to distribute their products or provide their services

e. If applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

ASC 280-10 does not define the term "similar" or provide much guidance on the aggregation criteria, and the determination of whether two or more operating segments are similar depends on the individual facts and circumstances and is subject to a high degree of judgment. As a result, the SEC staff may ask a registrant to provide an analysis on how it determined that its aggregation of operating segments complies with both the quantitative and qualitative requirements in ASC 280-10. In the assessment of whether operating segments may be aggregated, determining the basis for economic similarity is particularly difficult for registrants that have complex models and organization and reporting structures. Accordingly, the SEC staff may ask registrants that have aggregated segments how they satisfied the quantitative requirements of ASC 280-10 and may further comment when the economic measures of a registrant's aggregated operating segments have not converged over time despite the registrant's previous assertion that it expected such measures to become more similar. In addition, the SEC staff has emphasized that registrants should also focus on the qualitative factors in ASC 280 (e.g., similar products and customers) when assessing whether operating segments are similar for aggregation purposes. Further, at the 2014 AICPA Conference, the SEC staff noted that registrants should consider whether aggregation is consistent with the objective and basic principles of ASC 280.

Changes in Reportable Segments

Example of an SEC Comment

In your Form 8-K filed July 9, 2014, you indicate your board of directors approved your new organizational design at its meeting on June 19, 2014. Please explain why you waited until the first quarter of fiscal 2015 to reevaluate the impact of the Organizational Redesign restructuring program on the determination of your operating segments and reporting units. Please explain why the reclassification of [Brand X] from [Operating Segment A] to [Operating Segment B] was not reflected in your financial statements as of June 30, 2014. Please refer to ASC 280-10-50-34.

Registrants should continually monitor any changes in facts and circumstances that may affect the identification or aggregation of operating segments. Examples of changes that may prompt the SEC staff to seek additional information about registrants' reportable segments include changes in internal reporting after an acquisition and changes in the CODM.

If a registrant changes the structure of its business in a manner that causes the composition of its reportable segments to change, it is required, in accordance with ASC 280-10-50-34 and 50-35, to restate segment information from prior periods for consistency with current reportable segments unless doing so would be impracticable. If a registrant changes the structure of its business after year-end or quarter-end, the new segment structure should not be presented in financial statements until operating results managed on the basis of that structure are reported (typically in a periodic filing such as a Form 10-K or 10-Q). Paragraph 13310.1 of the FRM indicates that "[i]f annual financial statements are required in a registration or proxy statement that includes subsequent periods managed on the basis of the new organization structure, the annual audited financial statements should include a revised segment footnote that reflects the new reportable segments." A registrant can include the revised financial statements (1) in the registration or proxy statement or (2) in a Form 8-K, which can be incorporated by reference. See the SEC Reporting section for more information.

Product and Service Revenue by Segment

Example of an SEC Comment

We note . . . that you offer a number of different products and in your earnings release you also discuss and quantify sales for different products. Please explain to us your consideration of the guidance in FASB ASC 280-10-50-40 with respect to revenues for each product.

Registrants should remember to identify the "[t]ypes of products and services from which each reportable segment derives its revenues" and to report the total "revenues from external customers for each product and service or each group of similar products and services" in accordance with ASC 280-10-50-21 and ASC 280-10-50-40, respectively. The SEC staff has objected to overly broad views of what constitutes "similar" products and services.

Operating Segments and Goodwill Impairment

Registrants should be aware that incorrect identification of operating segments can affect goodwill impairment testing. Goodwill is tested at the reporting-unit level in accordance with ASC 350-20, and reporting units are identified as either operating segments or one level below. If a registrant has not correctly identified its operating segments, it could incorrectly identify its reporting unit and, as a result, improperly test goodwill for impairment. See the Impairments of Goodwill and Other Long-Lived Assets section for additional information.

Information About Geographic Areas

The SEC staff has frequently asked registrants to include disclosures about geographic information in future filings in accordance with ASC 280-10-50-41 unless it is impracticable to do so.

Other Deloitte Resources

- December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."
- Financial Reporting Alert 14-3, "Segment Reporting."
- December 16, 2013, *Heads Up*, "Highlights of the 2013 AICPA Conference on Current SEC and PCAOB Developments."

Share-Based Payments

Disclosures

> **Example of an SEC Comment**
>
> Please review the disclosure requirements for stock-based compensation found at ASC 718-10-50 and provide the following disclosures in future annual filings:
>
> - [Please] revise future filings to include the total intrinsic value of options exercised during the year pursuant to ASC 718-10-50-2d2;
> - Please disclose the weighted-average remaining contractual term of options currently exercisable pursuant to ASC 718-10-50-2e; and
> - Please revise future filings to include the method used to estimate the fair value of all of your options, as well as, the significant assumptions used to determine fair value pursuant to ASC 718-10-50-2b & f.

Registrants should ensure that their disclosures address the following objectives outlined in ASC 718-10-50-1:

- The "nature and terms" of share-based payment arrangements.
- The "effect of [the related] compensation cost . . . on the income statement."
- The "method [for determining] the fair value of the equity instruments granted."
- The "cash flow effects [of] share-based payment arrangements."

Accordingly, the SEC staff's comments on share-based payment disclosures have focused on items such as:

- The nature of, and reason for, a modification in the share-based payment award's terms and how the registrant accounted for that modification.
- The terms and conditions of awards, including vesting conditions and whether award holders are entitled to dividends or dividend equivalents.
- The number of awards that are expected to vest, and the assumptions that were used to determine that number.
- The registrant's valuation method, including significant assumptions used (e.g., volatility, expected term, dividend yield).
- The "weighted-average grant-date fair value" of equity instruments granted during the year.
- The "total intrinsic value of options exercised."

In its comments about disclosures, the SEC staff frequently refers to ASC 718-10-50-2, which describes the "minimum information needed to achieve the objectives in [ASC 718-10-50-1]."

In addition, the SEC staff often asks registrants about share-based payment information they are required to include in a proxy statement (e.g., those disclosures required by Regulation S-K, Item 402). See the Executive Compensation and Other Proxy Disclosures section for more information about SEC staff comments on registrants' proxy statements.

Share-Based Payment Awards Issued by Privately Held Companies

> **Example of an SEC Comment**
>
> Please tell us the estimated IPO price range. To the extent there is a significant difference between the estimated grant-date fair value of your common stock during the past twelve months and the estimated IPO price, please discuss for us each significant factor contributing to the difference.

Calculating share-based compensation for privately held companies can be complex and may require registrants to use significant judgment in determining the fair value of the equity instrument because there is typically no active market for the common stock of such companies. The SEC staff continues to comment on registrants' accounting and valuation assumptions for equity securities issued as compensation in periods before an IPO (commonly referred to as "cheap stock" considerations). The AICPA's accounting and valuation guide *Valuation of Privately-Held Company Equity Securities Issued as Compensation* (known as the "Cheap Stock Guide") contains guidance on these accounting considerations.

A registrant preparing for an IPO should also refer to paragraph 7520.1 of the FRM, which outlines considerations for registrants when the "estimated fair value of the stock is substantially below the IPO price." In such situations, registrants should be able to reconcile the change in the estimated fair value of the underlying equity between the award grant date and the IPO by taking into account, among other things, intervening events and changes in assumptions that support the change in fair value.

Whereas the SEC staff had historically asked registrants to expand the disclosures in their critical accounting estimates to provide additional information about the valuation methods and assumptions used for share-based compensation in an IPO, it updated its FRM in 2014 to indicate that registrants should significantly reduce such disclosures. Specifically, Section 9520 of the FRM was revised to clarify what disclosures are expected in an IPO registration statement and thereby encourage registrants to provide less information about cheap stock. However, paragraph 9520.2 of the FRM notes that the staff may continue to "issue comments asking companies to explain the reasons for valuations that appear unusual (e.g., unusually steep increases in the fair value of the underlying shares leading up to the IPO)." Such requests are meant to ensure that a registrant's analysis and assessment support its accounting for share-based compensation and do not necessarily indicate that the registrant's disclosures need to be enhanced.

At the Practising Law Institute's "SEC Speaks in 2014" Conference, the SEC staff provided insights into how registrants would be expected to apply the guidance in paragraph 9520.1 of the FRM (and thereby reduce their share-based compensation disclosures):

- The staff does not expect much detail about the valuation method registrants used to determine the fair value of their pre-IPO shares. A registrant need **only** state that it used the income approach, the market approach, or a combination of both.

  Further, while registrants are expected to discuss the nature of the material assumptions they used, they would **not** be required to quantify such assumptions. For example, if a registrant used an income approach involving a discounted cash flow method, it would only need to provide a **statement** indicating that "a discounted cash flow method is used and [such method] involves cash flow projections that are discounted at an appropriate rate"; no additional details would be needed.

- Registrants would have to include a **statement** indicating that the estimates in their share-based compensation valuations are "highly complex and subjective." They would not need to provide additional details about the estimates.

- Registrants would also need to include a **statement** disclosing that such "valuations and estimates will no longer be necessary once the company goes public [because] once it goes public, it will rely on the market price to determine the market value of [its] common stock."

For a discussion of SEC staff comments related to IPOs, see the Initial Public Offerings section.

Significant Assumptions — The Simplified Method

Examples of SEC Comments

- We . . . note your disclosure does not explain the reasons why you use the simplified method to determine the expected term for your stock options. Please revise your disclosure to include the reasons why the simplified method was used.
- We note your disclosure that you use the simplified method to estimate the expected term of your stock options. Considering the extent of exercise activity since your initial public offering, please explain to us why you continue to believe that it is appropriate to use the simplified method rather than using historical information.

As noted above, the SEC staff's comments have focused on significant assumptions used in a registrant's valuation of share-based payment awards, such as volatility, expected term, and dividend yield. For example, there were a number of comments related to the use of the "simplified method" to calculate the expected term of employee share options. Under ASC 718, the expected term of an option is a key factor for measuring the option's fair-value-based amount and the related compensation cost. In SAB Topic 14, Question 6 of Section D.2 discusses the simplified method[1] of estimating the expected term of "plain-vanilla" share options and permits a registrant to use the simplified method under certain circumstances if the registrant "concludes that its historical share option exercise experience does not provide a reasonable basis upon which to estimate expected term." The SEC staff's comments have focused on a registrant's use of the simplified method, and in certain instances, registrants were asked to explain why they believe that their historical share option experience does not provide a reasonable basis for estimating the expected term.

In accordance with the staff's guidance in Question 6, a registrant that uses the simplified method should disclose in the notes to its financial statements (1) that the simplified method was used, (2) the reason the method was used, (3) the types of share option grants for which the simplified method was used if it was not used for all share option grants, and (4) the period(s) for which the simplified method was used if it was not used in all periods presented.

Other Deloitte Resources

- June 12, 2015, *Heads Up*, "FASB Issues Proposed ASU to Simplify the Accounting for Share-Based Payments."
- April 2015, *A Roadmap to Accounting for Share-Based Payment Awards*.
- April 28, 2014, *Heads Up*, "MD&A Disclosures About 'Cheap Stock' in IPO Transactions."

[1] Question 6 states that under the simplified method, the "expected term = ((vesting term + original contractual term) / 2)."

SEC Disclosure Topics

Management's Discussion and Analysis

Regulation S-K, Item 303, provides guidance on the information a registrant should consider providing in its discussion of financial condition and results of operations in MD&A. The SEC staff continues to indicate that MD&A is the leading source of SEC staff comments, many of which are about the results of operations section. While the SEC staff's comments have addressed various topics of MD&A,[1] they have continued to focus on greater transparency in registrants' disclosures about (1) material trends and uncertainties that affect results of operations, (2) liquidity and capital resources, (3) estimates in critical accounting policies, (4) disclosure of contractual obligations, and (5) early-warning disclosures.

The staff continues to stress that registrants should focus on providing disclosures that are material and relevant to their operations. In addition, the SEC staff continues to recommend that registrants consider including an executive overview section in MD&A that contains a balanced discussion of the key drivers, challenges, and risks that affect results of operations and liquidity.[2]

Results of Operations

The SEC staff frequently comments on how a registrant can improve its discussion and analysis of known trends, demands, commitments, events, and uncertainties and their impact on the results of operations. Such discussion and analysis is crucial to a financial statement user's understanding of the quality of, and potential variability in, a company's earnings and cash flows as well as the extent to which reported results indicate future performance. A determination of the appropriate disclosure generally should include (1) consideration of financial, operational, and other information; (2) identification of known trends and uncertainties; and (3) an assessment of whether these trends and uncertainties will have, or are reasonably likely to have, a material impact on the company's financial condition and operating performance.

Example of an SEC Comment

Please revise this section in future filings to include, if material, substantive disclosure on prospective developments and strategies that may affect your company. Your current disclosure . . . contains a list of factors that broadly affect your segments, but there is no disclosure addressing management's views about the trends and uncertainties that you reasonably expect will have a material impact on your operations. We note that . . . management expressed expectations for a number of items including oil prices, global macroeconomic conditions, raw materials, currency fluctuations and end market demand for each of your segments. In the future, to the extent material, please enhance your discussion of any particular trends, events or uncertainties that you expect may have a material impact on your operations. Please see Section III.B.3 of SEC Release 33-8350 and Item 303(a)(3)(ii) of Regulation S-K.

Under Item 303(a)(3), registrants are required to disclose in MD&A material known trends or uncertainties that may affect future performance (whether favorable or unfavorable). Registrants are commonly asked to (1) quantify components of overall changes in financial statement line items and (2) enhance their analysis of the underlying factors that cause such changes or the reasons for the components affecting the overall change — including an analysis of changes at the segment level because such an analysis is often meaningful in MD&A. The SEC staff has suggested that in addition to discussing how volume and product mix affect their results of operations, registrants should consider explaining other potential influences, such as pricing changes, acquisitions, new contracts, inflation, and foreign exchange rates.

For example, at the Practising Law Institute's "SEC Speaks in 2015" Conference, the SEC staff stressed the importance for a registrant to disclose in MD&A the effects of the decline in the price of crude oil, gas, and other commodities (e.g., iron, copper) if the decline materially affects, or is expected to affect, the registrant's operations. In addition, the staff noted that the mining and oil and gas industries may be particularly affected by such a price decline. Further, registrants with foreign operations in regions

[1] See paragraphs 9110.1 and 9110.2 of the FRM for the SEC staff's interpretive views about the objectives of a registrant's MD&A.

[2] See the SEC's interpretive release for additional information.

experiencing economic struggles (e.g., Greece, Puerto Rico) or that are otherwise exposed to material business or financial risks resulting from recent economic events should discuss in their MD&A any material trends, risks, and uncertainties related to their operations.[3]

The SEC staff has also encouraged registrants to:

- Use appropriate metrics to help them "tell their story" — including those that may be common to their industry (e.g., same-store sales, average subscribers). However, the SEC staff distinguishes such metrics from non-GAAP measures that are adjusted GAAP measures. See the Non-GAAP Financial Measures and Key Metrics section for additional information.
- Present changes in a tabular format (e.g., a table that summarizes disaggregated cost of sales components by reportable segment).

Further, the SEC staff has asked registrants to separately discuss the impact of online sales on their results of operations.

Liquidity and Capital Resources

Example of an SEC Comment

You state that you believe you will have sufficient capital to fund your operations for the next twelve months. Please discuss the company's capital needs over that period, what the capital will be used for, and what sources of capital and liquidity management believes it has access to. Please refer to Item 303(a)(1) of Regulation S-K and Item 303(a)(2)(i) of Regulation S-K.

The SEC staff frequently requests more meaningful analysis in a registrant's MD&A of material cash requirements, historical sources and uses of cash, and material trends and uncertainties so that investors can understand the registrant's ability to generate cash and meet cash requirements. In addition, rather than repeating items that are reported in the statement of cash flows, registrants should (1) concentrate on disclosing the primary drivers of cash flows and the reasons for material changes in specific items underlying the major captions reported in their financial statements and (2) disclose significant developments in liquidity or capital resources that occur after the balance sheet date.

The SEC staff has noted that it is important for registrants to "accurately and comprehensively explain [their] liquidity story" and has advised registrants to consider including discussions of key liquidity indicators, such as leverage ratios and other metrics that management uses to track liquidity.[4] In addition, the SEC staff has indicated that MD&A disclosures should take into account how the following factors, among others, affect a registrant's liquidity:

- Any changes in leverage strategies.
- Any strains on liquidity caused by changes in availability of previously reliable funding.
- Sources and uses of funds.
- Intraperiod debt levels.
- Restrictions on cash flows between the registrant (i.e., the parent) and its subsidiaries.[5]
- The impact of liquidity on debt covenants and ratios.

Registrants should also consider whether they need to provide enhanced disclosures about:

- Significant debt instruments, guarantees, and covenants.[6]
- Effects on liquidity of material cash balances that are held.[7]

[3] For additional information, see Deloitte's Financial Reporting Alert 15-2, "Financial Reporting Implications Related to Regions Experiencing Economic Struggles."

[4] At the 2011 AICPA Conference, the SEC staff highlighted the need for registrants to include appropriate narratives regarding liquidity and capital resources. See Deloitte's December 14, 2011, *Heads Up* for additional information.

[5] See the Debt section for more information.

[6] See footnote 5.

[7] See the Income Taxes section for more information.

Critical Accounting Estimates

> **Example of an SEC Comment**
>
> Please note that the accounting policy notes in the financial statements should generally describe the method you use to apply an accounting principle; whereas the discussion in Management's Discussion and Analysis of Financial Condition and Results of Operations should present your analysis of the uncertainties involved in applying a principle at a given time or the variability that is reasonably likely to result from its application over time. In future filings please include an analysis, to the extent material, of factors such as how you arrived at critical estimates, how accurate the estimate/assumption has been in the past, how much the estimate/assumption has changed in the past, and whether the estimate/assumption is reasonably likely to change in the future. In addition, your disclosure should address sensitivity of the estimate/assumption to change based on other outcomes that are reasonably likely to occur and would have a material effect. Please refer to the Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No[.] 34-48960.

The critical accounting policies section of MD&A is intended to highlight only those financial statement items that require significant management estimates and judgment. When reviewing the section, the SEC staff has frequently focused on the estimates that management used in valuations (e.g., estimates used in the valuation of pension assets, impairment of long-lived assets, income taxes including DTAs and uncertain tax positions, and fair value determinations). Registrants should not simply copy their accounting policy disclosures from the footnotes to the financial statements. Instead, the SEC staff expects discussion and analysis of material uncertainties associated with assumptions underlying each critical accounting estimate.

To provide comprehensive and meaningful disclosures, management should consider disclosing the following items in the critical accounting policies section of MD&A:

- The method(s) used to determine critical accounting estimates.
- The accuracy of past estimates or assumptions.
- The extent to which the estimates or assumptions have changed.
- The drivers that affect variability.
- Which estimates or assumptions are reasonably likely to change in the future.

In addition, registrants should include an analysis of the sensitivity of estimates to change on the basis of outcomes that are reasonably likely to occur and that would have a material effect. The sensitivity analysis should be quantitative if it is reasonable for registrants to obtain such information.

For more information, see the Pensions and Other Postretirement Benefits and Impairments of Goodwill and Other Long-Lived Assets sections.

Tabular Disclosure of Contractual Obligations

Examples of SEC Comments

- With respect to your purchase obligations, we note the discussion of the types of purchase obligations [is] not included in the table in the paragraph following the table. Please tell us how you considered the definition of purchase obligations in Item 303(a)(5)(ii)(D) of Regulation S-K.
- We note . . . that you have long-term raw material and power supply contracts. Please tell us why you do not report these long-term contracts in your contractual obligations table under Item 303(a)(5) of Regulations S-K. In addition, tell us why amounts due under your revolving credit agreement are also excluded from the table. Please provide revised tabular disclosure of your contractual obligations to be included in future filings which includes these obligations or tell us how your current presentation complies with Item 303(a)(5) of Regulation S-K.

The SEC staff's comments on the contractual obligations table and the associated footnotes and disclosures continue to focus on a registrant's omission of (1) material obligations, such as interest payments on debt, pension obligations, and uncertain tax position liabilities, and (2) disclosures about the terms of obligations, such as those related to purchase obligations.

Some registrants have questioned how obligations subject to uncertainties about timing or amount should be presented in the table of contractual obligations. The SEC staff has noted that registrants should consider their circumstances and use judgment in determining whether to include such information in the table or the footnotes to the table.[8] The staff has also indicated that the footnotes should be used to clarify amounts in the table and to (1) explain the nature of the obligations, including whether they were included in, or excluded from, the table (and the reasons for inclusion or exclusion); (2) describe whether the obligations are subject to uncertainty; and (3) describe the uncertainty.[9]

Early-Warning Disclosures

Item 303 requires disclosure of "any known trends or uncertainties that . . . the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." Early-warning disclosures may give investors insight into (1) when charges may be incurred in the future; (2) whether a charge is related to contingencies, restructuring activities, impairment of goodwill or other long-lived assets, or the settlement of uncertain tax positions; (3) when revenue growth or profit margins may not be sustainable because of underlying economic conditions; or (4) when the registrant will be unable to comply with debt covenants. Accordingly, such disclosures may alert investors to the underlying conditions and risks that the company faces before a material charge or decline in performance is reported.

[8] See the highlights of the September 2012 CAQ SEC Regulation Committee joint meeting with the SEC staff for discussion of a registrant's use of judgment related to disclosures in the table of contractual obligations.

[9] To the extent that the obligations cannot be quantified, the SEC staff expects registrants to disclose information that investors and users need to understand the nature and extent of the registrant's obligations. As indicated in paragraph 9240.7 of the FRM, registrants may include footnotes "to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the registrant's specified contractual obligations."

SEC Reporting

SEC authoritative literature includes a number of requirements in Regulation S-X that govern the form and content of a registrant's financial statements and other information that must be included in filings with the SEC. The SEC staff often comments on these requirements, and they have been the subject of discussion at a variety of forums, including the annual AICPA Conference, various industry conferences, and joint meetings of the SEC staff and the CAQ SEC Regulations Committee. However, there may be situations in which registrants seek relief from complying with certain SEC reporting rules and regulations. With this in mind, the SEC staff has acknowledged that relief may be warranted in some cases and that registrants may seek to obtain a waiver from the CF-OCA. The SEC staff has provided best practices for registrants to consider when seeking reporting relief.

Further, on September 25, 2015, the SEC announced that it is seeking public comment on the effectiveness of financial disclosure requirements in Regulation S-X, including those related to the form and content of financial disclosures about (1) acquired businesses and the accompanying pro forma financial information, (2) equity method investees, and (3) guarantors and issuers of guaranteed securities.[1] SEC Chairman Mary Jo White indicated that the request for comment, which is part of the SEC's disclosure effectiveness initiative, "is an important step in [the SEC's] review of the disclosure requirements" and "will help [the SEC] evaluate potential changes to Regulation S-X that would benefit both investors and companies."

Private-Company Accounting Alternatives

As noted above and discussed further below, there are instances in which a registrant must provide the financial statements of other entities in its registration statements or periodic filings. Among the entities that meet the definition of a public business entity (PBE) under ASU 2013-12 are those that are "required by the [SEC] to file or furnish financial statements, or [do] file or furnish financial statements (including voluntary filers), with the SEC (including other entities whose financial statements or financial information are required to be or are included in a filing)." PBEs are not permitted to adopt private-company accounting alternatives. Accordingly, the effects of any previously elected private-company accounting alternatives would have to be eliminated from the historical financial statements of an entity whose financial statements are included in the SEC filing of a registrant.

Significant Business Acquisitions (Rule 3-05)

Examples of SEC Comments

- Please tell us how you determined that it was not necessary to provide audited financial statements of [Company A] in accordance with Rule 3-05 of Regulation S-X. Please provide us with your [significance] calculations pursuant to Rule 3-05(b)(2) and Rule 1-02(w) of Regulation S-X.
- The company filed a Form 8-K . . . indicating that it intends to file by amendment the historical financial statements of [Company A], and pro formas reflecting the acquisition, not later than 71 calendar days after the date the Form 8-K was required to be filed. Your registration statement may not be declared effective before the financial statements meeting the requirements of Rule 3-05 of Regulation S-X are provided, if the transaction exceeds the 50% significance level. Please provide us with a reasonably detailed presentation of your significance level computations.

[1] For more information about the SEC's request for comment, see Deloitte's October 6, 2015, *Heads Up*.

When a registrant consummates, or it is probable that it will consummate, a significant business acquisition, the SEC staff may require the registrant to file certain financial statements for the acquired or to be acquired business (acquiree) in accordance with Regulation S-X, Rule 3-05, in a Form 8-K, registration statement, or proxy statement. The following factors govern whether, and for what period, financial statements for the acquiree are required:

- Whether the acquired or to be acquired assets and liabilities meet the definition of a business for SEC reporting purposes. The definition of a business for SEC reporting purposes under Regulation S-X is not the same as the definition under ASC 805 for U.S. GAAP purposes.
- The significance of the acquired or to be acquired business. The significance is calculated on the basis of three tests: the investment (purchase price) test, the asset test, and the income test.
- Whether consummation of the business acquisition is probable or has occurred.

The SEC staff comments on the application of Rule 3-05 in connection with significant business acquisitions when registrants:

- Incorrectly determine that the acquired or to be acquired assets and liabilities do not meet the definition of a business for SEC reporting purposes.
- Do not perform the significance calculations correctly. Some of the most common mistakes are misapplications of the income test, such as excluding unusual or one-time gains or losses from the test.
- Do not realize that Rule 3-05 also applies, in a registration statement or certain proxy statements, to probable acquisitions whose significance is greater than 50 percent.
- Do not consider, in a registration statement or proxy statement, the cumulative significance of previously consummated individually insignificant acquisitions.

The staff may also question the financial statements provided by a registrant under Rule 3-05 when the registrant has acquired only selected parts of an entity. In such situations, it may be appropriate, on the basis of the facts and circumstances, for the registrant to include (1) full financial statements of the entity, (2) carve-out financial statements of the assets and operations acquired, or (3) abbreviated financial statements (i.e., Statement of Assets Acquired and Liabilities Assumed; Statement of Revenue and Direct Expenses). For additional information about how to determine what financial statements are appropriate when the registrant has acquired selected parts of an entity, see Section 2065 of the FRM.

Investments in Equity Method Investees (Rules 4-08(g) and 3-09)

Example of an SEC Comment

Please tell us why you have not presented the summarized financial data under Rule 4-08(g) of Regulation S-X for your equity method investments for the years presented. Additionally, please provide us with your significance test with respect to income before continuing operations before income taxes to determine whether the financial statements of [Company A] are required under Rule 3-09 of Regulation S-X. Please refer to Rule 1-02(w)(3) of Regulation S-X.

When a registrant has a significant equity method investment, Regulation S-X, Rules 4-08(g) and 3-09, may require the registrant to provide summarized financial information of the investee in the footnotes to the financial statements, separate financial statements of the investee, or both. To determine whether summarized information is required under Rule 4-08(g), a registrant must perform all three significance tests: the investment test, the asset test, and the income test.

Under Rule 3-09, significance is calculated for equity method investees on the basis of only two tests performed annually: the investment test and the income test. If an investee is significant, its separate financial statements must be filed in the registrant's Form 10-K or in a related amendment. Thus, a registrant's compliance with Rule 3-09 is particularly important because its failure to file the financial statements of a significant investee may cause it to become a delinquent filer and lose Form S-3 eligibility.

Common errors that registrants make when performing the significance tests under Rules 4-08(g) and 3-09 include:

- Failure to document the tests each year. This is most common when an equity method investee has been clearly insignificant in the past. In certain situations, such as a near-break-even year for the registrant or a large income or loss at the investee level, the current year's significance may change, making the equity method investee significant for the first time and thus requiring audited financial statements for the current year and unaudited financial statements for prior years.
- Failure to update the tests each year. Registrants should update and reassess the significance tests for all years presented in a Form 10-K after they report a retrospective change, such as a change in accounting principle or classification of a component as a discontinued operation. See paragraph 2410.8 of the FRM.

For additional SEC staff interpretations of Rules 4-08(g) and 3-09, see Section 2400 of the FRM.

Restrictions on Dividends (Rules 4-08(e), 5-04, and 12-04)

Registrants must consider the requirements of Regulation S-X, Rules 4-08(e), 5-04, and 12-04, when the transfer of assets (cash or other funds) to the parent company/registrant from its subsidiary (or subsidiaries) or equity method investee (1) is materially restricted, (2) is limited, or (3) requires a third party's approval.

For additional discussion, see the Debt section.

Guarantors of Registered Securities (Rule 3-10)

Regulation S-X, Rule 3-10, requires a registrant to provide separate financial statements for each subsidiary issuer or guarantor of debt securities registered or being registered unless certain criteria are met. The information required under Rule 3-10 must be presented in registration and proxy statements as well as Forms 10-K and 10-Q. Therefore, a registrant should consider the requirements under Rule 3-10 if (1) the registrant registers debt and the debt is guaranteed by one or more of its subsidiaries or (2) one of the registrant's subsidiaries registers debt and the debt is guaranteed by the parent company or one or more of its other subsidiaries.

Rule 3-10 contains certain exceptions under which a registrant may provide more limited financial information in lieu of full financial statements. If the registrant meets the exception criteria, it may be eligible to provide, in a footnote to the parent company's financial statements, either of the following types of modified financial information in lieu of separate financial statements:

- Condensed consolidating financial information.
- Narrative disclosures about each subsidiary issuer or guarantor.

While each of the exceptions under Rule 3-10 has additional provisions that must be met for a registrant to qualify for the relief, all of them require (1) the subsidiary issuer and guarantors to be "100 percent owned" by the registrant and (2) the guarantee to be "full and unconditional." The SEC staff sometimes comments on whether the registrant specifically meets these and other criteria necessary for the presentation of modified financial information.

For additional SEC staff interpretations of Rule 3-10, see Section 2500 of the FRM.

Definition of 100 Percent Owned

> **Example of an SEC Comment**
>
> It is not clear that you have provided all of the disclosures required by Rule 3-10(i)(8) to (11) of Regulation S-X. For example, pursuant to Rule 1-02(aa) of Regulation S-X, wholly-owned is not equal to 100% owned.

Registrants must disclose that a subsidiary is 100 percent owned to meet one of the conditions for relief under Rule 3-10. The SEC staff has reminded registrants that under Regulation S-X, "100 percent owned" does not mean the same thing as "wholly owned" and that the terms are therefore not interchangeable. The staff has indicated that wholly owned under Regulation S-X, Rule 1-02, means that the parent owns substantially all of the outstanding voting stock of the subsidiary whereas 100 percent owned is defined as ownership of all outstanding shares of the subsidiary. For further clarification of the definition of 100 percent owned, see Rule 3-10(h)(1).[1]

Full and Unconditional Guarantees and Release Provisions

> **Example of an SEC Comment**
>
> Your disclosure indicates that the subsidiary guarantees are full and unconditional. We note that the related indenture agreements contain certain release provisions. For example, . . . there are provisions under which the guarantees shall automatically terminate or the subsidiary guarantor shall be released and discharged from all obligations. Please tell us what consideration you gave to disclosing such release provisions to the full and unconditional guarantees in order to more accurately describe the qualifications to the subsidiary guarantors.

A guarantee must be full and unconditional to allow the registrant to provide limited financial information in lieu of full financial statements under Rule 3-10. Paragraph 2510.4 of the FRM clarifies that an "arrangement that permits a guarantor to opt out of its obligation prior to or during the term of the debt is not a full and unconditional guarantee." However, a subsidiary whose guarantee is released automatically by one of the customary release provisions referred to in paragraph 2510.5 of the FRM may rely on the relief provided by Rule 3-10. Accordingly, registrants should disclose any qualifications of subsidiary guarantees and should not characterize a subsidiary guarantee as full and unconditional without disclosing the circumstances under which it can be released.

The FRM's guidance on customary release provisions applies only to subsidiary guarantees, not to parent guarantees. The SEC staff has clarified that to qualify for Rule 3-10 relief, a registrant must meet certain conditions specified in the rule, one of which is the filing of the parent company's financial statements for the periods indicated. Therefore, if the parent could be released from its guarantee, there would be no basis for relief under Rule 3-10. However, the staff has allowed limited exceptions to parent release provisions, such as situations in which the parent's guarantee is released when the debt is repaid. Registrants are encouraged to contact the staff regarding any parent release provisions in their debt indentures.

[1] Registrants may wish to consult legal counsel when interpreting Rule 3-10(h)(1).

Condensed Consolidating Financial Information

Examples of SEC Comments

- [T]ell us your consideration of the need to include a separate column for the condensed consolidating financial information of the subsidiary issuer(s). Refer to Rule 3-10 (b)–(f) of Regulation S-X.
- Please tell us the consideration you gave to presenting the material components of investing and financing activities in your condensed consolidating statements of cash flows. Refer to Rule 3-10(i)(1) and Rule 10-01(a)(4) of Regulation S-X.

If a registrant presents condensed consolidating financial information, it should use a columnar format and include certain or all of the following as applicable: (1) the parent, (2) subsidiary issuer(s) of the security, (3) subsidiary guarantor(s), (4) nonguarantor subsidiaries, and (5) consolidating adjustments. Registrants should also provide sufficient detail about the assets, liabilities, operations, and cash flows for each of the parent, issuer, subsidiary guarantors, and nonguarantor subsidiaries, as appropriate.

The SEC staff often discusses form and content considerations related to the preparation of condensed consolidating financial information under Rule 3-10 and has highlighted that under this rule:

- The information should be presented at the same level of detail (i.e., the major financial statement captions) as interim financial statements prepared in accordance with Regulation S-X, Article 10.
- The information should be presented in accordance with U.S. GAAP[2] (e.g., intercompany receivables should be shown as an asset and not as a negative liability).
- The classifications in the condensed consolidated statement of cash flows should also comply with U.S. GAAP (i.e., gross versus net reporting, investing versus financing classification).
- A total for comprehensive income should be presented in either a single continuous statement or two separate but consecutive statements.[3]

The SEC staff may also comment when a registrant:

- Incorrectly assumes that certain exceptions in Rule 3-10 are met and therefore concludes that it does not have to provide separate financial statements, condensed consolidating financial information, or narrative disclosures.
- Incorrectly prepares the required condensed consolidating financial information by not presenting subsidiaries under the equity method of accounting, or not presenting information in sufficient detail to allow investors to determine the assets, results of operations, and cash flows of each of the consolidating groups.

The SEC staff has also commented when the parent (or guarantor) has recorded positive operating cash flows in a particular period in the absence of any revenue-generating activities during that time frame. Positive cash flow from operations often results when the parent (or guarantor) classifies dividends received from its subsidiaries as a "return on its investment." In accordance with ASC 230-10-45-16(b) and ASC 230-10-45-12(b), the parent (or guarantor) should consider its particular facts and circumstances when determining whether the cash flows resulting from a dividend distribution represent a "return on" or a "return of" the related investment in the underlying subsidiary. The SEC staff may ask registrants to disclose (1) how they have accounted for such dividends and (2) the amount of dividends received from subsidiaries included in cash flows from operations. For more information about the SEC staff's comments regarding cash flow statement classification, see the Financial Statement Classification, Including Other Comprehensive Income section.

[2] One exception is that investments in subsidiaries should be presented under the equity method of accounting. See Rule 3-10(i)(5).

[3] The SEC staff has clarified that a registrant should present total comprehensive income in a manner consistent with the interim requirements for the registrant's primary financial statements. See paragraphs 2515.2 and 2810.1 of the FRM for additional information.

Recently Acquired Subsidiary Issuers or Subsidiary Guarantors (Rule 3-10(g))

Under Rule 3-10(g), which applies to recently acquired subsidiary issuers or subsidiary guarantors, a registrant must provide separate financial statements of a significant subsidiary issuer or guarantor if the subsidiary's historical results have not been included in the parent's audited financial statements for at least nine months of the most recent fiscal year. The SEC staff has noted that the significance test under Rule 3-10(g) is different from the tests under Rule 3-05 for businesses acquired or to be acquired (see Significant Business Acquisitions (Rule 3-05) above). To determine significance under Rule 3-10(g), a registrant should compare the subsidiary's net book value or purchase price (whichever is greater) with the principal amount of the securities being registered. If the test result equals or exceeds 20 percent, the registrant must file separate financial statements of the acquired subsidiary that are (1) audited in accordance with the standards of the PCAOB for the most recent fiscal year and (2) unaudited for the appropriate interim period preceding the acquisition.

In computing significance under Rule 3-10(g), a registrant must aggregate the acquisitions of a group of related subsidiary issuers or guarantors before their acquisition. A registrant is also required to include financial statements in registration statements but not in periodic reports filed under the Exchange Act (e.g., Forms 10-K and 10-Q).

Pro Forma Financial Information (Article 11)

Examples of SEC Comments

- [P]lease explain the adjustments for the acceleration of certain profits interests awards from [Company A] as a result of the offering. Tell us why these adjustments are considered factually supportable, directly attributable to the transaction, and expected to have a continuing impact on the statement of operations. Refer to Rule 11-02(b)(6) of Regulation S-X.
- We note the terms and form of future earn-out payments . . . have not been finalized. . . . As a range of terms are under consideration, you should provide additional pro forma presentations which give effect to the range of possible results, consistent with the guidance in Rule 11-02(b)(8) of Regulation S-X. This information should fully address the anticipated impact upon future results of operations, earnings per share, and ownership percentages.

Pro forma information is required under Regulation S-X, Article 11, when (1) it is material to an understanding of a significant consummated or probable transaction, such as a business combination; (2) a transaction is subject to a shareholder vote; or (3) other conditions outlined in Article 11 are met. Pro forma financial information under Article 11 may be required in a registration statement, proxy statement, or Form 8-K, but it is not required in a Form 10-K or 10-Q. Although Article 11 pro forma financial statements are not required in a registrant's Form 10-K or 10-Q, a registrant must separately evaluate the need for supplemental pro forma disclosures under ASC 805 (related to business combinations) in its financial statements included in a Form 10-K or 10-Q. See the Business Combinations section for more information about supplemental pro forma disclosures that are required under U.S. GAAP.

Registrants should generally present Article 11 pro forma financial statements in columnar form with separate columns for historical financial information, pro forma adjustments, and pro forma results. In limited circumstances, registrants may present narrative disclosures in lieu of pro forma financial statements. Further, Article 11 requires pro forma balance sheet adjustments to reflect events that are (1) factually supportable and (2) directly attributable to the transaction. In addition, pro forma income statement adjustments must have a "continuing impact" on the registrant's operations (i.e., they are not "one time").[4] The SEC staff continues to comment on certain form and content matters, such as when a registrant fails to clearly explain each financial statement adjustment or does not clearly demonstrate how the above requirements are met.

[4] The SEC staff has expanded on its view of what would constitute continuing impact. See the highlights of the June 2012 and March 2013 CAQ SEC Regulations Committee joint meetings with the SEC staff for additional information.

When calculating pro forma adjustments, registrants should assume that the transaction occurred (1) as of the date of the most recent balance sheet for the pro forma balance sheet and (2) at the beginning of the fiscal year presented for the pro forma income statement. In the past, the SEC staff has clarified that this guidance applies only to calculating the amount of the pro forma adjustment and should not be used to determine whether an adjustment is appropriate. For example, in the preparation of a pro forma income statement, it would be inappropriate for a registrant to make a pro forma adjustment for a charge in the historical financial statements on the basis of an assertion that if the transaction had been consummated at the beginning of the year, the charge would not have been incurred.

For companies doing an IPO, the SEC staff has clarified that it would be rare for costs "that a company expects to incur as a public company" to be pro forma adjustments "since such costs are not directly attributable to the transactions for which pro forma information is presented."[5] However, the staff has noted that depending on the facts and circumstances, a registrant may disclose the types and ranges of such costs in the notes to the pro forma financial information. For additional reporting considerations related to IPOs, see the Initial Public Offerings section.

Further, transactions may be structured in a manner such that significantly different results may occur. In these instances, registrants should comply with the requirement under Regulation S-X, Rule 11-02(b)(8), to disclose additional pro forma information that gives effect to the range of possible outcomes resulting from the transaction.

Section 3300 of the FRM summarizes issues that are often associated with pro forma financial information.

[5] Quoted text is from the highlights of the March 2012 CAQ SEC Regulations Committee joint meeting with the SEC staff.

Disclosures About Risk

The SEC staff continues to expect registrants to provide investors with tailored, comprehensive, and transparent risk disclosures.

Risk Factors

Example of an SEC Comment

Some of your risk factors appear to combine separate risk factors under one heading. Please review each risk factor heading to ensure it clearly conveys a separate, detailed risk to investors regarding your company, industry or security.

In recent years, the SEC staff has emphasized that registrants should present tailored risk factors in their filings and avoid using boilerplate language. In an April 11, 2014, speech[1] highlighting the SEC staff's "disclosure effectiveness" initiative, a staff member indicated that "risk factors could be written better — less generic and more tailored — and they should explain how the risks would affect the company if they came to pass."

Accordingly, the SEC staff routinely asks registrants to replace boilerplate risk disclosures with a discussion of the risks that specifically affect the registrant and their possible impact on the registrant's business. Instead of combining separate risk factors under a single heading and providing a general discussion, registrants are asked to review each risk factor heading to ensure that it clearly conveys and adequately describes a separate, detailed risk to investors. In addition, the SEC staff requests more specific discussion and enhanced explanations of how the risks could materially affect the registrant's business. This discussion may be supplemented with quantitative information to provide additional context about the risks. In addition, the staff often asks registrants whether they have (1) discussed all relevant risk factors and (2) provided sufficient MD&A discussion when a risk constitutes a material trend or uncertainty.

Cybersecurity

Example of an SEC Comment

We note that you may have been subject to [distributed denial of service] attacks in the past. Please clarify whether you have knowledge of the occurrence of any such attacks in the past. If attacks have occurred, and were material either individually or in the aggregate, revise to discuss the related costs and consequences. For additional guidance, consider our CF Disclosure Guidance: Topic No. 2 on Cybersecurity.

The SEC staff has noted the increasingly frequent occurrence of cyberincidents, which may cause registrants to incur significant remediation and other costs for (1) direct damages (both real and reputational), (2) the impact on their customers, and (3) increased protection from future cybersecurity attacks. It is important for registrants to consider the nature of any cyberincidents that occur and to provide the appropriate level of disclosure about such incidents in their filings.

Currently, there are no SEC rules that explicitly require registrants to disclose cybersecurity-related matters in their filings. Therefore, some registrants' cybersecurity disclosures have been viewed as generic and uninformative. However CFDG Topic 2 provides SEC staff views on potential disclosures related to material cybersecurity matters. CFDG Topic 2 indicates that under existing SEC requirements, registrants may need to provide disclosures in various sections of an SEC filing, including risk factors, legal proceedings, MD&A, and the financial statements. For example, cybersecurity risks and cyberincidents may constitute material known trends and uncertainties that registrants should consider disclosing in MD&A in accordance with Regulation S-K, Item 303(a)(3)(ii).

[1] Keith Higgins, director, Division of Corporation Finance, "Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting," April 11, 2014.

In cybersecurity disclosures, registrants should avoid using boilerplate language and instead should include information such as (1) the aspects of the business that are subject to cybersecurity risks, (2) updates for new information, and (3) cost estimates, if possible and material. Registrants should not state that there is a risk of a cybersecurity breach after the occurrence of an actual cyberattack; rather, such registrants should disclose that they have experienced security breaches or cyberattacks.

Accordingly, the SEC staff may monitor information outside a registrant's filings and ask why certain cyberincidents are not disclosed. Further, a registrant may be asked to confirm that it has disclosed the occurrence of material cyberincidents in its filings.

Other Deloitte Resources

- October 16, 2014, *Heads Up*, "SEC Staff Suggests Ingredients for Effective Disclosures."
- August 26, 2014, *Heads Up*, "The Road to Effective Disclosures."
- April 8, 2014, *Heads Up*, "Highlights of the SEC's Cybersecurity Roundtable."
- March 20, 2014, *Heads Up*, "Highlights of the 'SEC Speaks in 2014' Conference."

Non-GAAP Financial Measures and Key Metrics

Example of an SEC Comment

We note your presentation of the line item "net revenue" here and in the financial statement table within MD&A, which you describe on page 22 of MD&A as revenue minus transportation costs. As you appear to generally be the primary obligor for generally recognizing gross revenues under ASC Topic 605-45-45 and you report gross revenue in your audited financial statements, presenting "net revenue" appears to be a non-GAAP measure under Item 10(e) of Regulation S-K for which a tabular presentation reconciling net revenue to the most directly comparable GAAP measure would be necessary. As such, please revise the tables in Selected Financial Data and MD&A to disclose that the line item net revenue represents a non-GAAP measure. In a footnote to the tables, please describe how this measure is calculated and further, how it is used by management and how it should be used by an investor. Please revise in future filings.

SEC Rule 33-8176 defines a non-GAAP financial measure as a "numerical measure of a registrant's historical or future financial performance, financial position or cash flows" that includes amounts that are not part of the most directly comparable GAAP measure or excludes amounts that are part of the most directly comparable GAAP measure. Common non-GAAP financial measures include EBITDA or adjusted EBITDA, adjusted revenues, free cash flows, core earnings, funds from operations, and measures presented on a constant-currency basis.

Regulation S-K, Item 10(e)(1)(i), states that for financial measures used in documents that are filed with the SEC, the following information should accompany a registrant's disclosure of non-GAAP financial measures:

(A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with [GAAP];

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP . . . ;

(C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to [subparagraph (C) above].

At the 2013 AICPA Conference, the SEC staff noted that it continues to focus on disclosures of non-GAAP measures and particularly on whether registrants have (1) clearly labeled and described non-GAAP measures and adjustments (e.g., titles should not be confusingly similar to those of GAAP financial measures), (2) used appropriate conventional accounting terminology, and (3) provided context for their presentation.

Further, the SEC staff has indicated that a registrant should not present non-GAAP measures if they are misleading — regardless of whether the registrant intends to use them in or outside a filing. In addition, the staff has indicated that the following items should not be excluded from non-GAAP financial measures:

- Expenses that are necessary to run the business, such as traditional recurring cash operating expenses.
- The largest expenses that are necessary to generate the registrant's revenues.

The staff has also indicated that registrants should not eliminate recurring cash charges from a profit measure in a misleading way. When the staff believes that a registrant's presentation of a non-GAAP measure is misleading, it may take action in addition to issuing a comment, which could include bringing an enforcement action against the registrant.

In addition, the staff often comments when adjustments to non-GAAP measures are labeled as nonrecurring, infrequent, or unusual. Regulation S-K, Item 10(e), prohibits registrants from adjusting a non-GAAP financial performance measure "to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years." Question 102.03 of the C&DIs related to non-GAAP financial measures clarifies that guidance by indicating that a charge or gain may be included as an adjustment as long as it is not inappropriately labeled or described as nonrecurring, infrequent, or unusual.

Liquidity Versus Performance Measures

Example of an SEC Comment

We note that you reconcile your non-GAAP measure, Adjusted EBITDA, to net income attributable to [Company A]. Because you adjust this measure for changes in deferred revenue and course expenses, effectively reflecting cash disbursements and receipts as opposed to earned revenues and incurred expenses, it appears to be a measure of liquidity as opposed to performance. Therefore, we believe the most directly comparable GAAP measure is cash provided by operating activities rather than net income. Please advise or revise accordingly.

The SEC staff has continued to comment when a non-GAAP financial measure is not reconciled to the appropriate GAAP measure as determined on the basis of whether the purpose of the non-GAAP measure is to assess the registrant's performance or its liquidity. For example, the staff has indicated that the most directly comparable GAAP measure for reconciling EBITDA and adjusted EBITDA is typically net income (loss) for a performance measure and cash flows from operating activities for a liquidity measure.

Relevance and Consistency of Non-GAAP Measures

Examples of SEC Comments

- We note your disclosure of the non-GAAP measures free cash flow, EBIT, and ongoing EPS. Furthermore, your disclosure states that "the presentation of non-GAAP financial measures is intended to supplement investor's understanding of our operating performance." It appears your disclosures are overly general and therefore, not consistent with the objective of Item 10(e)(1)(i) of Regulation S-K. Please revise to include disclosure concerning the reasons why the management believes that presentation of the non-GAAP financial measure provides useful information to investors in accordance with Instruction 2 to Item 2.02 of Form 8-K and Item 10(e)(1)(i) of Regulation S-K.
- While three of the factors disclosed in the press release and the Form 10-Q are the same, there are two factors disclosed in the press release that were not included in the Form 10-Q and one factor in the Form 10-Q that was not included in the press release. Please help us understand why there appears to be an inconsistency between the press release and the Form 10-Q.

The SEC staff has continued to comment on the extent of a registrant's disclosures and whether the disclosures demonstrate the purpose of the measures (i.e., how management uses them and their usefulness to investors).

Further, the SEC staff focuses on consistency in communications with investors. It may ask a registrant about inconsistencies between (1) the non-GAAP measures identified in information disclosed outside the registrant's SEC filings, such as on its Web site and in its press releases, earnings calls, and analyst presentations, and (2) the non-GAAP measures in the registrant's SEC filings. The SEC staff has noted that it does not require registrants to use non-GAAP measures in their filings. However, the staff may comment if a registrant discusses non-GAAP financial measures in other communications to investors but such discussion is omitted from, or contradicts, the information in the registrant's filings. In addition, if a non-GAAP measure is the focal point in all of a registrant's outside communications but is not included in filed documents, the SEC staff may ask why.[1]

Undue Prominence of a Non-GAAP Financial Measure

Example of an SEC Comment

We note that you present full non-GAAP income statements for the three months ended December 31, 2014 and 2013. We believe that the presentation of a full non-GAAP income statement attaches undue prominence to the non-GAAP information, results in the creation of many additional non-GAAP measures, and may give the impression that the non-GAAP income statement represents a comprehensive basis of accounting. Please confirm to us that you will revise your presentation to provide relevant information to investors without providing full non-GAAP income statements in future filings. For additional guidance, please refer to [Question 102.10 of the C&DIs related to non-GAAP financial measures].

The SEC staff will comment when a registrant presents its non-GAAP financial measures more prominently than its GAAP measures in terms of the order of presentation or the degree of emphasis. A registrant may receive a comment if its discussion of non-GAAP financial measures is significantly longer than its discussion of the corresponding GAAP financial measures, or if it uses a full non-GAAP income statement format that is generally not appropriate under Question 102.10 of the C&DIs related to non-GAAP financial measures. In recent comments, the SEC staff has indicated that as a substitute for presenting a full non-GAAP income statement, registrants may consider presenting only individual non-GAAP measures (e.g., line items) as long as each measure is used in a manner consistent with Regulation S-K, Item 10(e)(1)(i).

Key Metrics

Example of an SEC Comment

We note your discussion . . . of the number of your customers and your annual dollar-based net expansion rate. Please tell us what consideration you have given to discussing these metrics, as well as other measures you use to evaluate your business, in a separately titled section and discussing any trends in such metrics and related material impacts on your business. For example, it appears that the growth rates of property manager customers and law firm customers are slowing. See Item 303(a) of Regulation S-K, and for additional guidance, refer to Section III.B of SEC Release No. 33-8350.

A registrant may include in its SEC filings unique financial or operating metrics (e.g., same-store sales, average rental rates, number of online users, room night stays, catalogs mailed) to illustrate the size and growth of its business. In public remarks, the SEC staff has stated that (1) metrics may differ from non-GAAP measures and (2) it is generally not referring to non-GAAP measures when discussing metrics.

At the "SEC Speaks in 2015" Conference, the SEC staff discussed metrics used in registrants' IPO registration statements and periodic filings. The staff indicated that because not all investors may be familiar with a registrant's metrics, such metrics should be discussed informatively. Accordingly, a registrant should (1) clearly define the metrics used and how they are calculated, (2) describe any important assumptions and limitations of the metrics (e.g., whether the metric is a "hard" amount or

[1] The SEC staff discussed this topic at the 2010 AICPA Conference. See Deloitte's December 16, 2010, *Heads Up* for additional information.

an estimate), (3) present a metric within a balanced discussion, and (4) clearly describe how a metric is related to current or future results of operations. A registrant should also consider disclosing how management uses specific metrics and why they are important to investors. In addition, the staff indicated that because metrics evolve over time, it expects registrants to disclose what the changes are and the reasons for using a new metric.

A registrant must use judgment in determining whether to include metrics in its filings. The staff noted at the "SEC Speaks in 2015" Conference that registrants should ask themselves the following questions in making this determination:

- Is the metric integral to the story?
- Does the metric help investors understand changes quickly and effectively?
- Is the metric discussed outside of periodic filings (e.g., in earnings calls or supplemental packages)?

Disclosure Controls and Procedures

In discussions of disclosure controls and procedures (DC&P)[1] registrants must use language that conforms to the requirements in Rule 13a-15(e) or Rule 15d-15(e) of the Exchange Act.[2] The SEC staff often comments when registrants do not use the proper definition of DC&P or omit certain language in reaching conclusions about the effectiveness of their DC&P. In these situations, the staff frequently requires registrants to confirm that their DC&P are effective in the current year and to revise their disclosures in future filings.

Inappropriate Conclusion About DC&P

Example of an SEC Comment

We note your statement that your disclosure controls and procedures are not effective for a company your size. Please revise to remove the qualifier "for a company our size." Refer to Item 307 of Regulation S-K, which requires a clear and unqualified statement as to whether your disclosure controls and procedures are effective or ineffective.

The SEC staff has noted that management must clearly state, without using any qualifying or alternative language, its conclusion about whether DC&P are "effective" or "ineffective" as of the end of the respective quarter. Examples of unacceptable language include phrases such as "adequate," "effective except for," "effective except as disclosed below," or "reasonably effective."

The SEC staff has also commented when registrants refer to the level of assurance of the design of their DC&P. Although registrants are not required to discuss such assurance, the staff has asked registrants that choose to do so to also state clearly whether the DC&P are, in fact, effective at the "reasonable assurance" level.

In addition, when registrants have concluded that their DC&P are ineffective, the staff has asked them to discuss how they intend to remedy the deficiencies identified.

Incomplete, Inconsistent, or Inaccurate Information in Disclosure About DC&P

Examples of SEC Comments

- We note your Chief Executive Officer and Chief Financial Officer concluded that your disclosure controls and procedures as of June 30, 2014 were effective; however, you did not include the definition of disclosure controls and procedures or refer to such definition as stated in the Exchange Act Rules. Please confirm to us, if true, that your officers concluded your disclosure controls and procedures are effective as of June 30, 2014, to ensure that the information required to be disclosed by the company in reports that it files under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission´s rules and forms and also to ensure that information required to be disclosed in the reports that you file or submit under the Exchange Act is accumulated and communicated to management, as appropriate, to allow timely decisions regarding required disclosure. Further, in future filings, revise your disclosures to include the full definition of disclosure controls and procedures or clearly indicate that the evaluation was made with respect to disclosure controls and procedures as defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act. We refer you to Item 307 of Regulation S-K.
- The disclosure . . . that management concluded that your [DC&P] were effective [as of] December 31, 2013 is not consistent with your risk factor [regarding which] you disclose that management concluded that your DC&P were not effective due to the existence of certain material weaknesses.

[1] Under Part I, Item 4, of Form 10-Q and Part II, Item 9A, of Form 10-K.

[2] As required by Regulation S-K, Item 307.

Registrants are not required to define DC&P in their conclusion (they may refer to the definition in the Exchange Act Rules instead). However, if they choose to define the term, they must use the entire definition in Rule 13a-15(e) or Rule 15d-15(e). The SEC staff has commented when registrants (1) define DC&P but do not use the entire definition or (2) neither fully define DC&P nor refer to the definition in the Exchange Act. In addition, the staff has commented when a registrant's DC&P disclosure (1) is inconsistent with other disclosures in the filing or previous filings or (2) does not contain all of the required information.

Conclusion That DC&P Were Effective If a Restatement Is Required, a Material Weakness Exists, or Reports Were Not Filed in a Timely Manner

Examples of SEC Comments

- We note your disclosure of a material weakness related to the failure to maintain qualified accounting personnel. Your disclosure describes certain remediation efforts and states that you expect remediation to continue. Given [that ICFR is] an integral part of [DC&P], please tell us how you came to the conclusion that your material weakness related to ICFR did not impact your conclusion on the effectiveness of your DC&P or amend to revise your conclusion on the effectiveness of your DC&P.
- [P]lease consider whether management's failure to perform or complete its report on internal control over financial reporting impacts its conclusions regarding the effectiveness of your disclosure controls and procedures as of June 30, 2014 and revise your disclosure as appropriate.

Paragraph 4310.9 of the FRM states, "Because of the substantial overlap between ICFR and [DC&P], if management concludes that ICFR is ineffective, it must also consider the impact of the material weakness on its conclusions related to [DC&P]." If a registrant concludes that its DC&P are effective when a material weakness exists, the SEC staff often asks for information on the factors the registrant considered in reaching such a conclusion. In addition, when a registrant is required to file amended periodic reports containing restated financial statements, the SEC staff generally asks the registrant to reconsider its conclusions about the effectiveness of its DC&P.

The SEC staff has also asked about management's conclusion that DC&P were effective when a registrant did not file periodic reports in a timely manner. A registrant should design DC&P to ensure that information disclosed in its reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the periods specified in the SEC's rules. If the registrant does not report such information within these periods, the staff may request the registrant to supply additional information to support management's conclusion.

A Change in the Conclusion That DC&P Were Effective If No Changes to ICFR Were Disclosed

Example of an SEC Comment

You concluded your disclosure controls and procedures were effective as of September 30, 2014. In forming this conclusion, please tell us how you considered the following: (a) the three material weaknesses you had as of December 31, 2013, (b) your internal control over financial reporting was not effective as of December 31, 2013, (c) your disclosure controls and procedures were not effective as of December 31, 2013, March 31, 2014 and June 30, 2014 and (d) you disclosed in each of your Forms 10-Q filed during 2014 that no material changes in your internal control over reporting had occurred. Please also tell us the factors you considered to support management's conclusion that your disclosure controls and procedures were effective as of September 30, 2014. Please revise your disclosures regarding changes in your internal control over financial reporting and corrections of material weaknesses, as appropriate. Otherwise, please amend your Form 10-Q for the period ended September 30, 2014 to disclose, if true, your disclosure controls and procedures were not effective as of September 30, 2014.

If a registrant concludes that its DC&P were effective after a period in which the DC&P had been deemed ineffective, the SEC staff may ask the registrant to explain the basis for its conclusion. The SEC staff is especially likely to do so if the registrant has disclosed in the same period that there have been no changes to its ICFR.

Internal Control Over Financial Reporting

In addition to disclosing material changes in ICFR on a quarterly basis,[1] a registrant must annually provide management's report on ICFR and, if applicable, the attestation report of the registrant's registered public accounting firm.[2] These reports are not required in registration statements or Form 11-K.[3] Further, newly public companies generally do not need to provide management's report on ICFR in the first Form 10-K that they file after their initial public registration statement is declared effective.[4] In addition, the JOBS Act amended Section 404(b) of the Sarbanes-Oxley Act by exempting emerging growth companies (EGCs) from the requirement to obtain an attestation report on ICFR for as long as such entities retain their EGC status. See the Emerging Growth Companies section for considerations related to EGCs.

Entities should be mindful of the SEC's interpretive release regarding management's assessment of ICFR, particularly the guidance on the evaluation of control deficiencies. The OCA has stated that internal control reporting is a focus in its reviews and enforcement actions, and this focus is evidenced by past SEC cases. For example, in one case, the SEC's Division of Enforcement brought an enforcement action against the CEO and former CFO of a computer equipment company alleging internal control violations, including (1) the failure to disclose to their company's auditors significant deficiencies in internal control and (2) falsely representing in their signed certifications under Section 302 of the Sarbanes-Oxley Act that they disclosed all such deficiencies to the auditors. In another case, an enforcement action was brought against a corporation for Foreign Corrupt Practices Act (FCPA) violations, including internal control violations of the Exchange Act, with the chief of the Division of Enforcement's FCPA Unit noting that the FCPA violations were the result of a "lax internal control environment."

Evaluation of Severity of Control Deficiencies

Examples of SEC Comments

- Please describe in detail your evaluation of the severity of the key control deficiency. Refer to the guidance for evaluation of control deficiencies beginning on p. 34 of SEC Release No. 33-8810 "Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934." Include in your analysis a description of the maximum potential amount or total of transactions exposed to the deficiency and how that determination was made.
- Please address the following in relation to [the error you identified]:
    - Provide further information to help us understand how you considered the identification and correction of the error in your evaluation of [ICFR] as of December 31, 2013 and whether control deficiencies existed due to the error. To the extent that you determined there were control deficiencies due to the error, describe the deficiencies and how you evaluated the severity of each identified.
    - In addition, describe the evaluation performed on whether there was a reasonable possibility that your controls would have failed to prevent or detect a material misstatement associated with other related aspects of the consolidation process.
    - Last, tell us if the identification and correction resulted in changes to your internal controls and if so, describe those changes and the timing.

The SEC staff has continued to issue comments to registrants that have identified numerous control deficiencies without reporting a material weakness to understand how the registrants evaluated the severity of the deficiencies in the aggregate. The SEC staff has reiterated that the existence of a material weakness does not depend on the actual magnitude of an error (or whether an error existed) but instead depends on whether there was a reasonable possibility that a material misstatement could have occurred without being detected or prevented by the registrant's ICFR. In the interpretive release discussed above, the SEC stated that management needs to consider "whether each deficiency, individually or in

1 Under Part I, Item 4, of Form 10-Q and Part II, Item 9A, of Form 10-K.

2 The requirement for an attestation report applies only to large accelerated and accelerated filers because nonaccelerated filers are exempt from this requirement under Section 404(b) of the Sarbanes-Oxley Act.

3 Form 11-K is used to file the annual reports for employee stock purchase, savings, and similar plans.

4 However, paragraph 4310.6 of the FRM states, "A company that historically reported under the Exchange Act as a voluntary filer or because of registered debt, and therefore filed annual reports up to and through the date of its [equity] IPO, in which it was required to comply with . . . Item 308(a) of Regulation S-K, is therefore required to provide management's report on ICFR in its first annual report following the IPO."

combination, is a material weakness as of the end of the fiscal year . . . even though such deficiencies may be individually less severe than a material weakness"; in addition, the SEC noted an increased likelihood of misstatement when there are "[m]ultiple control deficiencies that affect the same financial statement amount or disclosure." At the 2013 AICPA Conference, Brian Croteau, deputy chief accountant in the OCA, stated that he remains convinced that "at least some of the PCAOB's inspection findings related to the audits of internal control over financial reporting are likely indicators of similar problems with management's evaluations of ICFR, and thus potentially [are] also indicative of risk for unidentified material weaknesses." He also questioned whether all material weaknesses are being properly identified and noted that only in rare instances does management identify a material weakness in the absence of a material misstatement. He attributed this to the following possibilities: (1) "the deficiencies are not being identified in the first instance" or (2) "the severity of deficiencies is not being evaluated appropriately."

Mr. Croteau reiterated these points at the 2014 AICPA Conference, where he stated that he "continue[s] to question whether material weaknesses are being properly identified, evaluated, and disclosed." He also stated that the "efforts throughout the SEC pertaining to the ICFR requirements are ongoing, coordinated, and increasingly integrated into [the SEC's] routine consultation, disclosure review and enforcement efforts," thus indicating that ICFR will remain a focus of the SEC staff.

Evaluation of Control Deficiencies Related to Immaterial Misstatements

Example of an SEC Comment

We note that you concluded that the errors related to deferred tax assets were immaterial to the previously reported amounts contained in your periodic reports. Please tell us the following concerning these errors:

- Explain to us in greater detail the nature of the errors and how they were determined and remediated;
- Tell us if there was any impact on the evaluation of your disclosure controls and procedures and your conclusion on Internal Control over Financial Reporting; and
- Provide us with your SAB 99 materiality analysis beginning with the initial time period in which the errors were detected, addressing how you concluded that these errors were immaterial to the previously reported amounts contained in your periodic reports.

At the September 2014 AICPA Banking Conference, the SEC staff indicated that it will continue to question how registrants have considered and evaluated the severity of deficiencies in ICFR related to immaterial misstatements that were corrected by immaterial restatements.[5] The staff reminded registrants that the severity of a deficiency does not depend on whether a misstatement actually has occurred; rather, it depends on whether there is a reasonable possibility that the deficiency could have resulted in a misstatement. The evaluation of the severity warrants consideration of risk factors including, but not limited to, the potential future consequences of the deficiency.[6] Accordingly, it is possible that an immaterial restatement represents a material weakness in ICFR even though the actual magnitude of an error was not material. The SEC's interpretive release states:

> Management evaluates the severity of a deficiency in ICFR by considering whether there is a reasonable possibility that the company's ICFR will fail to prevent or detect a misstatement of a financial statement amount or disclosure; and the magnitude of the potential misstatement resulting from the deficiency or deficiencies. The severity of a deficiency in ICFR does not depend on whether a misstatement actually has occurred but rather on whether there is a reasonable possibility that the company's ICFR will fail to prevent or detect a misstatement on a timely basis.

[5] An immaterial restatement is a restatement of previously issued financial statements for the correction of a misstatement that is either of the following:

- Not material to the prior period being changed but would be material to the current period if corrected in the current period.
- Not material to any periods being presented.

[6] At the December 2014 AICPA Conference, the SEC staff indicated that "[c]onsidering the nature of the deficiency is an important next step in determining the magnitude of the potential misstatement." This evaluation should include consideration of both the nature and current number of transactions affected by the deficiency and the expected amount or volume of transactions that may be affected in the future.

Evaluation of Deficiencies Identified in the Other COSO Components

Examples of SEC Comments

- Tell us how you considered the various errors identified at your corporate location and across multiple geographic regions, some of which were the result of control deficiencies, including significant deficiencies, in different components of the COSO Framework, in evaluating the effectiveness of the control environment component of COSO, especially as it relates to the factor regarding competence (i.e., knowledge, skills, training, and experience of the relevant employees).
- For the significant deficiencies you identified in the risk assessment, monitoring, and information and communication components, tell us why the severity of each is limited to the specific, individual process-level errors you describe in your response and how you determined that the reasonably possible potential error for each is limited to the various errors identified. For example, how was it determined that the significant deficiency in the risk assessment component related to "not having the appropriate resources" is limited to only being manifested through an immaterial error in a specific type of revenue transaction?
- Tell us how you concluded that the significant deficiency resulting in the embedded derivative error is appropriately classified within the information and communication component, as opposed to the failure to identify the relevant clauses in the contracts resulting from, for example, a lack of appropriate employee technical skill (control environment), an improper risk assessment of the types of activities that could lead to embedded derivatives, or the ineffective monitoring of the regional accounting team by the corporate accounting team.

The SEC staff has questioned whether deficiencies in control activities may be related to deficiencies in one or more of the following components of ICFR:

- Control environment.
- Information and communication.
- Risk assessment.
- Monitoring.

Specifically, the SEC staff may ask a registrant to provide a detailed analysis on how it concluded that the controls related to each of the other four COSO components were effective. This point was illustrated at the 2014 AICPA Conference by Kevin Stout, senior associate chief accountant in the OCA, who cited an example in which a growing company had "not employed sufficient resources in the finance department to keep up." Mr. Stout stated that such a situation "raises questions about what other amounts or disclosures could be impacted by the lack of resources and how the Control Environment and Risk Assessment components of COSO had been evaluated." Mr. Stout explained that if management does not understand the nature of all deficiencies, it "is more likely to overlook the possibility that there is a deficiency in another COSO component that may already represent, or could otherwise be developing into, a material weakness."

Disclosure of Material Changes in ICFR

Example of an SEC Comment

[Y]our disclosure indicates that there were no significant changes in your internal control over financial reporting during the last quarterly period covered by this report. This seems to contradict your statement that the signing of the acquisition agreement with [Company A] and the change in management, both of which occurred in November 2013, represent steps to cure deficiencies in your internal control over financial reporting. Please clarify.

The SEC staff has commented when a registrant has not explicitly and clearly asserted whether there has been a change in ICFR in the last fiscal quarter that had or could have a material effect on its ICFR, as required by Regulation S-K, Item 308(c). Registrants should state clearly whether there were changes in ICFR for the quarter and, if so, should disclose the nature of the changes. The staff has stressed that registrants should avoid "boilerplate" disclosure that there have been no material changes affecting ICFR in a period, particularly when there have been identifiable events such as layoffs, changes in outsourcing arrangements, or changes in accounting policies.

Consequently, the staff expects to see increased disclosures regarding changes in ICFR, specifically those related to remediation of material weaknesses. For example, the SEC staff has reminded registrants that it is important for management to monitor and consider disclosing a change in ICFR in the quarter in which management remediates a material weakness.[7]

In reviewing registrants' filings, the SEC staff looks for indicators of potential ICFR deficiencies. Common indicators include disclosures about changes in ICFR and corrections of errors (discussed below). If indicators are observed, the staff routinely asks registrants about management's consideration of such indicators in relation to its conclusions about the effectiveness of ICFR (i.e., whether a deficiency in internal control represents a material weakness that should have been identified and disclosed). For the quarter in which any material changes in ICFR occur, registrants should provide disclosures about such material changes, including (1) the identification of any material weaknesses and (2) changes made to remediate material weaknesses.

Disclosures About the Impact and Remediation of Material Weaknesses

Example of an SEC Comment

We note your disclosure that your independent registered public accounting firm identified material weaknesses in the internal controls over financial reporting during the 2014 and 2013 audits. Please revise to address the following:

- Please provide information surrounding each of the material weaknesses identified. Quantify the effects of each one on your financial statements.
- Please provide an expanded discussion of the specific steps you have taken and put into place to resolve each material weakness. Identify which material weaknesses have been resolved and which have not been resolved.
- Please revise MD&A to provide a discussion of the material weaknesses that includes the information requested in the first two bullets points of this comment and that includes a discussion of how the material weaknesses affected your financial condition, results of operations and cash flows.

[7] The SEC staff discussed remediation of material weaknesses and related disclosure considerations at the 2010 AICPA Conference. For additional information, see Deloitte's December 16, 2010, *Heads Up*.

The SEC staff has indicated that management's disclosures about material weaknesses are expected to go beyond merely identifying the existence of one or more material weaknesses or providing a limited description. Rather, such disclosures should contain enough information to allow investors to understand the cause of a material weakness and determine the pervasiveness of its effect on ICFR.

Similarly, the staff has called for more transparent disclosures about the pervasiveness of a material weakness's impact on the registrant's financial reporting and its ICFR. The staff has stressed that registrants need to avoid narrowly focusing their disclosures on a particular financial statement line item affected by a material weakness and should consider other financial statement line items that may also be affected.[8]

Registrants that have identified a material weakness have been asked to discuss (1) management's plans to remediate the weakness, (2) the estimated timing of management's remediation efforts, and (3) the related material costs.

In addition, in certain instances, the SEC staff has observed that questions about the validity and completeness of management's disclosures regarding material weaknesses have arisen as a result of management's discussion of its remediation plans. Sometimes the remediation plans are broader than the material weakness identified, potentially indicating that the actual material weakness is more pervasive than the material weakness disclosed or that there may be another material weakness that was not identified and disclosed. In providing disclosures about remediation plans, registrants should therefore consider the root cause of a material weakness and whether it highlights a more pervasive material weakness in their ICFR or deficiencies in other controls.

Further, the SEC staff has recently commented when registrants identified one or more material weaknesses in ICFR but either refrained from concluding on the effectiveness of ICFR or concluded that their ICFR is effective. In such instances, the staff has reminded registrants that Regulation S-K, Item 308(a)(3), prohibits a conclusion that ICFR is effective when one or more material weaknesses exist and has asked registrants to amend their filings to state that their ICFR is not effective as a result of the material weaknesses that were identified.

Conclusion That ICFR Remains Effective After a Restatement

Example of an SEC Comment

Please tell us what consideration was given to management's assessment at December 31, 2013 and at dates before then during 2011, 2012 and 2013 of the effectiveness of disclosure controls and procedures and internal control over financial reporting in light of the restatement discussed in [your notes]. Explain why you believe both disclosure controls and procedures and internal controls over financial reporting were effective at those dates in light of the errors and why no modifications to the disclosures contained in management's report, including any material changes made to ICFR, were required.

Because a restatement is typically indicative of a material weakness in ICFR, the SEC staff may challenge registrants when they conclude that their ICFR and DC&P are effective after restating their financial statements. In addition, since most elements of ICFR are subsumed in the definition of DC&P and it is therefore typically difficult for a registrant to conclude that its DC&P are effective when its ICFR is ineffective, the SEC staff may ask registrants after a restatement has occurred to explain why they concluded that their DC&P are effective. At the 2013 AICPA Conference, Mr. Croteau discussed a registrant's responsibility to maintain effective DC&P and directed registrants' management to (1) review an SEC enforcement order that addresses a registrant's failure to maintain effective controls and (2) consider whether its own DC&P and ICFR processes and procedures could be improved in light of the issues raised in that order. He also indicated that the adequacy of such controls and management's evaluations and conclusions about them are likely to be a focus of future Enforcement Division investigations.

[8] This issue was discussed at the Forums on Auditing in the Small Business Environment hosted by the PCAOB in December 2012.

Registrants should consider paragraphs 4310.16 and 4310.17 of the FRM regarding the restatement of financial statements:

> There is no requirement for a company to reevaluate the effectiveness of its internal controls and/or reissue a revised management's report on ICFR when a company restates its financial statements to correct errors . . . . However, a company may need to consider whether or not its original disclosures in management's report continue to be appropriate in light of these errors, and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the restatement. . . . If a company's management concludes that its original assessment of ICFR was incorrect, it should consider whether or not to revise its original report on ICFR.

Disclosure of the Framework Used to Evaluate ICFR

Example of an SEC Comment

Please revise future filings to clarify which version, 1992 or 2013, of the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control — Integrated Framework* you utilized when performing your assessment of internal control over financial reporting.

The COSO framework is one of the most widely applied frameworks used by registrants in evaluating the effectiveness of their ICFR. On May 14, 2013, COSO released an updated version of its *Internal Control — Integrated Framework* to reflect the significant changes in business and operational environments that have occurred since the original framework was introduced in 1992. Although the components of internal control under the framework remain unchanged, the update introduced 17 new principles that explicitly articulate and describe the components of internal control.[9] At the 2013 AICPA Conference, the SEC staff stated that registrants must disclose the internal control framework they applied in assessing the effectiveness of their ICFR in accordance with paragraph 4310.7 of the FRM. Because the COSO framework was updated in 2013 and provides for a transition period before the original framework is superseded, registrants should disclose whether they applied the 2013 framework or the original framework.

The SEC staff often comments when registrants do not disclose the framework used to evaluate the effectiveness of ICFR. The staff has cited specific examples in which management did not identify the framework used, as well as instances in which management inappropriately referred to SEC guidance or COSO's small-company guidance as the framework used for the evaluation. As a result, when a registrant has not disclosed the framework it used, it may be asked to advise the SEC staff of the framework it used in the current year and to revise its disclosures in current and future filings.

The SEC staff has also noted that "the longer issuers continue to use the 1992 framework, the more likely they are to receive questions from the staff about whether the issuer's use of the 1992 framework satisfies the SEC's requirement to use a suitable, recognized framework."[10]

[9] For additional information, see Deloitte's June 10, 2013, *Heads Up* on the revised COSO framework.

[10] For additional information, see the highlights of the September 2013 CAQ SEC Regulations Committee joint meeting with the SEC staff.

Incomplete or Missing ICFR Evaluation

Examples of SEC Comments

- [Y]ou did not include your conclusion regarding the effectiveness of your internal control over financial reporting. Please confirm to us that you intended to state . . . that your internal control over financial report is not effective, if correct, and confirm that you will include your conclusions for your assessments of the effectiveness of your disclosure controls and procedures and internal control over financial reporting in all future Forms 10-K.
- We note that management's report does not provide all the required information. Specifically, it does not define management's responsibility for establishing and maintaining adequate internal control over financial reporting, nor does it identify the framework used by management to evaluate the effectiveness of internal control over financial reporting at December 31, 2013.

Regulation S-K, Item 308(a)(3), requires registrants to assess and conclude on the effectiveness of their ICFR as of the end of their most recent fiscal year. In several instances, the SEC staff has issued comments to registrants that omitted a conclusion or provided one that did not contain all of the required information. The staff has also issued comments to registrants that failed to indicate a date for their ICFR evaluation or included in their filing a date other than the end of their most recent fiscal year. Registrants should ensure that the appropriate date of their ICFR evaluation is prominently displayed in any filing with the SEC.

Other Deloitte Resources

- December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."
- September 5, 2014, *Heads Up*, "Challenges and Leading Practices Related to Implementing COSO's *Internal Control — Integrated Framework*."
- December 16, 2013, *Heads Up*, "Highlights of the 2013 AICPA Conference on Current SEC and PCAOB Developments."

Executive Compensation and Other Proxy Disclosures

Proxy disclosure, particularly executive compensation, remains a topic of focus in SEC staff comments to registrants, including those issued to smaller reporting companies. Many of the staff's comments are related to (1) disclosures about how performance is assessed, including the use of performance targets and benchmarking; (2) disclosures in CD&A, including compensation table disclosures; and (3) disclosures about related-party transactions.

Further, the SEC continues to expand executive compensation and other proxy disclosure requirements through its rulemaking under the Dodd-Frank Act. See Other Deloitte Resources below for additional considerations.

Determining Compensation — Assessment of Performance

Performance Targets

> **Example of an SEC Comment**
>
> We note disclosure that the maximum bonus opportunities were set between [X]% and [Y]% of base salary for each of your named executive officers. In future filings, please clearly disclose the threshold, target and maximum bonus opportunities as a percentage of salary for each of your named executive officers. Please also disclose all previously established performance goals (such as company operating income), the actual level of achievement, and how you calculated the performance based bonus award for each named executive officer. [P]lease provide us supplementally with draft disclosure showing how you will present this information in future filings. Refer to Items 402(b)(1)(v) and (2)(v) of Regulation S-K.

The SEC staff frequently asks registrants that use performance targets to disclose them and provide information about their use.[1] Under Regulation S-K, Item 402(b), a registrant is required to discuss any compensation awarded to named executive officers (NEOs) in its CD&A. The discussion should include (1) the objectives of the compensation program, (2) what the compensation program is designed to reward, (3) the elements of the compensation, (4) the registrant's reasons for paying each element, (5) how each element is calculated (including any formula used), and (6) how the program fits into the registrant's objectives. The SEC staff frequently comments on how certain performance factors affect compensation arrangements for NEOs as well as how nonequity incentive compensation granted to NEOs is calculated. Item 402(b) also requires discussion of whether and, if so, how the results of shareholder advisory votes on executive compensation may affect the registrant's decisions and policies related to executive compensation.

To help financial statement users understand the registrant's compensation policies and decisions, the SEC staff has asked registrants to:

- Quantify and disclose the performance target and explain the purpose of performance factors.
- Disclose actual performance results and detail the specific elements of individual performance and contributions that affected the compensation received.
- Discuss the correlation between achievement of performance targets and the compensation ultimately awarded.
- Indicate whether the compensation committee or others had discretion or additional qualitative input when determining the final amount of compensation awarded, and the factors that affected the determination.

[1] Registrants may exclude performance targets (and other confidential information) if disclosing such material would result in competitive harm. However, registrants must satisfy "confidential-treatment" criteria and demonstrate to the SEC staff, upon request, that they have done so. Even when omission of targets or other factors or criteria is appropriate, a registrant should disclose how difficult it will be for the executive, or how likely it will be for the registrant, to achieve the undisclosed target levels or other criteria.

Benchmarking

> **Example of an SEC Comment**
>
> In future filings, please disclose the component companies used for benchmarking the compensation of your named executive officers. See Item 402(b)(2)(xiv) of Regulation S-K. We also note that target total annual compensation was within the [X] percentile. In future filings, please revise to disclose where actual total annual compensation fell for your named executive officers in relation to the benchmarked parameters.

A registrant may use benchmarks for total compensation or a material element of compensation (e.g., the registrant compares its executive compensation to that of a peer group in the same industry or uses compensation surveys to determine compensation levels). When it does, the registrant must identify (1) the benchmark for each NEO and (2) the components of compensation used and the entities that constitute the benchmark group.[2]

If benchmarks are used, the SEC staff may request that registrants disclose:

- All elements of compensation that are subject to benchmarking.
- The impact of the benchmarking on compensation decisions.
- Additional details about how they used the comparison information, including whether they had discretion regarding when and how to use it as well as the nature and extent of such discretion.
- Where payments fell with respect to the benchmark for each NEO.
- The degree to which their compensation committees consider entities in the benchmark group to be comparable to the registrants themselves.

The staff has also asked for explanations when actual compensation fell outside the targeted range.

Disclosures in CD&A

> **Examples of SEC Comments**
>
> - You disclose that the amounts of the 2014 cash incentives are included in the Bonus column. If the bonus was granted under a plan providing for compensation intended to serve as incentive for performance to occur over a specified period of time, then the bonus should be disclosed under the "Non-Equity Incentive Compensation Plan" column. Amounts earned under the plan as adjusted for the exercise of negative discretion would still be reportable in the Non-Equity Incentive Plan Compensation column. Please explain to us why the payments under the 2014 Annual Incentive Plan awards are being disclosed in the "Bonus" column, and to the extent necessary revise your future filing accordingly. For guidance, please refer to Question 119.02 of Regulation S-K Compliance and Disclosure Interpretations.
> - We note disclosure that Mr. [A] has received fees related to his services on the company's board . . . for a total aggregate of $[X]. Please tell us where these fees have been disclosed in the summary compensation table, and in future filing, identify them through the use of footnote disclosure to the extent applicable. Please see instruction 3 to Item 402(c) of Regulation S-K.

The SEC staff continues to focus on CD&A disclosures, particularly those in the summary compensation table, because they give investors important information about a registrant's compensation policies and decisions. Frequently, the staff asks about inconsistencies between the amounts disclosed in the financial statements and the amounts disclosed in the summary compensation table.

[2] See Regulation S-K, Item 402(b)(2)(xiv), for additional information.

Regulation S-K, Item 402(c), requires that for each NEO, registrants include tabular disclosures specifying (1) the NEO's name and principal position, (2) the fiscal year covered, (3) the base salary earned, (4) the bonus earned, (5) the stock/option awards, (6) nonequity incentive plan compensation, (7) the change in pension value and nonqualified deferred compensation earnings, (8) all other compensation, and (9) the total amount of compensation. Both the cash portion and the noncash portion of salary and bonus must be disclosed.

Accordingly, the SEC staff often comments when registrants disclose amounts in incorrect columns of, or exclude types of compensation from, the table. For example, the staff often asks why bonuses paid to NEOs (on the basis of achieved performance targets) are disclosed in the bonus column instead of in the nonequity incentive plan compensation column.

In addition, for stock awards included in CD&A, the SEC staff often asks for the aggregate grant-date fair value of the awards as computed in accordance with ASC 718 and for disclosure of all assumptions used in the valuation of share-based compensation, which the registrant can provide by including a reference to its footnotes to the financial statements or to the critical accounting policies section of its MD&A. Regulation S-K, Item 402(k)(2)(iii), also requires disclosure of the aggregate grant-date fair value and aggregate number of stock awards as of the fiscal year-end for each director.

Related-Party Transactions

Regulation S-K, Item 404(a), requires disclosure of transactions that the registrant participated in, or will participate in, with related parties in which the "amount involved exceeds $120,000, and [the related party] had or will have a direct or indirect material interest." ASC 850 does not establish a quantitative threshold but requires disclosure in the financial statements when the information "would make a difference in decision making." In addition, Regulation S-X, Rule 4-08(k), requires registrants to (1) disclose related-party transactions that affect the financial statements and (2) separately present the amounts of such related-party transactions on the face of the balance sheet, income statement, or statement of cash flows when those amounts are material. Types of related-party transactions that the SEC staff often comments about include sales and loans involving related parties.

As part of identifying related-party transactions, registrants should consider consulting with legal counsel and reviewing the instructions to Item 404(a) to better understand the definition of a "related person" and the types of transactions they need to disclose.

Policies and Procedures

Example of an SEC Comment

Please tell us your Committees' policies and procedures for the review, approval, or ratification of covered transactions. Please see Item 404(b) of Regulation S-K.

The SEC staff may request that the registrant provide a complete discussion of the policies and procedures related to the review, approval, or ratification of transactions with related persons, as required by Regulation S-K, Item 404(b). Registrants often disclose the existence, or a general summary, of such policies and procedures but exclude material features such as the types of transactions covered by the policies and procedures, the standards to be applied to the transactions, and the persons or group of persons responsible for applying the policies and procedures.

Transactions Involving Indebtedness

Example of an SEC Comment

Please provide the disclosure required by Item 404(a)(5) of Regulation S-K. In addition, please update the balance of the related party debt as of the most recent financial statements.

The SEC staff also often asks registrants to improve their disclosures about related-party transactions involving indebtedness. Item 404(a) indicates that registrants should disclose the major terms of related-party indebtedness (e.g., the amounts involved, the largest principal amount outstanding during the period and as of the latest practicable date, the principal and interest payments during the period, the interest rate, and the interest-payable amount).

Other Deloitte Resources

- September 10, 2015, *Heads Up*, "SEC Issues Final Rule on Pay Ratio Disclosure."
- August 5, 2015, *Heads Up*, "SEC Proposes Rule on 'Clawback' Policies."
- May 29, 2015, *Heads Up*, "SEC Proposed Rule on Pay Versus Performance."

Emerging Growth Companies

An emerging growth company (EGC) is a new type of issuer created by the JOBS Act to encourage public offerings by small and developing companies. The regulatory and reporting requirements for EGCs are less stringent than they are for other types of issuers and include the following:

- Only two years of audited financial statements are required in an IPO for common equity.
- The periods required for selected financial data in both registration statements and periodic filings do not extend to periods before the first year presented in the EGC's equity IPO registration statement.
- EGCs may elect to defer the adoption of new accounting standards until they become effective for private companies (i.e., nonissuers).
- EGCs are exempt from the requirement to obtain an attestation report on ICFR from their auditor.

In addition, an EGC may submit registration statements to the SEC for confidential reviews. Under the JOBS Act, an EGC would be required to make publicly available (at least 21 days before its "road show") any documents that were submitted to the SEC staff for confidential review. Accordingly, the SEC staff's comment letters to the EGC (and the EGC's responses) must be filed on EDGAR.

The staff in the SEC's Division of Corporation Finance has issued FAQs on numerous aspects of the JOBS Act, many of which are related to qualifying for EGC status and the filing requirements for EGCs. In addition, the SEC staff has incorporated EGC-related guidance in section 10000 of the FRM.

In its comment letters to EGCs, the SEC staff primarily has asked companies to disclose (1) that they qualify for EGC status, (2) how and when they may lose their EGC status, (3) the elections they made under Title I of the JOBS Act, and (4) their qualification for an exemption from Section 404(b) of the Sarbanes-Oxley Act.

EGC Status and Elections

Example of an SEC Comment

It appears that you qualify as an "emerging growth company," as defined in the Jumpstart Our Business Startups Act. If true, in an appropriate section of the filing please disclose that you are an emerging growth company and revise your registration statement to:

- Describe how and when a company may lose emerging growth company status;
- Briefly describe the various exemptions that are available to you, such as [an exemption] from Section 404(b) of the Sarbanes-Oxley Act of 2002 . . . ; and
- State your election under Section 107(b) of the JOBS Act:
    - If you have elected to opt out of the extended transition period for complying with new or revised accounting standards pursuant to Section 107(b), include a statement that the election is irrevocable; or
    - If you have elected to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(2), provide a risk factor explaining that this election allows you to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies. Please state in your risk factor that, as a result of this election, your financial statements may not be comparable to companies that comply with public company effective dates. Include a similar statement in your critical accounting policy disclosures.

Filing Status

Because a key objective of the JOBS Act is to promote smaller companies' access to capital markets, some of the JOBS Act's accommodations for EGCs resemble reporting requirements for smaller reporting companies (e.g., annual financial statement requirements in an IPO registration statement under Regulation S-X, Article 8). However, the rules are not the same, and the SEC staff has asked EGC filers to clarify descriptions of their filing status. Further, a company can maintain EGC status for up to a maximum of five years after an equity IPO as long as certain conditions apply;[1] and the SEC staff has asked EGC filers to disclose information about their filing status, including how and when the company may lose EGC status.

Extended Transition Period to Adopt New or Revised Accounting Standards

EGCs are allowed to adopt new or revised accounting standards on the basis of effective dates applicable to private companies (i.e., nonissuers) for ASUs issued after April 5, 2012 (i.e., the date of the enactment of the JOBS Act). Consequently, the SEC staff has asked EGC filers to indicate the basis on which they are adopting accounting standards. Further, the SEC staff has asked EGCs that elect to adopt accounting standards on the basis of adoption and transition dates that apply to private companies to disclose as a risk factor that their financial statements may not be comparable with those of registrants that elect (or are required) to adopt accounting standards on the basis of adoption and transition dates that apply to public companies. The SEC staff has also asked registrants to include similar disclosures in their critical accounting policy section of MD&A.

Section 404(b) Exemption

The JOBS Act amends Section 404(b) of the Sarbanes-Oxley Act by exempting EGCs from the requirement to obtain an attestation report on the company's ICFR from its registered public accounting firm. The staff has required registrants to disclose that they are exempt from obtaining an audit of their ICFR (for as long as they maintain EGC status).[2]

Other Considerations

Reduced Financial Reporting Requirements

Examples of SEC Comments

- You state here that you have not made a final decision to take advantage of certain of the exemptions available to you as an emerging growth company. Please tell us when you intend [to] make that decision and whether your current executive compensation disclosures reflect the reduced disclosure obligations applicable to a smaller reporting company.
- Briefly describe . . . exemptions [from the requirements related to obtaining shareholder approval of executive compensation under] Section 14A(a) and (b) of the Securities Exchange Act of 1934.

An EGC is required to present only two years of audited financial statements in its equity IPO registration statement. In addition, the periods for which an EGC presents select financial data in its registration statements and periodic filings may be limited to the earliest year presented in its equity IPO registration statement. Further, certain JOBS Act provisions related to scaled disclosures may interact with certain SEC rules (e.g., other entities' financial statements may be required under Regulation S-X, Rules 3-05 and 3-09); accordingly, the SEC staff has issued comments on reduced disclosure requirements. For example, under the JOBS Act, EGCs can comply with the SEC's proxy requirements regarding executive compensation by providing the same reduced disclosures that are required of smaller reporting companies.[3] Consequently, the staff has asked whether EGCs' executive compensation disclosures reflect reduced disclosure requirements. EGCs should therefore consider the SEC staff's FAQs on the JOBS Act to assess whether reduced reporting requirements apply in these situations. For additional information on Rules 3-05 and 3-09, see the SEC Reporting section.

[1] For example, the EGC's total gross revenues do not exceed $1 billion during the five-year period; the EGC's market capitalization does not exceed $700 million (i.e., the EGC does not meet the definition of a large accelerated filer); and the EGC does not issue more than $1 billion in nonconvertible debt in a three-year period (which is not limited to calendar or fiscal years and is a rolling three-year period from the date of the EGC's last debt issuance).

[2] EGCs are also exempt from any future PCAOB rules that may require (1) auditor rotation or (2) expansion of the auditor's report to include an auditor's discussion and analysis of the company under audit.

[3] EGCs are also exempt from certain proxy provisions of the Dodd-Frank Act.

Requests for Written Communications

Example of an SEC Comment

We note that you are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act. Please supplementally provide us with the following:

- [C]opies of all written communications, as defined in Rule 405 under the Securities Act, that you, or anyone authorized to do so on your behalf, present to potential investors in reliance on Section 5(d) of the Securities Act, whether or not they retain copies of the communications; and
- [A]ny research reports about you that are published or distributed in reliance upon Section 2(a)(3) of the Securities Act of 1933 added by Section 105(a) of the Jumpstart Our Business Startups Act by any broker or dealer that is participating or will participate in your offering.

The JOBS Act significantly changed the rules governing communication between EGCs and certain potential investors. Under the JOBS Act, an EGC, or any person authorized to act on behalf of an EGC, may engage in oral or written communications with potential investors that are qualified institutional buyers or institutional accredited investors to "test the waters" before the EGC files its registration statement. Consequently, the SEC staff has requested copies of such communications.

Other Deloitte Resources

April 15, 2014, *Heads Up*, "Two Years After the JOBS Act."

Other SEC Reporting Matters

Certifications

Example of an SEC Comment

We note that the beginning of the certifications filed . . . are missing the first line of text relating to the individual certifying the filing as required by Item 601(b)(31) of Regulation S-K (i.e., the declaration that the party is certifying). We also note that you have omitted the introductory language in paragraph 4 referring to internal control over financial reporting. Accordingly, please file an amendment to your Form 10-K that includes the entire filing together with the certifications of each of your current CEO and CFO in the form currently set forth in Item 601(b)(31) of Regulation S- K.

Registrants must provide quarterly and annual certifications in the form specified by Regulation S-K, Item 601(b)(31). When these certifications contain errors, registrants are often asked to file an amendment to an entire periodic filing in addition to submitting a corrected certification. Interpretation 246.14 of the C&DIs of Regulation S-K states:

> The following errors in a certification required by Item 601(b)(31) are examples of errors that will require the company to file a corrected certification that is accompanied by the entire periodic report: (1) the company identifies the wrong periodic report in paragraph 1 of the certification; (2) the certification omits a conformed signature above the signature line at the end of the certification; (3) the certification fails to include a date; and (4) the individuals who sign the certification are neither the company's principal executive officer nor the principal financial officer, or persons performing equivalent functions.

The SEC staff often comments when registrants' certifications, including punctuation marks and parenthetical phrases, do not appear exactly as specified in Item 601(b)(31). The staff routinely notes that including the title, rather than the name, of the certifying officer in the first sentence of the certification constitutes an inappropriate modification. In addition, the staff regularly comments on certifications that are dated incorrectly.

Registrants must include certifications when they are filing amendments to periodic reports. See Question 161.01 of the C&DIs of Exchange Act Rules for guidance on what paragraphs can be excluded from certifications filed with amendments to periodic reports.

Use of Experts and Consents

> **Example of an SEC Comment**
>
> We note that the prospectus includes market and industry data derived from publications, surveys, and reports, including from [Entities A, B, C, D, E, F, and G]. If any of these publications, surveys, or reports were commissioned by you for use in connection with the registration statement, please file consents of such third parties pursuant to Rule 436 of the Securities Act as exhibits to your registration statement or tell us why you believe you are not required to do so.

In their registration statements under the Securities Act and periodic reports under the Exchange Act (e.g., Forms 10-K and 10-Q), registrants sometimes refer to an "independent valuation firm" or other third party. The SEC staff has asked such registrants whether management or the board relied on a third-party expert and will sometimes infer reliance on a third-party expert even when the registrants do not refer to one. Examples of third-party experts that registrants commonly consider or rely on include the following:

- Valuation firms, about:
  - The valuation of a registrant's common and preferred stock in an IPO.
  - The fair value determination of goodwill and assets acquired and liabilities assumed in a business combination.
  - The determination of goodwill impairment.
  - The determination of an environmental liability.
- An independent actuary, about the estimation of workers' compensation liability.
- Petroleum engineers, about the evaluation of oil and gas reserves.
- Pricing services or brokers that provide information used to determine the fair values of financial assets or liabilities. See the Fair Value section for additional considerations.
- Counsel providing legal opinions.
- Tax specialists providing tax opinions.

The SEC staff has stated that in registration statements or periodic reports, registrants generally are not required to refer to an independent valuation firm or other expert. If a registrant does not refer to the expert in its filing, the registrant is not required to name the expert or obtain the expert's consent; however, certain SEC requirements may compel the registrant to include or summarize an expert's report or opinion in its filing and could trigger a consent requirement. Registrants that refer to experts in their filings should consider the implications related to periodic reports and registration statements.

Periodic Reports (Exchange Act)

Consents are not required for Form 10-K or 10-Q. However, the guidance below on registration statements should be applied if the registrant (1) refers to an independent valuation firm or other expert in a periodic report and attributes statements in the report to the expert and (2) incorporates that periodic report by reference into a registration statement.

Registration Statements (Securities Act)

Historically, if a registrant has referred to third-party experts in a registration statement, the SEC staff has asked the registrant to provide the experts' consents, including those from the registrant's independent registered public accounting firm. However, C&DIs issued by the staff appear to indicate that the key to assessing whether a consent will be required is determining the degree to which management takes

responsibility for statements related to work performed by a third-party expert that are included in or incorporated into the registration statement. The SEC staff typically evaluates the totality of the disclosure provided when determining whether management is taking responsibility for the conclusion.[1]

Scope

The SEC staff has also commented on the use of "limiting" language in consents provided by third-party experts. The staff has emphasized that an expert's consent should not contain any language that limits the use of the consent to the registrant or suggests that there is a limit on potential investor reliance.

Material Contracts

Example of an SEC Comment

You state that you rely on the uninterrupted operation of your data centers. Yet it appears that you do not plan to file as exhibits any agreements with the third parties that host your network operating centers. To the extent you have entered into agreements with respect to your network operating centers, please revise the Business section to discuss the material terms of your material agreements. In addition, explain to us how you determined that the agreements need not be filed as exhibits pursuant to Item 601(b)(10) of Regulation S-K. Alternatively, file the agreements as exhibits to the registration statement.

Regulation S-K, Item 601, requires registrants to file certain material contracts as exhibits if, during the reporting period, such contracts (1) become effective or (2) are executed, amended, or modified. For example, Item 601(b)(10) requires a registrant to file:

- Every material contract that is "not made in the ordinary course of business."
- Any material contract "made in the ordinary course of business":
  - With certain parties, such as directors, officers, promoters, voting trustees, certain security holders, or underwriters, other than contracts involving only the purchase or sale of current assets at a price that equals a determinable market price.
  - On which the registrant's business substantially depends.
  - For the acquisition or disposition of any property, plant, or equipment for consideration exceeding 15 percent of the registrant's total consolidated fixed assets.
  - For a lease under which part of the property is held by the registrant.
- Generally, any management contract or compensatory plan, contract, or arrangement in which a director or NEO of the registrant participates (such contracts are considered material) and any other material management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates.[2]
- Any other material compensatory plan, contract, or arrangement "adopted without the approval of security holders pursuant to which equity may be awarded" in which any employee of the registrant (i.e., regardless of whether the employee is an executive officer) participates.

1 Registrants may look to Question 233.02 of the C&DIs of the Securities Act Rules that were issued by the SEC staff in November 2008 but should be aware that other consent-related C&DIs of the Securities Act Rules may apply to their specific circumstances and that they should therefore review such C&DIs periodically.

2 For examples of management contracts or compensatory plans, contracts, or arrangements that are exempt from this filing requirement, see Item 601(b)(10)(iii)(C).

Accordingly, the SEC staff issues comments when registrants omit certain material agreements. Recent comment letters have instructed registrants to do either of the following:

- File the material agreements in their entirety, including schedules and related exhibits, as exhibits to Form 10-K or 10-Q or separately on Form 8-K in accordance with Item 601.
- Explain why they have not filed the agreements.

For SEC staff views on when registrants may be required to file agreements as exhibits under Item 601, see Sections 146, 206, and 246 of the C&DIs of Regulation S-K.

Backlog Disclosures

Examples of SEC Comments

- Please tell us how and when the "order process" that you mention was changed and how that will affect age outs. Also, please (1) clarify this issue in future filings where you mention the order process change, [and] (2) tell us about any other changes to the method that you used to determine the dollar amount of reported backlog during the last three fiscal years, the extent to which the change affected backlog, and where you describe those changes in your filings.
- To the extent material, please disclose the amount of backlog related to uncompleted contracts for which you have recorded a provision for estimated losses. Please also disclose the amount of backlog not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of backlog. Refer to Item 101(c)(1)(viii) of Regulation S-K.

Regulation S-K, Item 101(c)(1)(viii), requires disclosure of the "dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog." Because companies may compute backlog information differently, the SEC staff has requested expanded disclosures about it, including (1) the methods used (or changes in methods used) to determine backlog and (2) changes in backlog resulting from new contracts, canceled contracts, and contracts recognized in revenue. In addition, the SEC staff has reminded registrants to disclose in accordance with Item 101(c)(1)(viii) the backlog not reasonably expected to be filled within the current fiscal year.

Disclosures Regarding State Sponsors of Terrorism

Examples of SEC Comments

- You state . . . that [Company X] accounted for 10% of your sales in 2014. [Company X's] wholly-owned subsidiaries . . . both provide contact information on their respective websites for their respective [businesses] in each of [Sudan and] Syria. [Sudan and] Syria are designated by the Department of State as state sponsors of terrorism, and are subject to U.S. economic sanctions and export controls. Please describe to us the nature and extent of your past, current, and anticipated contacts with . . . Sudan and Syria, if any, whether through subsidiaries, affiliates, distributors, partners, customers, joint ventures or other direct or indirect arrangements. You should describe any services, products, information, or technology you have provided to [Sudan or] Syria, directly or indirectly, and any agreements, commercial arrangements, or other contacts you have had with the governments of those countries or entities they control.
- Please discuss the materiality of any contacts with . . . Sudan and Syria you describe in response to the comment above, and whether those contacts constitute a material investment risk for your security holders. You should address materiality in quantitative terms, including the approximate dollar amounts of any associated revenues, assets, and liabilities for the last three fiscal years and the subsequent interim period. Also, address materiality in terms of qualitative factors that a reasonable investor would deem important in making an investment decision, including the potential impact of corporate activities upon a company's reputation and share value. Various state and municipal governments, universities, and other investors have proposed or adopted divestment or similar initiatives regarding investment in companies that do business with U.S.-designated state sponsors of terrorism. You should address the potential impact of the investor sentiment evidenced by such actions directed toward companies that have operations associated with [Sudan and] Syria.

The U.S. Department of State has designated three countries as state sponsors of terrorism — Iran, Sudan, and Syria. These countries are subject to U.S. economic sanctions and export controls. Generally, registrants that do business in these countries are required to disclose material operations conducted in them (whether through subsidiaries, affiliates, distributors, partners, customers, joint ventures, or other direct or indirect arrangements) and any agreements, commercial arrangements, or other contacts with the countries' respective governments or with entities controlled by such governments.[3] The SEC staff regularly comments on this subject and believes that such disclosures are important to investors in making investment decisions. The staff has asked registrants to disclose the nature and extent of these contacts (past, present, and probable) — as well as to provide a detailed analysis of the materiality of contacts with these countries — on the basis of both quantitative and qualitative factors. In addition to providing quantitative disclosures of revenues, assets, and liabilities associated with these countries, registrants are encouraged to disclose any related qualitative factors that may have a significant impact on their activities.[4]

[3] In 2007, the SEC issued a concept release that requested input on certain matters related to sponsors of state terrorism. The concept release indicates that the "federal securities laws do not impose a specific disclosure requirement that addresses business activities in or with a country based upon its designation as a State Sponsor of Terrorism." However, as with other requirements to disclose material information, the "federal securities laws do require disclosure of business activities in or with a State Sponsor of Terrorism if this constitutes material information that is necessary to make a company's statements, in the light of the circumstances under which they are made, not misleading." [Footnote omitted]

[4] Further, the Iran Threat Reduction and Syria Human Rights Act of 2012 requires registrants to include certain disclosures about sanctionable activities with those countries in all quarterly and annual reports. There is no materiality threshold for such reporting; therefore, a registrant may be required to disclose immaterial transactions meeting the criteria specified in the Act. For implementation guidance, see Questions 147.01 through 147.07 of the C&DIs of Exchange Act Sections.

Interactive Data — eXtensible Business Reporting Language (XBRL)

SEC Staff's Review and Observations

Examples of SEC Comments

- The staff notes that you have not submitted electronically and posted on your corporate Web site every Interactive Data File required to be submitted and posted during the preceding 12 months. Please file this information pursuant to Rule 405 of Regulation S-T.
- The XBRL Document and Entity Identification Information rendered as part of your filing appears to contain a number of data element errors, including but not limited to, your classification as a non-accelerated filer. Please revise to comply with the requirements of Section 405 of Regulation S-T and the EDGAR Filer Manual.

The SEC staff continues to monitor registrants' interactive data file (i.e., XBRL) submissions for completeness and compliance with the provisions of Regulation S-T, Rule 405. The staff often asks whether the registrant has (1) submitted its interactive data files as an exhibit to Form 10-K and Form 10-Q in accordance with Regulation S-K, Item 601(b)(101); (2) checked the appropriate box on the cover page of its Form 10-K or 10-Q to indicate that all required interactive data files have been submitted; and (3) posted its interactive data files on its Web site. When a registrant has omitted a required interactive data file exhibit, the staff may ask why and request an amended filing that includes the missing information.

The SEC staff also considers the quality of interactive data filings and has commented broadly on the problems encountered in that regard. For example, the staff has indicated that it continues to see basic errors in interactive data submissions and has directed registrants to its observations on the SEC's Web site for additional details. Specifically, the staff has reminded registrants to (1) use negative values properly, (2) ensure the completeness of tagging, and (3) use custom tags only when appropriate.

In its July 2014 report *Staff Observations of Custom Tag Rates*, the SEC staff noted that although it has seen a steady decline in custom tag use by larger filers, it has not observed a similar decline in usage by smaller filers.[5] Further analysis revealed that this trend may be partially attributable to smaller filers' use of certain third-party providers. The staff expressed its intention to continue monitoring registrants' use of custom tags and indicated that it may issue further guidance or take additional action in the future.

Requirement to Include Calculation Relationships

Sections 6.14 and 6.15 of the EDGAR Filer Manual provide guidance on complying with the requirement to include calculation relationships in an interactive data file. In addition, the SEC staff's "Dear CFO" letter,[6] which was posted to the SEC's Web site in July 2014 and has been sent to a number of public companies, reminds registrants that the XBRL rules require them to "include calculation relationships for certain contributing line item elements for [the] financial statements and related footnotes." The letter advises registrants to "take the necessary steps to ensure that [they] are including all required calculation relationships" in their XBRL files.

Interactive Data Requirements in Other Filings

Example of an SEC Comment

Please provide the XBRL interactive data file that is required to be submitted pursuant to Item 601(b)(101)(i) of Regulation S-K. For guidance, please refer to Regulation S-K Compliance and Disclosure Interpretations Question 146.17, available at: http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.

[5] The staff used the term "smaller filers" to refer to U.S. GAAP filers that are not large accelerated filers.

[6] *Sample Letter Sent to Public Companies Regarding XBRL Requirement to Include Calculation Relationships.*

Under Regulation S-T and Regulation S-K, Item 601(b)(101)(i), registrants must submit an interactive data file as an exhibit to a registration statement if the statement contains (1) financial statements and (2) a price or price range. For purposes of Item 601(b)(101)(i), the disclosure of the "offering price" of a shelf offering, an at-the-market offering, an exchange offer, or a secondary offering in a filed registration statement is construed as a price or price range.

In addition, Item 601(b)(101)(i) highlights that an interactive data file would be required for a Form 8-K filing "when the Form 8-K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the [SEC] that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle."

Further, registrants should monitor new rules issued by the SEC as a result of the Dodd-Frank Act or other legislation to see whether they require XBRL tagging of specified information that otherwise would be outside the scope of the SEC's interactive data requirements. For example, under the SEC's recently proposed rule on pay-versus-performance disclosures, which would implement Section 953(a) of the Dodd-Frank Act, registrants would be required to provide such disclosures "in tagged data format using [XBRL]."[7]

Other Deloitte Resources

- July 8, 2014, *Deloitte Accounting Journal*, "SEC Staff Issues Communications to XBRL Filers."
- December 16, 2013, *Heads Up*, "Highlights of the 2013 AICPA Conference on Current SEC and PCAOB Developments."
- September 19, 2013, *Heads Up*, "XBRL — Past, Present, and Future."

Audit Report Requirements

Example of an SEC Comment

Please amend your filing to include an audit opinion which encompasses all of the financial statements included in your filing. In this regard, we note that your audit opinion refers to " . . . the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity and cash flows for the year then ended." However, you have included more than one year of financial statements. We note the same terminology was used in the concluding paragraph of the audit opinion. Additionally, please ensure that your independent auditor properly references the city and state where the audit report was issued. Please refer to Rule 2-02 (a) of Regulation S-X. We remind you to also include currently dated certifications that refer to the amended form.

The SEC staff continues to comment when a registrant does not comply with Regulation S-X, Rule 2-02(a), and Regulation S-T, Rule 302. For example, the staff has commented when:

- A signature did not conform to Regulation S-X and S-T requirements.
- A public accounting firm's city and state were omitted from the audit report.
- A registrant included a report from its auditor that does not appropriately identify all financial statements covered by the audit report.

[7] For additional information about the SEC's proposed rule, see Deloitte's May 29, 2015, *Heads Up*.

The SEC staff will generally ask the registrant to amend its filing or provide a revised audit report if the report is not in compliance with the technical requirements of Regulation S-X, Rule 2-02(a), or Regulation S-T, Rule 302, including the requirements related to typed "signatures" in electronic submissions.

In addition, the CAQ issued Alert 2012-16 to remind auditors that "it **would not** be appropriate for the auditor's report for issuers or other entities that require compliance with PCAOB requirements to reference only the ***auditing* standards** of the PCAOB" since this qualifying language may imply that the auditor did not adhere to other standards of the PCAOB (e.g., its independence standards). The alert also encouraged registrants and auditors to review paragraph 4110.5 of the FRM for additional information regarding certain PCAOB requirements in various SEC filings.

Selected Quarterly Financial Data

Example of an SEC Comment

We note in your disclosure that you describe the effects of certain significant items on an aggregate basis for each respective year. Please revise to clearly disclose how such unusual or infrequently occurring items are material to the results of each quarter. Please refer to Item 302 (a)(3) of Regulation S-K.

The SEC staff has issued comments on the sufficiency of disclosures about selected quarterly financial information under Regulation S-K, Item 302(a). For example, the staff has asked registrants to revise such disclosures when the disclosures fail to mention the effects of items recognized during quarters within the two most recent fiscal years, such as (1) the disposal of a segment of a business or (2) extraordinary, unusual, or infrequently occurring items.

A registrant is generally not required to provide selected quarterly financial data in its initial registration statement on Form S-1 because the requirement does not apply until a company has registered securities in accordance with Section 12(b) or Section 12(g) of the Exchange Act. However, at the March 2015 CAQ SEC Regulations Committee joint meeting with the SEC staff, the staff clarified that registrants that file a follow-on registration statement[8] before filing their first Form 10-K would generally be required to provide selected quarterly financial data because their securities are typically registered under Section 12(b) or Section 12(g) at the time the follow-on registration statement is filed.

[8] That is, a registration statement filed after the IPO.

Disclosure Topics in Initial Public Offerings

Initial Public Offerings

An IPO is most commonly thought of as the initial sale of equity or debt securities to the public by a private company that registers its securities on Form S-1. However, there are other situations in which a company can register debt or equity securities with the SEC for the first time, such as by exchanging debt securities previously issued in a private transaction for registered debt securities (typically on a Form S-4), registering currently outstanding equity securities, or distributing shares in a spin-off transaction by a public company (typically on a Form 10). All such transactions are referred to as IPOs in this discussion. However, as a result of the JOBS Act, which was signed into law on April 5, 2012, certain companies that meet the requirements for emerging growth company (EGC) status are eligible to raise capital and register as new issuers by complying with less stringent regulatory and reporting requirements than those required for a typical IPO. See the Emerging Growth Companies section for additional information on such requirements.

Because an IPO typically represents a company's first filing with the SEC, the SEC staff almost always reviews the related registration statement. The staff's review is typically comprehensive, covering reporting, accounting, and legal issues. In addition, the SEC staff's comments often focus on the following reporting topics (most of which are further discussed in the SEC Reporting section):

- Significant business acquisitions (Regulation S-X, Rule 3-05).
- Investments in equity method investees (Regulation S-X, Rule 3-09).
- Guarantors of registered securities (Regulation S-X, Rule 3-10).
- Issuers of securities that collateralize registered securities (Regulation S-X, Rule 3-16).
- Pro forma financial statements (Regulation S-X, Article 11).

It is also common for SEC staff comments on IPO registration statements to address accounting and disclosure topics such as (1) complex equity instruments; (2) share-based compensation, including equity securities issued as compensation in periods before an IPO (commonly referred to as "cheap stock" considerations); and (3) revenue recognition. For more information, see the Debt, Financial Instruments, Share-Based Payments, and Revenue Recognition sections. The SEC staff also comments on certain issues that are more specific to IPO registration statements. Such issues are discussed in this section.

Registrant Financial Statements

A company undergoing an IPO is required to present its financial statements, footnotes, and schedules for certain annual and interim periods in its registration statement. Regulation S-X, Rules 3-01 through 3-04, describe the general financial statement requirements for the registrant and its predecessors. Registrants must determine which financial statements to include in their initial registration statement on the basis of their individual facts and circumstances and must continue to update the financial statements throughout the registration process to provide current financial information. The SEC staff often comments when registrants do not include the required financial statements in the registration statement.

Age of Financial Statements

> **Example of an SEC Comment**
>
> Please amend your filing to provide financial statements for [Company A] and its predecessor that comply with Rule 3-12 of Regulation S-X at the date the registration statement becomes effective.

A registrant's financial statements must meet the "age of financial statements" requirements as of every filing date as well as when the registration statement is declared effective. The age of financial statements generally refers to the specific annual and interim periods for which financial statements are required in a filing. Regulation S-X, Rule 3-12, provides guidance on such periods and on when the financial statements become stale (i.e., should be updated).

Recently Organized Registrant

Example of an SEC Comment

Please provide audited financial statements of the registrant (i.e. the current subsidiary that will become [Company X]) and [the existing entity] as required by Rule 3-01(a) of Regulation S-X, or tell us why you believe such financial statements are not required.

Sometimes the legal entity registering securities in an IPO is a newly formed company that will succeed to the operations of an existing business before the effective date of the initial registration statement. In such cases, the entity may need to include the balance sheet of the recently organized registrant in addition to the financial statements of the existing business. See Section 1160 of the FRM for additional guidance on newly formed entities. In addition, Regulation S-X, Rule 3-01, provides guidance on a registrant's balance sheet requirements.

Predecessor Financial Statements

Example of an SEC Comment

Please tell us what factors you considered, and why you concluded, [Company A] represents your predecessor. In your response, please tell us how you are actually succeeding to substantially all of the business of [Company A], and what impact control of [Company A] has upon your ability to succeed to the business. We may have further comment.

Section 1170 of the FRM addresses the requirements for predecessor financial information. It states that the designation "predecessor" is required when "a registrant succeeds to substantially all of the business (or a separately identifiable line of business) of another entity (or group of entities) and the registrant's own operations before the succession appear insignificant relative to the operations assumed or acquired." Because a predecessor's historical financial information is considered important to an investing decision, when a predecessor is identified, the registration statement must also present the predecessor's financial information and reflect such information as if it were the registrant's. That is, financial statements for both the registrant and its predecessor should be presented as of and for all periods required by Regulation S-X.

Trends related to predecessor financial statements in put-together transactions were considered at the March 2015 CAQ SEC Regulations Committee joint meeting with the SEC staff. The meeting highlights published by the CAQ state:

> The Committee and staff also discussed how registrants should evaluate who the predecessor is in put-together transactions where multiple entities that are roughly the same size are acquired by a [new entity ("Newco")] in a business combination in which Newco is the accounting acquirer. In this situation, the staff noted that it may not be readily apparent which entity or entities should be treated as the predecessor. The [s]taff also noted that the fact patterns it has seen have been unique, and in certain circumstances registrants have concluded that there is more than one predecessor.

In summary, the reasoning behind an entity's conclusion on what should be included in its predecessor financial statements — and on whether the entity has a single predecessor or multiple predecessors — remains a focus of the SEC staff.

Carve-Out Financial Statements

Example of an SEC Comment

You disclose that the combined financial statements may not include all of the actual expenses that would have been incurred had [the new entity] been a [stand-alone] company during the periods presented and that actual costs would have been different. Please disclose your estimate as to what the expenses would have been on a stand-alone basis for [the new entity], that is, the cost that would have been incurred if [the new entity] had operated as an unaffiliated entity for all years reported when such basis produces materially different results. Please refer to Question 2 of SAB Topic 1.B.1.

"Carve-out financial statements" is a generic term used to describe separate financial statements that are derived from the financial statements of a larger parent company. A carve-out occurs when a parent company segregates a portion of its operations and prepares a distinct set of financial statements for the segregated portion in preparation for a sale, spin-off,[1] or IPO of the "carve-out entity." Examples of a carve-out entity may include (1) all or part of a subsidiary of a parent company or (2) a line of business that was previously part of a larger parent company.

Often, the parent may not have historically accounted for the carve-out entity separately, and the registrant (i.e., the carve-out entity) may have relied on the parent for certain functions. SAB Topic 1.B indicates that the registrant's historical income statements should present all of the costs of doing business, including expenses incurred by the parent on behalf of the registrant. Examples of such costs include salary, rent, depreciation, advertising, accounting and legal services, and other SG&A. Registrants must use a reasonable method to allocate the common expenses from the parent to the registrant if specific identification is not practicable. The method for such allocation must also be disclosed in the notes to the financial statements, with an explanation of why management believes such method is reasonable. To the extent that the registrant and the parent have shared functions (e.g., treasury or cash management), these shared functions need to be evaluated so that the appropriate amount of expense to be allocated to the carve-out entity can be determined.

When financial statements of a carve-out entity are used in an IPO, it is critical that the carve-out financial statements identify the appropriate assets and operations of the registrant. A registrant's determination of the composition of the carve-out financial statements depends on its specific facts and circumstances and may require significant judgment because the process of identifying appropriate assets and operations of the registrant in an IPO transaction is complicated. At the 2014 AICPA Conference, the SEC staff acknowledged that determining what financial statements to include in a registration statement can be complex and that registrants need to use judgment when doing so, particularly because (1) there may not be SEC guidance directly on point and (2) accounting guidance (e.g., the guidance in ASC 505-60 on determining the accounting spinnor and spinnee) may not be wholly determinative of the SEC's reporting requirements. Further, at the March 2015 CAQ SEC Regulations Committee joint meeting with the SEC staff, the staff discussed financial reporting differences that can arise depending on the legal form of the transaction.

Accordingly, registrants should consider the context of their Description of Business section and MD&A and whether that information, along with the financial statements, provides a full picture for investors. At the 2014 AICPA Conference, the SEC staff encouraged registrants to submit a prefiling letter to resolve any complex issues ahead of time and thereby potentially avoid having to address them during the staff's review of their IPO filing.

In addition, the SEC staff discussed at the 2014 AICPA Conference the recent prevalence of IPO transactions that contemplate the formation of a master limited partnership. Examples include situations in which assets that function as internal services have been contributed by the sponsor but operations

[1] ASC 505-60-20 defines a spin-off as the "transfer of assets that constitute a business by an entity (the spinnor) into a new legal spun-off entity (the spinnee), followed by a distribution of the shares of the spinnee to its shareholders, without the surrender by the shareholders of any stock of the spinnor."

have not had historical revenue streams. Registrants need to carefully analyze the facts and circumstances to determine what historical financial statements to include. Again, the staff encouraged registrants to submit a prefiling letter to help resolve these unique and complex issues.

Spin-off transactions can be highly complex and involve numerous legal and accounting decisions that registrants must consider, including the accounting for the transaction (i.e., spin-off or reverse spin-off) in accordance with ASC 505-60. Registrants should also consider other aspects of carve-out financial statement reporting, including (1) the allocation of items such as pension and postretirement benefit plans, income taxes, impairment of goodwill and other intangible assets, and debt and contingencies and (2) treatment of intercompany transactions. In addition, carve-out entities in an IPO will need to consider their ongoing compliance with Rules 3-05 and 3-09 for acquisitions and equity method investments, respectively, whose level of significance may differ from that of the parent's acquisitions and equity method investments. Further, the SEC staff may ask about segment reporting and EPS in these complex transactions.

For additional considerations related to carve-out transactions, see Deloitte's publication *A Roadmap to Accounting and Financial Reporting for Carve-Out Transactions*.

Public-Entity Disclosures and Transition Provisions

A nonpublic entity's previously issued financial statements may not be sufficient for an IPO. Nonpublic entities may need to revise their financial statements to include the public entity disclosures required under U.S. GAAP and Regulation S-X.[2] In addition, such entities will need to obtain an auditor's report on their financial statements that (1) is issued by a PCAOB-registered accounting firm and (2) refers to the PCAOB's standards.[3]

U.S. GAAP

Certain provisions of U.S. GAAP differ for public and nonpublic entities. A registrant's financial statements in an IPO must adhere to accounting principles and disclosures required for public entities for all periods presented.[4] The term "public entity" generally refers to an entity that files its financial statements with the SEC. However, there are different definitions of public entity under U.S. GAAP. Examples of accounting principles and disclosures that apply to public entities but not nonpublic entities include EPS (under ASC 260-10-15-2 and 15-3); segment reporting (under ASC 280-10-15-3 and ASC 280-10-20); temporary equity classification of redeemable securities (under ASC 480-10-S99-3A); and pensions and other postretirement benefits, such as defined benefit plans (under ASC 715-20-20).

In addition, the effective date of a new accounting pronouncement may be sooner for public entities than for nonpublic entities. Since registrants must apply public-entity guidance for all periods presented in the IPO financial statements, a nonpublic entity may be required to retrospectively change its date of adoption of a new standard to that required for a public entity.[5]

Further, a company that is preparing to go public — or that may consider going public in the future — should be cautious about electing the alternatives developed by the PCC. Once a company is considered a PBE, it would no longer be permitted to apply PCC accounting alternatives. Consequently, any previously elected PCC alternatives would need to be eliminated from the company's historical financial statements before such statements can be included in its IPO registration statement. See the SEC Reporting section for additional information about PBEs.

[2] EGCs are allowed to adopt new or revised financial accounting standards on the basis of effective dates applicable to private companies (i.e., nonissuers) "if such standards apply to companies that are not issuers." See the Emerging Growth Companies section for additional information.

[3] See paragraph 4110.5 of the FRM for additional information.

[4] See footnote 2.

[5] See footnote 2.

SEC Rules and Regulations

Examples of SEC Comments

- Please revise future filings to disclose the amount of income (loss) before income tax expense attributable to domestic or foreign operations. Refer to Rule 4-08(h) of Regulation S-X.
- Please revise to provide separate disclosure in your consolidated statements of operations of the license fee expense paid to [Company A], a company affiliated with one of your principal shareholders, during all periods presented. Refer to the guidance outlined in Rule 4-08(k) of Regulation S-X.

In an IPO, the registrant's financial statements should comply with the applicable requirements of Regulation S-X, and SEC staff views in SABs, for each period presented in the financial statements. Because such requirements and views are new to the registrant, its disclosures may not be fully compliant; as a result, the SEC staff frequently requests additional disclosures. Regulation S-X prescribes the types, form, and content of the financial information that registrants must file. Many of these requirements expand on the disclosures directly required by U.S. GAAP. SABs provide staff views on 14 broad topics, including business combinations, revenue recognition, and share-based payment arrangements. Requirements addressed by Regulation S-X and SABs that often affect nonpublic-entity financial statements during the IPO process include:

- Balance sheet and income statement presentation requirements (Regulation S-X, Rules 5-02 and 5-03) and age of financial statement requirements (Regulation S-X, Rule 3-12).
- Summarized financial information of subsidiaries not consolidated and 50 percent or less owned persons (Regulation S-X, Rule 4-08(g)).
- Income tax expense (Regulation S-X, Rule 4-08(h)).
- Related-party disclosures (Regulation S-X, Rule 4-08(k)).
- Audited financial statement schedules (Regulation S-X, Articles 5 and 12).
- Preferred stock and other securities (e.g., common stock) subject to mandatory redemption requirements or whose redemption is outside the issuer's control (Regulation S-X, Rule 5-02.27; ASR 268; ASC 480-10-S99-3A).

For additional reporting considerations related to these topics, see the Financial Statement Classification, Including Other Comprehensive Income; Income Taxes; and SEC Reporting sections.

Distributions to Owners

Example of an SEC Comment

We note that you plan to distribute all of the proceeds from the offering of common units and a portion of the proceeds from your new credit facility to [Entity A] upon closing of the offering. Please explain to us what consideration you gave to providing a pro forma balance sheet alongside your latest historical balance sheet reflecting the distribution. Additionally, please tell us what consideration you gave to providing pro forma per unit data for the latest year and interim period within your historical financial statements to the extent that the distribution exceeds the current year's earnings. . . . We refer you to SAB Topic [1.B.3].

It is common for registrants to plan dividends or distributions to owners as of, or immediately before, the closing of an IPO. The SEC staff often comments on the need for pro forma information related to such distributions.

SAB Topic 1.B.3 and paragraph 3420.1 of the FRM express the SEC staff's view that a significant planned distribution that is not reflected in the latest historical balance sheet should be presented in a pro forma balance sheet regardless of whether it has been declared or will be paid from the proceeds of the offering. The pro forma balance sheet should be presented alongside the most recent historical balance sheet in the filing and should reflect the distribution (but not give effect to the offering proceeds).

In addition, SAB Topic 1.B.3 indicates that if a distribution will be paid to owners from the proceeds of the offering rather than from the earnings in the current year, the registrant should present pro forma EPS data for the latest year and interim period in addition to historical EPS. Paragraph 3420.2 of the FRM provides additional interpretive guidance on the calculation of such pro forma per share data.

Changes in Capitalization

Entities often have other capitalization changes that occur before, or concurrently with, the effective date or closing of an IPO. Some changes, such as a stock split, are reflected retrospectively in all periods presented in the financial statements. Other changes, which may include (but are not limited to) the redemption or automatic conversion of preferred stock into common stock or the conversion of debt to equity, are only recorded prospectively and may not be reflected in the financial statements presented in an IPO filing. Registrants should present such changes in capitalization as part of the pro forma information. The SEC staff often focuses on the presentation of such pro forma information.

Pro Forma Information

Examples of SEC Comments

- Please revise to include a pro forma balance sheet presented alongside the historical balance sheet giving effect to the conversion of your A, B and C preferred shares. Also if the conversion will result in a material reduction of earnings per share, please include pro forma EPS for the latest year and interim period giving effect to the conversion.
- We note your use of net proceeds from this offering includes the repayment of outstanding balances under your credit facility. Please revise your pro forma net loss per share information to address the effect of the proceeds intended to be used for debt repayment. In this regard, you should disclose the effects of the interest expense adjustment and the number of shares issued in this offering whose proceeds will be used to repay the credit facility. Please ensure that the footnotes to your pro forma disclosures clearly support the calculations of both the numerator and denominator used in computing pro forma net loss per share. We refer you to SAB Topic 3.A by analogy and Rule 11-01(a)(8) and Rule 11-02(b)(7) of Regulation S-X.

The SEC staff asks registrants to present pro forma information when changes in capitalization will occur after the date of the latest balance sheet. Paragraph 3430.2 of the FRM indicates that when such changes will result in a material reduction in permanent equity or are the result of a redemption of a material amount of securities in conjunction with the offering, a filing should include a pro forma balance sheet (presented alongside the historical balance sheet) that takes into account the change in capitalization but not the effects of the offering proceeds.

In addition, paragraph 3430.3 of the FRM indicates that when a conversion of outstanding securities occurs after the latest balance sheet date and will result in a material reduction in EPS exclusive of the effects of the offering, registrants should present pro forma EPS (but should exclude the effects of the offering). Such pro forma EPS should be presented for the latest fiscal year and interim period.

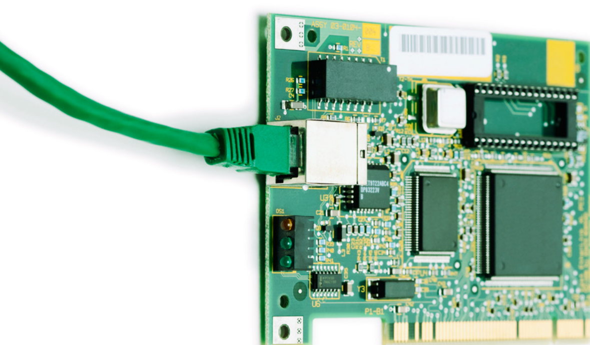
Further, SEC staff comments have noted that to the extent that proceeds of an offering are used for the repayment of outstanding borrowings, registrants should include the impact of such repayments in their pro forma EPS amounts by (1) increasing the denominator by the number of shares necessary to repay the outstanding borrowings and (2) adjusting interest expense in the numerator.

Draft Audit Reports

Example of an SEC Comment

We note that your reverse stock split will be effective immediately prior to completion of the offering. This reverse split should be retrospectively reflected in the financial statements, selected financial data and elsewhere throughout the filing. If the transaction prevents the auditor from expressing an opinion on the financial statements at the time of filing, we will not object to the filing of a "draft report" in the form that it will be expressed at effectiveness. In this case, the draft report should be accompanied by a signed preface of the auditor stating that it expects to be in a position to issue the report in the form presented at effectiveness. No registration statement can be declared effective until the preface is removed and the accountant's report [is] finalized.

In accordance with Regulation S-X, Rule 2-02, and interpretive guidance (e.g., Section 4710 of the FRM), the auditor's report should be dated and signed by the auditor and should not contain restrictive language (e.g., "draft"). The SEC staff will generally not commence its review of a registrant's filing if the registrant has filed a registration statement that does not meet these requirements. However, if a transaction (e.g., a stock split) is expected to occur immediately before the registration statement is declared effective, the registrant may wish to give effect to the transaction before it occurs. When such an anticipated transaction has been included in the historical financial statements, the SEC staff has accepted the filing of a "draft report" in the form in which the report will be expressed at the time the registration statement becomes effective to prevent the auditor from expressing an opinion regarding the financial statements at the time of filing (because the filing took place before the transaction occurred and before the registration statement was declared effective). Such a report would include a preface indicating that the report will not be final until the transaction is completed. The SEC staff will remind registrants to remove the preface from a registration statement that was filed before being declared effective because no registration statement can be declared effective until the preface is removed and the accountant's report is finalized.



Dilution Disclosure

Examples of SEC Comments

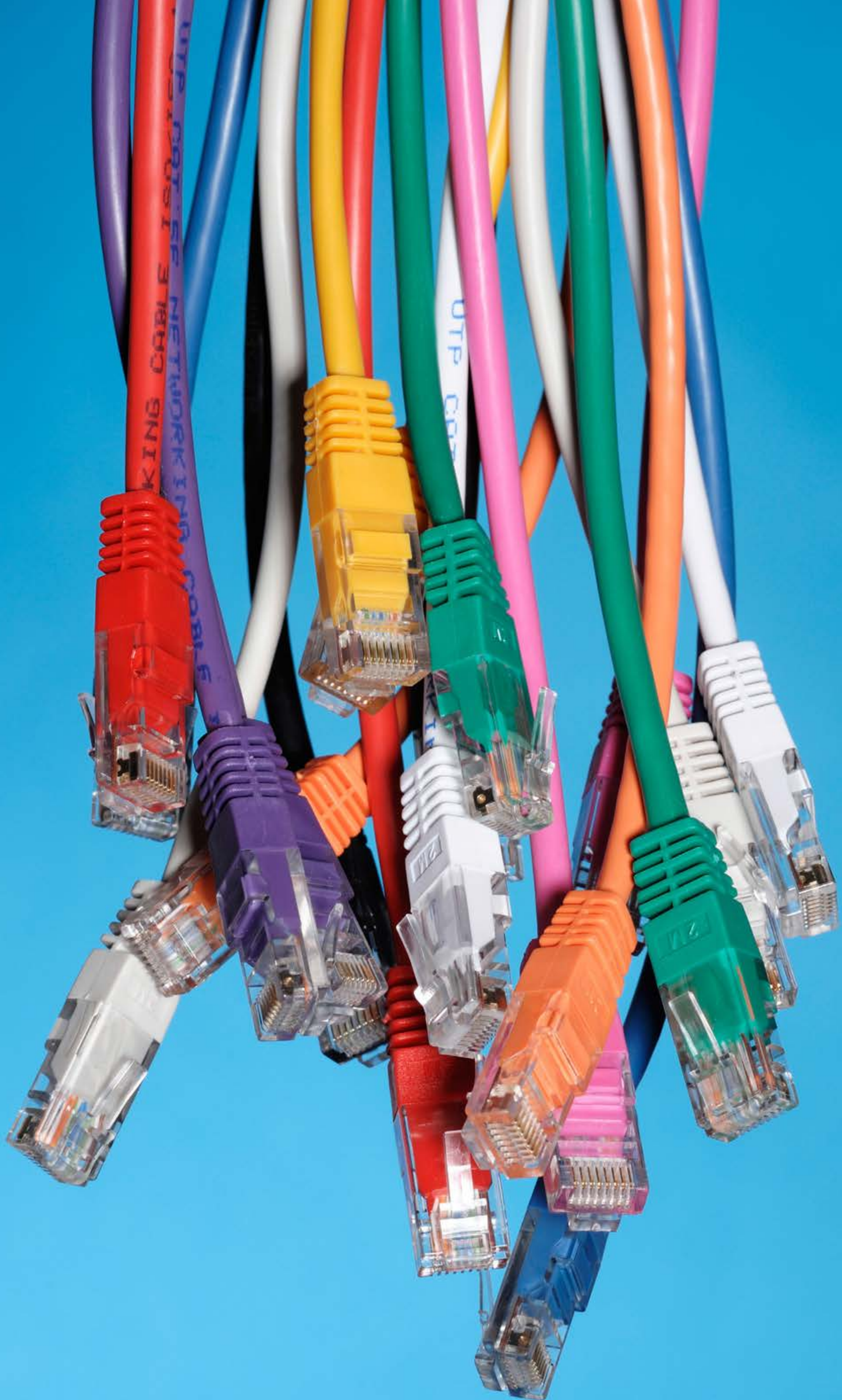
- Please tell us why you are including noncontrolling interest in your calculation of historical net tangible book value for purposes of assessing dilution to shareholders that invest at the time of your IPO.
- We note that you removed the measure of net tangible book value from your disclosure in addition to removing your measure of net tangible liabilities. Please revise your disclosures to present the net tangible book value measures required by Item 506 of Regulation S-K, or tell us why you believe these disclosures are no longer applicable.

Under Regulation S-K, Item 506, certain disclosures (including net tangible book value per share before and after a distribution) are required when "common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons of common equity acquired by them."

Section 8300 of the FRM acknowledges that there is no authoritative definition of "tangible book value" but notes that the metric "is used generally as a conservative measure of net worth, approximating liquidation value." The interpretive guidance (1) indicates what tangible assets should exclude and (2) cites examples of when the SEC staff has allowed dual calculation of tangible book value. Accordingly, the staff may question a registrant's calculation of dilution and its related disclosures, particularly if net tangible book value reported in the dilution section of the registration statement appears to be inconsistent with the historical financial statements.

Other Deloitte Resources

- December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."
- December 24, 2013, *Deloitte Accounting Journal*, "FASB Defines a Public Business Entity."



Foreign Private Issuers

Foreign Private Issuers Using IFRSs

The SEC staff's comments to FPIs have addressed a number of financial accounting and disclosure topics. Many of the comments are generally consistent with those issued to domestic filers and raise topics that are discussed in other sections of this publication (albeit staff comments to FPIs on financial statement topics refer to IFRSs). In addition, FPIs have received staff comments about (1) the presentation of financial statements (i.e., under IAS 1); (2) accounting for expenditures related to the exploration for, and evaluation of, mineral resources (i.e., under IFRS 6); (3) their consolidation analysis and disclosures (e.g., under IFRS 10); and (4) references to the use of IFRSs as issued by the IASB.

Presentation of Financial Statements

Examples of SEC Comments

- Please confirm that you have disclosed all material expenditures by nature as required under paragraph 104 of IAS 1 or revise your disclosure to quantify these expenditures.
- We note . . . that you view the loss of settlement as [being] unrelated to your operations because the settlement was based on an allegation of infringement and no finding of infringement was ever made by a court of proper jurisdiction. We would expect that it is normal operational activity for companies to defend their patents used in operations against claims of infringement, whether litigated or settled. Since the patents involved are used by your operations, we continue to believe that the associated settlement costs are representative of activities that would normally be regarded as operating. Refer to BC 56 of IAS 1.

The SEC staff's comments have often focused on missing disclosures about the nature of expenses when FPIs used a functional presentation of expenses in the statement of profit or loss and OCI. The staff has also commented on the exclusion of certain expenses from amounts presented as results of operating activities (i.e., operating income). In addition, the staff has asked FPIs to present additional line items in the statement of profit or loss and OCI when such presentation is relevant to an understanding of the issuer's financial performance.

Under IAS 1, an entity can present expenses either by nature or by function. According to paragraph 104 of IAS 1, an entity that presents expenses by function must provide additional disclosures about the "nature of expenses, including depreciation and amortisation expense and employee benefits expense." As explained in paragraph 105 of IAS 1, this is "because information on the nature of expenses is useful in predicting future cash flows." The use of the term "including" in IAS 1 implies that additional disclosures about the nature of expenses may not be limited to depreciation, amortization, and employee benefit expenses. Rather entities should disclose other expenses by nature if such information may be useful in predicting future cash flows. An entity that uses a functional format should ensure that all additional disclosures are included in the footnotes and should consider including them in a single footnote for greater transparency. Paragraph IG6 of IAS 1 illustrates income statements that are presented by nature and by function.

Paragraphs 82 and 82A of IAS 1 each list line items that an entity should include, at a minimum, in its statement of profit or loss and OCI. Disclosure of the results of operating activities as a separate line item in the statement of profit or loss and OCI is not required; however, an entity that decides to present the results of operating activities or a similar line item should refer to paragraph BC56 of IAS 1, which notes, in part, that "it would be misleading and would impair the comparability of financial statements if items of an operating nature were excluded from the results of operating activities, even if that had been industry practice."

Further, paragraph 85 of IAS 1 requires an entity to present additional line items, headings, and subtotals on the face of the statement of comprehensive income "when such presentation is relevant to an understanding of the entity's financial performance." When including such line items and subtotals, an entity should consider providing transparent disclosures that clearly convey the relevance of the items to financial statement users. In such cases, an entity may amend the description of the line items and reorder them to explain the particular element of financial performance.

Exploration for, and Evaluation of, Mineral Resources

Examples of SEC Comments

- We note . . . that you rely on IFRS 6 guidance in capitalizing exploration expenditures. We also note . . . that capitalized exploration costs are classified as mine development assets and you are relying on the guidance in IAS 16. To help us better understand your accounting policy for capitalizing exploration expenditures, please address the following items:
    - Tell us why you consider it appropriate to classify the capitalized exploration costs as mine development assets under IFRS 6 paragraphs 10 and 25.
    - Tell us how you reclassify the capitalized exploration costs when the technical feasibility and commercial viability of extracting a mineral resource are demonstrable under the guidance in IFRS 6 paragraph 17 if the related capitalized exploration costs have been recorded as mine development assets.
    - Tell us the amount of exploration costs capitalized by mine at [Mine A and Mine B].
- We note your disclosure that you capitalize exploration and evaluation costs as intangible assets and reclassify these costs to mining properties when intended production levels are achieved. Please provide us a detailed discussion of how your accounting policy complies with IFRS 6, particularly paragraph 17. Additionally, please tell us how you define intended production levels being achieved.

The SEC staff has often requested more information about an FPI's accounting policy related to the types of expenditures that the issuer recognizes as exploration and evaluation assets, including whether such policy complies with IFRS 6.

IFRS 6 requires an entity to develop an accounting policy that specifies the types of expenditures it recognizes as exploration and evaluation assets and to apply that policy consistently — particularly because IFRS 6 does not require entities to capitalize exploration and evaluation expenditures. In addition, when specified conditions are met, IFRS 6 permits entities to continue applying the accounting policies they used to account for exploration and evaluation expenditures before adopting IFRS 6.

Under IFRS 6, an entity's assessment of which expenditures would qualify as exploration and evaluation assets is determined on the basis of how closely the expenditures are associated with finding specific mineral resources. IFRS 6 provides a nonexhaustive list of expenditures that an entity might consider including in the initial measurement of its exploration and evaluation assets. Such expenditures include those related to:

- Acquisition of rights to explore minerals.
- Topographical, geological, geochemical, and geophysical studies.
- Exploratory drilling.
- Trenching.
- Sampling.
- Activities related to evaluating the technical feasibility and commercial viability of extracting a mineral resource.

However, in accordance with IFRS 6, entities should not recognize expenditures related to the development of mineral resources as exploration and evaluation assets; instead, entities are required to apply the *Conceptual Framework for Financial Reporting* and IAS 38 to determine an appropriate accounting policy for such amounts. Further, although the term "development" is not defined, paragraph 5(b) of IFRS 6 indicates that the development phase begins "after the technical feasibility and commercial viability of extracting a mineral resource are demonstrable."

References to the Use of IFRSs as Issued by the IASB

Example of an SEC Comment

Please amend your filing to include an audit opinion that refers to and opines on International Financial Reporting Standards as issued by the International Accounting Standards Board or include a reconciliation to US GAAP. Refer to Item 17(c) of Form 20-F.

The SEC staff has requested that FPIs amend their Form 20-F when they have not asserted, and the audit report has not stated, that the financial statements were prepared in accordance with "IFRSs as issued by the IASB."

As stated in paragraph 6310.2 of the FRM and similarly indicated in Item 17 of Form 20-F, the issuer's "accounting policy footnote must state compliance with [IFRSs] as issued by the IASB and the auditor's report must opine on compliance with [IFRSs] as issued by the IASB." An issuer that does not prepare its financial statements in accordance with IFRSs as issued by the IASB is required to reconcile its financial statements to U.S. GAAP. The SEC staff has reiterated that FPIs need to provide a statement of compliance with "IFRSs as issued by the IASB" to be eligible to omit the U.S. GAAP reconciliation.

Consolidations

Examples of SEC Comments

- We note that upon adoption of IFRS 10, you deconsolidated five companies because you determined you are not exposed to variable returns although you have power over the relevant activities. [F]or [Entity A] and [Entity B], your ownership percentage is 100.00% and 92.64%, respectively. Tell us and revise your future filings to disclose the significant judgments and assumptions made in your determination that you are not exposed to variable returns for these entities even though you have substantially all voting rights.
- We note that your adoption of IFRS 11 resulted in accounting for several entities under the equity method instead of the proportional consolidation method you used prior to the adoption of IFRS 11. Please tell us in sufficient detail how you determined these joint arrangements qualified as joint ventures as opposed to joint operations. Ensure your analysis discusses the structure and form of the arrangements and the involved parties' rights and obligations arising from the arrangements.

FPIs have received SEC staff comments about their IFRS 10 conclusions, including whether they have (1) power over the relevant activities of an investee, (2) exposure or rights to the variable returns of an investee, and (3) the ability to affect an investee's variable returns through their power over the investee.

In addition, FPIs have been asked to provide disclosures required by IFRS 12 related to (1) their interests in other entities and (2) the significant judgments and assumptions they made in determining that they have control, joint control, or significant influence over another entity.

Further, the SEC staff has inquired about how a registrant determined whether joint arrangements qualified as joint ventures rather than joint operations.

Industry-Specific Topics

Consumer and Industrial Products

Retail and Distribution

The SEC staff's comments to registrants in the retail and distribution industry have focused on the convergence of digital technology with the traditional "brick-and-mortar" and direct channels. Retailers citing an omnichannel customer experience have received comments on MD&A related to the impact of multiple distribution channels on trends in results of operations and in liquidity and capital resources. Other frequent comments include (1) questions about the accounting for and disclosure of certain revenue recognition items and (2) requests for additional disclosures related to sales returns and allowances.

In addition, given that registrants in the industry typically have multiple distribution channels (e.g., stores, catalogs, the Internet), geographic locations, and store concepts and brands, the SEC staff frequently asks such registrants about the identification and aggregation of their operating segments, particularly when they disclose only one reportable segment. Further, many retailers have received comments related to the disclosure of revenue by products and services in accordance with ASC 280-10-50-40. See the Segment Reporting section for additional information.

MD&A

Examples of SEC Comments

- [P]lease expand your discussion of how the trend towards mobile and multi-channel shopping will affect both your liquidity and capital resources expenditures moving forward.
- Since it appears that your online business has a significant impact on your results, please provide a quantified discussion of your online business as part of providing investors with a view of the company through the eyes of management. . . . In making this disclosure, please disclose the revenues and profitability of your online channel for each period presented and provide a comprehensive discussion and analysis of the performance and known trends related to your online operations.
- While we recognize that situations such as placing an online order while standing in a store make it difficult to present pure store and online sales amounts, we assume that if management separately tracks the sales from stores and online you are using a reasonable allocation methodology to make those figures meaningful to you, and we believe that your investors would benefit from you sharing this information along with your allocation methodology.
- We note your eCommerce sales are included within your same store sales calculation. Tell us your basis for inclusion of online sales in your same store sales calculation and explain to us what consideration you gave to also disclosing same store sales excluding eCommerce sales. In explaining your basis, please tell us and disclose whether the prices, margins or types of products ordered online differ materially from products available at your brick and mortar stores.

The SEC staff frequently asks registrants to improve their MD&A (e.g., by including operational and statistical measures) to help investors see registrants' performance through the eyes of management. Many retailers consider same-store sales a key operating metric; accordingly, same-store sales are often discussed in MD&A to help explain fluctuations in results of operations. Because there can be variability in the way same-store sales are calculated, the SEC staff often asks registrants to enhance their disclosures about such metrics and elaborate on any factors that could affect year-to-year comparability.

Further, in a manner consistent with SEC staff remarks at the 2013 AICPA Conference, the SEC staff continues to ask registrants with significant online sales to separately discuss (1) the impact of such sales on the results of operations, including changes in overall gross margin, and (2) any trends affecting online sales. Incrementally, retailers have received comments requesting expanded disclosure of the impact that online sales have on year-to-year sales metrics, such as same-store sales. See the Management's Discussion and Analysis and Non-GAAP Financial Measures and Key Metrics sections for additional information.

Revenue Recognition — Accounting and Disclosure

Examples of SEC Comments

- We note that delivery sales are recognized at the time of shipment rather than upon delivery to and acceptance by the customer. Please explain why this policy is appropriate referencing authoritative literature.
- Please tell us how you account for your customer loyalty program and your consideration of disclosing your accounting policy specifically as it relates to the program.
- Please tell us how you determined that it was appropriate to classify income from unredeemed gift cards as a reduction of selling, general and administrative expenses as opposed to within net sales or other operating income. Further, tell us and, if material, disclose the amount of breakage income recognized during the periods presented.

The SEC staff may ask registrants to clarify the key terms and related accounting and disclosure for certain revenue recognition items common among retailers, including matters related to direct sales, customer loyalty programs, and gift card breakage. For example, since there is diversity in practice regarding the classification of gift card breakage (i.e., classification as a reduction of SG&A versus within net sales or other operating income), the SEC staff frequently asks registrants to explain the rationale for their classification.

Sales Returns and Allowances

Example of an SEC Comment

Please tell us your consideration of disclosing your accounting policy for sales returns and allowances and your consideration of including the activity in Schedule II as prescribed by Rule 12-09 of Regulation S-X in accordance with Rule 5-04 of Regulation S-X.

The SEC staff has focused on sales returns and allowances for retailers. Given that retailers' online sales are increasing significantly, trends in sales returns may become more important since the rate of sales returns is frequently greater in retailers' direct channels (e.g., online sales) than in their brick-and-mortar channels. Accordingly, registrants whose sales returns have a material impact on their financial statements should consider providing expanded disclosures about their accounting policy in the notes to the financial statements as well as additional quantitative and qualitative information about sales returns in MD&A. Further, some registrants may provide a rollforward of sales returns and allowances in Schedule II under Regulation S-X, Rule 12-09, or similar disclosure in the notes to the financial statements.

Travel, Hospitality, and Leisure

The SEC staff's comments to registrants in the THL industry have focused on (1) revenue recognition accounting and disclosures, (2) impairment of long-lived assets, and (3) VIEs.

Revenue Recognition

Examples of SEC Comments

- We note from your revenue recognition critical accounting policy that at the majority of your private clubs, members are expected to pay an initiation fee or deposit upon acceptance as a member to the club for which revenue related to the initiation fee is recognized over the expected life of an active membership. . . . In this regard, please tell us and revise your critical accounting policies to disclose the expected lives or range of expected lives of active memberships for purposes of recognizing revenue associated with initiation fees and deposits for each of the periods presented in your financial statements. Your revised discussion should address attrition rates and how they are used in determining the expected lives of active memberships.
- We refer to the September 2013 modifications to your [Entity A] agreement that have changed the way you record [travel program miles] sold. We note your disclosure that you allocate the consideration received from selling miles to all deliverables based on their relative standalone sales price and you disclose your method for determining your best estimate of selling prices. Please clarify for us, and revise to disclose the timing when revenue is recognized for each deliverable and the classification of the revenue in the statements of operations.
- Given your acquisition of [Entity A] during 2013 and a portion of [A's] revenues being derived from membership fees, please revise your revenue recognition policy to disclose how you recognize membership fees, the period over which such revenue is recognized and how you account for any deferred revenue and the classification of such on your balance sheet.

The SEC staff often asks THL registrants to clarify and support their revenue recognition policies by disclosing in MD&A or footnotes information such as:

- Any estimates used in the determination of deferred or recognized revenue. For example, the SEC staff may ask for additional disclosure about (1) estimation processes used to determine timing of recognition (e.g., how breakage estimates for loyalty programs were determined) or (2) estimates associated with determining selling prices for contracts with multiple-elements. The SEC staff may also ask THL registrants to disclose amounts recorded in revenue that are based on such estimates.
- The specific inputs and assumptions used to calculate estimates for revenues recognized over time. The SEC staff may ask THL registrants to clarify in their critical accounting policies (1) the significant inputs and assumptions used to determine estimates and (2) the values of the inputs and assumptions used to determine the estimates for the periods reported (e.g., customer attrition rates used to determine average membership life).

In addition, THL registrants have received SEC staff comments asking them to (1) disclose the percentage of revenue derived from key customers mentioned in the registrants' respective SEC filings and (2) provide the staff with quantitative and qualitative information related to any contracts or agreements with countries designated by the U.S. government as state sponsors of terrorism (see the Disclosures Regarding State Sponsors of Terrorism section for more information).

Long-Lived Assets

> **Example of an SEC Comment**
>
> Please consider expanding the Critical Accounting Policies section of MD&A to include a table summarizing your owned vessels that details by vessel, the date of acquisition, purchase price and carrying value at the balance sheet date. Also, please identify within this table any vessels whose estimated market values are less than their carrying values. In this regard, for those vessels whose estimated market value is below their carrying value, please add disclosure below the table of the aggregate market value and aggregate book value of such vessels. This additional disclosure will provide investors with an indication of the estimated magnitude of the potential aggregate impairment charge related to these vessels, if you decided to sell all of such vessels. Also, the disclosure accompanying the table should discuss the related accounting treatment of your vessels, and describe the circumstances under which you would be required to record an impairment loss for those vessels with a carrying value in excess of their estimated fair market values.

The SEC staff has encouraged shipping company registrants to provide tabular disclosures in the critical accounting policies section of MD&A that include information about assets at the individual-vessel level, especially if asset values are depressed. Further, the SEC staff has asked such registrants to disclose, on a comparative basis, the aggregate amount by which their vessels' carrying value exceeds the vessels' aggregate basic charter-free market value (or valuation for covenant compliance purposes). This disclosure is intended to highlight the potential for impairment, the trend in vessel values, and how that trend could affect future results of operations.

In addition, the SEC staff may ask shipping company registrants to discuss more thoroughly (1) the factors and conditions that would lead them to recognize an impairment loss and (2) the sources or events that are driving the change in fair value for recorded impairment charges at the individual-vessel level.

The SEC staff may also ask for more robust disclosures about the sensitivity of assumptions used in the impairment test, particularly those used in the selection of historical average charter rates. Accordingly, registrants are encouraged to consider disclosing the margins by which estimated future undiscounted cash flows would exceed each vessel's carrying value if management were to use various historical trailing averages (e.g., those based on one-year, three-year, and five-year periods).

VIEs

> **Example of an SEC Comment**
>
> Please tell us more specifically how you determined that it was appropriate to not consolidate the variable interest [entity] which you manage, but do not consolidate. Please refer to the specific guidance starting at ASC 810-10-25-20 and compare and contrast to your [c]onsolidated VIEs.

THL registrants may enter into arrangements that result in their holding variable interests (e.g., interests related to real estate investments, property management ventures, or investments in utilities that supply energy to property developments). Since holders of variable interests are required to perform a consolidation analysis, the SEC staff often inquires, or requests additional disclosures, about (1) the specific terms of such arrangements, (2) the initial determination and evaluation of the primary beneficiary under ASC 810-10, and (3) changes in circumstances (e.g., development plans) that could affect the primary beneficiary analysis. In addition, the SEC staff has asked THL registrants to clarify why a consolidated VIE's assets (or liabilities) are not separately presented on the face of the primary beneficiary's statement of financial position if the consolidated VIE's assets can only be used to settle obligations of the consolidated VIE (or the consolidated VIE's liabilities do not provide creditors with recourse to the general credit of its primary beneficiary).

For more information, see the Consolidation section.

Energy and Resources

Oil and Gas

The SEC staff's comments to registrants in the oil and gas industry continue to focus on (1) distributable cash flow and maintenance capital expenditures for master limited partnerships (MLPs); (2) oil and gas reserves; (3) disclosures about drilling activities, wells and acreage data, and delivery commitments; (4) income statement classification; and (5) declines in oil and gas prices.

Distributable Cash Flow and Maintenance Capital Expenditures for MLPs

Example of an SEC Comment

Please tell us and disclose whether you incurred any capital expenditures that had an element of both maintenance capital expenditures and expansion capital expenditures. If so, please revise your disclosure to quantify the portion allocated to expansion capital expenditures for each of the periods presented. In your response, please show us what your disclosure would have looked like had such disclosures been provided in your current Form 10-K.

The partnership agreements of MLPs typically define distributable cash flow and often call for a distinction between capital expenditures related to maintenance and those related to growth. In turn, MLPs frequently disclose distributable cash flow and capital expenditure amounts. Consequently, because distributable cash flow is not determined on the basis of SEC rules or U.S. GAAP, SEC staff comments to registrants in the oil and gas industry may focus on:

- Providing (1) greater clarity about how distributable cash flow is calculated and (2) disclosure of any changes in the calculation of distributable cash flows from prior periods.
- How maintenance capital expenditures are defined, and how they affect distributable cash flow.
- Describing the relationship between the calculated amount of distributable cash flow and actual distributions.
- Understanding the liquidity ramifications of cash distribution requirements, including the risk that the registrant will be unable to maintain the same level of distributions in the future.
- Compliance with the requirements of Regulation S-K, Item 10(e), related to non-GAAP financial measures.

Oil and Gas Reserves

PUD Reserves

Examples of SEC Comments

- You state that "at June 30, 2014, none of our proved undeveloped reserves, which are all at [Location A], have remained undeveloped for five years from the date of initial recognition and disclosure as proved undeveloped reserves." Please disclose the extent to which these proved undeveloped reserves are not expected to be converted from undeveloped to developed status within five years since your initial disclosure of these reserves. If any of your proved undeveloped reserves will take more than five years to develop since initial disclosure, you should disclose the specific circumstances to comply with Item 1203(d) of Regulation S-K.
- We note that your inventory of proved undeveloped drilling locations included four wells that had been recognized as proved reserves for five years or longer. Please quantify the reserves related to these wells, describe the specific circumstances that justified the continued recordation of these reserves, and outline your progress in drilling these four wells. Refer to Rule 4-10(a)(31) of Regulation S-X.

Under Regulation S-X, Rule 4-10(a)(22), a registrant should be reasonably certain when estimating proved reserves that the reserves can be recovered in future years under existing economic conditions. In accordance with Rule 4-10(a)(31)(ii), "[u]ndrilled locations can be classified as having undeveloped reserves only if a development plan has been adopted indicating that they are scheduled to be drilled within five years, unless the specific circumstances, justify a longer time."

At the 2014 AICPA Conference, the SEC staff referred registrants to Rule 4-10(a) and Question131.04 of the C&DIs of the oil and gas rules for the definition of proved undeveloped (PUD) oil and gas reserves and staff views on the interaction of that definition with a registrant's development plan. The staff noted that a mere intent to develop reserves does not constitute adoption of a development plan, which would require a final investment decision. Further, a registrant's scheduled drilling activity should reconcile to its investment plans that have been approved by management.

The SEC staff may ask registrants to justify recorded PUD reserves that will remain undeveloped for more than five years because a registrant's decision not to develop PUD reserves for such a long period may indicate uncertainty regarding development and ultimate recoverability. In accordance with Regulation S-K, Item 1203(d), a registrant may be asked to explain why the reserves have not been or will not be developed, why it believes that the reserves are still appropriate, and how it plans to develop the reserves within five years given the registrant's historical conversion rate. The SEC staff may also ask registrants to support engineering assumptions, such as terminal decline rates, used in proved reserve estimates, as well as assumptions used in future cash flow analyses (e.g., estimated future well costs).

In addition, at the 2014 AICPA Conference, the SEC staff reminded registrants in the oil and gas industry to consider the recent declines in oil and gas prices and the related potential impact on exploration, development, and production levels. See Declines in Oil and Gas Prices below for more information.

Separate Disclosure of NGL Reserves

Example of an SEC Comment

We note your disclosure of "wet" natural gas reserves including NGLs in the presentation of your proved and probable reserves as of June 30, 2013. If your reserves as of June 30, 2013 represent a combination of two separate sales products, please revise your disclosure to provide separate disclosure by product type. In this regard, the staff considers natural gas liquids to be a separate product type under Item 1202(a)(4) of Regulation S-K. Therefore, NGL reserves, if material, should be presented as separate quantities for disclosure under Item 1202(a)(2) of Regulation S-K. Please revise your disclosure or tell us why a revision is not necessary.

Although NGLs are not separately identified as a product type in Regulation S-K, Item 1202(a), they are discussed in ASC 932-235-50-4. Accordingly, the SEC staff may ask registrants to disclose NGLs separately if they aggregate significant NGLs with other product types in their disclosures of proved reserves.

Significant Changes in Reserves and Standardized Measures

Examples of SEC Comments

- Please revise your disclosure to include an explanation of significant changes in reserve quantities as discussed in FASB ASC 932-235-50-10.
- Despite the decrease in [PUDs] from [X thousand barrels of oil equivalent (MBoe)] at December 31, 2013 to [X] MBoe at December 31, 2014, we note that future development costs used to calculate the standardized measure of discounted future net cash flows increased from approximately $[X] to approximately $[X]. Please tell us whether you expect the PUDs recorded as of December 31, 2014 to require greater expenditure for development to proved developed status than PUDs converted in prior periods.

The SEC staff has commented on registrants' disclosures about (1) changes in proved reserves and standardized measures and (2) their compliance with ASC 932-235-50. Accordingly, the SEC staff may ask registrants to:

- Describe the technical factors (e.g., the activities, findings, and circumstances) that led to significant changes in proved reserves.
- Address negatively revised estimates attributable to performance separately from negatively revised estimates attributable to price reductions.
- Explain significant changes in extensions and discoveries.
- Disclose prices used in the calculation of standardized measures.
- Discuss how certain tax attributes were used to determine the future income tax expenses.

Further, the SEC staff may (1) ask registrants whether abandoned assets have been included in the standardized measure and, if so, to provide information about them and (2) refer registrants to a sample letter expressing views of the SEC's Division of Corporation Finance on the required disclosures.

Reserve Reports

Example of an SEC Comment

The discussion of methods employed in the estimation of reserves provided in the Appendix to the reserves report lists four methods customarily employed in the estimation of reserves. While this appears to be a comprehensive list of the methods available to the evaluator, Item 1202(a)(8)(iv) of Regulation S-K requires that the disclosure should address the methods and procedures used in connection with the preparation of the estimates specific to the report. Please obtain and file an amended report to revise the discussion, if necessary, to list only those methods and/or combinations of methods actually used to estimate the reserves contained in the report.

Under Regulation S-K, Item 1202(a)(8), a registrant must file a third-party report as an exhibit to its periodic report or registration statement when it "represents that a third party prepared, or conducted a reserves audit of, the registrant's reserves estimates, or any estimated valuation thereof, or conducted a process review." Accordingly, certain disclosures are required under Item 1202(a)(8). The SEC staff issues comments when these required disclosures are omitted. Often, the staff's comments are related to the requirement in Item 1202(a)(8)(iv) to disclose the "assumptions, data, methods, and procedures used, including the percentage of the registrant's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report."

Drilling Activities, Wells, Acreage, and Delivery Commitments

Examples of SEC Comments

- [P]lease revise your disclosure to provide additional information regarding the minimum remaining terms of leases and concessions. As currently presented, your disclosure only provides information on acreage expirations for the three fiscal years following the periods covered by your Form 10-K. Refer to Item 1208(b) of Regulation S-K.
- Please expand the disclosure of your production to present the total annual quantities, by final product sold, for each of the periods presented to comply with the requirements in Item 1204(a) of Regulation S-K.

The SEC staff has continued to focus on registrants' disclosures about production information, drilling activities, wells and acreage data, and delivery commitments under Regulation S-K, Items 1204 through 1208. Additional disclosures that may be requested include (but are not limited to) the following:

- Production by geographic area and for each country and field that contains 15 percent or more of the registrant's total proved reserves.
- Drilling activities for each of the last three years by geographic area.
- Steps to be taken to meet significant delivery commitments.
- The number of wells that the registrant operates, including the total gross and net productive wells, expressed separately for oil and gas by geographic area.
- Information related to undeveloped acreage regarding minimum remaining terms of leases and concessions for material acreage concentrations, including significant undeveloped acreage that will be expiring over the next three years.

Income Statement Classification

Example of an SEC Comment

We note your disclosure . . . indicating that in certain instances you take title to the natural gas, NGLs or crude oil that you gather, store, or transport for your customers. We further note the disclosure in your revenue recognition footnote . . . that you recognize revenues for services and products. Please tell us how much revenue you have recognized, for each financial period presented, related to the sales of tangible product for which you have taken title and the amount of revenue related to services. Also tell us how you determined you were not required to separately disclose net sales of tangible products and revenues from services to comply with Rule 5-03(b)(1) of Regulation S-X and to separately disclose the related costs and expenses to comply with Rule 5-03(b)(2).

Under Regulation S-X, Rule 5-03, if product or service revenue is greater than 10 percent of total revenue, disclosure of such component is required as a separate line item on the face of the income statement, and costs and expenses related to the product or service revenue should be presented in the same manner. Revenue streams vary by sector within the oil and gas industry. For example, in the midstream sector, revenue streams could include transportation and storage of crude or refined petroleum products, processing of natural gas, and marketing fees generated from the sale of such products. In connection with these services, midstream companies may purchase, take title to, or otherwise have risk of ownership for the related products they are transporting, storing, or processing. If revenues from these product sales exceed 10 percent of total revenues, registrants are required to disclose such revenues and costs and expenses separately in the income statement. For more information, see the Financial Statement Classification, Including Other Comprehensive Income section.

Declines in Oil and Gas Prices

Example of an SEC Comment

You indicate that a continued low price environment could cause a "significant revision" in the carrying value of oil and gas properties in future periods. Section III.B.3. of SEC Release No. 33-8350 provides guidance regarding quantitative disclosure of reasonably likely effects of material trends and uncertainties. Please revise to provide more extensive discussion, including, where reasonably practicable, quantification of the impact of current commodity prices on the carrying value of your oil and gas properties. Your revised disclosure should also quantify the impact of potential scenarios deemed reasonably likely to occur on your estimated reserve volumes.

At the 2014 AICPA Conference, the SEC staff reminded registrants in the oil and gas industry to consider the recent declines in oil and gas prices and that such changes may:

- Represent a known trend or uncertainty that should be discussed in MD&A.
- Represent a risk that should be discussed in risk factor disclosures.
- Affect the determination of estimated proved reserves.

The SEC staff has noted that one of the most important elements necessary to gaining an understanding of a company's performance, and the extent to which reported financial information is indicative of future results, is the discussion and analysis of known trends and uncertainties. Section III.B.3 of SEC Release No. 33-8350 calls for the quantification of material effects of known material trends and uncertainties and states that "material forward-looking information regarding known material trends and uncertainties is required to be disclosed as part of the required discussion of those matters and the analysis of their effects." Given the nature of the oil and gas industry, significant changes to commodity prices could affect the overall operations of the company. In particular, a significant decline in commodity prices could have a material impact on the carrying value of an exploration and production company's oil and gas properties and may be an early-warning sign of impairment. Accordingly, registrants in the oil and gas industry should quantify, to the extent possible, the impact of commodity prices on their (1) future development and capital programs and (2) oil and gas properties, including reserves. For more information, see Deloitte's January 2015 *Oil & Gas Spotlight*. Registrants should also consider their risk factor disclosures, including quantitative disclosures about the potential impact of the recent changes in commodity prices on their reserves, and whether those disclosures adequately address the risks arising from the uncertainty associated with the price changes. See PUD Reserves above.

Other Deloitte Resources

December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."

Power and Utilities

The focus of recent SEC staff comments to registrants in the P&U industry is largely consistent with that of staff comments issued in past years. Specifically, the staff has concentrated on (1) dividend restrictions; (2) accounting for the impact of rate making; (3) regulatory disallowance of property, plant, and equipment; and (4) identification of possible phase-in plans.

The SEC staff has also issued comments related to whether registrants in the P&U industry have complied with requirements under ASC 450 to disclose their range of loss in connection with litigation and other contingencies. Further, the staff has asked such registrants to explain the considerations they gave to separately disclosing the revenues and costs of revenues related to nonregulated businesses in light of Regulation S-X, Rule 5-03(b)(1) and (2). For additional considerations related to these topics, refer to the Contingencies and Financial Statement Classification, Including Other Comprehensive Income sections.

Dividend Restrictions

Example of an SEC Comment

Reference is made to your disclosure . . . of [Company A's] maximum ratio of consolidated financial indebtedness to consolidated total capitalization imposed by a credit agreement. Please tell us whether this covenant, other financial covenants and/or restrictions imposed by regulatory commissions restrict the ability of your subsidiaries or investments accounted for by the equity method to transfer funds to you in the form of loans, advances or cash dividends. If so, please tell us: (i) the amount of restricted net assets of consolidated subsidiaries and your equity in the undistributed earnings of investments accounted for by the equity method as of September 30, 2014 and how you computed the amount; (ii) your consideration of providing the disclosures required by Rule 4-08(e)(3)(i) and (ii) of Regulation S-X; and (iii) your consideration of providing the condensed financial information prescribed by Rule 12-04 of Regulation S-X in accordance with Rule 5-04 of Regulation S-X.

Given the nature of regulation in the P&U industry, there may be constraints on a P&U registrant's financial flexibility and its relationships with affiliated parties, including the parent company. For example, a utility subsidiary may be subject to requirements imposed by federal and state regulators that establish a minimum equity capitalization ratio or set limits on the payment of dividends. In addition, the capital-intensive demands of the P&U industry require significant financing agreements at the subsidiary level that may restrict (1) a subsidiary's transfer of assets in the form of advances, loans, or dividends to the parent company or another affiliated party or (2) other types of transactions between a subsidiary and its affiliates. The inability of a subsidiary to transfer assets to the parent company could, in turn, restrict the parent company's ability to pay dividends to its own shareholders.

Consequently, several P&U registrants have received comments from the SEC staff about their compliance with Regulation S-X, Rules 4-08(e) and 5-04. Those comments have included inquiries about whether consideration was given to regulatory or other limitations (e.g., debt agreements) that could restrict the transfer of assets from a subsidiary to the parent company through dividends, loans, advances, or returns of capital. As a result of the staff's comments, several P&U registrants have been required, or have agreed, to prospectively (1) expand their notes to the financial statements about potential dividend restrictions in accordance with Rule 4-08(e) and (2) include a Schedule I in their annual Form 10-K filing in accordance with Rule 5-04. Registrants should be aware that the calculations for determining the note disclosures required under Rule 4-08(e) should be performed independently of the calculations for determining the required Schedule I disclosures, and that compliance with one set of disclosure requirements does not satisfy the requirements of the other.

For additional considerations about dividend restrictions, see the Debt section.

Accounting for the Impact of Rate Making

Example of an SEC Comment

We noted a significant increase in your regulatory asset related to [Matter X] during the fiscal year ended December 31, 2014 . . . . We also note your disclosure . . . that the [state legislation] leaves the decision on cost recovery determinations related to [Matter Y] to the normal ratemaking processes before utility regulatory commissions and your disclosure . . . that you believe recovery is probable. We further note your disclosure in multiple instances . . . that an order from the regulatory authorities disallowing recovery of costs related to [Matter Z] could have an adverse impact on your financial statements. As it appears you do not have a regulatory order supporting the deferral of these costs, please tell us why you believe the amounts you have deferred as regulatory assets are probable of recovery under U.S. GAAP and provide us with your detailed analysis supporting this conclusion including both positive and negative evidence you considered. Refer to ASC 980-340-25-1.

The SEC staff's comments have focused on (1) ensuring that P&U registrants are thoughtful in determining the initial and continuing probability of cost recovery inclusive of the expected recovery period, (2) providing supplemental explanations or separate detailed analysis and evidence that support the P&U registrant's recognition of regulatory assets, and (3) whether a particular regulatory asset of the P&U registrant is earning a rate of return. Further, the SEC staff continues to issue comments on (1) how the P&U registrant's current regulated rates are designed to recover its specific costs of providing service, (2) the nature of the P&U registrant's material regulatory assets and liabilities, and (3) the P&U registrant's accounting policies for revenues subject to refund.

Regulatory Disallowance of Property, Plant, and Equipment

Example of an SEC Comment

We note from your Form 8-K filed on March 9, 2015 that [Utility Commission A] voted to disallow recovery of costs related to [Capital Project A] and that you expect to record a charge of approximately $[X] during the first quarter of 2015. Considering the recovery disallowance recommendations of [Intervenor A] and [Intervenor B] during 2014 along with the February 2015 [administrative law judge] recovery disallowance proposal, please tell us in more detail why no charges were recorded during fiscal 2014 related to the [Capital Project A] prudence investigation.

SEC staff comments to public utility registrants continue to focus on the guidance in ASC 980-360-35 on subsequent measurement and recognition of property, plant, and equipment related to regulated operations. Under that guidance, an entity should record a disallowance related to a recently completed plant if it determines that a disallowed amount is probable and reasonably estimable; the entity must use judgment to make that determination. In light of recent regulatory orders by state public utility commissions that limit a public utility entity's cost recovery, registrants have been asked to explain their considerations related to the timing of recording a disallowance, particularly when a disallowance was not recorded until a rate order was received.

Identification of Possible Phase-In Plans

> **Example of an SEC Comment**
>
> Please explain to us in detail why the method of recognition of allowable costs in rates associated with bare steel and cast iron replacement activities of [Subsidiary A] and [Subsidiary B], the capital infrastructure program of [Subsidiary A,] and [the replacement of] bare steel and cast iron pipelines and other infrastructure by [Subsidiary C] are not considered phase-in plans as defined in ASC 980-340-20.

To lessen the impact of a rate increase as part of a current rate proceeding, a regulator may decide to defer costs associated with a major new plant addition. A deferral of any costs associated with a major, newly completed plant could be a phase-in plan. In accordance with ASC 980-340-25-2, cost deferrals are not permitted for phase-in plans. To qualify as a phase-in plan, a method for recognizing allowable costs must meet the three criteria outlined in ASC 980-340-20.

If a major, newly completed plant is being included in rates for the first time and the regulator provides for a deferral of any costs associated with the new plant for inclusion in future rates rather than as part of the cost of service in the current proceeding, those costs may not qualify as regulatory assets under U.S. GAAP regardless of whether the incurred costs are probable of recovery in future rates unless an exception applies.

Mining

Examples of SEC Comments

- We note you have combined your proven and probable reserve categories which is contrary to the explicit guidance of Industry Guide 7, which provides that reserves may be combined as "proven and probable" only if proven and probable reserves cannot be readily segregated. Your filing does not state that your proven and probable reserves cannot be differentiated or segregated with an explanation. Please modify your filing and segregate your proven reserves from your probable reserves in the appropriate reserve tables or provide a statement that this is not possible with the appropriate explanation.
- We note you refer to [Properties A and B] as development stage properties . . . . The terms development and production have very specific meanings within Industry Guide 7 (see www.sec.gov/about/forms/industryguides.pdf). These words/terms reference the development stage when preparing reserves for production, and the production stage when companies are engaged in commercial-scale, profit-oriented extraction of minerals. Since you do not disclose any reserves for these properties, as defined by Guide 7, please remove the terms develop, development or production throughout your document, and replace this terminology, as needed, with the terms such as explore or exploration.
- We note your disclosure of proven and probable reserves for [Mine A]. Please forward to our engineer, as supplemental information and not as part of your filing, your technical report or the information that establishes the legal, technical and economic feasibility of the materials designated as reserves, as required by paragraph (c) of Industry Guide 7. This information should include:
  - Acreage breakdown by owned, leased or other.
  - Maps showing property, mine permit and reserve boundaries; including recent and historic production areas.
  - Drill-hole maps showing drill intercepts.
  - Justifications for the drill hole spacing used at various classification levels.
  - General cross-sections that indicate the relationship between seams, geology, and topography.
  - A detailed description of your procedures for estimating reserves.
  - The specific criteria used to estimate reserves.
  - An indication of how many years are left in your longest-term mining plan for each reserve area.
  - Site specific economic justification for the criteria you used to estimate reserves.
  - Mining plans or feasibility studies, including production schedules, cost estimates and cash flow projections.
  - Third party reviews of your reserves that were developed within the last three years.
  - Any other information needed to establish legal, technical and economic feasibility.

The SEC staff often comments when a registrant has not separately disclosed proven and probable reserves in accordance with paragraph (a) of SEC Industry Guide 7. Under paragraph (b) of Guide 7, such reserves may be combined if "the difference in degree of assurance between the two classes of reserves cannot be readily defined."

Registrants should also ensure that they are appropriately using the terms "exploration stage," "development stage," and "production stage." These terms are explicitly defined in Section (a) of Guide 7.

Further, paragraph (c) of Guide 7 outlines the supplemental information that registrants should disclose "[i]f an estimate of proven (measured) or probable (indicated) reserves is set forth in the [technical] report." Such information includes (1) "maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon," (2) "all pertinent drill data and related maps," and (3) "the calculations whereby the basic sample-assay or drill data were translated into the estimates made [of] the grade and tonnage of reserves in each block and in the complete reserve estimate." Accordingly, the SEC staff may ask for supplemental information for proven and probable reserves. For example, the staff may ask registrants to furnish the technical report or the information that establishes the legal, technical, and economic feasibility of the materials designated as reserves.

Financial Services

Banking and Securities

The SEC staff's comments to registrants in the banking industry have moderated over the past couple of years; however, they continue to focus on (1) the estimation of allowances for loan losses, (2) disclosures about credit quality, (3) acquired loans, and (4) loan modifications and TDRs.

Further, registrants in the securities industry have received SEC staff comments requesting enhanced disclosures about (1) market risk and VaR, (2) asset management and administration fees, (3) order flow revenues and disclosures about license agreements, and (4) the impact of regulatory reporting errors on ICFR.

Allowance for Loan Losses — Collateral Appraisals

Example of an SEC Comment

Please revise your future filings to disclose whether your policy for obtaining appraisals for properties outside of [Country A] is consistent with your policies disclosed here for properties inside [Country A]. If not, disclose the similar policies for obtaining appraisals for properties outside of [Country A]. Additionally, please revise future filings to disclose whether your collateral valuations for construction or development projects that are in process contemplate collateral values "as is" or "as complete/developed."

To understand how registrants determine their allowance for loan losses, the SEC staff often requests disclosures about (1) their appraisal policies, including differences in those policies for various jurisdictions; (2) how frequently they obtain updated appraisals for impaired collateral-dependent loans; and (3) the types of adjustments made to appraised values, if any.

Disclosures About Credit Quality Under ASC 310-10

Example of an SEC Comment

[Please revise future filings to:]

1. [D]isclose the allowance for loan losses rollforward by portfolio segment. Refer to ASC 310-10-50-11B.c for guidance and provide us your planned disclosure in your response.
2. [D]isclose both the balance of your allowance for loan losses and your recorded investment in financing receivables by impairment method (e.g. collectively evaluated, individually evaluated) for each loan portfolio segment. Refer to ASC 310-10-50-11B(g) and (h), ASC 310-10-50-11C, and the example disclosure in ASC 310-10-55-7 for guidance and provide us your planned disclosure in your response.
3. [I]nclude all of the disclosure requirements of ASC 310-10-50-14A through [50-20] related to impaired loans and provide us your planned disclosure in your response.
4. [I]nclude all of the disclosure requirements of ASC 310-10-50-28 through [50-30] related to credit quality information and provide us your planned disclosure in your response.
5. [I]nclude the disclosure requirements of ASC 310-10-50-7(b) and [ASC] 310-10-50-7A regarding past due loans. Refer to ASC 310-10-55-9 for guidance and provide us your planned disclosure in your response.

The SEC staff continues to focus on the disclosures prescribed by ASC 310-10, particularly the granularity of those disclosures. ASC 310-10 requires entities to enhance and disaggregate their disclosures about the credit quality of their financing receivables and their allowance for credit losses.

Specifically, as indicated in ASU 2010-20, ASC 310-10 requires disclosure of the following information about credit exposure and reserving methodology on the basis of disaggregated portfolio segments and classes of financing receivables:

1. Credit quality indicators of financing receivables at the end of the reporting period by class of financing receivables
2. The aging of past due financing receivables at the end of the reporting period by class of financing receivables
3. The nature and extent of troubled debt restructurings that occurred during the period by class of financing receivables and their effect on the allowance for credit losses
4. The nature and extent of financing receivables modified as troubled debt restructurings within the previous 12 months that defaulted during the reporting period by class of financing receivables and their effect on the allowance for credit losses
5. Significant purchases and sales of financing receivables during the reporting period disaggregated by portfolio segment.

Acquired Loans

Example of an SEC Comment

[R]evise your future filings [as follows]:

- [P]lease enhance the relevant sections of your MD&A disclosures to disaggregate your allowance for credit losses and related asset quality disclosures[,] differentiating between your acquired loan portfolio for all periods presented and your originated loan portfolio. . . .
- [D]isclose how changes in the credit quality of your originated loan portfolio are reflected in the amount of your provision for loan loss[es] recorded during the period and the amount of the allowance for loan losses at period end . . . . Your analysis should quantify each loan portfolio component of your allowance for loan losses (ASC 310-10, ASC 450-20) and explain how incremental credit quality changes are reflected.

The SEC staff has requested disclosures that clearly distinguish between the registrant's originated loans and its acquired loans (both PCI and non-PCI) to enable financial statement users to understand the key characteristics of each portfolio and the related impact on the determination of the allowance for credit losses.

Loan Modifications and TDRs

Example of an SEC Comment

Please revise your disclosure in future filings to provide [information about your forbearance program as follows]:

- Clarify whether you have any limits on the number of times a borrower may request a modification of the terms of [its] loan. If not, please discuss how you consider multiple modifications in determining whether a loan has been renegotiated or refinanced.
- [S]eparately disclose the balance of loans that have received multiple modifications [and the balance of loans] that have received only one modification.
- [R]evise future filings to discuss how you consider the level of loans needing more than one modification as well as the level of re-defaults of refinanced or renegotiated loans when determining the appropriate level of allowance for loan losses. If you believe this disclosure is no longer meaningful, please tell us why.

The SEC staff continues to request enhanced disclosures about loan restructurings. The staff has also inquired about whether such restructurings should be accounted for as TDRs and therefore should be included in the registrant's risk element disclosures required by SEC Industry Guide 3.

The SEC staff has suggested that registrants consider disclosing:

- How modifications affect the timing of the recording of the allowance for loan losses.
- A description of the key features of the registrant's loan modification programs, including whether the programs are government- or company-sponsored and whether they are short- or long-term.
- How frequently loans are modified and remodified.
- More granular and quantitative information about the levels of loan modifications and remodifications.
- Quantification of the types of concessions made (e.g., rate reductions, payment extensions, forgiveness of principal, forbearance) and discussion of success with the different types of concessions.
- The accounting policy for restructured loans, including how and when a restructured loan is determined to be nonaccrual or accrual (i.e., noninterest accruing or interest accruing); the factors the registrant considered in determining whether the loan should accrue interest; the anticipated period and number of borrower payments for a restructured loan to return to accrual status; and whether any loan loss allowance has been recorded or any portion of the loan has been charged off.
- Confirmation of whether loan restructurings should be classified as TDRs under ASC 310-40 and, if so, separate disclosure of the loans in the nonperforming assets table under SEC Industry Guide 3, Item III(C)(1).
- TDRs by loan type, classified separately as accrual or nonaccrual.

In addition, if there are material changes in TDRs, the SEC staff may ask about such changes and request additional disclosures, including a rollforward detailing loan sales, payments, charge-offs, and loans that have been removed from TDR status.

Further, when a material amount of a registrant's loan modifications is not accounted for as TDRs, the SEC staff often requests disclosures that explain:

- Triggers and factors the registrant considered to identify loans to modify and to support its conclusion that modifications are not TDRs.
- Key features of the modification programs, including a description of the significant terms modified and the typical length of each modified term.
- Success rates of the modification programs.
- The amount of the loans modified in each period presented.
- Whether the modified loans are included in the registrant's impairment analysis of the general reserve (ASC 450-20) or individual reserve (ASC 310-10) and, if included in the general reserve analysis, whether a materially different amount would have resulted if the loans had been included in the individual reserve analysis.

In evaluating whether a loan modification represents a TDR, a registrant must use judgment to determine whether (1) the debtor (i.e., the borrower) is experiencing financial difficulty and (2) the lender has granted a concession to the borrower.

ASC 310-40 outlines considerations for determining whether a borrower is experiencing financial difficulties (e.g., debtor default, debtor bankruptcy, and concerns about the borrower's ability to continue as a going concern). Further, it clarifies that a borrower not currently in default could be experiencing financial difficulties if default is probable in the foreseeable future.

Disclosures About Market Risk and VaR

Example of an SEC Comment

We note that you made significant changes to your regulatory VaR and stressed-VaR models in 2013. We also observe . . . that certain significant variances in VaR measures from June 30, 2013 to September 30, 2013 were the result of changes made to your VaR models (i.e. you replaced relative or percentage changes in interest rate risk factors with absolute changes). Finally, we note that you have omitted comparative information for 2012 because of the changes made to your VaR models. Please explain to us and revise your future filings to address the following:

- Disclose comparative information for prior periods under the current model or additionally provide current and comparative information under the previous model until all reported periods are presented under the current model. Refer to Item 305(a)(1)(iii)(4)(ii) of Regulation S-K which requires the disclosure of both the old and new methods for the purposes of comparability.
- Explain to us your basis for making the changes to your VaR models (i.e. explain how this change has made your model more precise). Include in your explanation a description of any other changes made to your model and indicate which changes were the result of regulatory guidance.

The SEC continues to ask registrants in the banking and securities industries to provide enhanced quantitative and qualitative disclosures about market risk and VaR. In addition, the SEC staff may ask registrants to:

- Quantify the amount of the investment positions excluded from the VaR measure.
- Explain whether the VaR measure includes the market risk associated with securities sold but not yet purchased.
- Include comparative disclosures for the prior year, along with a discussion describing the reasons for material quantitative changes in market risk.
- Explain the reason for the length of the historical observation period used to calculate VaR-based measures.
- Identify whether VaR-based measures are based on regulatory or internal risk management parameters and include a description of the parameters used.
- Revise future filings to present information under a stressed-VaR scenario or to explain why this information would not be meaningful.

Asset Management and Administration Fees

Example of an SEC Comment

We note that a significant amount of your asset management and administration fees are generated from [your] money market funds, equity and bond funds, and [Mutual Fund A] (i.e. mutual fund service fees). In an effort to enhance your disclosure and provide greater transparency to investors, please revise your future filings to address the following:

- Provide a separate roll-forward of your assets under management and administration (AUM&A) for each asset class (as noted above). Your roll-forward should include, but not be limited to, gross in-flows and gross out-flows, market appreciation (depreciation), and the effects of foreign currency translations for each period provided.
- Disclose the average AUM&A for each asset class for each period provided. In addition, consider expanding your client metrics . . . to provide your average client assets.
- Provide an analysis (preferably in tabular format) comparing your weighted average fee rate charged (e.g. by basis points) for the aforementioned asset classes.
- Provide a discussion here, and elsewhere within your MD&A as necessary, of any significant trends experienced in AUM&A (e.g. new client assets or redemptions, significant changes between asset classes attributable to specific or general economic factors, etc.).

The SEC staff has asked registrants in the banking and securities industries to enhance their disclosure about asset management and administration fees to provide greater transparency to investors. Specifically, the staff has asked registrants to include (1) a separate rollforward of AUM for each asset class, and (2) the rollforwards that reflect gross inflows, gross outflows, and market appreciation (depreciation) separately from effects of foreign currency translations for each period. In addition, the SEC staff may ask registrants to present the net return on AUM for each period presented to give investors a better understanding of AUM performance.

Order Flow Revenues and Disclosures About License Agreements

Examples of SEC Comments

- It appears that order flow revenues have been a significant component of your “Other Revenue” line item in each of last three fiscal years. However, your disclosure does not indicate the amount of order flow payments or the amount of the change, year over year. We note that payments made to brokers by market venues were subject to a significant amount of public, press, regulatory and congressional scrutiny. Also, we note that on your website you provide customers with disclosure about the revenue per share you receive from various market venues. In order for investors to better understand the impact of order flow payments and any changes to the arrangements, please revise your disclosure in future filings to disclose the amounts of revenue generated from order flow in each period. Please discuss the major components of order flow revenues. Please also discuss the reasons for any material changes in order flow revenues, such as whether an increase was a result of a higher trade volume or a change in the fee structure paid by the market venues.
- We note from your disclosure . . . that licensing agreements in place with [Entities A, B, and C] expire in 2017, 2015 and 2015, respectively. Please tell us and, in future filings, consider discussing the impact that the expiration of these licenses could have on your business, to the extent that they are material individually or in the aggregate. In addition, in future filings, consider disclosing the expiration date of your license agreement with [Entity D] and include it in the discussion suggested above to the extent that [the license agreement] will expire in the near term.

Although other revenues and expenses may not typically be thought of as items that require additional disclosure, the SEC staff has asked registrants in the securities industry to identify significant components of other revenue and expense items that may be of interest, or may be material, to users.

Impact of Regulatory Reporting Errors on ICFR

Example of an SEC Comment

We note your disclosure that you applied an incorrect adjustment . . . , resulting in an overstatement of your historical regulatory capital ratios included in prior SEC filings and other regulatory reports. Additionally, . . . you filed an 8-K disclosing that a third party was engaged to perform certain procedures . . . , and that this review resulted in adjustments to your regulatory capital ratios . . . . Lastly, . . . a spokesperson for the company noted that you made an error in calculating the volume data you sent to FINRA regarding the equity volume transacted on your alternative trading system. In light of these errors noted in your SEC and other regulatory reporting, please provide us with the following additional information:

- Tell us whether the identification of the regulatory capital ratio error and subsequent adjustments are indicative of the existence of one or more material weaknesses in [ICFR], and, if so, whether any such material weaknesses also would have existed as of December 31, 2013;
- To the extent you identified significant deficiencies in your original assessment of ICFR as of December 31, 2013, tell us the nature of each, including the impacted component(s) of the [COSO] Internal Control Integrated Framework, and how you evaluated their severity individually and in the aggregate, including in aggregation with any deficiencies identified upon discovery of the above regulatory capital ratio errors, if applicable; and
- Upon discovery of the error related to alternative trading system volume in your regulatory reporting to FINRA, tell us the extent to which there may be common root causes to the errors in your regulatory capital ratio reporting that are relevant to the evaluation of the nature and severity of any deficiencies in ICFR (especially the control environment, risk assessment, or monitoring components of COSO).

Registrants should be aware that regulatory disclosures are a critical part of the financial statements and that the SEC staff asks issuers to determine how deficiencies in regulatory reporting affect ICFR.

Other Considerations

The SEC staff has asked registrants to explain, and disclose in future filings, (1) whether they have evaluated the impact of a decline in the market and (2) how their brokerage revenues and investment holdings would be affected.

For more information, see the Management's Discussion and Analysis section.

Insurance

In many of its comments to registrants in the insurance industry, the SEC staff has continued to focus on (1) reserves and loss adjustment expense; (2) disclosures related to the current interest rate environment; and (3) various other considerations, including those related to statutory disclosures, disclosures about dividend restrictions, captive subsidiaries, and investments and financial instruments.

In addition to the insurance-related matters (discussed below), the SEC staff's comments to registrants in the insurance industry have focused on goodwill and income taxes. See the Impairments of Goodwill and Other Long-Lived Assets and Income Taxes sections for more information.

Reserves and Loss Adjustment Expense

Example of an SEC Comment

Please tell us the variations in loss and loss adjustment expenses for the appropriate periods that relate to prior year loss reserve development and provide proposed revised disclosure to be included in future periodic reports that discusses the amount and underlying causes of prior year loss development.

The SEC staff has asked registrants to discuss in the critical accounting policy section of their MD&A the drivers of change to their loss reserve, including assumptions that have changed and assumptions that are reasonably likely to change. In addition, the SEC staff continues to ask registrants to (1) explain the key methods and assumptions they used in deriving their loss adjustment expense and related reserves and (2) provide current disclosures that comply with the requirements of SEC Industry Guide 6.

Interest Rate Environment

Example of an SEC Comment

You state that the current low interest rate environment has meant that you have invested or reinvested cash flows at substantially lower yields than your existing portfolio yield, while your ability to reduce credited rates has been limited by contractual minimums. Please provide us proposed disclosure to be included, in MD&A, in future periodic reports that discloses the expected effects of this known trend or uncertainty on your future financial position, results of operations and cash flows. To the extent that information about cash flows you expect to have to reinvest at lower rates due to potential maturities or calls of your investments, or [information about] cash flows that you are committed to pay due to products with guaranteed features[,] is necessary to understand these effects, please include information such as the amount of maturing or callable investments and their weighted average yields and the amount of products with guaranteed features and their rates in your proposed disclosure.

Depending on the interest rate environment, the SEC staff may comment on effective interest rates and ask registrants to expand their disclosures about the expected effects of the interest rate environment and the impact of those effects on future financial information (e.g., financial position, results of operations, and cash flows).

Other Considerations

Statutory Disclosures and Disclosures About Dividend Restrictions

SEC staff comments to registrants in the insurance industry continue to focus on compliance with existing disclosure requirements about statutory capital, surplus, and dividend restrictions under ASC 944-505-50 and Regulation S-X, Rule 4-08(e). When registrants have used in their annual audited financial statements labels such as "Unaudited," "Approximate," or "Preliminary" to describe their statutory capital and surplus, the staff will remind them that these disclosures are required to be audited. Further, the staff has asked registrants to enhance disclosures on minimum capital and surplus requirements for both domestic and foreign subsidiaries.

The SEC staff has also asked registrants in the insurance industry about their compliance with Regulation S-X, Rules 4-08(e) and 7-05(c),[1] when there appear to be restrictions on the payment of dividends. In addition, registrants in the industry have been asked to provide additional information about the considerations underlying their determination of why they did not need to disclose information required under Rules 4-08(e) and 7-05(c). Further, the staff has reminded registrants that in applying Rule 4-08(e), they must consider foreign insurance operations and nonregulated subsidiaries in addition to U.S. domestic subsidiaries. See the Debt section for additional information.

Captive Subsidiaries

Many insurance entities have captive subsidiaries, which insure specific risks for the parent entity and its affiliates. These captive subsidiaries allow entities to manage their own risks and provide many advantages, including capital management benefits. The SEC staff has continued to request expanded disclosures about transactions between registrants in the insurance industry and their captive subsidiaries, such as the nature, purpose, and number of those transactions. Further, it has requested enhanced disclosures about the impact of captive subsidiaries on registrants' financial statements and about the risks and uncertainties associated with those subsidiaries.

Investments and Financial Instruments

Given the significance of investment portfolios to most registrants in the insurance industry, the SEC staff may ask such registrants about their investments and financial instruments and whether related disclosures portray their financial position accurately. Accordingly, the staff may concentrate on conclusions reached by management about the credit quality of investments and may ask registrants to summarize the procedures they performed (and other support they obtained) to make such determinations.

The SEC staff may also question registrants' disclosures about key drivers that affected their net derivative results. When there has been significant volatility in results for multiple periods, registrants may be asked to enhance their disclosures about the drivers of net derivative gains and losses.

[1] Rule 7-05(c) requires registrants in the insurance industry to file Schedule II if the rule's conditions are met. These conditions are identical to those under Regulation S-X, Rule 5-04, that govern whether a commercial company must file Schedule I. See the Debt section for information about Rule 5-04.

Investment Management

The SEC staff's recent comments to investment advisers and business development companies in the investment management industry have continued to focus on topics such as (1) fair value measurement, (2) risk oversight, (3) consolidation, and (4) commitments and contingencies. The staff has also commented on quantitative and qualitative disclosures about market risk. For more information about risk factors, see the Disclosures About Risk section.

In addition, the SEC's Office of Compliance Inspections and Examinations (OCIE) highlighted the examination priorities of the SEC's 2015 National Exam Program for investment advisers and investment companies, which include issues such as conflicts of interest and fund marketing and performance. This year, the OCIE's examination priorities are organized into three themes: (1) protecting retail investors and investors saving for retirement, (2) assessing market-wide risks, and (3) using data analytics to identify signals of potential illegal activity. For more information about these priorities, see the OCIE's 2015 National Exam Program.

Fair Value Measurement

Example of an SEC Comment

We note that you use valuations provided by third party pricing services as the basis for your fair value measurements for several different types of financial instruments. Please revise your future filings to disclose the procedures you perform to validate the valuations received from such third party pricing services.

The SEC staff continues to focus on fair value measurement and related disclosures in comments to investment advisers in the investment management industry. In particular, the SEC staff will frequently ask investment advisers to disclose additional qualitative information about their processes for determining fair value. Specifically, it will ask a registrant for additional information about (and, potentially, additional disclosures related to) Level 3 inputs, adjustments to quoted market prices, and investments for which the investment adviser's net asset value per share does not represent fair value. Further, the SEC staff has asked investment advisers to disclose additional information about the procedures they use to validate values obtained from external sources (e.g., broker quotes[2]). In addition, the SEC staff has often asked investment advisers to expand quantitative disclosures, such as a weighted average or range of inputs in the tabular disclosure of Level 3 unobservable inputs. For more information, see the Fair Value section.

Risk Oversight

Example of an SEC Comment

Please expand your risk management discussion to describe in more detail the various tools you use to monitor risk. You should address:

- Whether you have identified triggering events that require reports/communications to the committee;
- Whether you have a Chief Risk Officer and this person's role in the risk management process; and
- Potential challenges your organization faces in managing risk.

An Exchange Act registrant is required to disclose its board's risk management policies and procedures under Regulation S-K, Item 407(h). The SEC staff may ask an investment adviser in the investment management industry to elaborate on its board's risk management oversight of investment vehicles and to disclose additional information about the risk management responsibilities of board committees (e.g., the audit and compliance committees).

[2] For SEC staff remarks about the use of third-party pricing services to measure fair value, see Deloitte's December 14, 2011, *Heads Up*.

Consolidation

Example of an SEC Comment

We note your consolidation policy related to variable interest entities ("VIEs"). Please revise your future filings to address the following:

- Expand your disclosure to discuss how you assess your rights in determining if you have the power to direct the activities of the VIE that most significantly impact the [VIE's] economic performance.
- In your discussion of VIEs evaluated for consolidation that are not money market funds or investment companies you state that "when determining whether the Company stands to absorb the majority of a VIE's expected losses or receive a majority of [the] VIE's expected returns, if the Company determines it has control over the activities that most significantly impact the economic performance of the VIE and it will absorb a majority of the VIE's expected variability, [the Company] will consolidate the [VIE."] Explain how your disclosure here is consistent with the guidance in ASC 810-10-25-38.
- In your discussion of [VIEs] that will be consolidated when you have both the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and the obligation to absorb losses or right to receive benefits that could potentially be significant to the VIE, clarify how the calculation of variability, based on an analysis of projected probability-weighted cash flows based on the design of a particular VIE, complies with the guidance in ASC 810-10-25-38A(b) in determining whether losses and benefits could potentially be significant to the VIE.
- Expand the examples of entities assessed for consolidation under the different frameworks described in your policy discussion . . . to increase transparency as to the basis for entities consolidated (e.g. [collateralized debt obligations], pooled investment vehicles, etc.).

Because VIEs are common in the investment management industry, the SEC staff continues to comment on management's conclusions regarding the consolidation or deconsolidation of VIEs and asks investment advisers to clarify why certain vehicles have been consolidated and others have not. The SEC staff frequently questions (1) the consolidation model applied to specific investments, (2) the qualitative and quantitative assessments used to determine the primary beneficiary, and (3) the related disclosures. For more information, see the Consolidation section.

Commitments and Contingencies

Example of an SEC Comment

In future financial statements, please include a line item for "Commitments and Contingencies," along with a reference directing the reader to the related footnote in the Company's Notes to Financial Statements . . . . See Regulation S-X Rule 6-04.15.

Business development companies have received SEC staff comments related to their financial statements. Recently, the SEC staff has focused on the requirements of Regulation S-X, Rule 6-04.15, and has asked business development companies to include a line item on the balance sheet for commitments and contingencies along with a reference to the related footnote.

Real Estate

The SEC staff's comments to registrants in the real estate industry have focused on topics such as (1) whether, for U.S. GAAP purposes, real estate acquisitions represent business combinations or asset acquisitions and whether, for SEC reporting purposes, a registrant has acquired a business or real estate operations; (2) leasing activities; (3) capitalization of real estate development, construction, and leasing costs; (4) non-GAAP financial measures; (5) liquidity considerations associated with distributions; and (6) consolidation.

In addition, in industries other than real estate, the SEC staff has observed a higher frequency of REIT transactions (e.g., conversions, spin-offs, and carve-outs) involving nontraditional real estate assets such as cell towers, data centers, and billboards. REITs holding nontraditional real estate assets have received staff comments suggesting that they should strive to comply with the spirit of the disclosure requirements prescribed for REITs that hold traditional real estate assets (e.g., requirements related to Schedule III,[3] portfolio occupancy, effective rents, material tenant concentrations, category and physical location of the assets, significant lease types, and lease expiration dates). REITs holding traditional real estate assets that provided insufficient disclosures have also received comments from the staff.

Real Estate Acquisitions

Examples of SEC Comments

- Please provide us with the results of the significance tests for your 2013 and 2014 acquisitions in accordance with Rule 3-14 of Regulation S-X. For each property acquisition where Rule 3-14 financial statements are required, please tell us where you have filed these financial statements.
- Please tell us and disclose your policy for determining whether the acquisition of real estate is a business or asset purchase and the result of that determination on how [you] record the cost of the transaction.

Regulation S-X, Rule 3-05, requires a registrant to provide full financial statements (and pro forma financial information) for significant acquired or to be acquired businesses. However, Regulation S-X, Rule 3-14, permits a registrant to file only abbreviated income statements (and pro forma financial information) for significant acquired or to be acquired real estate operations that meet certain requirements. Because the requirements of Rules 3-05 and 3-14 are different, it is important for a registrant to determine whether it acquired a real estate operation (see the SEC Reporting section for additional information about Rule 3-05). As a result, from an SEC reporting standpoint, the SEC staff may ask a registrant to provide an analysis supporting its conclusion that its acquisitions are real estate operations under Rule 3-14.

In addition, from an accounting standpoint, the SEC staff has asked registrants with material acquisitions to elaborate on their process and policies for determining whether the acquired assets, including acquired real estate that is subject to a lease, qualify as a business or an asset acquisition under U.S. GAAP. This determination is important because the accounting for an asset acquisition differs from the accounting for a business combination. In acquisitions accounted for as business combinations, all transaction costs must be expensed as incurred. In asset acquisitions, however, transaction costs are capitalized as part of the purchase price. The SEC staff has asked registrants to enhance their disclosures to discuss the accounting policies they apply to property acquisitions, including policies for allocating value to identified intangible assets and for recognizing acquisition-related costs.

[3] Under Regulation S-X, Rule 5-04, certain real estate companies are required to file a Schedule III that presents supplemental information about real estate investments and accumulated depreciation on a property-by-property basis in the manner prescribed by Regulation S-X, Rule 12-28.

Leasing Activities

Triple Net Leases

Examples of SEC Comments

- It appears that [Entity X] is a significant lessee of properties under a long-term triple-net lease. Please tell us how you determined it was not necessary to provide audited financial statements of [Entity X].
- We note that you have presented within . . . [Forms 8-K] summary financial information for [Entity X], [Entity Y] and [Entity Z], along with disclosure as to where audited financial statements could be located on the internet for these companies. Please tell us how you have complied with the applicable rules to provide financial statements of significant asset concentrations as these financial statements have not been filed pursuant to the Exchange Act.

In a triple net lease, a lessee is typically required to pay costs that are normally associated with ownership, such as property taxes, insurance, utilities, and maintenance costs. In accordance with Section 2340 of the FRM, a registrant that leases, under triple net leases, one or more properties to a single lessee may need to provide full audited financial statements of the lessee (or guarantor) for the periods required by Regulation S-X, Rules 3-01 and 3-02, if a determination was made that the properties represent a "significant" portion of the registrant's assets (i.e., more than 20 percent of the registrant's assets as of its most recent balance sheet date). Section 2340 further states that if the lessee is a public company subject to the periodic reporting obligations of the Exchange Act, a registrant that would otherwise be required to provide such full audited financial statements may instead include in its filing a statement that refers investors to a publicly available Web site containing financial statements the lessee filed with the SEC. Accordingly, when a registrant enters into a triple net lease and its filing does not include or refer to a lessee's financial statements, the SEC staff may request information related to the significance test performed to determine whether there is significant asset concentration. Similarly, the SEC staff will inquire about significant asset concentration when a registrant acquires a property that is subject to a triple net lease.

Disclosures About Rental Performance

Examples of SEC Comments

- In future Exchange Act periodic reports, please provide more detailed leasing statistics, including the amount of space available at the start of the period, the amount of lease expirations, the amount of new leases, the amount of renewals and the amount of vacant space at the end of the period. Additionally, please provide more detailed disclosure regarding tenant improvement costs and leasing commission costs for new leases.
- In future Exchange Act periodic reports, please include a discussion that compares new leases and renewed leases on previously leased properties to prior rents received. Such amounts should be adjusted for any tenant concessions provided, such as free rent.

Over the past few years, as rental rates in many markets have fluctuated, the SEC staff has commented about registrants' disclosures in MD&A of lease rollover trends, including changes in rental rates on lease renewals and new leases in the reporting period. For space expected to be re-leased over the next 12 months, the staff has commented on the difference between existing rents and current market rents to better understand registrants' current and future performance trends.

The SEC staff has also requested information about activity related to new and expiring leases and lease renewals during the reporting period, including:

- Square feet leased.
- Average rents.
- Per-square-foot costs associated with leasing (e.g., leasing commissions, tenant allowances, and tenant improvements).

See the Leases section for additional staff comments on leasing transactions.

Capitalization of Real Estate Development, Construction, and Leasing Costs

Examples of SEC Comments

- [C]onsider including in future filings a breakdown of your capital expenditures by type (new development, redevelopment/renovation, tenant improvements/allowances, CAM, etc.) and by period presented.
- In future filings, please expand your disclosure to clearly describe your capitalization policy as it relates to construction/development costs including interest, salaries and G&A, real estate taxes and any other significant amounts that are capitalized during the pre-acquisition phase and the construction phase including a discussion of when the capitalization period ends.

The SEC staff frequently asks registrants to enhance their disclosures about the capitalization of real estate development, construction, and leasing costs (including their accounting for these costs). For example, the SEC staff has asked registrants to clarify their accounting policy for capitalizing or deferring costs in accordance with ASC 835-20, ASC 840-20-25-16, and ASC 970-10. It has also requested quantitative disclosures of certain expenses that are being capitalized, such as soft costs (e.g., interest and payroll).

In addition, the SEC staff has asked registrants to expand their disclosures about capital expenditures (either on the face of the statement of cash flows or in MD&A) to separately disclose expenditures related to acquisitions, new development, redevelopment, and improvements to existing properties.

Non-GAAP Financial Measures

Examples of SEC Comments

- In future Exchange Act periodic reports, in order to illustrate for investors your internal earnings growth, please disclose period to period same store net operating income. Additionally, please disclose how you determine the properties that fall within the "same store" pool, including also a discussion of any properties that were excluded from the pool that were owned in all periods compared, and how you determined which revenues and expenses to include in determining NOI. For example, please explain if you include items such as tenant improvement and leasing commissions, ground rent, lease termination fees and marketing costs.
- In arriving at Funds from operations, you start with Net income available to common stockholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity stockholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common stockholders."

The SEC staff has continued to comment on inconsistencies between (1) the key performance measures identified in press releases, earnings calls, and analyst presentations and (2) the non-GAAP financial measures disclosed in registrants' SEC filings. Although the SEC filings of most REITs include FFO as defined by the National Association of Real Estate Investment Trusts (NAREIT), REIT communications to shareholders and analysts may use other performance measures, such as modified FFO, adjusted FFO,

core FFO, EBITDA, NOI, or core earnings.[4] When these key performance measures are provided in other communications to investors, the SEC staff may ask registrants why such non-GAAP financial measures were not disclosed in their periodic reports (e.g., Forms 10-K and 10-Q).

In addition, the staff has recently issued comments on FFO disclosures that are inconsistent with NAREIT's definition of FFO. Many of these comments have specifically asked the registrant to confirm whether its FFO calculation is in accordance with NAREIT's definition of FFO and have focused on whether FFO is reported gross or net of noncontrolling interest adjustments. In situations in which the FFO calculation appears to consider noncontrolling interest adjustments and is simply labeled "FFO," the staff has asked registrants to update the labeling of the total to reflect "FFO attributable to common stockholders" or "FFO attributable to the company."

The SEC staff has also focused on non-GAAP performance metrics used in MD&A. The staff has requested clarification of how registrants define NOI to determine whether any additional property operating costs should be included. The SEC staff will often question whether the MD&A disclosure of period-to-period changes clarifies the impacts of same-property and non-same-property results, particularly when the discussion does not address the drivers of changes in the operating results (e.g., occupancy, rental rates) besides changes in the number of properties. To improve transparency, disclosures of "same-property NOI" should (1) be accompanied by a clear explanation of how the same-property pool is defined and determined and (2) highlight any changes in the pool from the prior reporting period, including the number of properties that were added to and removed from such metrics in any given year.

Over the past couple of years, the SEC staff has also requested additional information and disclosure about backlog from (1) real estate companies involved in engineering and construction and (2) home builders.

See the Backlog Disclosures, Management's Discussion and Analysis, and Non-GAAP Financial Measures and Key Metrics sections for additional information.

Liquidity and Capital Resources — Distributions

Example of an SEC Comment

In future Exchange Act periodic reports, please provide separate disclosure showing cash coverage and earnings coverage of distributions for the last fiscal year . . . . Highlight the relationship between total distributions paid, and cash flow from operations showing the source of any shortfall. In addition, show the relationship of the total distributions paid and earnings, net income or FFO. To the extent there is a shortfall in either cash flow from operations coverage or FFO . . . coverage, please specify the percentage coverage in a risk factor related to dividend coverage.

The SEC staff frequently requests disclosures that investors can use to evaluate the registrant's ability to maintain or increase its historical distribution yield. When GAAP cash flow from operations is insufficient to cover the total distributions paid during a particular period, the SEC staff may inquire about the cash resources used to cover the shortfall, such as borrowings or offering proceeds. Registrants should adequately disclose the risks associated with paying distributions in excess of GAAP cash flow from operations. In addition, the SEC staff may request disclosures that compare earnings (or FFO) with paid distributions, including amounts reinvested through a distribution reinvestment plan. The staff sometimes asks registrants to disclose these items on a cumulative basis so that financial statement users can better understand the relationship between earnings (or FFO) and distributions.

See the Management's Discussion and Analysis section for further discussion about liquidity and capital resources.

[4] See Questions 102.01 through 102.03 of the C&DIs on non-GAAP financial measures for additional information about FFO and NAREIT.

Consolidation

Example of an SEC Comment

Please clarify how you determined that you do not have a controlling interest in either of [your] joint ventures. Your disclosure . . . suggests that you are the managing member in each of the joint ventures and as such there would be a presumption of control by analogy to ASC 970-810-25-3.

The SEC staff continues to focus on registrants' involvements with VIEs and joint ventures and has inquired about consolidation assessments.

The SEC staff also routinely asks for additional information and disclosures about non-VIE joint ventures, particularly when (1) a registrant uses the equity method of accounting and either has a majority ownership interest or is the general partner or managing member or (2) the qualitative disclosures about such arrangements are not robust. Disclosures about these arrangements should include a discussion of the ownership structure as well as the governance provisions that led the registrant to conclude that it does not have a controlling financial interest in the joint venture. In addition, the SEC staff routinely asks for clearer qualitative disclosures when there are amendments to management agreements or changes in ownership structure or percentages that do not result in a change to a registrant's consolidation conclusion.

See the Consolidation section for further discussion about VIEs.

Health Sciences

Life Sciences

The SEC staff's comments to registrants in the life sciences industry have focused on topics such as (1) revenue recognition, (2) disclosures related to risk factors, (3) MD&A disclosures, (4) business combinations, and (5) commitments and contingencies.

Revenue Recognition

Collaborative Arrangements

Examples of SEC Comments

- In order to help us understand more fully how your collaborative arrangements impact your financial statements for each period presented, please provide us, in table format, the amounts . . . by year and by line item included in your statements of operations attributable to transactions arising from collaborative arrangements between you and the other participants and third-parties. Please provide separate tables for each of your "significant" collaborative arrangements and for all of your collaborative arrangements in the aggregate (i.e. the "significant" arrangements and all other arrangements). Present separately amounts with other participants and third-parties that are netted in a financial statement line item.
- You indicate that collaborative activities may include research and development, marketing and selling (including promotional activities and physician detailing), manufacturing, and distribution. Tell us your accounting policies regarding separation and allocation for your collaborative arrangements.
- Although you disclose your accounting policies for income you generate as a result of collaboration agreements under "revenue recognition" . . . , tell us your accounting recognition for other aspects of these arrangements and where these policies are disclosed.

Collaborative arrangements are common among biotech and pharmaceutical companies. ASC 808-10 provides guidance on the income statement presentation, classification, and disclosures related to collaborative arrangements but "does not address recognition or measurement matters related to collaborative arrangements, for example, determining the appropriate units of accounting, the appropriate recognition requirements for a given unit of accounting, or when the recognition criteria are met." As a result, the SEC staff often asks registrants in the industry about the nature of, and accounting for, their collaborative arrangements and has continued to probe them to better understand the basis for such accounting under U.S. GAAP.

Inquiries to registrants have focused on the registrant's conclusion about whether certain transactions with the collaboration partner represent true vendor-customer activities. Collaborative arrangements within the scope of ASC 808 are based on the premise that each party to the agreement assumes a proportionate share of risks and, therefore, a vendor-customer relationship does not exist. Even if the registrant concludes that it is a party to a collaborative agreement, however, there may be circumstances in which certain elements of the agreement represent activities that are similar to those in a vendor-customer relationship. Accordingly, the SEC staff seeks to understand the registrant's accounting policies regarding separation (i.e., unit of accounting) and allocation (i.e., when multiple units exist) for collaborative arrangements.

In addition, since collaborative arrangements often include up-front payments, royalty or profit-share payments, and expense reimbursements, the SEC staff has requested supplemental explanation of the registrant's determination and disclosure of (1) the separation, allocation, recognition, and classification principles that were used to account for payments between collaboration partners and (2) the factors that led the registrant to conclude that it is the principal (or agent) in transactions with third parties.

The SEC staff also has requested enhanced disclosures about registrants' collaborative agreements, including the overall effect of collaborative arrangements on the financial statements. Staff requests for such disclosures have focused on clearly describing the material terms of a collaborative arrangement, such as (1) each party's rights and obligations under the arrangement, (2) potential payments, (3) the existence of royalty provisions, and (4) duration and termination provisions. Further, the SEC staff has asked that registrants prepare a tabular summary to provide the staff with a composite disclosure of the financial statement impact of all collaborative arrangements. For all periods presented, the staff may request a separate table for each significant collaborative arrangement and a table for all collaborative arrangements in the aggregate; in addition, the staff may request separate presentation in such tables of amounts attributable to transactions with other participants and third parties that are presented net in a financial statement line item.

Further, the staff may ask registrants to file a material collaborative arrangement as an exhibit to their filing in accordance with Regulation S-K, Item 601(b)(10). For more discussion, see the Material Contracts section.

Milestones

Example of an SEC Comment

Your disclosure . . . lists the awarding of a license as an example of an appropriate milestone for revenue recognition. Please provide us with a detailed explanation of your basis for previously recognizing this revenue, including the specific milestones previously reached that made recognition of the revenue on the affected contracts appropriate. Also, please clarify your ongoing revenue recognition policy in terms of when it is appropriate to recognize revenue prior to obtain[ing] a license.

The SEC staff has continued to comment on disclosures related to the milestone method of revenue recognition under ASC 605-28. When such disclosures apply, the staff will review the registrant's filings to determine whether they contain the following disclosures outlined in ASC 605-28-50-2:

a. A description of the overall arrangement

b. A description of each milestone and related contingent consideration

c. A determination of whether each milestone is considered substantive

d. The factors that the entity considered in determining whether the milestone or milestones are substantive

e. The amount of consideration recognized during the period for the milestone or milestones.

Registrants in the industry will often make adjustments for milestones when determining non-GAAP income. For a discussion of adjustments made by registrants when determining their non-GAAP measures, see the Non-GAAP Financial Measures and Key Metrics section.

Multiple-Element Arrangements

Example of an SEC Comment

You disclose that you recognize revenue from the licensing of product rights and the performance of research or selling activities over the periods earned. Please tell us the amounts of each of these streams of [revenue] you recognized in each of the last three years and address the following:

- Tell us your consideration for disclosing each revenue stream separately under Item 5-03.1 of Regulation S-X;
- Tell us your consideration for disclosing the terms of any material arrangements under which these revenues are earned; and
- To the extent these streams are material, provide us proposed revised policy disclosure to be provided in future periodic reports that clarifies how you recognize these revenues "over the periods earned."

The SEC staff often asks registrants in the life sciences industry to expand or clarify their disclosures about multiple-element arrangements, particularly those involving licenses of product rights and other deliverables. Registrants could improve their required disclosures about the nature and terms of such arrangements by (1) separating the description of the obligations and rights from the discussion of how they were accounted for, (2) ensuring that the description is complete (i.e., that all material terms are disclosed for each revenue stream), and (3) precisely describing the rights conveyed by the license.

In addition, the staff has reminded registrants that they should explicitly identify each deliverable in the arrangement and explain why it represents (or does not represent) a separate unit of accounting. The staff has also suggested that registrants could improve their disclosures about the relative selling price method of allocating arrangement consideration by (1) quantifying the total arrangement consideration to be allocated, (2) identifying the amount of consideration allocated to each unit of accounting, and (3) explaining how the estimated selling price for each unit was determined (including the significant assumptions used). For more information about multiple-element arrangements and other revenue-related considerations, see the Revenue Recognition section.

Risk Factors

Example of an SEC Comment

You disclose your plan to initially conduct further clinical trials in Europe and that you intend to put off any clinical trials in the United State until 2015. Accordingly, please also discuss here any risks to your product development and domestic commercialization strategy from conducting trials outside of the United States. For example, you should address the possibility that the FDA may not accept the results of such trials and how such lack of acceptance could impact the regulatory approval process.

The SEC staff recently issued several comments on risk factors related to product development. More specifically, when registrants have used boilerplate language for risk factor disclosures, the staff has commented that risk factor disclosures should focus on providing additional detail specifically related to the registrant and the risks associated with the registrant's product development. In addition, the staff has asked registrants to explain how they would be affected by such risks if those risks came to pass.

MD&A Disclosures

R&D Expenses

> **Example of an SEC Comment**
>
> Please revise your disclosure to disclose the costs incurred during each period presented and to date for each of your research and development projects. If you do not maintain any research and development costs by project, disclose that fact and explain why you do not maintain and evaluate research and development costs by project and provide other quantitative or qualitative disclosure that indicates the amount of your resources being used on each of your projects.

The SEC staff has asked registrants in the life sciences industry to expand their disclosures about internal R&D expenses and estimated future expenses beyond those required under ASC 730-10. In addition to disclosing the types of activities and elements included in R&D expenses and the amount of R&D expenses incurred during each reporting period, registrants may be asked to revise their MD&A (and Business section) to include information about each major R&D project. If registrants do not maintain information about R&D costs by project or program, they may be asked to explain why.

Registrants must carefully consider whether their R&D projects are significant enough to warrant disclosure and whether the timing of the costs associated with the projects can be reasonably estimated. Registrants involved in late-stage clinical trials should consider expanding their disclosures about such projects to reflect the uncertainty of ultimate regulatory approval and commercial success.

The SEC staff may also ask a registrant to include, in its contractual obligations table in MD&A, commitments to make payments for R&D contractual relationships. See the Management's Discussion and Analysis section for more information about the contractual obligations table.

Revenue Adjustments

> **Examples of SEC Comments**
>
> - We believe that your disclosure related to estimates of items that reduce revenues such as product returns, chargebacks, rebates and other sales deductions could be improved. . . . [P]lease provide us a revised table to be included in future periodic reports that presents the following:
>   - Current provision related to sales made in current period,
>   - Current provision related to sales made in prior periods,
>   - Actual returns or credits in current period related to sales made in current period, and
>   - Actual returns or credits in current period related to sales made in prior periods[.]
> - [P]lease provide us disclosure to be provided in future periodic reports that discusses the amount of and reason for fluctuations for each type of reduction of revenue (i.e. product returns, chargebacks, rebates and other sales deductions) including the effect that changes in your estimates of these items had on your sales and operations.

The SEC staff has asked registrants to expand their MD&A disclosure related to the reductions in revenue incurred as a result of product returns, chargebacks, rebates, and other revenue adjustments. Enhancement requests have focused on (1) describing in tabular format the period-over-period fluctuations that occurred and (2) disclosures describing the reasons for changes, such as changes in pricing strategies or changes in contracts. Further, the SEC staff has asked registrants to clarify the period to which their recorded provisions or processed credits apply.

Patents

Examples of SEC Comments

- We note your disclosure regarding your patent portfolio which you have provided in bullet point format . . . . Please revise your disclosure regarding your patents and patent applications to provide the following information:
  - Please specify which of your patents and [patent] applications are owned and which are licensed. For the patents and patent applications which are licensed, please specify from whom they are licensed;
  - Please disclose in which jurisdictions your patents have been granted and which jurisdictions your patent applications are currently pending. In this regard we note that you provide this information in some of your bullet points but not in others; and
  - Please provide the expected expiration dates if your pending patent applications are approved. Please provide this information separately from the expiration dates of your approved patents where applicable.
- Please tell us, and disclose in future filings, when the patents . . . expire. In this regard, please tell us which patents, if any, expired and will expire in the near future that are resulting in or are likely to result in material competition from generic products; include in your response the portion of your revenue and income derived from those patents.

The SEC staff has regularly commented on life sciences registrants' disclosure of patents, particularly on patent exclusivity of their products in U.S. and foreign jurisdictions and the impact of such exclusivity on revenues and overall operations. Patent expiration and challenges can affect not only a registrant's current-period earnings but also its future operations and liquidity, particularly if the patents are for core products. Registrants should consider Regulation S-K, Items 101 and 503(c), respectively, for guidance on (1) disclosing patent information in the Business section of their periodic filings and (2) discussing patent expiration and challenges as possible risk factors in their annual reports. In addition, the SEC staff has requested information on the subject matter, type of patent coverage (e.g., method of use, composition of matter), and jurisdiction of a registrant's patents.

Liquidity

Examples of SEC Comments

- We note your disclosure that a significant amount of your earnings occur outside the U.S., and that non-U.S. subsidiaries hold funds that are indefinitely reinvested there and that are available for use by your non-U.S. operations. However, it appears from your disclosure . . . that you intend to borrow these funds from your non-U.S. subsidiaries.
- You disclose that during fiscal 2014, 2013 and 2012, you provided for U.S. and non-U.S. income and withholding taxes in the amount of $[X], $[X] and $[X], respectively, on earnings that were or are intended to be repatriated. You further indicate that, in general, the remaining earnings of your subsidiaries are considered to be permanently reinvested and that you have approximately $[X] of undistributed earnings that are considered to be permanently reinvested. Please quantify the amounts repatriated for each period presented and tell us the facts and circumstances for repatriating your subsidiaries earnings.

Life sciences companies typically have manufacturing and distribution sites, as well as holding company subsidiaries, domiciled in countries with favorable tax rates. If a life sciences registrant discloses that it will reinvest undistributed earnings of its foreign subsidiaries indefinitely, the SEC staff is likely to examine the registrant's liquidity disclosure to determine whether its cash holdings are sufficient to meet its long- and short-term liquidity needs. Therefore, the disclosures in the liquidity section of MD&A about how the registrant plans to meet its funding obligations should be clear and robust. See the Income Taxes section for additional information.

Business Combinations

Example of an SEC Comment

You state that you acquired no significant processes in your . . . acquisition of all of the outstanding shares of [Company A]. Please provide your analysis supporting this conclusion and that this was not an acquisition of a business. Refer to ASC 805-10-55-4 through [55-9].

In recent years, the life sciences industry has seen an increase in M&A activity. While many entities in the industry have sought ways to expand their pipeline of products in development or acquire additional commercial products, others have explored how to generate additional returns on assets that are no longer a strategic focus.

Accounting for a transaction as a business combination differs significantly from accounting for a transaction as an asset acquisition. For example, whereas an entity would capitalize acquired IPR&D and recognize the fair value of contingent consideration and goodwill in a business combination, it would expense acquired IPR&D and not recognize contingent consideration and goodwill in an asset acquisition. Consequently, when acquisitions occur, it is important to determine whether what is being acquired meets the definition of a business under ASC 805. Accordingly, the SEC staff often issues comments related to whether the acquired set meets the definition of a business and further inquires about the basis for the registrant's conclusion.

In addition, in business combinations involving the acquisition of intangible assets, acquirers must determine the useful life of each intangible asset acquired. Because the intangible assets acquired are typically the patent rights to a product or potential product, most life sciences companies begin their analysis by considering the patent life of the underlying product. However, useful life could be affected by other factors, such as the risk of competition from branded or generic products before the company's patent expires or a high barrier to market entry even after the company's patent expires. Therefore, the SEC staff has asked registrants to provide additional analysis that explains the basis for their conclusions about the useful lives of acquired intangible assets.

For additional accounting and reporting considerations related to acquisitions, see the Business Combinations section.

Commitments and Contingencies

> **Example of an SEC Comment**
>
> Please summarize for us your potential milestone and royalty payments related to your collaborations and explain why these potential payments are excluded from the Contractual Obligations and Commitments table. Refer to Item 303(a)(5) of Regulation S-X.

Pharmaceutical and medical device companies often enter into licensing arrangements that include up-front payments and royalty or profit-share payments contingent on the occurrence of certain future events linked to the success of the asset in development. The SEC staff often comments on life sciences registrants' disclosures about these commitments and contingencies associated with payments due to licensors of intellectual property. Registrants can improve such disclosures by disclosing the nature, timing, and amount of contingent milestone and royalty payments, including the factors that trigger payment. For additional accounting and disclosure considerations related to contingencies, see the Contingencies section.

> **Other Deloitte Resources**
>
> March 2015, *Life Sciences: Accounting and Financial Reporting Update — Including Interpretive Guidance*.

Health Plans

The SEC staff's recent comments to health plan registrants have focused mainly on (1) accounting for risk adjustment, reinsurance, and risk corridor programs (the "three Rs") and (2) statutory disclosures. Like other registrants, health plan registrants have also continued to receive comments related to MD&A, contingencies, goodwill impairment, and revenue recognition. For more information on these topics, see the Management's Discussion and Analysis, Contingencies, Impairments of Goodwill and Other Long-Lived Assets, and Revenue Recognition sections.

In addition, because health plan registrants are primarily engaged in offering health care insurance products, SEC staff comments to registrants in the insurance industry may also apply to health plans. For more information, see the Insurance section.

Accounting for the Three Rs

> **Example of an SEC Comment**
>
> Please provide us with your accounting policy for the risk corridor, reinsurance and risk adjustment ("three Rs") that you reference . . . . Please also tell us the amounts you have recorded for each item as well as for the reinsurance fee assessment.

The Patient Protection and Affordable Care Act (PPACA) provided for the establishment of three premium stabilization programs. Commonly referred to as the three Rs, these programs became effective on January 1, 2014, and consist of the following:

- *Risk adjustment program* — This program is designed to enable health insurers to price and offer policies to individuals and small groups without regard to the health status of individual policyholders or group members. It is the only permanent program among the three Rs.
- *Reinsurance program* — Designed as a temporary measure for the 2014–2016 calendar years, the reinsurance program aims to mitigate the effects of a potential increase in the number of large claims filed by policyholders in the individual health care insurance market.

- *Risk corridor program* — Like the reinsurance program, the risk corridor program was designed to be a temporary measure for the 2014–2016 calendar years. Its purpose is to help protect health care insurers from variability in the individual and small group markets by limiting gains and losses. The program applies only to qualified health plans established under the PPACA in the individual and small-group markets.

Similar risk adjustment provisions may also exist in registrants' insurance plan contracts that are not subject to the PPACA.

The SEC staff has asked health plan registrants about their accounting policies and recorded amounts related to the three Rs as well as the method they used to determine such amounts.

Statutory Disclosures

Example of an SEC Comment

Please provide us disclosure to be included in future periodic reports of the restricted net assets for your subsidiaries as of the balance sheet date or otherwise provide disclosure that complies with the objective in Rule 4-08(e)(3)(ii) of Regulation S-X such as disclosing the amount available from these subsidiaries. In this regard, you indicate that dividends received from your regulated subsidiaries are a source of liquidity.

Regulation S-X, Rule 4-08(e)(3), requires footnote disclosure in the consolidated financial statements about the nature and amount of significant third-party restrictions on the ability of subsidiaries to transfer funds to the registrant if restricted net assets of consolidated subsidiaries and equity method investees exceed 25 percent of consolidated net assets. The SEC staff has commented when disclosures required under ASC 944-505 (e.g., disclosures about statutory requirements related to minimum capital standards and certain restricted accounts or assets that may limit payment of dividends) and Rule 4-08(e) are incomplete or missing. In addition, the SEC staff has reminded health plan registrants that disclosures under ASC 944-505 should not be labeled as unaudited. For more information, see the Debt and Insurance sections.

Technology and Telecommunications

Technology

Over the past year, the technology industry has seen a continued high volume of initial public offering (IPO) filings in both domestic and foreign markets. As the amount of capital available to the technology industry rises, business models in various sectors of the industry keep evolving, leading to a need for more robust and transparent disclosures about (1) how companies in those sectors earn revenue and (2) the related critical accounting policies and estimates. Accordingly, when the SEC staff reviews IPO and annual financial report filings, it continues to focus largely on matters related to revenue recognition, including (1) accounting policies and disclosures regarding multiple-element arrangements, (2) gross versus net reporting, and (3) accounting for nonrefundable up-front fees. In addition, the staff has focused on registrants' use of key metrics in MD&A. See the Revenue Recognition section for more information about SEC staff comments on revenue-related topics.

In addition, SEC staff comments to registrants in the technology industry, like those received by registrants in other industries, have concentrated on disclosures about contingencies, income taxes, segment determination, and share-based compensation. See the Contingencies, Income Taxes, Segment Reporting, and Share-Based Payments sections for additional information about such comments.

Revenue Recognition — Multiple-Element Arrangements

Accounting Policies and Disclosures Regarding Multiple-Element Arrangements

Examples of SEC Comments

- Please explain to us how you apply FASB ASC 605-25-30, which requires arrangement consideration to be allocated based on the relative selling price to all deliverables in your multiple element arrangements. Please identify each unit of accounting and discuss how you determine the selling price for each deliverable under FASB ASC 605-25-30-2. Please also include clarifying disclosure in future filings.
- We note your disclosure that implementation services that are delivered prior to the customer being able to use the platform do not have stand-alone value and are recognized over the longer of the life of the subscription or the expected life of the customer relationship. Please explain your basis for concluding that these services do not have [stand-alone] value and tell us how you considered ASC 605-25-25-5(a). In this regard, we note that you disclose that these services can be provided by the Company, third-party service providers or distributors.
- Disclose how you are allocating the arrangement fee to each element or deliverable identified in an arrangement. Further, describe how you account for [one or more arrangements] with a customer that [contain] software-related and non-software related elements, if any. We refer you to ASC 985-605-15-4A.

Under ASC 605-25, consideration in multiple-element arrangements must be allocated to the deliverables on the basis of their relative selling price. To determine the selling price of each deliverable, entities apply a hierarchy that requires them to use vendor-specific objective evidence (VSOE) if available, third-party evidence (TPE) if VSOE is not available, or their best estimate of the selling price if neither VSOE nor TPE is available. The SEC staff focuses on how technology registrants allocate consideration to elements in such arrangements and may request additional information about the factors, inputs, and assumptions used to determine the selling price of each element.

Given the prevalence of multiple-element arrangements in the industry, when the SEC staff reviews the filings of technology registrants, it may comment on the manner in which revenue is measured and recognized in such arrangements as well as on the related disclosures. Historically, registrants have been asked to clarify the descriptions of the elements or deliverables in an arrangement, how they determined that deliverables have stand-alone value, and the timing of each element's delivery or performance.

For multiple-element arrangements that include tangible products containing software, the staff may ask registrants to clarify the accounting guidance they applied and how they determined whether a tangible product's software components and nonsoftware components function together to deliver its essential functionality (and are therefore outside the scope of the guidance in ASC 985-605). Accordingly, registrants should (1) carefully consider all facts when determining the appropriate accounting guidance to apply to arrangements that involve tangible products containing software and (2) clearly and adequately disclose the guidance they applied to such arrangements.

Disclosures About VSOE

> **Example of an SEC Comment**
>
> You indicate that you have established VSOE for consulting days, training and software support, except for software support bundled with time-based licenses, based on separate stand-alone sales of these elements. Please describe in greater detail the methodology for establishing VSOE for these arrangements, including the volume and range of [stand-alone] sales used to establish VSOE. We refer you to ASC 985-605-25.

Establishing VSOE of fair value can significantly affect how revenue is recognized under ASC 985-605. To recognize revenue for a delivered element (e.g., a software license) in a software arrangement, a vendor must first establish VSOE for any undelivered elements (e.g., postcontract customer support (PCS) or professional services). If the vendor cannot establish VSOE of fair value for undelivered elements, it generally must defer all revenue in the arrangement until VSOE is established, the undelivered elements are delivered, or the last remaining deliverable is PCS.

The SEC staff periodically asks registrants that have multiple-element arrangements within the scope of ASC 985-605 — many of which are undergoing IPOs — to expand their disclosures about how they determined VSOE. The additional information may include:

- The percentage of customers that renew at contractually stated rates for PCS and how the rates are substantive when contractually stated renewal rates are used to establish VSOE.
- An explanation of how the registrant determined VSOE if it does not use stated renewal rates or a bell-curve analysis of stand-alone sales to establish VSOE.
- A description of the process used to evaluate the various factors that affect VSOE.
- A quantitative description of the volume and range of stand-alone sales used to establish VSOE and how the registrant accounts for contracts whose sales volume falls outside that range.
- A description of how VSOE is determined when different levels of renewable rates exist.
- An explanation of why the registrant believes that it cannot determine VSOE for its undelivered elements if it accounts for software arrangement elements ratably because they are not separated.
- An explanation of why the registrant could not determine VSOE in prior years and, in cases in which VSOE is first established or is reestablished, what changes arose in the current year.

Revenue Recognition — Gross Versus Net Reporting

Under ASC 605-45, an entity should report revenue on a gross basis when it is acting as the principal of the transaction and on a net basis when acting as an agent to the transaction; applying this guidance often requires careful consideration and judgment. Although ASC 605-45 refers to eight indicators of gross reporting, the SEC staff has placed a higher emphasis on (1) which party is the primary obligor to the transaction and (2) which party has general inventory risk.

Determining the principal in an online transaction is challenging for technology companies, particularly those engaging in transactions related to software as a service (SaaS), online gaming, or online advertising, since there is no tangible product (and, in some instances, transactions are executed almost instantaneously). Because these types of arrangements have become more prevalent, they are topics of increased SEC staff focus.

At the 2014 AICPA Conference, the SEC staff discussed challenges related to determining whether an entity is a principal or an agent under ASC 605-45 when the guidance is applied to emerging business models, such as digital advertising. The staff observed that this analysis should generally begin with the identification of a "deliverable" in the transaction and the party ultimately responsible for its fulfillment. In this regard, the staff may scrutinize the deliverable identified by a registrant and consider all available information (e.g., MD&A, Web sites, marketing materials, contractual arrangements) in evaluating the reasonableness of this determination. Further, the staff noted that the deliverable that is ultimately identified for ASC 605-45 application purposes should be consistent with the deliverable that is subsequently evaluated for revenue recognition purposes.

In its discussion of principal-versus-agent considerations at the 2014 AICPA Conference, the SEC staff also indicated that it is likely to focus on a registrant's assessment of the primary obligor and general inventory risk indicators under ASC 605-45. If the identity of the primary obligor is unclear, the staff may focus its analysis on other factors, such as general inventory risk and latitude in establishing pricing. The staff also noted that latitude in establishing pricing should be evaluated in the context of any "economic constraints" in accordance with ASC 605-45.

SaaS and Online Gaming

Example of an SEC Comment

We note . . . that you believe the second type of arrangement is not within the scope of ASC 605-45. Please clarify whether the partner's customer will enter into any agreement or licensing rights with you to have the right to access your software. Indicate whether the partner's customer will seek remedy from your partner or you. That is, tell us whom the partner's customer will consider responsible for the acceptability and fulfillment of the services. Describe how any marketing materials or other representations made in executing these arrangements describe your role. Your response should address how you considered that you are hosting and providing the services that the customers want.

SaaS and online gaming companies often use operator or reseller partners to target new markets. Questions arise about which party is the primary obligor (i.e., the party responsible for providing the product or service desired by the customer). The SEC staff has challenged the conclusions of various SaaS and online gaming companies (and their resellers) about the appropriateness of gross or net reporting for their transactions and has asked such registrants to provide additional analysis with an emphasis on the factors outlined in ASC 605-45-45. The staff may also request additional disclosures about the nature of these transactions and the role of each of the parties.

Online Advertising

> **Example of an SEC Comment**
>
> We note that you recognize advertising revenue from customers that are advertising networks on a net basis, while advertising revenues earned directly from advertisers are recognized on a gross basis. Also we note your agreements with [Company X] and [Company Y] executed in September and October 2013, respectively. With the agreements you have apparently transferred the primary responsibility to fill substantially all website advertising inventory to [X] and mobile advertising inventory to [Y]. Further both [X] and [Y] will pay for all advertising requests regardless of their ability to fill the inventory. In light of the arrangements, please explain how you have considered whether your website and mobile advertising revenue should be recognized on a gross or net basis under ASC 605-45-45.

Like other forms of advertising, online advertising often involves at least three parties:

- An owner/operator of the online content (a "publisher") that provides the online space or search engine results in which advertising content may be placed.
- A party (an "advertiser") that desires to place the advertising content.
- A third-party service provider (e.g., an "advertising agency").

In addition, there are many companies that offer various technologies and solutions to help advertisers and publishers in what is commonly referred to as the "ad tech" industry. These include "ad networks" or "demand-side platforms," "ad exchanges," and "supply-side platforms."

A registrant that has entered into an online advertising arrangement needs to evaluate the terms of the arrangement and the responsibilities of each of the parties to the agreement to determine whether it should report revenues on a gross or net basis. As a result, the SEC staff may review the contractual terms and marketing materials related to the transaction to determine the nature of the deliverable and the party ultimately responsible for fulfillment. For example, it may be challenging for an advertising agency to conclude that it is the primary obligor (and therefore the principal) if it cannot demonstrate that it is responsible for displaying the advertising content but instead appears to be acting as an agent by matching advertisers with publishers. On the other hand — to understand whether, for example, a demand-side platform is the principal — the SEC staff often seeks to understand contractual terms (among other factors) to determine whether there are sufficient economic and fulfillment risks analogous to inventory risk. Accordingly, the SEC staff may review the contractual agreements with advertisers to understand whether the demand-side platform provided a firm commitment to deliver a certain amount of advertising space at fixed pricing by means of contractual insertion orders (a common contractual form used in the online advertising industry).

Because of the complexity and judgments associated with determining whether to record revenues on a gross or net basis, technology registrants should (1) thoroughly document the basis for their conclusions and (2) consider whether additional disclosures would be appropriate for investors.

Revenue Recognition — Accounting for Nonrefundable Up-Front Fees

Example of an SEC Comment

We note that your [Segment X] business recognizes nonrefundable setup fees as services are performed. Please tell us whether the setup fees have standalone value. Refer to ASC 605-25-25-5(a). If they do not have standalone value, please tell us how you determined that recognition of revenue as services are performed is appropriate. Refer to footnote 39 of SAB Topic [13.A.3(f)].

SAB Topic 13.A.3(f) provides guidance on the accounting for nonrefundable up-front fees. In the technology industry, up-front fees often exist in hosting or SaaS arrangements. These fees, which are typically charged together with a subscription fee for the hosting or SaaS services, cover items such as training, connection services, data migration, and other implementation services. Entities entering into such arrangements are generally required to determine whether the activities associated with the up-front fees and those related to the ongoing hosting or SaaS services are separate units of accounting in a multiple-element arrangement under ASC 605-25. To make this determination, entities must assess whether the activities associated with the up-front fees have stand-alone value and can therefore be regarded as a separate unit of accounting. In assessing stand-alone value, entities need to consider whether such activities are sold separately by any vendor or whether the customer can resell any products or services received.

When the activities associated with an up-front fee and the hosting or SaaS services are treated as a single unit of accounting under ASC 605-25, registrants apply the guidance in SAB Topic 13.A.3(f) to determine an appropriate accounting policy for recognizing revenue related to the up-front fee. Under that guidance, "[u]nless the up-front fee is in exchange for products delivered or services performed that represent the culmination of a separate earnings process," revenue is typically deferred and recognized over the period in which the up-front fee is earned, which may extend beyond the initial contract term.

Footnote 39 of SAB Topic 13.A.3(f) states that the "revenue recognition period should extend beyond the initial contractual period if the relationship with the customer is expected to extend beyond the initial term and the customer continues to benefit from the payment of the up-front fee." The SEC staff has asked registrants about their accounting policies for recognizing revenue in these circumstances. Specifically, it has focused on the period during which registrants recognize revenue for up-front fees, particularly when revenue is recognized either immediately or over the initial contract period despite indications that the relationship with the customer may extend beyond that period.

Disclosures About Key Metrics in MD&A

Examples of SEC Comments

- We note . . . that you expect to significantly increase your subscription base and the annual value per subscription, which you state will ultimately drive billings growth. Considering your transition to cloud based and flexible licenses in fiscal 2014, tell us how you considered providing quantification of your subscription base and annual value per subscription as key metrics in analyzing revenues. We refer you to . . . Section III.B.1 of SEC Release 33-8350.
- We note you provide information regarding the cumulative number of customers that have made at least one purchase since inception of your business and that you believe this metric helps you understand the activity rate of your subscribers. Please explain further why you believe this information is meaningful to your investors and how this metric relates to your results of operations. For example, based on your description, it appears the cumulative number of customers is a metric that is always going to increase and does not factor in currently active or inactive customers. Similar concerns apply to your metric regarding the cumulative number of repeat customers. Please advise.

Technology registrants often use metrics to convey information to their investors. Because there are various types of registrants in the industry (i.e., offering a broad range of products and services), there is diversity in metrics discussed in registrants' earnings calls, registration statements, and periodic filings. Examples of metrics common to registrants in the technology industry include (1) number of "likes," (2) revenue per user, (3) daily or monthly active users, and (4) weighted average duration of contracts. The SEC staff has questioned registrants when certain metrics are not explained in MD&A, changes are not appropriately quantified, and it is unclear whether metrics represent key performance indicators. Accordingly, the staff may ask registrants to provide a detailed quantitative and qualitative discussion and analysis of the impact of changes in their key metrics disclosed in MD&A, in a manner consistent with Sections III.B.1 and III.B.2 in SEC Release No. 33-8350 and Regulation S-K, Item 303(a)(3)(iii). In addition, registrants that have not already done so are asked to provide disclosures in MD&A to discuss why the metrics were chosen, how they are used, and any inherent limitations in the metrics selected.

Because of the vast volume of the metrics used, the SEC staff has been concerned that (1) metrics may not be presented with appropriate context and (2) the link between registrants' key metrics and their income and future profitably may not be clear. Registrants should review their metrics to ensure that the metrics portray a balanced discussion and remain relevant. If that is not the case, registrants should consider removing metrics (or replacing them with new ones).

Other Deloitte Resources

December 15, 2014, *Heads Up*, "Highlights of the 2014 AICPA Conference on Current SEC and PCAOB Developments."

Telecommunications

The SEC staff's comments to registrants in the telecommunications industry have focused on topics such as revenue recognition and long-lived asset impairment.

Revenue Recognition

Examples of SEC Comments

- While your disclosure addresses the basic revenue recognition criteria related to product sales, it is not clear when delivery typically occurs and when the related revenues are typically recognized. . . . Please tell us what consideration was given to disclosing the general timing of delivery or performance of service and the general timing of revenue recognition for product sales. Please refer to ASC 605-25-50-2.
- Tell us and explain why [Product A shipments] were not recognized as revenues. It is unclear from the Critical Accounting and Estimates section of the MD&A what revenue recognition criteria were not met. In addition, tell us in detail the nature of your sell-through to end users and how you are accounting for such sales.

The SEC staff often asks registrants in the telecommunications industry to expand or clarify their disclosures about revenue recognition. For example, the SEC staff may ask registrants for details about their compliance with the four criteria for revenue recognition contained in SAB Topic 13. The staff has indicated that registrants must carefully monitor these criteria when selling products to resellers and distributors and, in particular, should evaluate whether the substance of an arrangement is such that the price is not fixed or determinable until the product is sold to the end customer. When revenue is deferred because a criterion was not satisfied, registrants should specify which criterion was not met and disclose how and when the transaction will be recognized.

As the telecommunications industry continues to evolve, registrants in the industry must consider the revenue recognition implications of new business practices and ensure transparent disclosure. Wireless operators, for example, are increasingly offering subscribers more flexible handset-purchase options, such as installment plans and exchange rights. Such offerings can have significant revenue recognition implications. New offerings also may trigger a requirement for registrants in the industry to provide financial statement disclosures not previously considered significant. These could include disclosures about financing receivables for which registrants may not have historical information to appropriately predict an allowance for credit losses, credit quality indicators, and potential guarantee liabilities that arise from the various handset-purchase options. New business practices are likely to draw SEC staff scrutiny if the registrants' relevant revenue recognition policies and considerations are not clearly disclosed.

In addition, in light of the prevalence of multiple-element arrangements in the telecommunications industry and the complexities associated with accounting for them, the SEC staff frequently issues comments related to such arrangements. Further, registrants in the industry have received staff comments requesting an analysis that supports the registrant's conclusion about whether it is a principal or an agent in certain transactions.

For information on multiple-element arrangements and other revenue-related considerations, see the Revenue Recognition section.

Long-Lived Asset Impairment

> **Example of an SEC Comment**
>
> We note that you conducted a long-lived asset impairment analysis in the fourth quarter of [201X] and [201Y] and in each case concluded that your long-lived assets were not impaired. In this regard, please disclose events or changes in circumstances that occurred during those periods that indicated that the carrying value of your assets or assets groupings may not be recoverable. Disclose the extent to which the fair value of your assets or asset groups exceeded their carrying value. Disclose if any of your assets are at risk of impairment.

The SEC staff continues to question registrants in the telecommunications industry about the recoverability of their long-lived assets, including physical network assets and spectrum licenses. For example, the staff inquires about the reasonableness of the useful-life estimates used by registrants to determine whether their long-lived assets are potentially impaired. Such assets may be subject to a greater risk of impairment as a result of the rapid rate of technological innovation. In addition, the staff has asked registrants to disclose the carrying value of significant types of assets and the methods used to estimate the assets' useful lives.

For additional information, see the Impairments of Goodwill and Other Long-Lived Assets section.

Appendixes

Appendix A: Topic "Graveyard"

This appendix is a "graveyard" of comment letter topics discussed in our publication's eighth edition that no longer represent recent trends. Although such topics are not discussed in the current edition, we realize that they remain relevant to a registrant that may receive SEC staff comments regarding them and to any preparer who is interested in understanding topics on which the SEC staff has historically focused. Accordingly, this appendix links topic headings from last year's SEC comment letter book that do not appear elsewhere in the current edition. For information about a previously discussed topic, click one of the topic heading links below (also available on our US GAAP Plus Web site at http://www.iasplus.com/en-us/tag-types/united-states) and you will be directed to the corresponding section or subsection of the eighth edition. Linked titles of past comment letter book editions are also provided below.

Links to Prior-Year Topic Headings Not Included in This Year's Sections

Financial Statement Accounting and Disclosure Topics

Consolidation — VIEs in Foreign Jurisdictions

Financial Statement Classification, Including Other Comprehensive Income — Current Versus Noncurrent [Balance Sheet] Classification

Leases — Nonperformance Provisions

Other-Than-Temporary Impairment of Investments in Securities

Share-Based Payments — Financial Statement Presentation

SEC Disclosure Topics

Management's Discussion and Analysis — Off-Balance-Sheet Arrangements

SEC Reporting:

- Issuers of Securities That Collateralize Registered Securities ([Regulation S-X,] Rule 3-16).
- SEC Reporting Considerations for Material Changes That Require Retrospective Application.

Disclosures About Risk — Issuers Based in China

Internal Control Over Financial Reporting — Domestic Companies With a Majority of Operations Outside the United States

Foreign Private Issuers

Foreign Private Issuers Using IFRSs — Going-Concern Language in PCAOB Audit Reports

Industry-Specific Topics

Consumer and Industrial Products

Transportation, Travel, Hospitality, and Leisure — Capital Expenditures

Financial Services

Insurance:

- Reinsurance Receivables.
- Deferred Acquisition Costs.

Investment Management — Revenue Recognition

Real Estate — Impairments

Health Sciences

Life Sciences — Branded Pharmaceutical Drug Annual Fee

Health Plans — Provision For Adverse Deviation

Past Editions of Deloitte's SEC Comment Letter Publication

SEC Comment Letters on Domestic Registrants — A Closer Look (First Edition)

SEC Comment Letters on Domestic Registrants —A Closer Look (Second Edition)

SEC Comment Letters on Domestic Registrants — A Closer Look (Third Edition)

SEC Comment Letters — Including Industry Insights: A Snapshot of Current Themes (Fourth Edition)

SEC Comment Letters — Including Industry Insights: Improving Transparency (Fifth Edition)

SEC Comment Letters — Including Industry Insights: Highlighting Risks (Sixth Edition)

SEC Comment Letters — Including Industry Insights: Constructing Clear Disclosures (Seventh Edition)

SEC Comment Letters — Including Industry Insights: A Recap of Recent Trends (Eighth Edition)

Appendix B: SEC Staff Review Process

The SEC's Division of Corporation Finance (the "Division") selectively reviews filings made under the Securities Act and the Exchange Act. 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 11 offices staffed by experts in specialized industries, accounting, and disclosures. The section includes background on the different types of review (required and selective) and covers the comment process, indicating that "[m]uch of the [staff's] review [process] involves evaluating 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 C 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 and company responses to those letters are made public, via the SEC's Web site, at least 20 business days after the Division has completed its review of a periodic or current report or declared a registration statement effective. See Appendix D 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 C: Best Practices for Managing Unresolved SEC Comment Letters

The best 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 therefore do the following:

- 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, it should contact its SEC staff reviewer quickly for clarification so that it can provide an appropriate response.
- 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.
- 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 certain 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.

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

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.

Appendix D: 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 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 | Company Filings" page:

Search SEC Documents Go
Company Filings | More Search Options

U.S. Securities and Exchange Commission

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EDGAR Search Tools
Latest Filings
Company Filings
Mutual Funds
Variable Insurance Products
Daily Filings by Type
Boolean Archive Search
Full Text (Past 4 Years)
CIK Lookup
Confidential Treatment Orders
Effectiveness Notices
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Ticker or CIK Search

Ticker symbol or CIK is the fastest way to find company filings.

Guides

How to Research Public Companies
Learn how to quickly research a company's operations and financial information with EDGAR search tools.

Filing Types
Learn which filing types contain earnings announcements, executive compensation, SEC correspondence and more.

Search Tools

CIK Lookup Tool
Look up the central index key (CIK) of an EDGAR filer. Searching by CIK is the most accurate way to view filings.

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FOIA | No FEAR Act & EEO Data | Whistleblower Protection | Open Government | Plain Writing | Links | Investor.gov | USA.gov

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

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: Advanced Search Page

Search Reset

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., goodwill AND impairment). 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., goodwill AND "impairment test").

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

10/09/2015 S-3 for PACIFIC MERCANTILE BANCORP

COMPANY NAME(s) - [**PACIFIC MERCANTILE BANCORP (CIK - 1109546 /SIC - 6021)**]

As filed with the Securities and Exchange Commission on October 9, 2015 Registration No. 333- UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 FORM S-3 REGISTRATION

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.

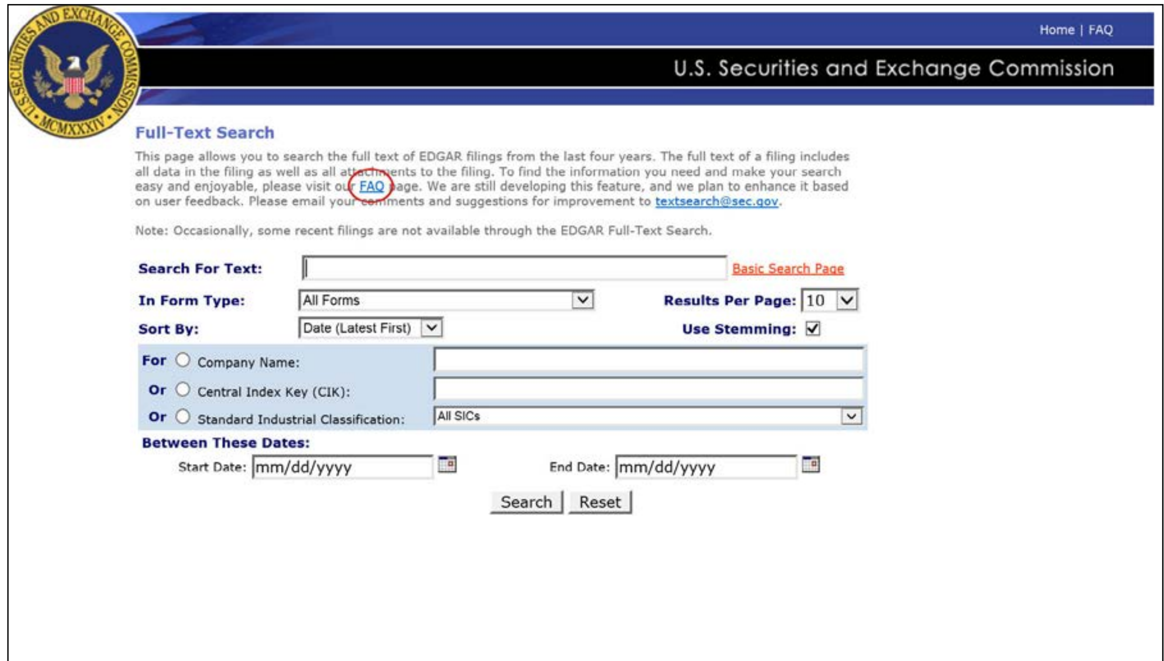
However, if the user narrowed his or her search by (1) selecting the form type UPLOAD, (2) entering the search term "results of operations" in quotation marks, (3) entering the industry code for the hotel/motel industry (SIC 7011), and (4) providing a date range spanning the last two years, the number 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 [that] 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 E: Glossary of Standards and Other Literature

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

AICPA Accounting and Valuation Guide

Valuation of Privately-Held-Company Equity Securities Issued as Compensation ["Cheap Stock Guide"]

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 — Other Literature

See the FASB's Web site for titles of:

- Accounting Standards Updates.
- Pre-Codification literature (Statements, Staff Positions, EITF Issues, and Topics).
- Concepts Statements.

International Standards

See Deloitte Touche Tohmatsu's IAS Plus Web site for the titles of citations to:

- International Financial Reporting Standards (IFRSs).
- International Accounting Standards (IASs).
- Other pronouncements.

PCAOB Auditing Standards

See the Standards page on the PCAOB's Web site for titles of its auditing standards.

SEC ASR

Accounting Series Release No. 268, "Presentation in Financial Statements of 'Redeemable Preferred Stocks'" (Rule 5-02.28 of SEC Regulation S-X)

SEC C&DI Topics

Exchange Act Rules

Exchange Act Sections

Non-GAAP Financial Measures

Oil and Gas Rules

Regulation S-K

Securities Act Rules

SEC Concept Release

33-8860, *Mechanisms to Access Disclosures Relating to Business Activities in or With Countries Designated as State Sponsors of Terrorism*

SEC Division of Corporation Finance Disclosure Guidance

Topic 2, "Cybersecurity"

SEC Division of Corporation Finance EDGAR Filer Manual

Volume II, *EDGAR Filing*

- Section 6.14, "Syntax of Calculation Linkbases."
- Section 6.15, "Content of Calculation Linkbases."

SEC Division of Corporation Finance FRM

Topic 1, "Registrant's Financial Statements"

Topic 2, "Other Financial Statements Required"

Topic 3, "Pro Forma Financial Information"

Topic 4, "Independent Accountants' Involvement"

Topic 6, "Foreign Private Issuers & Foreign Businesses"

Topic 7, "Related Party Matters"

Topic 8, "Non-GAAP Measures of Financial Performance, Liquidity, and Net Worth"

Topic 9, "Management's Discussion and Analysis of Financial Position and Results of Operations (MD&A)"

Topic 10, "Emerging Growth Companies"

Topic 13, "Effects of Subsequent Events on Financial Statements Required in Filings"

SEC Final Rule

33-8176, *Conditions for Use of Non-GAAP Financial Measures*

SEC Industry Guides

Guide 3, "Statistical Disclosure by Bank Holding Companies"

Guide 6, "Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters"

Guide 7, "Description of Property by Issuers Engaged or to Be Engaged in Significant Mining Operations"

SEC Interpretive Release

33-8350 (34-48960), *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*

33-8810, *Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934*

SEC Regulation S-K

Item 10, "General"

Item 101, "Description of Business"

Item 103, "Legal Proceedings"

Item 302, "Supplementary Financial Information"

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

Item 305, "Quantitative and Qualitative Disclosures About Market Risk"

Item 307, "Disclosure Controls and Procedures"

Item 308, "Internal Control Over Financial Reporting"

Item 402, "Executive Compensation"

Item 404, "Transactions With Related Persons, Promoters and Certain Control Persons"

Item 407, "Corporate Governance"

Item 503, "Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges"

Item 506, "Dilution"

Item 601, "Exhibits"

Item 1202, "Disclosure of Reserves"

Item 1203, "Proved Undeveloped Reserves"

Item 1204, "Oil and Gas Production, Production Prices and Production Costs"

Item 1205, "Drilling and Other Exploratory and Development Activities"

Item 1206, "Present Activities"

Item 1207, "Delivery Commitments"

Item 1208, "Oil and Gas Properties, Wells, Operations, and Acreage"

SEC Regulation S-T

Rule 302, "Signatures"

Rule 405, "Interactive Data File Submissions and Postings"

SEC Regulation S-X

Rule 1-02, "Definitions of Terms Used in Regulation S-X"

Rule 2-02, "Accountants' Reports and Attestation Reports"

Rule 3-01, "Consolidated Balance Sheets"

Rule 3-02, "Consolidated Statements of Income and Changes in Financial Position"

Rule 3-03, "Instructions to Income Statement Requirements"

Rule 3-04, "Changes in Stockholders' Equity and Noncontrolling Interests"

Rule 3-05, "Financial Statements of Businesses Acquired or to Be Acquired"

Rule 3-09, "Separate Financial Statements of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons"

Rule 3-10, "Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered"

Rule 3-12, "Age of Financial Statements at Effective Date of Registration Statement or at Mailing Date of Proxy Statement"

Rule 3-14, "Special Instructions for Real Estate Operations to Be Acquired"

Rule 3-16, "Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered"

Rule 4-08, "General Notes to Financial Statements"

Rule 4-10, "Financial Accounting and Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and the Energy Policy and Conservation Act of 1975"

Article 5, "Commercial and Industrial Companies"

Rule 5-02, "Balance Sheets"

Rule 5-03, "Income Statements"

Rule 5-04, "What Schedules Are to Be Filed"

Rule 6-04, "Balance Sheets"

Rule 7-05, "What Schedules Are to Be Filed"

Article 8, "Financial Statements of Smaller Reporting Companies"

Article 10, "Interim Financial Statements"

Article 11, "Pro Forma Financial Information"

Rule 11-01, "Presentation Requirements"

Rule 11-02, "Preparation Requirements"

Article 12, "Form and Content of Schedules"

Rule 12-04, "Condensed Financial Information of Registrant"

Rule 12-09, "Valuation and Qualifying Accounts"

Rule 12-28, "Real Estate and Accumulated Depreciation"

SEC SAB Topics

SAB Topic 1.B, "Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity"

SAB Topic 1.M, "Materiality" (SAB 99)

SAB Topic 1.N, "Considering the Effects of Prior Year Misstatements When Quantifying Misstatements in Current Year Financial Statements" (SAB 108)

SAB Topic 3.A, "Convertible Securities"

SAB Topic 5.P, "Restructuring Charges"

SAB Topic 5.Y, "Accounting and Disclosures Relating to Loss Contingencies"

SAB Topic 6.K, "Accounting Series Release 302 — Separate Financial Statements Required by Regulation S-X"

SAB Topic 11.B, "Depreciation and Depletion Excluded From Cost of Sales"

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)

SAB Topic 13, "Revenue Recognition" (SAB 101 and SAB 104)

SAB Topic 13.A, "Selected Revenue Recognition Issues"

SAB Topic 14, "Share-Based Payment"

Securities Act of 1933 Rules

Rule 405, "Definitions of Terms"

Rule 436, "Consents Required in Special Cases"

Securities Exchange Act of 1934 Rules

Rule 13a-15, "Issuer's Disclosure Controls and Procedures Related to Preparation of Required Reports"

Rule 15d-15, "Controls and Procedures"

Appendix F: Abbreviations

Abbreviation	Description
AICPA	American Institute of Certified Public Accountants
AICPA Banking Conference	AICPA National Conference on Banks and Savings Institutions
AICPA Conference	AICPA Conference on Current SEC and PCAOB Developments
ASC	FASB Accounting Standards Codification
ASR	SEC Accounting Series Release
ASU	FASB Accounting Standards Update
AUM	assets under management
AUM&A	assets under management and administration
BC	Basis for Conclusions
BCF	beneficial conversion feature
CAM	common area maintenance
CAQ	Center for Audit Quality
C&DI	SEC Compliance and Disclosure Interpretation
CD&A	Compensation Discussion and Analysis
CEO	chief executive officer
CF-OCA	SEC's Division of Corporation Finance, Office of the Chief Accountant
CFDG	Corporation Finance Disclosure Guidance
CFO	chief financial officer
CIK	central index key
CODM	chief operating decision maker
COSO	Committee of Sponsoring Organizations of the Treadway Commission
DC&P	disclosure controls and procedures
DTA	deferred tax asset
DTL	deferred tax liability
EBIT	earnings before interest and taxes

Abbreviation	Description
EBITDA	earnings before interest, taxes, depreciation, and amortization
EDGAR	SEC's Electronic Data Gathering, Analysis, and Retrieval system
EGC	emerging growth company
EPS	earnings per share
FASB	Financial Accounting Standards Board
FAQs	frequently asked questions
FDA	Food and Drug Administration
FFO	funds from operations
FINRA	Financial Industry Regulatory Authority
FPI	foreign private issuer
FRM	SEC Financial Reporting Manual
G&A	general and administrative expense
GAAP	generally accepted accounting principles
IAS	International Accounting Standard
IASB	International Accounting Standards Board
ICFR	internal control over financial reporting
IFRS	International Financial Reporting Standard
IPO	initial public offering
IPR&D	in-process research and development
LLC	limited liability company
M&A	mergers and acquisitions
MBoe	thousand barrels of oil equivalent
MD&A	Management's Discussion and Analysis
MLP	master limited partnership
NAREIT	National Association of Real Estate Investment Trusts
NCI	noncontrolling interest

Abbreviation	Description
NEO	named executive officer
NGL	natural gas liquid
NOI	net operating income
OCA	SEC's Office of the Chief Accountant
OCI	other comprehensive income
OCIE	SEC's Office of Compliance Inspections and Examinations
P&U	power and utilities
PBE	public business entity
PCAOB	Public Company Accounting Oversight Board
PCC	Private Company Council
PCI	purchased credit-impaired
PCS	postcontract customer support
PUD	proved undeveloped
R&D	research and development
REIT	real estate investment trust
SaaS	software as a service
SAB	SEC Staff Accounting Bulletin
SEC	Securities and Exchange Commission
SG&A	selling, general, and administrative expense
SIC	standard industrial classification
SOA	Society of Actuaries
TDR	troubled debt restructuring
THL	travel, hospitality, and leisure
TPE	third-party evidence
VaR	value at risk
VIE	variable interest entity
VSOE	vendor-specific objective evidence
XBRL	eXtensible Business Reporting Language

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

Abbreviation	Act
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
Exchange Act	Securities Exchange Act of 1934
FCPA	Foreign Corrupt Practices Act
JOBS Act	Jumpstart Our Business Startups Act
PPACA	Patient Protection and Affordable Care Act
Sarbanes-Oxley Act	Sarbanes-Oxley Act of 2002
Securities Act	Securities Act of 1933

GOODWIN PROCTER ALERT

AUGUST 19, 2015

SEC Adopts Final CEO Pay Ratio Disclosure Rule

by Daniel P. Adams, John O. Newell, Ettore A. Santucci, Marian A. Tse

Speed Read

The SEC has adopted a final rule requiring public companies to disclose the ratio of its CEO compensation to the median compensation of its employees, as mandated by the Dodd-Frank Act. Disclosure of the pay ratio will be required in registration statements, proxy and information statements, and annual reports that require executive compensation disclosure. Subject to certain transition provisions, the final rule will first apply to compensation paid for a company's first full fiscal year that begins on or after January 1, 2017 and, therefore, will not require new disclosure in SEC filings by calendar year-end companies until 2018.

On August 5, 2015, the Securities and Exchange Commission adopted the final CEO pay ratio disclosure rule by a 3-2 vote. The final rule amends Item 402 of Regulation S-K, as required by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The rules require public companies to disclose:

- the median annual total compensation for all employees of the company other than the CEO (subject to limited exceptions for foreign employees) for the last completed fiscal year;
- the annual total compensation of the CEO (or equivalent position) for the last completed fiscal year; and
- the ratio of the two amounts.

The pay ratio disclosure may be expressed as a ratio with the median employee compensation equal to one (for example, "x to 1" or "x:1"), or may be expressed narratively (for example, "The CEO's annual total compensation is x times that of the median total annual compensation of employees").

As discussed in greater detail in a separate section below, the CEO pay ratio disclosure rule will first apply to compensation paid for a company's first full fiscal year that begins on or after January 1, 2017 and will therefore not require new disclosure in a company's SEC filings until 2018. Although the final rule is likely to face legal challenges in court and there are already bills in both the House of Representatives and the Senate that would repeal the section of the Dodd-Frank Act under which the SEC adopted the final rule, companies should begin to evaluate whether they have information and reporting systems that would produce the required data and how compliance would impact internal and external reporting and disclosure.

Companies Covered by the Final Rule

The CEO pay ratio disclosure rule applies to all companies that are required to provide Summary Compensation Table disclosure under Item 402(c) of Regulation S-K. The final rule therefore does not apply to smaller reporting companies, emerging growth companies, U.S.-Canadian multijurisdictional disclosure system filers, foreign private issuers or registered investment companies.

Identifying the Median Employee

Employee Population. In determining the employees from which the median employee is identified, a company may use its full employee population or a statistical sampling and/or other reasonable methods. A company's full employee population for purposes of identifying the median employee for a particular year includes all individuals other than the CEO who were employed by the company or any of its consolidated subsidiaries as of a date selected by the company that is within the last three months of its fiscal year. All full-time, part-time, seasonal and temporary workers who were employed on the date selected are included. Workers who provide services to the company as independent contractors or "leased" workers are excluded if they were employed by and their

compensation was determined by an unaffiliated third party. In addition, companies may exclude persons who became employees as the result of a business combination or acquisition occurring during the year and, under limited exemptions described below, non-U.S. employees.

Employee Compensation. The final rule provides companies with significant flexibility in determining the compensation measure to be used to identify the median employee. Companies may use annual total compensation, calculated in the same way as total compensation is for the named executive officers in the Summary Compensation Table, or any other compensation measure that is consistently applied to all employees included in the calculation. For example, a company may use information from its tax or payroll records to identify the median employee. Companies also may use a measure that is defined differently across jurisdictions, such as "taxable wages," and may include different annual periods as long as the company applies the measure consistently within each jurisdiction. As described in more detail below, companies may also make cost-of-living adjustments to the compensation of employees in jurisdictions other than the jurisdiction in which the CEO resides.

Frequency of Determination. Companies must identify the median employee at least once every three years; provided that if there has been a change in employee population or compensation arrangements during a company's prior fiscal year that the company reasonably believes would result in a significant change to its pay ratio disclosure, the company must re-identify the median employee for that fiscal year.

Substitution of Median Employee. In cases where a company would otherwise not be required to re-identify the median employee for a particular year but it is no longer appropriate to use the median employee for the prior year because of a change in the employee's circumstances that the company reasonably believes would result in a significant change in its pay ratio disclosure, the final rule permits a company to use another employee whose compensation was substantially similar to the original median employee based on the compensation measure that the company used to select the original median employee. This could become necessary if the original median employee is no longer employed by the company in year two or year three, or if the employee's compensation significantly changes in year two or year three (for example, as a result of a promotion that significantly increases his or her compensation).

Disclosure Requirements. The final rule includes a number of disclosure requirements relating to the identification of the median employee. In particular, a company must disclose:

- the date selected by the company to determine the full employee population, and if such date was changed from the prior year, disclosure of the change and a brief explanation of the reason for the change;
- the compensation measure used to identify the median employee if the company uses a compensation measure other than annual total compensation;
- if true, that the company is using the same median employee as it did in the prior year and a brief description of the basis for its reasonable belief that there have been no changes in employee population or compensation arrangements during its prior fiscal year that it reasonably believes would significantly affect its pay ratio disclosure;
- the approximate number of employees that have been omitted because they became employees as the result of a business combination or acquisition during the year, if any, and the identity of the acquired business that is excluded; and
- if cost-of-living adjustments are made, the additional disclosures described in that section.

Companies also must briefly describe the methodology and any material assumptions, adjustments or estimates they use to identify the median employee. In addition, if a company changes its methodology or its material assumptions, adjustments or estimates from those used in its pay ratio disclosure for the prior fiscal year, and the effects of any such change are significant, the company must briefly describe the change and the reason for the change. The final rule also separately requires companies to clearly identify any estimates used. As an example, the adopting release stated that when a company uses statistical sampling, it must describe the size of both the sample and the estimated full employee population, any material assumptions used in determining the sample size and the sampling methods used.

Determination of Annual Total Compensation

Median Employee. The annual total compensation of the median employee that is required to be disclosed and used to determine the CEO pay ratio is to be calculated in the same way total compensation is calculated for the named executive officers in the Summary Compensation Table pursuant to Item 402(c)(2)(x) of Regulation S-K, except as noted below. Companies are required to recalculate the annual total compensation of the median employee each year, even in situations where they were not required to re-identify the median employee for the particular year.

Salary. For non-salaried employees, references to "salary" refer instead to "wages plus overtime."

Annualizing Adjustments. Companies may annualize total compensation for all permanent employees that were employed for less than the full year, such as newly hired employees or those on unpaid leave. Companies may not annualize total compensation for temporary or seasonal positions, and may not make a full-time equivalent adjustment for any employee.

Personal Benefits. Companies may include (1) personal benefits that are less than $10,000 in the aggregate and (2) non-discriminatory benefit plan compensation in calculating annual total compensation of their median employee if they include the same items in the annual total compensation of their CEOs used for purposes of calculating the CEO pay ratio. If a company does so, it must explain the difference between the CEO's annual total compensation used for the pay ratio disclosure and the total compensation shown in the Summary Compensation Table if the difference is material.

Reasonable Estimates. Companies are permitted to use reasonable estimates to calculate annual total compensation or any element of annual total compensation for the median employee. As interpreted by the SEC in the adopting release, this means that companies must have a reasonable basis to conclude that their estimates approximate the actual amounts of compensation, or a particular element of compensation, calculated in accordance with Item 402(c)(2)(x) of Regulation S-K. The SEC did state that companies may use reasonable estimates in determining an amount that reasonably approximates the aggregate change in the actuarial present value of the median employee's defined pension benefit. In this situation, the SEC recognized that companies may not have access to the information needed to calculate the precise amount.

Companies must clearly identify any estimates they use in calculating the annual total compensation or any element of annual total compensation for the median employee. Companies must also briefly describe any material assumptions, adjustments, or estimates they use to determine total compensation. If a company changes its assumptions, adjustments or estimates from the prior fiscal year and the effects of the change are significant, the company must describe the change and the reason for the change. These disclosure requirements are the same as the disclosure requirements relating to assumptions, adjustments and estimates used to identify the median employee.

Cost-of-Living Adjustments. As described in more detail below, the final rule permits companies to make cost-of-living adjustments to the compensation of employees in jurisdictions other than the jurisdiction where the CEO resides if they use such an adjustment to identify the median employee.

Multiple CEOs During a Single Year. The final rule permits a company that has more than one non-concurrent CEO serving during a single fiscal year to calculate the annual total compensation for its CEO in either of two manners:

- the company may calculate and combine the compensation provided to each person who served as CEO during the year for the period during which he or she served as CEO; or
- the company may calculate and annualize compensation for the individual who was serving as CEO on the date the company selected for identification of the median employee.

The final rule requires the company disclose which option it chose and how it calculated the CEO's annual total compensation.

Cost-of-Living Adjustments

The final rule permits companies to make cost-of-living adjustments to the compensation of employees in jurisdictions other than the jurisdiction where the CEO resides. From the discussion in the adopting release, these references to "jurisdiction" appear to be limited to different countries rather than different U.S. states or local jurisdictions. If a company uses such an adjustment to identify the median employee, and the median employee is in a jurisdiction other than the jurisdiction where the CEO resides, the company

must use the same adjustment to calculate the median employee's annual total compensation and disclose the median employee's jurisdiction. The company must also briefly describe the cost-of-living adjustment it used (1) to identify the median employee and (2) to calculate the median employee's annual total compensation, including the measure used as the basis for the cost-of-living adjustment. If the company makes a cost-of-living adjustment, it must also present the median employee annual total compensation and pay ratio determined *without* the cost-of-living adjustment. To calculate these amounts, the company will need to identify the median employee without using any cost-of-living adjustment. Companies must disclose if they change from using a cost-of-living adjustment to not using that adjustment (or vice versa).

Non-U.S. Employees

The CEO pay ratio rule provides two exemptions for employees located outside the United States.

Data Privacy Exemption. The final rule allows companies to exclude non-U.S. employees from the company's employee population if they are employed in a foreign jurisdiction in which the laws or regulations governing data privacy are such that, despite reasonable efforts to obtain or process the necessary information, the company is unable to do so without violating those laws or regulations. If a company excludes any non-U.S. employees under this exemption in a particular jurisdiction, it must exclude all non-U.S. employees in that jurisdiction. The data privacy exclusion is subject to the following additional requirements:

- A company's "reasonable efforts" to obtain the necessary information must include, at a minimum, using or seeking an exemption or other relief under the applicable data privacy laws or regulations.
- If a company excludes any employees under this exemption, it must identify the excluded jurisdiction(s) and identify the specific data privacy laws or regulations that prohibit the collection of information and explain how complying with the CEO pay ratio disclosure rule would violate those laws or regulations (including the efforts the company made to seek an exemption from the laws or regulations). Companies must also indicate the approximate number of employees excluded from each jurisdiction based on this exemption.
- A company that relies on this exemption must obtain a legal opinion from counsel that opines on the company's inability to obtain or process the required information without violating the jurisdiction's data privacy laws or regulations, including the company's inability to obtain an exemption or other relief. Companies must file this legal opinion as an exhibit to the filing that includes CEO pay ratio disclosure.

The data privacy exclusion is not subject to the 5% limitation of the *de minimis* exemption described below, but employees excluded under the data privacy exemption count against the 5% limitation of the *de minimis* exemption.

De Minimis Exemption. The adopted rule also provides a "*de minimis*" exemption for non-U.S. employees. To the extent available, this exemption permits companies to exclude up to 5% of their total employees. If a company's non-U.S. employees account for 5% or less of its total employees, the company may choose to exclude all (but not less than all) of its non-U.S. employees under this exemption. If a company's non-U.S. employees exceed 5% of its total employees, a company may exclude up to 5% of its total employees who are non-U.S. employees, subject to the following restrictions:

- If a company excludes any non-U.S. employees in a jurisdiction, it must exclude all employees in that jurisdiction. If more than 5% of the company's employees are in a single non-U.S. jurisdiction, companies may not exclude any employees in that jurisdiction under the *de minimis* exemption.
- Companies may not use the *de minimis* exemption if the number of employees excluded under the data privacy exemption equals or exceeds 5% of the company's total employees. Non-U.S. employees excluded under the data privacy law exemption count against the 5% total that may be excluded under the *de minimis* exemption.
- If employees excluded under the data privacy exemption are less than 5% of the company's total employees, the company may use the *de minimis* exemption to exclude up to the number of non-U.S. employees that would, combined with employees excluded under the data privacy exemption, not exceed 5% of the company's total employees.

If a company uses the *de minimis* exemption, it must disclose the jurisdiction or jurisdictions from which it is excluding employees, the approximate number of employees excluded from each jurisdiction under the *de minimis* exemption, the total number of its U.S. and

non-U.S. employees calculated without regard to the data privacy and/or *de minimis* exemptions, and the total number of its U.S. and non-U.S. employees used for its *de minimis* calculation.

Additional Disclosure Permitted

The final rule permits (but does not require) companies to present additional information, including additional ratios, such as additional pay ratios for U.S. employees or non-U.S. employees. Additional information and ratios must be clearly identified and must not be misleading or presented with greater prominence than the required ratio.

Personally Identifiable Employee Information

The final rule provides that companies are not required to, and should not, disclose any personally identifiable information about the median employee other than his or her compensation. The final rule permits companies to generally identify an employee's position to put the employee's compensation in context, but does not require companies to provide this information and provides that companies should not do so if providing that information could identify any specific individual.

CEO Compensation Not Available and New Form 8-K Disclosure

If a company's CEO's salary or bonus is not calculable through the latest practicable date for a filing that otherwise would require disclosure of the CEO pay ratio, the company must disclose that the pay ratio cannot be calculated until the CEO salary or bonus, as applicable, has been determined and the date on which it expects to determine the CEO's actual total compensation. The company must then include the CEO pay ratio disclosure required by the final rule in the current report under Item 5.02(f) of Form 8-K that discloses the CEO's salary or bonus.

Compliance Date, Affected Filings and Transition Periods

For companies that are subject to the CEO pay ratio disclosure rule, the final rule will first apply to compensation paid for their first fiscal year beginning on or after January 1, 2017. As a result, the final rule will not require CEO pay ratio disclosure until 2018 for calendar year-end companies.

Filings Affected. Companies are required to include CEO pay ratio disclosures in any registration statement, proxy or information statement and annual report that requires executive compensation disclosure pursuant to Item 402 of Regulation S-K.

Disclosure Timing. Generally, CEO pay ratio disclosure is subject to the same filing timetable as other compensation disclosure required by Item 402. This means that the final rule does not require a company to file CEO pay ratio disclosure for the last completed fiscal year until it files its annual report on Form 10-K or, if later, when the company files its definitive proxy or information statement relating to its next annual meeting of shareholders or written consent in lieu of such a meeting. As is the case with other Item 402 compensation disclosure, a company may incorporate the CEO pay ratio disclosure into its annual report on Form 10-K from its definitive proxy statement. If the company does not file its definitive proxy statement within 120 days after the end of its prior fiscal year, the company must file the CEO pay ratio disclosure and other disclosure that would have been incorporated by reference from its definitive proxy statement in an amendment to its annual report on Form 10-K. Unlike other disclosures required by Item 402, if the CEO pay ratio disclosure for the mostly recently completed fiscal year would be required in a registration statement or a proxy or information statement that is filed before such disclosure is included, or required to be included, in a company's Form 10-K, the company would not be required to include the updated CEO pay ratio disclosure in that filing. The adopting release suggests that, in that instance, the most recent CEO pay ratio disclosure that previously had been included in a Form 10-K (i.e., the prior year's CEO pay ratio disclosure) would be required to be included in the filing.

Filed, not Furnished. CEO pay ratio disclosure will be treated as "filed" rather than "furnished" for purposes of the federal securities laws, and will be subject to the CEO/CFO certifications required by Rule 13a-14 under the Securities Exchange Act of 1934 and Section 906 of the Sarbanes-Oxley Act.

Transitional Relief for New Reporting Companies. For a new reporting company that is not an emerging growth company or a smaller reporting company, the final rule will first apply to compensation paid for the first fiscal year following the year on which it first becomes subject to reporting requirements under Section 13(a) or Section 15(d) of the Securities Exchange Act, but not for any fiscal year that begins before January 1, 2017. For example, a company that completes its initial public offering in 2016 would first be

required to provide CEO pay ratio disclosure with respect to 2017 compensation in its Form 10-K or definitive proxy statement filed in 2018. Similarly a company that completes its initial public offering in 2018 would first be required to provide CEO pay ratio disclosure with respect to 2019 compensation in its Form 10-K or definitive proxy statement filed in 2020.

Transitional Relief for Emerging Growth and Smaller Reporting Companies. For a company that qualifies as an emerging growth company or smaller reporting company, the final rule will first apply to compensation paid for the first fiscal year commencing on or after the date on which the company ceases to be an emerging growth company or smaller reporting company, as applicable, but not for any fiscal year that begins before January 1, 2017. For example, a company that ceases to be an emerging growth company during 2017 would first be required to provide CEO pay ratio disclosure with respect to 2018 compensation in its Form 10-K or definitive proxy statement filed in 2019.

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GOODWIN PROCTER ALERT

FEBRUARY 26, 2015

SEC Proposes Hedging Policy Disclosure Rule

by Daniel P. Adams, John O. Newell, Marian A. Tse

Speed Read

The SEC has proposed a rule that would require new hedging policy disclosure by companies that are subject to SEC proxy rules. The proposed rule would in most cases expand the hedging policy disclosure currently provided by companies. The proposed rule would also extend this requirement to companies that are not currently required to provide hedging disclosure, such as smaller reporting companies and emerging growth companies. The proposed rule is subject to public comment through April 20, 2015 and therefore is very unlikely to affect disclosure in proxy statements for 2015 annual meetings by companies with calendar year-end fiscal years.

On February 9, 2015, the Securities and Exchange Commission proposed a rule that would require companies to disclose their policies with respect to hedging of equity securities of the company, as well as its parent and subsidiaries of the company or its parent, by the company's employees, officers and directors. The proposed rule, which expands current SEC disclosure requirements for hedging policies, is one of four compensation-related disclosure mandates under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

To date, the SEC has proposed rules covering CEO pay ratio disclosure and hedging policy disclosure. The SEC has not yet proposed rules covering clawbacks of incentive compensation under stock exchange rules or pay for performance disclosure. The goal of the proposed rule is to provide investors with additional information about the governance practices of companies in which they invest.

The proposed rule is subject to public comment through April 20, 2015. Even if the SEC were to adopt a final rule promptly after the comment period closes, the final rule is therefore very unlikely to affect disclosure by companies with calendar year-end fiscal years in proxy statements for 2015 annual meetings. The full text of the proposed rule is available on the SEC web site.

In the proposing release, the SEC solicits public comment on a significant number of questions, so it is possible that the final rule may be somewhat different from the proposed rule. A joint statement released on February 9 by Commissioners Gallagher and Piwowar, who voted for the proposed rule, identified five areas about which they "remain quite concerned" and for which they "hope to receive robust public comment." These include:

- lack of an exemption for emerging growth companies and/or smaller reporting companies;
- lack of an exemption for certain investment companies (specifically, listed, closed-end funds);
- lack of an exemption for hedging by employees that cannot affect a company's share price;
- application of the proposed rule to the equity securities of a company's subsidiaries, parents, and brother-sister companies; and
- whether the proposed rule reflects the best prioritization of SEC staff and resources.

Proposed Hedging Disclosure

Companies and SEC Filings Covered. The proposed rule would require hedging policy disclosure in proxy and information statements for the election of directors by companies subject to the federal proxy rules, including smaller reporting companies, emerging growth companies, and registered closed-end investment companies with shares listed and registered on a national

securities exchange. The proposed rule would not require companies to adopt anti-hedging policies. However, as discussed below, many companies have already done so, and, depending on the scope of the final rule, other companies may choose to do so.

Persons Covered. The proposed disclosure of hedging policies would apply to hedging activities by any employees (including officers) and directors of the company and any of their designees. A company that permits hedging transactions by some, but not all, of the categories of persons covered by the proposed rule would be required to disclose the categories of persons who are permitted to engage in hedging transactions and those who are not.

Hedging Activities Covered. The proposed rule would require a company to disclose whether it permits its employees, officers or directors (1) to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) or (2) otherwise to engage in transactions that are designed to or have the effect of hedging or offsetting any decrease in the market value of equity securities that (A) have been granted to the employee, officer or director by the company as part of the compensation of the employee, officer or director or (B) are held, directly or indirectly, by the employee, officer or director.

The proposed rule would require a company to disclose the categories of hedging transactions that it permits and those that it prohibits. The proposed rule would permit a company to disclose that it prohibits or permits particular categories and permits or prohibits, respectively, all other hedging transactions, if true. If a company does not permit any hedging transactions, or permits all hedging transactions, it would be required to disclose that fact and would not be required to describe specific categories of hedging transactions. A company that permits hedging transactions would be required to disclose sufficient detail to explain the scope of the permitted hedging transactions.

The proposed rule would apply to hedging policies with respect to equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 and that have been issued by the company, any parent of the company, any subsidiary of the company, or any subsidiary of any parent of the company.

The disclosure required by the proposed rule would not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, the Securities Exchange Act of 1934 or the Investment Company Act of 1940 except to the extent that the company specifically incorporates the disclosure by reference.

Current Hedging Disclosure Requirements and Practice

There are current disclosure requirements relating to hedging policies, and many companies have adopted hedging policies, often in response to the policies of proxy advisory firms. However, the new rule as currently proposed would extend disclosure of hedging policies to companies that are not currently subject to these disclosure requirements, and would expand disclosure requirements significantly beyond the disclosure that most companies currently provide.

Under current SEC rules, the principal disclosure requirement relating to hedging policies in proxy statements is the requirement to disclose in Compensation Discussion and Analysis the material information necessary to understand a company's compensation policies and decisions regarding its named executive officers. In addition, in recent years, proxy advisory firms have implemented policies that encourage companies to adopt and disclose anti-hedging policies. As a result, many companies have already adopted and disclose the existence of anti-hedging policies. A study published in September 2014 by Meridian Compensation Partners LLC indicated that 91% of the 250 large publicly traded companies that comprise the Meridian 250 disclosed the existence of an anti-hedging policy, up from 82% in 2013.

Because the principal current disclosure requirement is part of CD&A, it does not apply to smaller reporting companies, emerging growth companies, registered investment companies or foreign private issuers. In addition, the current CD&A disclosure requirement does not cover hedging policies that apply to directors, executive officers who are not named executive officers, or other employees. Although anti-hedging policies adopted by companies often apply to a broader group of people than the company's named executive officers, they generally do not apply to all employees. Additionally, these policies may not cover registered securities, if any, issued by a subsidiary or the company's parent or another subsidiary of the parent, and may not apply to as broad a range of hedging transactions as those covered by the proposed rule.

As a result, when the final rule is adopted, most companies with existing anti-hedging policies will need to review their policies and disclosure in light of the new rule. In addition, many companies that have not adopted anti-hedging policies may need to consider doing so.

Actions to Take

The SEC has solicited public comment on a large number of questions that could affect which employees and securities are subject to disclosure under the new rule. The SEC has also solicited comment on whether the final rule should apply to classes of companies such as emerging growth companies and smaller reporting companies. As a result, we expect that many companies will wait for the SEC to adopt the final rule before amending existing anti-hedging policies or considering whether to adopt anti-hedging policies in response to these new disclosure requirements.

Ultimately, when the SEC adopts the final rule, we expect that companies may have additional policy decisions to consider. For example, if the proposed rule is adopted in its current form, companies would need to consider whether anti-hedging policies should apply to all employees. Companies would also need to consider the types of hedging transactions that will be subject to a company policy. Companies that wish to comment on the proposed rule should consider submitting comments on the proposed rule to the SEC on or before April 20, 2015.

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GOODWIN PROCTER ALERT

JULY 16, 2015

SEC Proposes Mandatory Incentive Compensation Clawback Rules

by Daniel P. Adams, John O. Newell, Ettore A. Santucci, Marian A. Tse

Speed Read

The SEC has proposed long-awaited rules on incentive compensation clawbacks under the Dodd-Frank Act. The proposed rules would require national securities exchanges to adopt new listing standards requiring listed companies to adopt and enforce clawback policies. The proposed rules would also require listed companies to make a variety of disclosures concerning their clawback policies and any clawbacks required by these policies. The proposed rules are sweeping in their scope, in terms of the number of listed companies covered, the number of executives covered, the types of incentive compensation covered and the number of fiscal years covered. If the SEC adopts these rules as proposed, the potential impact on executive compensation could be significant.

On July 1, 2015, the Securities and Exchange Commission proposed rules, consisting of new Rule 10D -1 and related rule and form amendments, that would require clawbacks of incentive compensation received by executive officers of listed companies in the event of subsequent accounting restatements. The SEC proposed these rules to implement Section 10D of the Securities Exchange Act of 1934, which was added by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The proposed rules would require national securities exchanges, including the NYSE and Nasdaq, to adopt rules that would prohibit the initial or continued listing of any security of a company that does not adopt and comply with a written policy providing that, in the event the company is required to prepare an accounting restatement as a result of material non-compliance with any financial reporting requirement under the securities laws, the company will recover (*i.e.,* "claw back") the amount of excess incentive based compensation received by the company's executive officers during the three fiscal years preceding the date on which the company is required to prepare the restatement. The proposed rules would also require each listed company to publicly file its written clawback policy and, if there is a restatement that is subject to the policy, to disclose specified information regarding the restatement and the company's application of its policy in connection with the restatement.

As described in more detail below, the new clawback policies that would be required could raise several difficult issues if the SEC adopts the proposed rules in their current form. For example:

- *Stock Price and TSR-Based Incentive Compensation*. The proposed rules would require listed company clawback policies mandated by the proposed rules to apply to compensation that had been earned based on the company's stock price or total shareholder return (TSR). In this situation, the listing standards required by the proposed rules would require that the amount of compensation to be clawed back be based on "a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received." Companies would likely encounter significant difficulties and uncertainties when they attempt to determine the precise impact of the misstated financial information on the company's stock price, and would likely need to hire a third party to assist with this determination. Requiring a company to make and publicly disclose these estimates could also harm the company's ability to defend potential litigation relating to a restatement.
- *No Tax Offset*. The new clawback policies would require companies to compute clawback amounts without regard to any taxes paid. As a result, if an executive ultimately is not able to obtain a full refund or credit for the taxes paid on compensation that is clawed back, the proposed rules would not provide for a reduction in the amount required to recovered from the executive and the executive could potentially be worse off than if the executive had never received the compensation in the first place.

- *Determination of When Restatement is Required*. The proposed rules would require companies to claw back excess incentive-based compensation received by the company's executive officers during the three fiscal years preceding the date on which the company is required to prepare the restatement. The definition of the date on which the company is required to prepare the restatement includes the date on which the relevant decision maker at the company "concludes, *or reasonably should have concluded*, that the company's previously issued financial statements contain a material error" (emphasis added). As a result, in order for a company to comply with its clawback policy, it would need to determine whether it reasonably should have reached this conclusion earlier than it actually did. Because the date of this conclusion determines the fiscal years that are subject to the company's clawback policy, this would introduce uncertainty into the determination of which compensation needed to be clawed back and potentially expose companies to delisting in the event they are second-guessed as to when they reasonably should have determined that a material error existed in prior financial statements. In addition, because the proposed rules would require companies to disclose the date on which the company was required to prepare the restatement and Form 8-K already requires companies to disclose the date on which they actually reach the conclusion that prior financial statements contain a material error, a company's determination that it reasonably should have concluded that a material error existed earlier than it actually did would be completely transparent to the public. Public disclosure of the difference between these dates could further compound the potential adverse consequences of a restatement to a company.

Which Companies Would be Affected?

The clawback policies that would be required by the listing standards under the proposed rules would apply to all companies with a class of listed securities, subject to very limited exceptions. The proposed rules would not permit exceptions for smaller reporting companies, emerging growth companies or foreign private issuers, among others.

Which Executives Would be Covered?

The new clawback policies would be required to apply to any individual who served as an "executive officer" of the company at any time during the performance period for incentive-based compensation that is subject to the clawback policy. The proposed rules define "executive officer" in the same manner that the rules under Section 16 of the Securities Exchange Act define "officer."

What Compensation Would be Subject to Mandatory Clawback?

Clawback policies under the proposed rules would require companies to claw back "incentive-based compensation," as defined by the proposed rules, that was received:

- during the three completed fiscal years immediately preceding the date that the company is required to prepare a restatement of its previously issued financial statements to correct a material error;
- while the company had a class of securities listed on a securities exchange; and
- by an individual who served as an executive officer at any time during the performance period for such incentive-based compensation.

The amount of incentive-based compensation that companies would be required to claw back would be the amount that exceeds the amount that otherwise would have been received if the incentive-based compensation had been determined based on the accounting restatement, computed without regard to any taxes paid.

"Incentive-Based Compensation." The proposed rules define "incentive-based compensation" as any compensation that is granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure. Financial reporting measures would be defined as:

- measures that are determined and presented in accordance with the accounting principles used in preparing the company's financial statements;
- any measures that are derived wholly or in part from those measures (*e.g.*, EBITDA, FFO, return on assets or invested capital, financial ratios, liquidity, return and earnings measures, and sales per square foot or same store sales, among others); and
- stock price and TSR.

Financial reporting measures would not be limited to measures presented within the company's financial statements or SEC filings.

Because the definition of incentive-based compensation includes compensation earned "in part" upon achieving a financial reporting measure, these clawback policies would also apply to compensation that is not tied to these measures in a strictly formulaic manner. This would include discretionary bonuses paid from a bonus pool, where the size of the pool is determined based wholly or in part on the attainment of a financial reporting measure, or awards based on the attainment of a financial reporting measure that are subject to discretionary increase or decrease. Incentive-based compensation would also include compensation that was earned based on the company's performance with respect to a financial reporting measure (for example, stock price and TSR) relative to a peer group.

The proposed rules would not apply to the following types of compensation:

- salary;
- bonuses or equity awards paid solely on a discretionary basis, other than those paid from a bonus pool the size of which was determined wholly or in part by satisfying a financial reporting measure;
- bonuses or equity awards paid solely on satisfaction of subjective standards, completion of a specified employment period or the achievement of goals that do not constitute financial reporting measures, such as opening a specified number of stores, obtaining regulatory approvals of a product, consummating a merger or divestiture or completing a restructuring plan or financing transaction.

When Compensation is "Received." Pursuant to the proposed rules, incentive-based compensation would be deemed received in the company's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period. For instance, an equity award that is earned based on the company's TSR for the three-year period ending December 31, 2018 would be deemed received in 2018 even though the shares are not issued until early 2019, and even if the shares are subject to additional time-based vesting. As a result, the shares would be subject to these clawback provisions if the company was required to prepare a restatement in 2019, 2020 or 2021.

When a Company is "Required to Prepare a Restatement." Under the proposed rules, the date on which a company is required to prepare an accounting restatement would be the earlier of:

- the date the company's board of directors, a committee of the board of directors, or officer(s) of the company authorized to take that action if board action is not required, concludes, or reasonably should have concluded, that the company's previously issued financial statements contain a material error; or
- the date a court, regulator or other legally authorized body directs the company to restate previously issued financial statements to correct a material error.

The proposed rules include a note that the first date above is generally expected to coincide with the date of the triggering event under Item 4.02(a) of Form 8-K, which requires the company to file a Form 8-K if relevant company decision makers conclude that previously issued financial statements should no longer be relied upon because of an error. However, the Form 8-K triggering event and the proposed rule's definition of the date on which a company would be required to prepare an accounting restatement differ in one potentially significant way. The Form 8-K reporting requirement is only triggered when the relevant decision makers actually reach the required conclusion. In contrast, the clawback requirement would be triggered when the relevant decision makers *reasonably should have* reached the required conclusion.

This subjective standard would introduce an element of potential uncertainty into the determination of the compensation that is required to be clawed back, and potentially require companies to disclose in their SEC filings that they reasonably should have concluded that a material error existed in their financial statements earlier than they actually reached this conclusion. Accounting standards can be very complex and/or may rely upon inherently subjective judgments. In situations where accounting standards are subsequently determined to have been misapplied, it may be difficult to determine exactly when the relevant decision maker reasonably should have concluded that a material error existed in previously issued financial statements. Uncertainty or potential second-guessing of when this conclusion reasonably should have been made could expose a company to significant risks because

the consequences of failing to implement the clawback policy and make the required disclosures at the required date include delisting of the company's securities. Further, publicly disclosing that the company should have reasonably concluded that a material error existed earlier than it actually reached this conclusion could further compound the potential adverse consequences of a restatement to a company.

Excess Incentive-Based Compensation. The listing standards would require companies to claw back excess incentive-based compensation. The amount of the excess incentive-based compensation is the amount of the applicable incentive-based compensation that exceeds the amount that otherwise would have been received had it been determined based on the accounting restatement (*i.e.*, using the restated results). As noted above, companies must determine and recover the amount of excess incentive-based compensation without regard to any taxes paid.

For incentive-based compensation based on a company's stock price or TSR, where the amount of excess incentive-based compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the proposed rules would require that:

- the amount be based on a reasonable estimate of the effect of the accounting restatement on the stock price or TSR upon which the incentive-based compensation was received; and
- the company maintain documentation of the determination of that reasonable estimate and provide that documentation to the securities exchange on which it is listed.

The SEC also provided additional guidance in the proposing release describing how it intended the proposed rules to operate with respect to the determination of the amount of excess incentive-based compensation. In particular, the SEC noted the following:

- if a company originally used negative discretion to reduce formulaic incentive-based compensation, the excess incentive-based compensation would equal the formulaic amount determined using the restated results less the amount originally received (*i.e.*, recovery would be deemed to have already been received to the extent of any prior exercise of negative discretion);
- if a company originally used positive discretion to increase formulaic incentive-based compensation, the excess incentive-based compensation would equal the formulaic amount determined using the restated results less the formulaic amount originally determined (*i.e.*, the executive would be permitted to retain the full amount of the discretionary increase in compensation) provided that the company would have been permitted to make such a discretionary increase based on the restated results;
- for awards received from bonus pools, where the size of the pool is determined based wholly or in part on the attainment of a financial reporting measure, no recovery is required unless the aggregate amount of awards received exceeds the size of the pool based on the restated results and the excess amount of any executive's award will be a pro rata portion of the aggregate deficiency (*i.e.*, no discretion to pursue differential recovery among executives is permitted); and
- for exercised options or SARs where the underlying shares have been sold, the recoverable amount would be the sale proceeds received with respect to the excess number of shares reduced to reflect the applicable exercise price paid.

Neither the proposed rules nor the proposing release address the potential for offsetting increases where restated results would have decreased the amount of incentive-based compensation received in one year, but increased the amount received in another year (for example, in a situation where the aggregate amount of revenues or expenses recognized over a multi-year period does not change, but the specific periods in which the revenues or expenses are recognized does change).

Indemnification Prohibited. The proposed rules would prohibit companies from indemnifying executive officers against the loss of any excess incentive-based compensation.

Are Companies Required to Recover Excess Incentive-Based Compensation Under All Circumstances?

The stock exchange listing standards mandated by the proposed rules would require a company to recover excess incentive-based compensation in accordance with its clawback policy unless the company's compensation committee determines recovery is impractical because either (i) the direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered or (ii) the recovery would violate home country law adopted prior to July 14, 2015.

Before concluding that recovery is impracticable based on the expense of enforcement, a company must first make a reasonable attempt to recover the excess incentive-based compensation, document that attempt and provide that documentation to the securities exchange on which the company's securities are listed. Before concluding that recovery is impracticable based on home country law, a company must first obtain an opinion of home country counsel, not unacceptable to the securities exchange on which the company's securities are listed, that recovery would result in a violation of applicable home country law and provide that opinion to the securities exchange. Neither the proposed rules nor the proposing release specify whether "home country law" is intended to refer to the laws of the country in which the company is domiciled or has its headquarters or whether it refers to the laws of any foreign jurisdiction that applied to an executive officer (for example, an executive officer located in a foreign office of a domestic company).

A company that does not comply with its clawback policy will be subject to delisting by the securities exchange on which it is listed. The proposing release suggested that the securities exchanges would have some discretion when determining whether and when to commence delisting proceedings. Because the proposed rules would not require that the clawback be completed within a specific period of time, the securities exchange would be required to determine whether the steps a company was taking constituted compliance by the company with its clawback policy. In the proposing release, the SEC indicated that a securities exchange, in making this assessment, would need to determine, among other things, whether the company was making a good faith effort to pursue recovery promptly. Because a company's failure to comply with its own policy could result in delisting, companies should be careful to craft their clawback policies in a manner that will minimize the potential for delisting due to noncompliance with requirements that are not strictly mandated by applicable SEC rules or securities exchange listing standards.

If a securities exchange delists a company for failing to comply with the clawback policy required by the securities exchange, the company will not be permitted to list its securities on any securities exchange thereafter until it has complied with its clawback policy.

How Quickly Must Companies Recover Excess Incentive-Based Compensation?

Although the proposed rules do not specify a minimum period of time within which clawback policies must require a company to recover excess incentive-based compensation, the SEC stated in the proposing release that a company should recover excess incentive-based compensation reasonably promptly, since undue delay would constitute non-compliance with its clawback policy. However, as noted below, the proposed rules would generally require a company to disclose any shortfalls in recovery that existed as of the end of the prior fiscal year in the company's proxy statement.

What New Disclosures Would be Required by the Proposed Rules?

Filing of Clawback Policy. The proposed rules would require each company that had a class of securities listed on a securities exchange at any time during its last completed fiscal year to file its required clawback policy as an exhibit to its annual report on Form 10 K.

Proxy Statement Clawback Disclosure After a Restatement. The proposed rules would require each company that had a class of securities listed on a securities exchange at any time during its last completed fiscal year to provide additional disclosure if at any time during the last completed fiscal year either (1) the company completed a restatement that required recovery of excess incentive-based compensation pursuant to the company's clawback policy or (2) there was an outstanding balance of excess incentive-based compensation from a prior restatement. In these cases, the company would be required to disclose the following information in its proxy or information statement that included executive compensation disclosure under Item 402 of Regulation S K and in its annual report on Form 10 K, either directly or through incorporation by reference to its proxy statement:

- *Clawback Amounts.* For each restatement, the company would be required to disclose:
  - the date on which the company was required to prepare an accounting restatement;
  - the aggregate dollar amount of excess incentive-based compensation attributable to the accounting restatement;
  - the estimates that were used in determining the excess incentive-based compensation attributable to the accounting restatement if the financial reporting measure related to a stock price or TSR metric; and

- the aggregate dollar amount of excess incentive-based compensation that the company had not recovered at the end of the last completed fiscal year.

If the company has not yet determined the amount of excess incentive-based compensation, the company must disclose that fact and explain the reasons.

- *Recoveries Not Pursued.* If during the last completed fiscal year the company decided not to pursue recovery of excess incentive-based compensation from any individual subject to its clawback policy, the company would be required to disclose, for each individual, the name and amount forgone and a brief description of the reason the company decided not to pursue recovery.
- *Unpaid Recoveries.* If, as of the end of the last completed fiscal year, any excess incentive-based compensation owed by an individual had been outstanding for 180 days or longer since the date on which the company determined the amount owed, the company would be required to disclose name of the individual and the outstanding dollar amount of excess incentive-based compensation due.

The proposed rules also provide that any amounts recovered from an executive pursuant to a company's required clawback policy would reduce the executive's compensation reported in the Summary Compensation Table for the fiscal year in which the recovered amount was initially reported as compensation, and would be identified by a footnote.

Under the proposed rules, the securities exchange listing standards would require each listed company to file all disclosures with respect to its clawback policy "in accordance with the requirements of the federal securities laws." A company that failed to comply with SEC disclosure requirements about its clawback policy would therefore be subject to delisting.

This new disclosure would not be incorporated by reference into registration statements except to the extent that the company specifically does so. Companies would also be required to file this new disclosure in XBRL format, block-text tagged, as an exhibit to each filing containing this new disclosure.

Other Proposed Amendments. The proposed rules would also amend Schedule 14A, Form N-CSR, Form 20-F and Form 40-F to include corresponding changes to the disclosure requirements in these forms for registered investment companies, registered management investment companies, foreign private issuers and filers under the multijurisdictional disclosure system.

When Will Companies be Required to Comply with the New Rules?

The proposed rules, other than those related to the new disclosure requirements, would not apply directly to companies, but would require national securities exchanges to adopt rules prohibiting the initial or continued listing of any security of a company that does not comply with the requirements of the listing standards required by the proposed rules. The proposed rules containing new SEC disclosure requirements would not become effective until the securities exchange listing standards requiring companies to adopt clawback policies become effective. As a result, a company will not be required to take any action until the SEC has adopted final rules and the securities exchange on which the company's securities are listed has adopted new listing standards and those listing standards have become effective. The proposed rules provide a detailed schedule for implementation of the new listing standards and disclosure requirements. The key dates are shown in the table below.

Event	Date
National securities exchanges must file proposed rules/amendments	Not more than 90 days after publication of final SEC rules
National securities exchanges rules/amendments must be effective	Not more than one year after publication of final SEC rules
Listed companies must adopt a clawback policy	Not more than 60 days after the effective date of the securities exchange rules/amendments
Incentive-based compensation subject to clawback policy	Compensation "received" on or after the effective date of the final rules adopted by the SEC
Companies must comply with new disclosure requirements	SEC filings required on or after the effective date of the securities exchange rules/amendments

Practical Considerations

In recent years, companies have increasingly redesigned their incentive compensation programs to pay compensation based on performance metrics that would be subject to the clawback policies mandated by the proposed rules. In particular, performance-based awards that use TSR, on a relative and/or absolute basis, have become commonplace. The final requirements and effective date of the proposed rules remain uncertain, but if the SEC adopts final rules that are consistent with the proposed rules, the impact of these rules on executive compensation policies could be wide-ranging and long-lasting. For example, these rules could create real tension between what many companies have seen as proper alignment/good governance policies, on the one hand, and effective incentives and fairness to executives on the other hand, as they relate to the risk/reward balances reflected in compensation policies and programs.

Companies may choose to defer any action until the mandated new securities exchange listing standards are finalized. However, companies – particularly those that rely on multi-year incentive programs that may pay compensation in future years after the SEC final rules and securities exchange listing standards become effective – may wish to begin considering how the stock exchange listing standards mandated by the proposed rules could affect their existing compensation structures and how they would comply with these listing standards and rules if the SEC adopts the proposed rules in their current form.

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November 24, 2015

Via E-mail: rule-comment@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: Effectiveness of Financial Disclosures About Entities Other Than the Registrant – File No. S7-20-15

Dear Ladies and Gentlemen:

We appreciate the opportunity to submit this letter in response to the request by the Securities and Exchange Commission (the "Commission") for comment on the effectiveness of financial disclosure requirements in Regulation S-X for certain entities other than the registrant. In particular, we are writing to suggest certain amendments to Rule 3-14 of Regulation S-X ("Rule 3-14").

While we believe that Rule 3-14 serves an important purpose and supports the Commission's goal of ensuring that investors have the information needed to make informed decisions, unnecessary inconsistencies between Rule 3-05 of Regulation S-X ("Rule 3-05") and Rule 3-14 can result in inefficiencies and uncertainties and place undue burdens on registrants, without providing investors with meaningful information. We respectfully request the Commission consider the following suggestions to harmonize certain requirements of Rule 3-14 with those of Rule 3-05.

1. Rule 3-14 should be amended to align it with Rule 3-05(b)(4)(i), so that Rule 3-14 contains an exception for acquisitions that are less than or equal to 50% significant.

Rule 3-05(b)(4)(i) provides that if an acquisition or probable acquisition of a business is less than or equal to 50% significant, financial statements of such business need not be included in the acquiror's registration statement or proxy statement unless the registration statement is declared effective, or the proxy statement is mailed, 75 days or more after the acquisition is consummated, and the financial statements have not previously been filed by the acquiror.[1] Rule 3-14 does not provide a similar exception, and Section 2310.2 of the Division of Corporation Finance's *Financial Reporting Manual* specifically states that the exception in 3-05(b)(4)(i) does not apply to Rule 3-14 financial statements.

[1] See also Section 2040.1 of the Division of Corporation Finance's *Financial Reporting Manual*.

The inconsistency between Rule 3-14 and 3-05(b)(4)(i) does not have a compelling rationale. In *Streamlining Disclosure Requirements Relating to Significant Business Acquisitions*, Release No. 33-7355 (Oct. 10, 1996), the Commission amended Rule 3-05 to add Rule 3-05(b)(4)(i). In adopting such amendment, the Commission noted that appropriate policy strives "to remove obstacles to proceeding with registered offerings despite pending or recent acquisitions, but recognizes that an acquisition could be so large relative to an issuer that investors would need financial statements of the acquired business for a reasoned evaluation of any primary capital raising transaction by the issuer."[2] It appears that the same reasoning for adding Rule 3-05(b)(4)(i) is also applicable to Rule 3-14. In Release No. 33-7355, the Commission specifically decided against applying the amendment to add Rule 3-05(b)(4)(i) to Rule 3-14, noting that "[b]ecause Rule 3-14 is intended to address unique features of [the real estate] industry, such as the ''blind pool'' type of offering frequently used in the industry, the Commission has decided to consider revision of Rule 3-14 in the context of its evaluation of a more comprehensive disclosure scheme."[3] As noted in Release No. 33-7355, such an amendment would "provide issuers greater flexibility and efficiency in accessing the public securities markets."[4]

Whether it is part of a more comprehensive disclosure scheme or a more focused amendment, we respectfully ask that the Commission amend Rule 3-14 to align it with Rule 3-05(b)(4)(i), so that financial statements for property acquisitions that are less than or equal to 50% significant are not required to be included in the acquiror's registration statement or proxy statement unless such registration statement is declared effective, or a proxy statement is mailed, 75 days or more after the acquisition is consummated.

2. **Rule 3-14 should be amended to align it with Rule 3-05(b)(4)(iii), so that it is clear that financial statements of an acquired property are not required to be separately presented once the financial results of such property are reflected in the audited consolidated financial statements of the acquiror for a full fiscal year.**

Rule 3-05(b)(4)(iii) provides that separate financial statements of an acquired business are not required to be separately presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the acquiror for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of major significance. Rule 3-14 is silent on this point and there is a divergence in practice in connection with how long acquirors continue to separately present Rule 3-14 financial statements. Consistent with Rule 3-05, some acquirors stop separately presenting Rule 3-14 financial statements after such financial statements have been reflected in the audited consolidated financial statements of the acquiror for a full fiscal year. Other acquirors continue

[2] *Streamlining Disclosure Requirements Relating to Significant Business Acquisitions*, Release No. 33-7355 (Oct. 10, 1996) [61 Fed. Reg. 54509, 54510].
[3] *Id* at 54512.
[4] *Id* at 54513.

to separately present Rule 3-14 financial statements for all significant property acquisitions made during the period covered by the acquiror's financial statements.

Similar to the inconsistency with Rule 3-05(b)(4)(i), the inconsistency between Rule 3-14 and 3-05(b)(4)(iii) does not have a compelling rationale. Once the financial results of an acquisition, whether of a business or property, that have previously been presented on a standalone basis are reflected in an acquiror's financial statements, there is no reason that the financial statements of the acquisition should also be presented separately. When amending Regulation S-X to establish uniform instructions governing the periods to be covered by financial statements, the Commission noted that the instructions had been designed by the Commission with "the intention of providing users with easy access to sufficient data for an informed decision while refraining from requiring data in excess of the amount necessary to satisfy most users or data for which the costs of preparation cannot be justified by the benefits."[5] The Commission's concern of providing users with sufficient information for an informed decision without requiring information in excess of the amount necessary is reflected in Rule 3-05(b)(4)(i) but not in Rule 3-14.

We respectfully ask that the Commission amend Rule 3-14 to align it with Rule 3-05(b)(4)(iii), so that it is clear that separate financial statements of acquired property need not be separately presented once the financial results of such property have been reflected in the audited consolidated financial statements of the acquiror for a complete fiscal year.

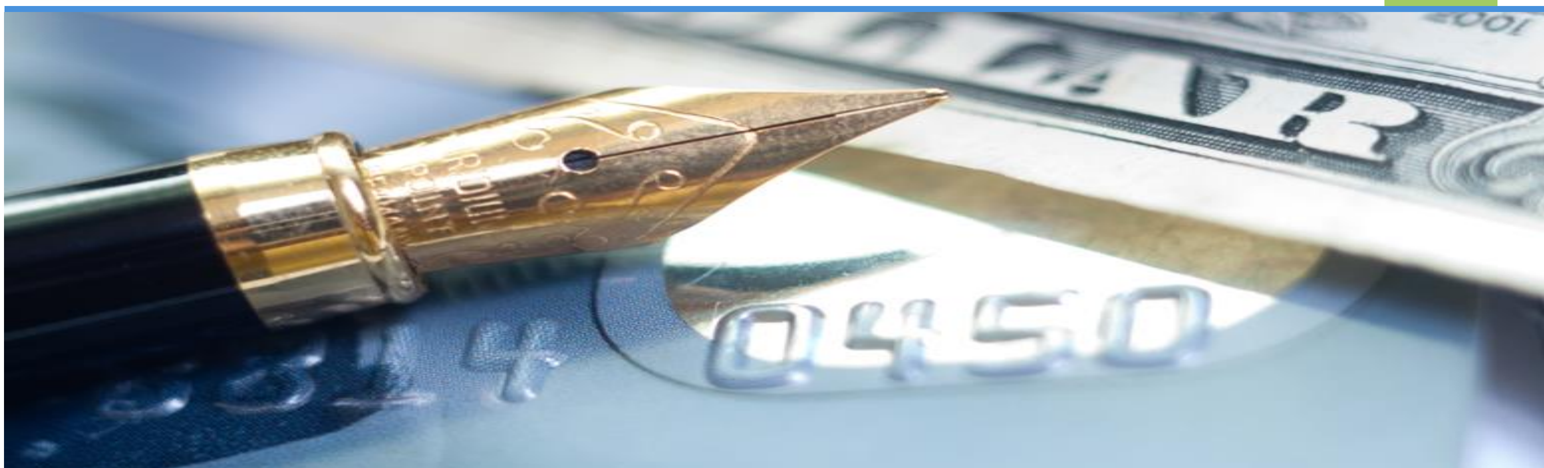
***

We would be happy to discuss any questions with respect to this letter, and any such questions may be directed to David H. Roberts at (617) 570-1039.

Sincerely,

GOODWIN PROCTER LLP

[5] Release No. 33-6234 (Sept. 2, 1980) [45 Fed. Reg. 63682, 63684].



November 2015

SEC Adopts Regulation Crowdfunding to Facilitate Early Capital Raises

On Oct. 30, 2015, the Securities and Exchange Commission (SEC) adopted Regulation Crowdfunding by a 3-1 vote. The rules were adopted despite concerns expressed in comment letters to the SEC that capital raising through crowdfunding could lead to fraudulent activities, and thereby place unsophisticated investors at risk. Regulation Crowdfunding governs offers and sales of securities under Section 4(a)(6) of the Securities Act of 1933, as amended (Securities Act), which came into effect as part of the JOBS Act in 2012. Securities sold under the new rules are exempt from the registration requirements of Section 12(g) of the Securities Exchange Act of 1934, as amended (Exchange Act). Regulation Crowdfunding will become effective May 16, 2016, except for certain provisions relating to funding portals, as discussed below. Under the new rules, an issuer may raise up to a maximum of $1 million in any rolling 12-month period from investors, including non-accredited investors. All offerings relying on Regulation Crowdfunding must utilize a SEC-registered broker-dealer or funding portal.

“Crowdfunding” has evolved in recent years as a method of raising capital through general solicitation, typically over the internet, for a variety of projects. The JOBS Act created an exemption under the U.S. federal securities laws to enable this funding alternative to be utilized for the offer and sale of securities, subject to certain investment size, and manner of offering limits. The provisions in the JOBS Act were designed to provide startup companies and small businesses with access to capital through relatively low dollar offerings of securities, featuring a less costly means of capital raising by relying on the “crowd.” In recent years, the concept has been confused with capital raises under Rule 506(c) under the Securities Act of 1933, as amended (Securities Act), and Regulation A+, adopted by the SEC last summer. However, as discussed below, crowdfunding under the newly-adopted rules draws important distinctions from other available exemptions. Offerings made in reliance on Section 4(a)(6) will not be integrated with other exempt offerings that occur prior to, concurrently with, or subsequent to the offering, provided that all conditions for each exemption relied upon are satisfied.

Issuer Eligibility: For purposes of determining aggregate amounts offered and sold, including under prior offerings, the term "issuer" is defined broadly to include "all entities controlled by or under common control with the issuer and any predecessors of the issuer. Among other issuer requirements, in order to rely upon Regulation Crowdfunding, the issuer must not be:

- a non-U.S. company;
- an existing SEC reporting company under the Exchange Act;
- a company (or affiliates) that is disqualified as a "bad actor" under Rule 503 under Regulation Crowdfunding;
- an investment company (subject to certain limitations);
- a development stage company with no specific business plan or that has indicated its business plan is to engage in a merger or acquisition with an unidentified company; or
- a company that has sold securities in reliance on Regulation Crowdfunding and has not filed the requisite reports with the SEC and provided the required annual reports to investors during the two years immediately preceding the filing of the required offering statement.

Disclosure Requirements. In conducting an equity crowdfunding offering, companies must file certain information with the SEC and make certain disclosures available to investors and the broker-dealer, or to the funding portal facilitating the offering, in the interest of providing transparency. Initial disclosure about the offering must be filed with the SEC on new Form C, which the intermediary (i.e., the broker-dealer or funding portal through which the offering is being conducted) would then post on its website or provide a link for potential investors. The required disclosures are akin to those included in a Form 1-A qualification statement under Regulation A+. Issuers can opt to include a Q&A-style format to provide certain disclosures. Amendments to the Form C must be filed for any updates to the information, or for material changes that would affect an investment decision. Progress reports on Form C-U are required to be filed with the SEC within five days after completion of certain milestones, such as: investor commitments for at least 50% of the offering; commitments for 100% of the offering; acceptance of oversubscriptions; and closing of the offering.

Form C disclosures are not insubstantial and include information about officers, directors, and owners of 20% or more of the company, certain related party transactions, the price to the public of the securities being offered or the method for determining the price, the target offering amount, offer mechanics, whether the company will accept investments greater than the target amount, any deadline by which the company must reach the target amount, a description of the company's business, the intended use of proceeds from the offering, indebtedness, a description of other exempt offerings over the past three years, risk factors, transfer restrictions, a discussion of the financial condition of the company, and financial statements of the company. Information must also be provided about the intermediary, including compensation arrangements, and any other financial interests the intermediary may have in the offering or in the issuer. The discussion of offering mechanics must include a statement that the investor can cancel a subscription up to 48 hours prior to the identified deadline and that, if not cancelled, the investor's funds will be released to the issuer at closing.

The scope of the financial information that must be provided depends upon the amount of securities being offered and sold during a 12-month period, as set out below:

- for offerings up to $100,000: total income, taxable income, and total tax, or equivalent line items, as reported on the issuer's federal tax return for the most recently completed year, and certified by the principal executive officer. The issuer's financial statements must also be provided and certified by the same officer. Alternatively, if financial statements have either been reviewed or audited by an independent public accountant, this information must be provided instead;
- for offerings over $100,000 and up to $500,000: financial statements reviewed by an independent public accountant, unless audited financial statements are available;
- for offerings over $500,000 and up to $1 million: financial statements audited by an independent public accountant; however, first-time issuers may provide financial statements that have been reviewed by an independent public accountant if audited statements are not available.

Financial statements must be prepared in accordance with U.S. GAAP and, where required, audited in accordance with AICPA or PCAOB standard. Audited financial statements must include a signed audit report from the independent public accountant.

Ongoing Reporting. Companies that conduct an offering under the new rules are required to file an annual report with the SEC on Form C-AR within 120 days after the issuer's fiscal year-end. The report must include the information required in the Form C, as well as financial statements certified by the principal executive officer.

The ongoing reporting requirements can be terminated upon the first to occur of:

- the issuer becoming subject to the reporting requirements of the Exchange Act;
- after filing at least one annual report, the issuer has fewer than 300 record holders;
- after filing at least three annual reports, the issuer's assets do not exceed $10 million;
- all of the issuer's securities issued under Section 4(a)(6) have been repurchased or redeemed; or
- the issuer dissolves or is liquidated under state law.

Holders of securities sold in reliance on Section 4(a)(6) are excluded from the determination of the number of the issuer's "holders of record," for purposes of determining whether the issuer is required to register the class of securities under Section 12(g) of the Exchange Act. However, the issuer is required to maintain a method for tracking its shareholders, which may require engaging a transfer agent or similar third-party service provider.

Offering Communications: Rule 204 under Regulation Crowdfunding permits issuers to release a notice to the public similar to the tombstone-type information allowed for conventional public offerings under Securities Act Rule 134. The information is limited to: the name, address, phone number and website of the issuer, together with an email address for the issuer's representative; the name of the related intermediary for the offering, including a link to the intermediary's offering page; the amount, nature and price of offered securities; the closing date; and a brief description of the issuer's business. All other communications with investors must occur through the intermediary's platform. The issuer may, however, continue to release information about its business in the ordinary course, without mentioning the offering; such releases will not have the benefit of an express safe harbor.

Investor Requirements: Investors themselves are subject to significant limitations on the amount they may invest in crowdfunding offerings over a rolling 12-month period. For investors with annual income or net worth less than $100,000, the maximum investment in all offerings relying upon Regulation Crowdfunding is the greater of (x) $2,000, or (y) 5% of the lesser of the investor's annual income or net worth. If annual income and net worth each equal or exceed $100,000, then the investment limit is 10% of such annual income or net worth, whichever is less.

Unlike securities acquired in a Regulation A+ offering, securities purchased through crowdfunding are subject to a one-year restriction on resale or transfer, except to the issuer, an accredited investor, a family member, or in connection with estate transfers, or in connection with an offering registered under the Securities Act.

Platform Requirements: Section 4A under the Securities Act was adopted as part of the JOBS Act and sets out the statutory requirements for intermediaries participating in a crowdfunding offering under Section 4(a)(6). All issuers conducting offerings under Section 4(a)(6) and Regulation Crowdfunding are required to use a SEC-registered intermediary, either a broker-dealer or funding portal. The intermediary essentially functions as a gatekeeper to protect investors from fraudulent transactions. Only one such intermediary may be used for a particular offering. The offering must be conducted on and through the intermediary's platform. A "platform" is "a program or application accessible via the Internet or other similar electronic communication medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act." Funding portals must register with the SEC on new Form Funding Portal and must also become a member of FINRA. The proposed FINRA framework is not covered in this Alert. The new Form will become effective Jan. 29, 2016. Registration will become effective on the later of 30 days after the filing of Form Funding Portal with the SEC, or the date upon which the portal is approved for membership in FINRA.

Under the new rules, intermediaries must, among other things:

- provide investors that open accounts with educational materials in plain English by electronic link that explain the process for investing on the platform, the types of securities offered, investment limits, company information, resale/transfer restrictions, right to cancel a commitment, and post-transaction relationships with the issuer and the intermediary;
- adopt measures to reduce the risk of fraud, including having a reasonable basis for believing the company complies with the new rules and has established means to keep accurate records of securities holders. The intermediary must conduct background and securities regulatory enforcement checks on each issuer, as well as the issuer's officers, directors, and beneficial owners of at least 20% of the issuer's securities;
- make the company disclosure available on the platform throughout the offering period, and for at least 21 days prior to the sale of any security in the offering;
- provide communication channels on the platform to facilitate discussions among investors and issuers about offerings made available on the intermediary's site, without participation by the intermediary itself; and
- disclose to investors the intermediary's compensation relating to the offering, as well as that of any promoter.

Intermediaries must require investors to open an account on the platform before accepting any investment; however, the intermediary cannot require a potential investor to open an account in order to receive information about the offering or an issuer. The intermediary must have a reasonable belief that the investor meets and complies with the investment limitations under the rules. The issuer may rely upon the intermediary's calculation of the investment limits relative to an investor, provided that the issuer does not otherwise have knowledge that the limits would be exceeded as a result of participating in the offering. Upon receipt of a commitment from an investor, the intermediary must provide an electronic notice to the investor confirming the dollar amount of the commitment, price of the securities, name of the issuer, and deadline for cancellation of the commitment. Prior to acceptance of the investor's commitment, the intermediary must obtain confirmation from the investor that the investor understands the restrictions on cancellation of a commitment and the ability to secure a return of the investment, the restrictions on resale and transfer of the securities, and the potential for complete loss of the investment and the ability to withstand such loss. Once the investment has been accepted, the intermediary must provide electronic confirmations to each of the investors at or before completing the sale.

Intermediaries are prohibited under the rules from engaging in certain activities. Companies may not be permitted access to the platform if the intermediary has a reasonable belief that there is a potential for fraud, among other concerns. Intermediaries are prohibited from having a financial interest in a company offering on its platform, unless that interest was received as compensation for its services, subject to certain limitations. In addition, no person may be compensated by the intermediary for providing personally identifiable information of any investor or potential investor.

Crowdfunding portals are subject to additional restrictions on their activities, as distinguished from broker-dealers. Funding portals cannot offer investment advice, make investment recommendations, solicit purchases, sales, or offers to buy securities, compensate promoters or other persons for soliciting investors or based upon the sale of securities, or hold, possess or handle investor funds or securities.

<u>State Securities Law Preemption</u>: Section 305 of the JOBS Act amended Securities Act Section 18(b)(4) to preempt the ability of state securities commissions to regulate certain aspects of crowdfunding conducted in reliance upon Section 4(a)(6). Although preemption of state registration requirements will reduce the costs of these offerings for issuers, certain states and commentators have expressed concern that such preemption will remove a layer of protection for investors in preventing fraud. In the adopting release, the SEC noted that certain restrictions included in the statute and the final rules are intended to offset this concern, such as through public disclosure requirements, investment limits, the use of an intermediary, and the disqualification provisions. In addition, the antifraud provisions of the federal and state securities laws will apply to these offerings.

* * * * * * * * * *

Regulation Crowdfunding will not become effective until May 16, 2016. This time lag will enable funding portals to begin the registration process with the SEC, once the applicable forms become available at the end of January 2016. It will also allow funding portals the necessary time to apply for FINRA membership. Early stage companies will now be able to consider the viability of raising capital through the "crowd," as compared to Regulation A+, or more traditional forms of private placements, such as Regulation D. However, given all the "chatter" that has surrounded crowdfunding since the enactment of the JOBS Act, we anticipate that early stage companies will welcome these new rules and seek to be part of the expanding crowd. Notwithstanding this enthusiasm, participants in crowdfunding must carefully prepare to meet the extensive requirements and safeguards imposed under the JOBS Act and Regulation Crowdfunding, as well as the associated costs.

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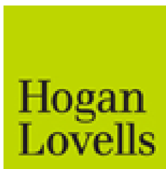

SEC Update

March 15, 2016

Print

See note below about Hogan Lovells

SEC staff issues no-action letter facilitating Rule 144 sales of REIT shares received in exchange for operating partnership units

On March 14, the staff of the SEC's Division of Corporation Finance issued a no-action letter that will enable holders of shares of a publicly traded real estate investment trust (REIT) received in exchange for privately placed units of the REIT's operating partnership to sell the shares under Rule 144 without having to start a new holding period for them. The staff issued the letter in response to a no-action request jointly submitted by Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated and three law firms, including Hogan Lovells. The letter is captioned *Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated* and is available **here**.

The parties submitting the no-action request did not identify specific parties or specific transactions to which the SEC staff directed its no-action relief. The staff's no-action letter accordingly represents an interpretive position on which any holder of REIT shares received in a covered exchange transaction should be able to rely. By facilitating Rule 144 resales, the no-action relief could reduce the number of registration statements REITs have to file related to these exchange transactions, alleviate the hardships that would be encountered by unit holders in the event a registration statement is not available, and provide lenders greater comfort in accepting units as collateral for loans.

Background

Entity and transaction structure. The staff's no-action relief encompasses exchange transactions involving securities of entities in an umbrella partnership real estate investment trust (UPREIT) structure as summarized in the no-action request.

REIT and operating partnership. In an UPREIT structure, all of the REIT's real estate assets are acquired and owned directly or indirectly by its umbrella partnership, which is organized as a limited partnership or limited liability company and is typically referred to as an "operating partnership." The REIT's only material assets are its holdings of interests (units) in the operating partnership, through which the REIT operates its business. The REIT either serves as the general partner of the operating partnership or controls the general partner.

Operating partnership units. Units also are held by other investors that

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acquire the securities in non-public offerings, typically in exchange for real estate assets they contributed to the operating partnership, either at the time of the REIT's initial public offering or in subsequent transactions. These investors pay the full purchase price for their units when they acquire them. There is no public market for the units, which are subject to significant transfer restrictions under the agreement governing the formation of the operating partnership.

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One unit is the economic equivalent of one share of common stock of the REIT, or of another specified number of shares of REIT common stock fixed to ensure economic parity between the REIT shares and the units. The units are substantially identical economically to the REIT shares, in that they represent the same right to the same proportionate interest in the same underlying pool of assets.

Exchange transaction. The REIT shares are registered under Section 12 of the Exchange Act and are publicly traded on a national securities exchange. After an initial one-year holding period, unit holders may request that the operating partnership redeem their units for cash. The REIT, at its option, may assume the operating partnership's redemption obligation and acquire the units for REIT shares based on the fixed ratio. Unit holders are not required to pay any additional consideration for the REIT shares at redemption, and the cash value of each unit at redemption directly corresponds to the REIT common stock's market value at that time.

Rule 144. Rule 144 provides a "safe harbor" from registration under the Securities Act for sales by holders of "restricted securities," which are securities acquired from the issuer or an affiliate of the issuer in a transaction not involving a public offering. Under Rule 144(d)'s "holding period" requirement, the securities must be held for at least six months after they have been fully paid for (or for at least one year if the securities are issued by a company that has been public for fewer than 90 days). In some situations, a holder of restricted securities may "tack" (or add on) the holding period of other parties or related securities to the holding period of newly acquired securities.

Before it issued the no-action letter, the SEC staff had not formally addressed the application of the holding period requirement to REIT shares received in exchange for operating partnership units, although it informally had indicated that a new holding period was required for the shares. Under this position, a unit holder's Rule 144(d) holding period for the REIT shares began upon its acquisition of the shares rather than upon its acquisition of the units it exchanged for the shares.

The staff's informal view had the unfortunate effect of subjecting holders of units who privately exchanged their units for REIT shares to a waiting period under Rule 144 of at least six months after receipt of the shares before they could sell the shares publicly. This would be a hardship for the holders, because, although taxes on the exchange would be triggered when the exchange occurred, the holders could not sell their shares under Rule 144 to help pay for the taxes until at least six months had elapsed. Many REITs have addressed the hardship by filing a registration statement under the Securities Act covering either the exchange of the units for REIT shares or the resale of the REIT shares received upon exchange. These filings require considerable time and expense to complete.

No-action request

The parties requesting no-action relief asked the SEC staff to concur with their view that a seller of REIT shares received upon an exchange of operating partnership units should be allowed under Rule 144 to tack the holding period of the units to the holding period of the REIT shares and therefore be able to sell the REIT shares immediately upon receipt if the units had been held for the requisite period. The staff traditionally has taken the position that the holding period requirement is satisfied only if the seller has been at full economic risk with respect to the securities for the entire period required by Rule 144. Where an exchange of securities occurs, the economic risk of the new securities typically is different from that of the exchanged securities, thereby requiring the start of a new holding period.

The requestors argued in their submission that in the case of a REIT structured as an UPREIT, the economic risk of the operating partnership units is identical to that of the REIT shares (apart from tax considerations). Under the UPREIT structure, the operating partnership units and the REIT common stock acquired upon redemption represent the same proportionate right to the assets of the operating partnership, so that the exchange does not result in any change to the economic risk of the investment in the underlying assets. The

unit holder has the same economic risk as a holder of REIT common stock during the entire period it holds the units and the unit holder retains the same economic risk and the same proportionate share of the underlying real estate assets after the exchange. Accordingly, from the date the unit holder pays the full purchase price for the units to the date it exchanges the units for REIT common stock, the economic value of a unit is the same as the market price of, and therefore the economic value of, a corresponding share of REIT common stock. Because the economic risk is the same after the exchange, the requestors said the holding periods of the two securities should be combined under the rule.

The staff agreed with the requestors that the holding periods of operating partnership units and REIT shares could be tacked under Rule 144. Because most UPREITs are structured to require holders of units to hold their units for at least one year, the staff's position will permit most unit holders to sell immediately under Rule 144 any REIT shares they receive in exchange for the units. Sales by affiliates of the REIT will be subject to the volume limitation and other requirements of Rule 144. For tax purposes, a new holding period will commence upon that exchange, so a sale within one year after the exchange would result in short-term capital gain to the extent the shares have appreciated in value since the exchange.

The staff's position is consistent with two orders the SEC issued in 1995 and 1998 under Section 12(h) of the Exchange Act that exempted two REITs having an UPREIT structure from the application of Section 16 of that Act to their ownership of, and transactions in, units of their operating partnerships. The orders, the first of which was obtained upon a request prepared by our firm, were based on the same principle on which the request for the new no-action letter was based, which is that the economic risk is the same (apart from taxes) for both the operating partnership units and the REIT shares received in exchange for them, so that no purchase or sale effectively occurs under Section 16 upon the exchange.

This SEC Update is a summary for guidance only and should not be relied on as legal advice in relation to a particular transaction or situation. If you have any questions or would like any additional information regarding this matter, please contact your relationship partner at Hogan Lovells or any of the lawyers listed on the right hand side of this update.

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Americas

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Proxy Voting Guidelines Updates

2016 Benchmark Policy Recommendations

Effective for Meetings on or after Feb. 1, 2016

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UNITED STATES

BOARD OF DIRECTORS- VOTING ON DIRECTOR NOMINEES IN UNCONTESTED ELECTIONS

Unilateral Bylaw/Charter Amendments

Current General Recommendation: Generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, who should be considered case-by-case) if the board amends the company's bylaws or charter without shareholder approval in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors, as applicable:

- The board's rationale for adopting the bylaw/charter amendment without shareholder ratification;
- Disclosure by the company of any significant engagement with shareholders regarding the amendment;
- The level of impairment of shareholders' rights caused by the board's unilateral amendment to the bylaws/charter;
- The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions;
- The company's ownership structure;
- The company's existing governance provisions;
- Whether the amendment was made prior to or in connection with the company's initial public offering;
- The timing of the board's amendment to the bylaws/charter in connection with a significant business development;
- Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders.

Key Changes:

- Separate the methodology for evaluating adoptions of bylaw or charter provisions made prior to or in connection with a company's initial public offering from the methodology for evaluating unilateral board amendments to the bylaws or charter made following completion of a company's initial public offering, and
- Explicitly state that ISS will consider both such actions in determining vote recommendations for director nominees until such time as the actions are reversed or submitted to a binding vote of public shareholders.

New General Recommendation:

1.17. Generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, who should be considered case-by-case) if the board amends the company's bylaws or charter without shareholder approval in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors:

- The board's rationale for adopting the bylaw/charter amendment without shareholder ratification;
- Disclosure by the company of any significant engagement with shareholders regarding the amendment;
- The level of impairment of shareholders' rights caused by the board's unilateral amendment to the bylaws/charter;
- The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions;
- The company's ownership structure;
- The company's existing governance provisions;
- The timing of the board's amendment to the bylaws/charter in connection with a significant business development; and,
- Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders.

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Unless the adverse amendment is reversed or submitted to a binding shareholder vote, in subsequent years vote case-by-case on director nominees. Generally vote against (except new nominees, who should be considered case-by-case) if the directors:

- Classified the board;
- Adopted supermajority vote requirements to amend the bylaws or charter; or
- Eliminated shareholders' ability to amend bylaws.

1.18. For newly public companies, generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, who should be considered case-by-case) if, prior to or in connection with the company's public offering, the company or its board adopts bylaw or charter provisions adverse to shareholders' rights, considering the following factors:

- The level of impairment of shareholders' rights caused by the provision;
- The company's or the board's rationale for adopting the provision;
- The provision's impact on the ability to change the governance structure in the future (e.g., limitations on shareholder right to amend the bylaws or charter, or supermajority vote requirements to amend the bylaws or charter);
- The ability of shareholders to hold directors accountable through annual director elections, or whether the company has a classified board structure; and,
- A public commitment to put the provision to a shareholder vote within three years of the date of the initial public offering.

Unless the adverse provision is reversed or submitted to a vote of public shareholders, vote case-by-case on director nominees in subsequent years.

Rationale for Update:

This update clarifies ISS policy and aligns ISS' approach to evaluating unilateral bylaw and charter amendments by pre-IPO companies and post-IPO company board members with feedback received from institutional investors. This update also establishes separate methodologies to evaluate adoptions of bylaw or charter provisions made prior to or in connection with a company's initial public offering and unilateral board amendments made to the bylaws or charter following completion of a company's initial public offering. This bifurcation reflects the differing expectations that investors may have for the governance structures of a newly-public company versus a company that has been public for some period of time.

At companies that are already public, investors have seen a marked increase in moves by boards to circumvent votes by unilaterally amending their companies' governing documents—usually the bylaws—to reduce shareholders' rights. While ISS tracked 10 such cases in 2013 (the historic norm in terms of volume), unilateral adoptions jumped to 64 in 2014, and there have been 62 thus far in 2015.

A majority of investor respondents to the ISS 2015–2016 policy survey favor adverse vote recommendations for director nominees when a board unilaterally adopts bylaw or charter amendments that "materially diminish" shareholders' rights until such time as the rights are restored. Both investor and non-investor respondents identify "classifying the board" and "establishing supermajority vote requirements for bylaw/charter amendments" as the unilateral actions for which continuing adverse vote recommendations would be most appropriate.

A significant percentage of recent IPOs have included provisions that limit board accountability to post-IPO investors and make it difficult for shareholders to amend the company's governing documents or take other corporate actions. While some pre-IPO boards argue that these governance structures will benefit investors over the long run, few of them provide opportunities for post-IPO shareholders to ratify these provisions. Notably, the lion's share of recent IPO firms have limited directors' accountability to shareholders by staggering board terms (via classified boards) and adopting supermajority vote provisions to amend the firms' governing documents. A law firm analysis of governance

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practices at more than 400 "emerging growth companies" that completed their IPOs in the period from Jan. 1, 2013, through Dec. 31, 2014, for example, found that 69 percent of these firms went public with classified boards and nearly three-quarters had supermajority vote requirements in place.[1] A separate law firm analysis of large IPOs at 46 non-controlled companies for the Sept. 1, 2001, to Oct. 31, 2013, period, found that 70 percent of the boards had staggered terms and 70 percent of the firms required supermajority votes to amend their bylaws.[2]

Overboarded Directors

Current General Recommendation: Vote against or withhold from individual directors who:

- Sit on more than six public company boards; or
- Are CEOs of public companies who sit on the boards of more than two public companies besides their own—withhold only at their outside boards[3].

Key Changes:

- In 2016, ISS will note in its analysis if a director is serving on more than five (5) public company boards.
- Starting in February of 2017, ISS will recommend against directors who sit on more than five (5) public company boards.

New General Recommendation: Vote against or withhold from individual directors who:

- Sit on more than six public company boards; for meetings on or after Feb. 1, 2017[4], sit on more than five public company boards; or
- Are CEOs of public companies who sit on the boards of more than two public companies besides their own—withhold only at their outside boards[3].

Rationale for Update:

More than a decade ago, in response to rising investor concerns about over-boarding and academic research questioning the performance of "busy" directors, ISS set limits of six directorships for most board members and three total board memberships (service on the home company board and two outside directorships) for sitting CEOs.

Since these limits were adopted, the average time commitment for board service has exploded. According to the National Association of Corporate Directors' (NACD) 2014-2015 Public Company Governance Survey, respondent directors of public companies now spend an average of 242 hours a year (or more than 30 eight-hour work days annually) on board service. This typical time commitment jumps up to 278 hours (or nearly five more eight-hour work days) when you add in the survey respondents' estimates of additional time spent in informal meetings/conversations with management. In contrast, the average annual director time commitment reported by NACD's survey respondents in 2005 was 190 hours (or fewer than 24 eight-hour work days).

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[1] Morrison & Foerster, Getting the Measure of EGC Corporate Governance Practices: A survey and related resources, 2015.
[2] Davis Polk &Wardwell, Corporate Governance Practices in U.S. Initial Public Offerings (Excluding Controlled Companies, Jan, 2014.
[3] Although all of a CEO's subsidiary boards will be counted as separate boards, ISS will not recommend a withhold vote from the CEO of a parent company board or any of the controlled (>50 percent ownership) subsidiaries of that parent, but may do so at subsidiaries that are less than 50 percent controlled and boards outside the parent/subsidiary relationships.
[4] This policy change includes a 1-year transition period to allow time for affected directors to address necessary changes if they wish.

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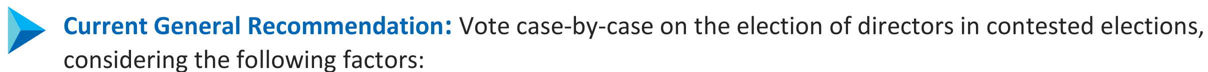
Recent academic research generally shows a negative association between board "busyness" and firm performance and director attendance at board meetings[5]. Notably, the authors of most of these studies define a "busy" director's workload as three or more boards.

Many boards have responded to concerns about overboarding by placing limits on the number of public company directorships that that their members may hold. Some boards appear to address time commitment concerns via their nominating panels. Spurred by these policies and common sense, most board members limit their board seats to four or fewer directorships.

ISS has periodically updated its overboarding policy since it was implemented in 2004, to incorporate the evolving market realities. The new policy aligns with feedback and research received from institutional investors as well as the issuer community (via our 2015-2016 policy survey and roundtable discussions) regarding the ability of a director to devote sufficient time to each board commitment. Based on that feedback as well as draft policy comments, ISS will continue evaluating the optimal level of directorships for individuals who are CEOs of public companies.

Proxy Contests/Proxy Access — Voting for Director Nominees in Contested Elections



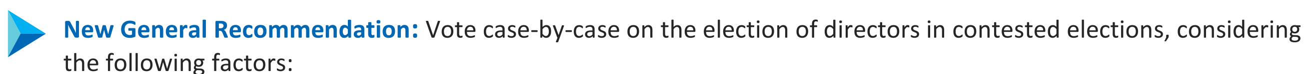
Current General Recommendation: Vote case-by-case on the election of directors in contested elections, considering the following factors:

- Long-term financial performance of the target company relative to its industry;
- Management's track record;
- Background to the proxy contest;
- Nominee qualifications and any compensatory arrangements;
- Strategic plan of dissident slate and quality of critique against management;
- Likelihood that the proposed goals and objectives can be achieved (both slates);
- Stock ownership positions.

When the addition of shareholder nominees to the management card ("proxy access nominees") results in a number of nominees on the management card which exceeds the number of seats available for election, vote case-by-case considering the same factors listed above.

Key Changes:

- Clarifying a policy analysis framework to evaluate candidates nominated pursuant to proxy access as well as nominees in a proxy contest.
- While several factors may be similar in each evaluation, there may be factors that are unique to analyzing proxy access nominations.



New General Recommendation: Vote case-by-case on the election of directors in contested elections, considering the following factors:

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[5] Cashman, George D. and Gillan, Stuart and Jun, Chulhee, Going Overboard? On Busy Directors and Firm Value (March 1, 2012). Available at SSRN: http://ssrn.com/abstract=2044798 or http://dx.doi.org/10.2139/ssrn.2044798; Falato, Antonio and Kadyrzhanova, Dalida and Lel, Ugur, Distracted Directors: Does Board Busyness Hurt Shareholder Value? (December 10, 2013). Available at SSRN: http://ssrn.com/abstract=2272478 or http://dx.doi.org/10.2139/ssrn.2272478; Jiraporn, Pornsit and Davidson, Wallace N. and Ning, Yixi and DaDalt, Peter J., Too Busy to Show Up? An Analysis of Directors' Absences (January 21, 2008). Available at SSRN: http://ssrn.com/abstract=1254642 or http://dx.doi.org/10.2139/ssrn.1254642

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- Long-term financial performance of the target company relative to its industry;
- Management's track record;
- Background to the contested election;
- Nominee qualifications and any compensatory arrangements;
- Strategic plan of dissident slate and quality of critique against management;
- Likelihood that the proposed goals and objectives can be achieved (both slates); and
- Stock ownership positions.

In the case of candidates nominated pursuant to proxy access, vote case-by-case considering any applicable factors listed above or additional factors which may be relevant, including those that are specific to the company, to the nominee(s) and/or to the nature of the election (such as whether or not there are more candidates than board seats).

Rationale for Update:

This policy revision provides an analytical framework for evaluating candidates nominated pursuant to proxy access. ISS has a policy for evaluating director nominees in contested elections, which currently applies to proxy contests as well as proxy access nominations. However, the circumstances and motivations of a proxy contest and a proxy access nomination may differ significantly. Therefore, it is necessary to create adequate analytical latitude for evaluating candidates nominated through proxy access.

Proxy access rights have grown into a high-visibility corporate governance issue for US-listed companies. In 2014, ISS evaluated 18 shareholder proposals seeking proxy access rights. That number rose to more than 90 in 2015. Further, while five of the proposals received majority support in 2014, 52 have received majority support so far in 2015. Moreover, following the 2015 US proxy season, numerous companies have unilaterally adopted proxy access rights, even in the absence of majority-supported shareholder proposals.

While it is unlikely that many (or perhaps any) proxy access nominees will materialize in 2016, ISS believes it is prudent to update its framework for evaluating candidates nominated via proxy access right. In some cases, the nominating shareholder's views on the current leadership or company strategy may be opposed to the existing board's views. Alternatively, a shareholder nominator may generally agree with the company's strategy or have no specific critiques of incumbent directors, but may propose an alternative candidate to address a specific concern, such as board diversity or boardroom skills gaps.

COMPENSATION

Advisory Votes on Executive Compensation— Problematic Pay Practices

Insufficient Executive Compensation Disclosure by Externally Managed Issuers

Current General Recommendation: None.

Currently, insufficient disclosure regarding compensation arrangements for executives at an externally-managed issuer (EMI) is not considered a problematic pay practice under ISS policy. Absent any other significant concerns identified, ISS has generally not issued adverse say-on-pay recommendations on this basis. ISS does raise concerns, however, regarding the lack of transparency resulting when an EMI provides a say-on-pay proposal without information that enables investors to make an informed voting decision on the proposal.

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Key Changes: Update the Problematic Pay Practice policy, add "Insufficient Executive Compensation Disclosure by Externally Managed Issuers (EMIs)" to the list of practices that may result in an adverse recommendation on the advisory vote on executive compensation. This refers to an EMI's failure to provide sufficient disclosure to enable shareholders to make a reasonable assessment of compensation arrangements for the EMI's named executive officers.

New General Recommendation: For externally-managed issuers (EMIs), generally vote against the say-on-pay proposal when insufficient compensation disclosure precludes a reasonable assessment of pay programs and practices applicable to the EMI's executives.

Rationale for Update:

Lack of Disclosure Precludes a Reasonable Assessment of Executive Compensation Arrangements

Like most U.S. public companies, EMIs are subject to periodic, advisory say-on-pay vote requirements. However, an EMI typically does not directly compensate its executives. Instead, executives are compensated by the external manager, which is reimbursed by the EMI through a management fee.

EMIs typically do not disclose any details about their compensation arrangements or payments made to executives by external managers. Many EMIs do not provide even basic disclosure regarding executive compensation arrangements and payments between the external manager and the EMI's executives. When "executive compensation information" is disclosed, it is usually limited to the aggregate management fee paid by the EMI to its manager. Without adequate information, shareholders are unable to conduct a reasonable assessment of executive compensation arrangements in order to identify potentially problematic aspects of those arrangements and to make an informed decision when voting on the EMI's say-on-pay proposal.

Some EMIs provide disclosure about the value and nature of NEOs' compensation arrangements in sufficient detail to enable shareholders to reasonably assess the arrangements and cast an informed vote on the EMI's say-on-pay proposal. Some EMIs, for example, disclose the aggregate portion of such fees that is allocable to executive compensation expenses. A small number of EMIs disclose detailed information on behalf of their external managers. This enhanced transparency demonstrates that such information can be made available within the constraints of company agreements with external managers.

As such, ISS will consider insufficient disclosure regarding compensation arrangements between executives and the external manager to be a problematic practice that warrants an AGAINST recommendation on the say-on-pay proposal.

2015-2016 Policy Survey

Based on 2015-2016 ISS Policy Survey results, 71% of investor respondents indicated that, in the event an EMI does not provide disclosure on the compensation paid to management by the eternal manager, ISS should recommend an AGAINST vote on the say-on-pay proposal, given that the level of disclosure does not meet shareholders' informational needs. Even a sizable minority (24%) of non-investor respondents (companies and advisors) responded that an AGAINST recommendation would be warranted.

U.S. Compensation Roundtables

At the 2015 ISS U.S. Compensation Roundtable held on Sept. 22, 2015, nearly all participants expressed their support for a policy update in which ISS would recommend AGAINST the say-on-pay proposals for EMIs that do not provide sufficient executive compensation disclosure. No participant expressed a preference for continuation of ISS' current approach of supporting the say-on-pay proposals in such cases. At the 2014 ISS U.S. Compensation Roundtable held on Sept. 16, 2014, participants similarly indicated that they considered an EMI's lack of compensation disclosure to inhibit shareholders' ability to fully assess the merits of the company's pay program and practices.

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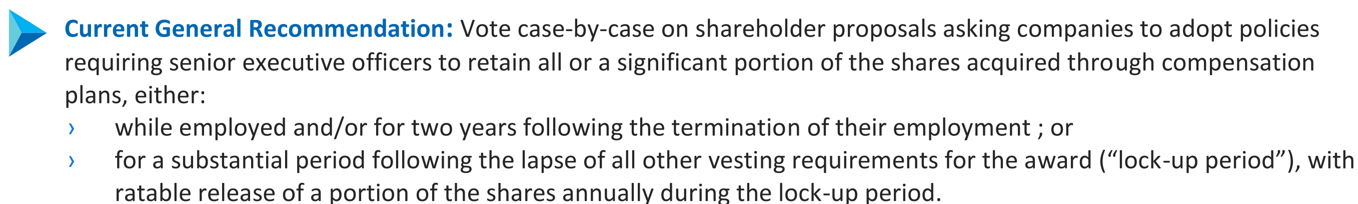
Hold Equity Past Retirement or for a Significant Period of Time



Current General Recommendation: Vote case-by-case on shareholder proposals asking companies to adopt policies requiring senior executive officers to retain all or a significant portion of the shares acquired through compensation plans, either:

- while employed and/or for two years following the termination of their employment ; or
- for a substantial period following the lapse of all other vesting requirements for the award ("lock-up period"), with ratable release of a portion of the shares annually during the lock-up period.

The following factors will be taken into account:

- Whether the company has any holding period, retention ratio, or officer ownership requirements in place. These should consist of:
  - Rigorous stock ownership guidelines;
  - A holding period requirement coupled with a significant long-term ownership requirement; or
  - A meaningful retention ratio;
- Actual officer stock ownership and the degree to which it meets or exceeds the proponent's suggested holding period/retention ratio or the company's own stock ownership or retention requirements;
- Post-termination holding requirement policies or any policies aimed at mitigating risk taking by senior executives;
- Problematic pay practices, current and past, which may promote a short-term versus a long-term focus.

A rigorous stock ownership guideline should be at least 10x base salary for the CEO, with the multiple declining for other executives. A meaningful retention ratio should constitute at least 50 percent of the stock received from equity awards (on a net proceeds basis) held on a long-term basis, such as the executive's tenure with the company or even a few years past the executive's termination with the company.

Vote case-by-case on shareholder proposals asking companies to adopt policies requiring Named Executive Officers to retain 75% of the shares acquired through compensation plans while employed and/or for two years following the termination of their employment, and to report to shareholders regarding this policy. The following factors will be taken into account:

- Whether the company has any holding period, retention ratio, or officer ownership requirements in place. These should consist of:
  - Rigorous stock ownership guidelines, or
  - A holding period requirement coupled with a significant long-term ownership requirement, or
  - A meaningful retention ratio,
- Actual officer stock ownership and the degree to which it meets or exceeds the proponent's suggested holding period/retention ratio or the company's own stock ownership or retention requirements.
- Problematic pay practices, current and past, which may promote a short-term versus a long-term focus.

A rigorous stock ownership guideline should be at least 10x base salary for the CEO, with the multiple declining for other executives. A meaningful retention ratio should constitute at least 50 percent of the stock received from equity awards (on a net proceeds basis) held on a long-term basis, such as the executive's tenure with the company or even a few years past the executive's termination with the company.

Generally vote against shareholder proposals that mandate a minimum amount of stock that directors must own in order to qualify as a director or to remain on the board. While ISS favors stock ownership on the part of directors, the company should determine the appropriate ownership requirement.

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Key Changes:

- Broaden policy to encompass executive equity retention proposals more generally, eliminating the need for a separate policy covering proposals seeking retention of 75% of net shares.
- Clarify that the proposed retention ratio and the required duration of retention are some of the several factors that will be considered in ISS' case-by-case analysis.

New General Recommendation: Vote case-by-case on shareholder proposals asking companies to adopt policies requiring senior executive officers to retain a portion of net shares acquired through compensation plans. The following factors will be taken into account:

- The percentage/ratio of net shares required to be retained;
- The time period required to retain the shares;
- Whether the company has equity retention, holding period, and/or stock ownership requirements in place and the robustness of such requirements;
- Whether the company has any other policies aimed at mitigating risk taking by executives;
- Executives' actual stock ownership and the degree to which it meets or exceeds the proponent's suggested holding period/retention ratio or the company's existing requirements; and
- Problematic pay practices, current and past, which may demonstrate a short-term versus long-term focus.

Rationale for Update:

This policy update clarifies the factors considered in ISS' case-by-case analysis. It also broadens the policy to encompass equity retention proposals more generally, thereby eliminating the need for a separate policy tied to a specified retention ratio.

Specifically, the revised policy clarifies that the proponent's suggested retention percentage/ratio and the required retention duration are two of the several factors to be assessed under ISS' case-by-case approach. This change eliminates the need for separate policies tied to specified retention ratios (i.e. a separate policy for proposals requesting 75% net share retention), since the retention ratio is a factor to be considered for every proposal. In more clearly identifying the factors and eliminating repetitive language, the new policy is more streamlined and easier to understand.

ENVIRONMENTAL AND SOCIAL ISSUES

Animal Welfare

Current General Recommendation: Generally vote for proposals seeking a report on a company's animal welfare standards, unless:

- The company has already published a set of animal welfare standards and monitors compliance;
- The company's standards are comparable to industry peers; and
- There are no recent, significant fines or litigation related to the company's treatment of animals.

Key Changes:

- Add "or animal welfare-related risks" to introductory sentence;
- Add "controversies" to last bullet point; and
- Add "and/or its suppliers'" to the last bullet point.

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New General Recommendation: Generally vote for proposals seeking a report on a company's animal welfare standards, or animal welfare-related risks, unless:

- The company has already published a set of animal welfare standards and monitors compliance;
- The company's standards are comparable to industry peers; and
- There are no recent significant fines, litigation, or controversies related to the company's and/or its suppliers' treatment of animals.

Rationale for Update:

In 2014, some proponents began submitting shareholder proposals requesting reports on the risks associated with the use of certain methods of animal housing (e.g. gestation crates and battery cages) and other animal welfare practices deemed inhumane in a company's supply chain. The updated policy clarifies that proposals requesting a report on animal welfare-related risks, including the aforementioned resolutions on supply chain risks, are analyzed under this policy. The inclusion of controversies, along with fines and litigation, provides for consistent language across the Environmental and Social Issues policies, and ensures consistent evaluation and incorporation of relevant information.

Pharmaceutical Pricing, Access to Medicines, and Prescription Drug Reimportation

Current General Recommendation: Vote case-by-case on proposals requesting that a company report on its product pricing or access to medicine policies, considering:

- The nature of the company's business and the potential for reputational and market risk exposure;
- Existing disclosure of relevant policies;
- Deviation from established industry norms;
- Relevant company initiatives to provide research and/or products to disadvantaged consumers;
- Whether the proposal focuses on specific products or geographic regions; and
- The potential burden and scope of the requested report.

Key Changes:

- Add "regulatory" to the risk exposure bullet point; and
  Add a bullet point for "recent signficiant controveries, litigation, or fines at the company."

New General Recommendation: Vote case-by-case on proposals requesting that a company report on its product pricing or access to medicine policies, considering:

- The potential for reputational, market, and regulatory risk exposure;
- Existing disclosure of relevant policies;
- Deviation from established industry norms;
- Relevant company initiatives to provide research and/or products to disadvantaged consumers;
- Whether the proposal focuses on specific products or geographic regions;
- The potential burden and scope of the requested report;
- Recent significant controversies, litigation, or fines at the company.

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Rationale for Update:

This update codifies ISS' current practice. When evaluating resolutions that request a report on a company's policies related to product pricing and access to medicine, ISS considers the potential for regulatory risks and the company's exposure to controversies, litigation, or fines.

The addition of the controversies bullet point reflects the increased criticism regarding the pricing of pharmaceutical products, in particular specialty drugs. This criticism has not only resulted in media coverage, but also Senate and U.S. Department of Justice investigations at some companies. Additionally, a growing number of states have either passed or have presented legislation aiming to cap pricing for certain products or to require drug manufacturers to provide increased disclosure on the cost of drug research and production, resulting in additional regulatory risks for the pharmaceutical industry.

Climate Change/Greenhouse Gas (GHG) Emissions

Current General Recommendation: Generally vote for resolutions requesting that a company disclose information on the impact of climate change on its operations and investments, considering:

- Whether the company already provides current, publicly-available information on the impacts that climate change may have on the company as well as associated company policies and procedures to address related risks and/or opportunities;
- The company's level of disclosure is at least comparable to that of industry peers; and
- There are no significant controversies, fines, penalties, or litigation associated with the company's environmental performance.

Key Changes:

Add "such as financial, physical, or regulatory risks" to the introductory sentence.

New General Recommendation: Generally vote for resolutions requesting that a company disclose information on the risks related to climate change on its operations and investments, such as financial, physical, or regulatory risks, considering:

- Whether the company already provides current, publicly-available information on the impact that climate change may have on the company as well as associated company policies and procedures to address related risks and/or opportunities;
- The company's level of disclosure is at least comparable to that of industry peers; and
- There are no significant controversies, fines, penalties, or litigation associated with the company's environmental performance.

Rationale for Update:

During the 2015 proxy season, proponents filed new shareholder proposals addressing companies' capital expenditure strategies as they relate to investments in fossil fuel and stranded carbon asset risk (investment in high-cost, high-carbon assets could be stranded, as global demand for fossil fuels slows in the coming years and/or potential climate change regulations make them unburnable). These resolutions asked companies to either report on the consistency of their capital expenditure strategies with policymakers' goals to limit greenhouse gas emissions, or a company's strategy

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to address the risk of stranded assets presented by global climate change and associated demand reductions for oil and gas.

The revisions to the current policy clarify the types of risks related to climate change that can impact a company's operations and investments. It also clarifies that the capital expenditure strategy and stranded carbon asset resolutions are evaluated pursuant to this policy.

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CANADA

BOARD OF DIRECTORS- VOTING ON DIRECTOR NOMINEES IN UNCONTESTED ELECTIONS

Overboarded Directors –TSX

Current General Recommendation: Generally vote withhold for individual director nominees if:

› Irrespective of whether the company has adopted a majority voting policy, the director is overboarded[6] AND the individual director has attended less than 75 percent of his/her respective board and committee meetings held within the past year without a valid reason for these absences.

Cautionary language will be included in ISS reports where directors are overboarded regardless of attendance.

Key Changes:

› Change the definition of "overboarded" from more than 2 outside public company boards to more than 1 in the case of CEOs, and from more than 6 total public company boards to more than 4 in the case of non-CEOs.
› Commencing as of February 2017 meeting dates, the new policy definition will be implemented under the ISS Canada TSX Overboarded Directors policy.

New General Recommendation: Generally vote withhold for individual director nominees if:

› Irrespective of whether the company has adopted a majority voting policy, the director is overboarded[6,7] AND the individual director has attended less than 75 percent of his/her respective board and committee meetings held within the past year without a valid reason for these absences.

Cautionary language will be included in ISS reports where directors are overboarded regardless of attendance.

Rationale for Update:

Directors need sufficient time and energy in order to be effective representatives of shareholders' interests. Directors' responsibilities are increasingly complex as board and key committee memberships demand greater time commitments.

In a 2014 study, 120 board chairs, directors and CEOs across Canada were surveyed regarding their annual time commitment per board on which they served. The survey found that the average annual time commitment per board for a Canadian director was 304 hours. This number was higher for directors of companies with assets of more than CA$5 billion (388 hours) and also higher for those with assets between CA$1 billion and CA$5 billion (335 hours). There

[6] "Overboarded" is defined as: a CEO of a public company who sits on more than 2 outside public company boards in addition to the company of which he/she is CEO (withholds would only apply on outside boards these directors sit on), OR the director is not a CEO of a public company and sits on more than 6 public company boards in total.

[7] Starting February 1, 2017, "overboarded" will be defined as: a CEO of a public company who sits on more than 1 outside public company board in addition to the company of which he/she is CEO (withholds would only apply on outside boards these directors sit on), OR the director is not a CEO of a public company and sits on more than 4 public company boards in total.

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was also a correlation between the role of a director and average annual time commitment. As expected, being a board chair is the most time consuming role; however, being a committee chair can be almost as time consuming.

While it appears that no comparable studies were conducted for previous years in Canada, according to a 2014-2015 US survey conducted by the National Association of Corporate Directors (NACD), directors of US public companies spent an annual average of 278 hours on board-related matters.

Based on the results of the 2015-16 ISS Global Policy Survey, a plurality of investor responses indicated that four total board seats is an appropriate limit for directors who are not active CEOs, and that a total of two board seats (a CEO's "home board" plus one outside board) is an appropriate limit for directors who are active CEOs.

ISS also obtained feedback in one-on-one discussions with institutional investors, the results of which indicate that a majority of those canvassed support maximum limits of four and two total board seats for non-CEO directors and CEO directors, respectively. These limits are reasonable in light of the "double-trigger" approach of jointly evaluating both number of board seats and attendance under Canadian policy.

Externally-Managed Issuers (EMIs) –TSX and TSXV

Current General Recommendation: None.

Key Changes:

Provide a framework for reviewing board accountability at EMIs, in cases where disclosure is limited or insufficient with respect to the management services agreement and how senior management is compensated.

New General Recommendation: Vote case-by-case on say-on-pay resolutions where provided, or on individual directors, committee members, or the entire board as appropriate, when an issuer is externally-managed and has provided minimal or no disclosure about their management services agreements and how senior management is compensated. Factors taken into consideration may include but are not limited to:

- The size and scope of the management services agreement;
- Executive compensation in comparison to issuer peers and/or similarly structured issuers;
- Overall performance;
- Related party transactions;
- Board and committee independence;
- Conflicts of interest and process for managing conflicts effectively;
- Disclosure and independence of the decision-making process involved in the selection of the management services provider;
- Risk mitigating factors included within the management services agreement such as fee recoupment mechanisms;
- Historical compensation concerns;
- Executives' responsibilities; and
- Other factors that may reasonably be deemed appropriate to assess an externally-managed issuer's governance framework.

Rationale for Update:

Externally-managed issuers (EMIs) typically pay fees to outside firms in exchange for management services. In most cases, some or all of the EMI's executives are directly employed and compensated by the external management firm.

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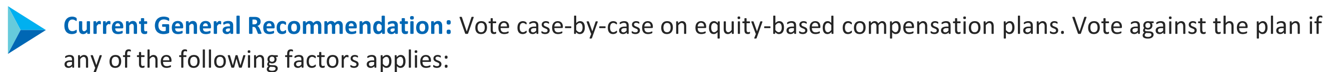
EMIs typically do not disclose details of the management agreement in their proxy statements and only provide disclosure on the aggregate amount of fees paid to the manager, with minimal or incomplete compensation information.

Say-on-pay resolutions are voluntarily adopted in Canada, and none of the currently identified Canadian EMIs had a say-on-pay resolution on ballot this past year. Additionally, all non-controlled TSX-listed issuers are required to adopt majority voting director resignation policies which could result in a director being required to resign from a board if he or she receives more 'withhold' than 'for' votes at the shareholders' meeting. Some investor respondents to ISS' 2015-16 ISS Global Policy Survey indicated that in cases where an externally managed company does not have a say-on-pay proposal (i.e., 'withhold' votes may be recommended for individual directors), factors other than disclosure should be considered, such as performance, compensation and expenses paid in relation to peers, board and committee independence, conflicts of interest, and pay-related issues. Policy outreach sessions conducted with Canadian institutional investors resulted in identical feedback.

COMPENSATION

Equity Compensation Plans–TSX



Current General Recommendation: Vote case-by-case on equity-based compensation plans. Vote against the plan if any of the following factors applies:

- **Cost of Equity Plans:** The total cost of the company's equity plans is unreasonable;
- **Dilution and Burn Rate:** Dilution and burn rate are unreasonable, where the cost of the plan cannot be calculated due to lack of relevant historical data.
- **Plan Amendment Provisions:** The provisions do not meet ISS guidelines regarding those amendments that should require shareholder approval..
- **Non-Employee Director Participation:** Participation of directors is discretionary or unreasonable.
- **Pay for performance:** There is a disconnect between CEO pay and the company's performance.
- **Repricing Stock Options:** The plan expressly permits the repricing of stock options without shareholder approval and the company has repriced options within the past three years.
- **Problematic Pay Practices:** The plan is a vehicle for problematic pay practices.

Key Changes:

Similar to the model introduced in the United States for the 2015 proxy season, ISS is adopting a "scorecard" model (Equity Plan Scorecard – "EPSC") for Canadian TSX equity plans that considers a range of positive and negative factors to evaluate equity incentive plan proposals. In concert with ISS' longstanding Canadian policies for TSX equity plans (relating to non-employee director participation, amendment provisions, and repricing without shareholder approval), the total EPSC score will determine whether ISS recommends for or against the proposal.

EPSC factors will fall under three categories ("EPSC pillars"): Plan Cost, Plan Features, and Grant Practices.

As part of the new approach, the updated policy will:

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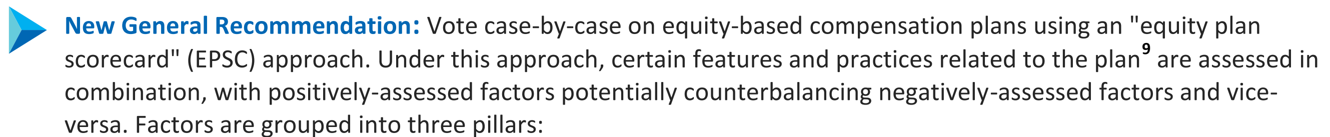
- Utilize two index groups to determine certain thresholds and factor weightings: [8]
  - S&P/TSX Composite Index; and
  - Non-Composite TSX-listed Issuers.
- Utilize individual scorecards for both index groups, as well as Special Cases versions of these scorecards where certain historic data are unavailable;
- Measure plan cost (Shareholder Value Transfer or SVT) through both of the following:
  - The company's total new and previously reserved equity plan shares plus outstanding grants and awards ("A+B+C shares"); and
  - Only the new request plus previously reserved but ungranted shares ("A+B shares");
- Incorporate a wide range of new factors for consideration, both positive and negative, in determining how to recommend for a given equity plan.



New General Recommendation: Vote case-by-case on equity-based compensation plans using an "equity plan scorecard" (EPSC) approach. Under this approach, certain features and practices related to the plan[9] are assessed in combination, with positively-assessed factors potentially counterbalancing negatively-assessed factors and vice-versa. Factors are grouped into three pillars:

- **Plan Cost**: The total estimated cost of the company's equity plans relative to industry/market cap peers, measured by the company's estimated Shareholder Value Transfer (SVT) in relation to peers and considering both:
  - SVT based on new shares requested plus shares remaining for future grants, plus outstanding unvested/unexercised grants; and
  - SVT based only on new shares requested plus shares remaining for future grants.

- **Plan Features:**
  - Absence of problematic change-in-control (CIC) provisions, including:
    - Single-trigger acceleration of award vesting in connection with a CIC; and
    - Settlement of performance-based equity at target or above in the event of a CIC-related acceleration of vesting regardless of performance.
  - No financial assistance to plan participants for the exercise or settlement of awards;
  - Public disclosure of the full text of the plan document; and
  - Reasonable share dilution from equity plans relative to market best practices.

- **Grant Practices:**
  - Reasonable three-year average burn rate relative to market best practices;
  - Meaningful time vesting requirements for the CEO's most recent equity grants (three-year lookback);
  - The issuance of performance-based equity to the CEO;
  - A clawback provision applicable to equity awards; and
  - Post-exercise or post-settlement share-holding requirements (S&P/TSX Composite Index only).

Generally vote against the plan proposal if the combination of above factors, as determined by an overall score, indicates that the plan is not in shareholders' interests. In addition, vote against the plan if any of the following unacceptable factors have been identified:

- Discretionary or insufficiently limited non-employee director participation;

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[8] Additional Special Cases versions of both models will also be developed for companies that have recently IPO'd or emerged from bankruptcy and where the burn-rate factor would therefore not apply.
[9] In cases where certain historic grant data are unavailable (e.g. following an IPO or emergence from bankruptcy), Special Cases models will be applied which omit factors requiring these data.

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- An amendment provision which fails to adequately restrict the company's ability to amend the plan without shareholder approval;
- A history of repricing stock options without shareholder approval (three-year look-back);
- The plan is a vehicle for problematic pay practices or a significant pay-for-performance disconnect under certain circumstances; or
- Any other plan features that are determined to have a significant negative impact on shareholder interests.

Rationale for Update:

As issues around cost transparency and best practices in equity-based compensation have evolved in recent years, ISS has determined to update its Canadian Equity Plans policy in order to provide for a more nuanced consideration of equity plan proposals.

Currently, the Canadian policy for equity plans comprises a series of pass/fail tests relating to plan cost and to three key concerns of Canadian investors:

- Non-employee director participation;
- Plan amendment provisions; and
- Repricing without shareholder approval.

While the three policy cornerstones above will continue to be overriding negative factors under the new policy, the pass/fail test for plan cost will be replaced with a scorecard approach designed to provide a robust overview of an equity plan's strengths and weaknesses.

Feedback obtained through ongoing consultation with institutional investors since the 2013-2014 ISS policy cycle indicates strong support for the new approach, which incorporates the following key goals:

1. Consider a range of factors, both positive and negative, in determining vote recommendations;
2. Select factors based on institutional investors' concerns and preferences and on best practices within the Canadian market established through regulation, disclosure requirements, and best practice principles;
3. Establish factor thresholds and weightings which are cognizant of the Canadian governance landscape (separate scorecards for the S&P/TSX Composite Index and the broader TSX);
4. Ensure that key concerns addressed by policy continue to hold paramount importance (institution of overriding negative factors).

The EPSC policy for equity plan proposals significantly iterates ISS' current Canadian policy by providing a full-spectrum overview of plan cost, plan features, and historic grant practices. This allows shareholders greater insight into rising governance concerns, such as the implementation of risk-mitigating mechanisms, the strength of vesting provisions, and the use of performance-based equity, while also providing added assessments of longstanding concerns relating to equity plans such as burn rate and dilution.

By assessing these factors in combination, the EPSC is designed to facilitate a more holistic approach to vote recommendations. For example, a plan where cost is nominally higher than a company's allowable cap may receive a favourable recommendation if sufficient positive factors are present. Conversely, a plan where cost is nominally lower than the allowable cap may ultimately receive a negative recommendation if a preponderance of scorecard factors demonstrates adverse qualities. Plans will, however, continue to be subject to the scrutiny of overriding negative factors reflecting ISS' current policies regarding problematic non-employee director participation, insufficient plan amendment provisions, repricing without shareholder approval, and other egregious practices. Plans permitting these unacceptable practices will continue to receive an "against" recommendation.

A scorecard approach will enable the evaluation of equity plan proposals in consideration of a range of best practices. Weightings for the three scorecard pillars applicable to S&P/TSX Composite Index constituents and non-Composite TSX-

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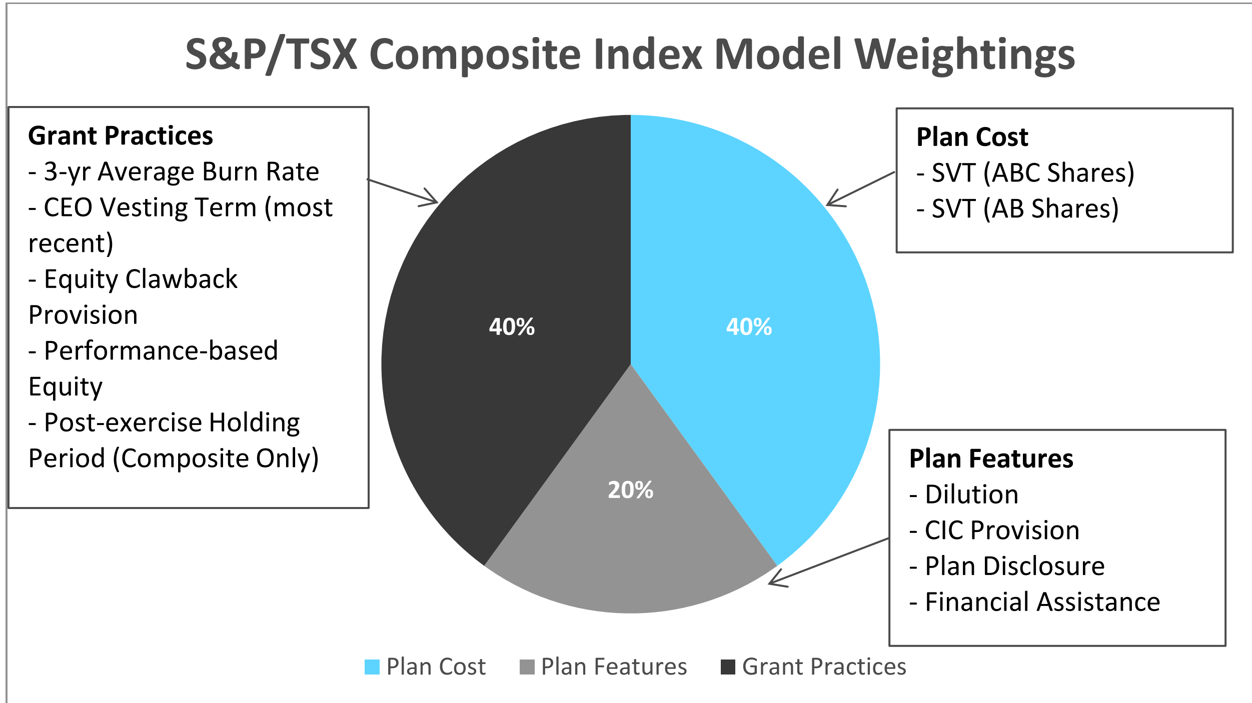
listed issuers are shown below, along with the factors within each pillar. More information about the policy and weightings will be included in ISS' EPSC FAQ to be published in December.



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BRAZIL

BOARD OF DIRECTORS - DIRECTOR ELECTIONS

Election of board and fiscal council nominees presented by minority ordinary and preferred holders under separate election items

Current General Recommendation: Vote against the election of directors nominated by non-controlling shareholders presented as a separate voting item if the nominee names are not disclosed in a timely manner prior to the meeting.

The policy is silent regarding the election of fiscal council members (statutory auditors) nominated by non-controlling shareholders, presented as separate voting items, as allowed by the Brazilian Corporate Law.

Key Changes:

- Recommend an abstain vote in the absence of timely disclosure regarding the names of the minority shareholders' director nominees (both ordinary minority nominee and/or preferred minority nominee, as applicable), when presented under a separate election; and
- Add the provision of an abstain vote recommendation in the absence of timely disclosure regarding the names of minority shareholders' fiscal council nominees and alternates (both ordinary and preferred minority nominees, as applicable), when presented under a separate election.

New General Recommendation: Vote abstain on the election of directors and fiscal council members nominated by non-controlling shareholders presented as a separate voting item if the nominee names are not disclosed in a timely manner prior to the meeting.

Rationale for Update:

The current recommendation to vote against the election of directors nominated by non-controlling shareholders presented as a separate voting item if the nominee names are not disclosed in a timely manner prior to the meeting is part of the Brazilian policy carved out from the Americas Regional policy mid-2013, effective as of Feb. 1, 2014, but was not fully implemented by the Latin America Research team due to the evolving processes in the voting operations chain regarding minority elections presented under separate items in the Brazilian market.

Minority nominees are generally considered independent and, as they can legally be presented up to the time of the meeting, a vote against would disenfranchise minority shareholders who could benefit from greater independent representation. Nonetheless, a vote for minority nominees in the absence of the disclosure of such names is inconsistent with ISS transparency principles and the overall policy framework for the Latin America region.

As such, an abstain vote is the most effective (and neutral) way to address minority shareholder election items when adequate disclosure is not provided in a timely manner. The policy update maintains the current practice of recommending a for vote if the names of the minority nominees are disclosed, and, in the absence of timely disclosure, to recommend an abstain vote for all minority election items, including directors and fiscal council nominees (ordinary and preferred shareholder meeting).

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Combined Chairman/CEO

Current General Recommendation: None specific to the combination of Chair/CEO.

Key Changes:
Introduce policies for voting on directors at companies listed under the differentiated corporate governance segments in Brazil that maintain a combined Chair/CEO structure

New General Recommendation: Vote against the bundled election of directors of companies listed under the differentiated corporate governance segments of the Sao Paulo Stock Exchange (BM&FBovespa)--Novo Mercado, Nivel 2, and Nivel 1-- if the company maintains or proposes a combined chairman/CEO structure, after three (3) years from the date the company's shares began trading on the respective differentiated corporate governance segment.

Vote against the election of the company's chairman, if the nominee is also the company's CEO, when it is presented as a separate election at companies listed under the differentiated corporate governance segments of the Sao Paulo Stock Exchange (BM&FBovespa)–Novo Mercado, Nivel 2, and Nivel 1-- after three (3) years from the date the company's shares began trading on the respective differentiated corporate governance segment.

Rationale for Update:

The policy update is consistent with the current regulatory requirements of the Brazilian differentiated corporate governance listing segments (Novo Mercado, Nivel 2, and Nivel 1) adopted by the BM&FBovespa in 2010, which established the following:

No Accumulation of Positions. The offices of chairman of the board of directors and the chief executive officer or major executive officer of the Company shall not be accumulated in a single person, except in case of vacancy, in which event the circumstance will be disclosed to the market and action will be taken within the subsequent one hundred and eighty (180) days to fill in the positions.

However, accumulation of positions of chairman of the board of director and chief executive officer or major executive officer of the Company will be permitted on an exceptional and transitional basis for a maximum period of three (3) years starting from the date the Company shares begin to trade on the Novo Mercado, the Nivel 2 and Nivel 1.

Conflicts of Interest (Policy change applies to Americas Regional policy as well)

Current General Recommendation: Under extraordinary circumstances, vote against individual directors, members of a committee, or the entire board, due to:

- Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;
- Failure to replace management as appropriate; or
- Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.

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Key Changes:
Include the provision to recommend against an individual nominee, committee members, or the entire board in light of a conflict of interest that raises significant risk, which has not yet materialized (forward looking), in the absence of mitigating measures.

New General Recommendation: Under extraordinary circumstances, vote against individual directors, member(s) of a committee, or the entire board, due to:

- Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;
- Failure to replace management as appropriate; or
- Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.

Vote against individual directors, members of a committee, or the entire board due to a conflict of interest that raises significant potential risk, in the absence of mitigating measures and/or procedures.

Rationale for Update:

The current policy framework refers to conflicts of interest that raise concern in specific transactions. The update addresses a conflict of interest that raises potential significant risk in terms of future possible actions or transactions that could be adverse to shareholders' interests, when the company does not disclose policies and procedures that would mitigate such risk.

COMPENSATION

Management Compensation

Current General Recommendation: Generally vote for management compensation proposals that are presented in a timely manner and include all disclosure elements required by the Brazilian Securities Regulator (CVM).

Vote against management compensation proposals when:

- The company fails to present a detailed remuneration proposal or the proposal lacks clarity; or
- The company does not disclose the total remuneration of its highest-paid executive; or
- The figure provided by the company for the total compensation of its highest-paid administrator is not inclusive of all elements of the executive's pay.

Key Changes:
Include a provision that a significant increase in the proposed remuneration cap on a year-over-year basis will trigger further scrutiny of the company's remuneration proposal, providing a framework for a more qualitative remuneration analysis.

New General Recommendation: Generally vote for management compensation proposals that are presented in a timely manner and include all disclosure elements required by the Brazilian Securities Regulator (CVM).

Vote against management compensation proposals when:

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- The company fails to present a detailed remuneration proposal or the proposal lacks clarity; or
- The company does not disclose the total remuneration of its highest-paid executive; or
- The figure provided by the company for the total compensation of its highest-paid administrator is not inclusive of all elements of the executive's pay.

Vote case-by-case on global remuneration cap (or company's total remuneration estimate, as applicable) proposals that represent a significant increase of the amount approved at the previous AGM (year-over-year increase). When further scrutinizing year-over-year significant remuneration increases, jointly consider some or all of the following factors, as relevant:

- Whether there is a clearly stated and compelling rationale for the proposed increase;
- Whether the remuneration increase is aligned with the company's long-term performance and/or operational performance targets disclosed by the company;
- Whether the company has had positive TSR for the most recent one- and/or three-year periods;
- Whether the relation between fixed and variable executive pay adequately aligns compensation with the company's future performance.

Rationale for Update:

In Brazil, shareholders are asked to approve the aggregate remuneration of directors and executive officers annually through a binding resolution presented at a shareholder meeting. Regulatory changes implemented late 2009, effective as of January 2010 (Instructions 480 and 481), provided the framework of full disclosure of the proposed remuneration, including detailed information of executive remuneration (not individualized), which has now been in place for several years. While current policy has based recommendations solely on companies' compliance with the disclosure requirements, this update provides for a more qualitative analysis when a significant year-over-year increase signals that further scrutiny of remuneration practices is warranted.

Compensation Plans

Current General Recommendation: ISS will generally support reasonable equity pay plans that encourage long-term commitment and ownership by its recipients without posing significant risks to shareholder value.

Practically all of the plans presented since the implementation of the 2009 CVM guidelines have included reasonable dilution limits and adequate vesting conditions. Performance criteria, meanwhile, are rarely disclosed. ISS' assessments of these plans have generally hinged on the presence of discounted exercise prices (which are common in Brazil), particularly in the absence of specific performance criteria.

Vote against a stock option plan, or an amendment to the plan, if:

- The plan lacks a minimum vesting cycle of three years; and/or
- The plan permits options to be issued with an exercise price at a discount to the current market price, in the absence of explicitly stated, challenging performance hurdles related to the company's historical financial performance or the industry benchmarks; and/or
- The maximum dilution exceeds ISS guidelines of 5 percent of issued capital for a mature company and 10 percent for a growth company. However, ISS will support plans at mature companies with dilution levels up to 10 percent if the plan includes other positive features such as challenging performance criteria and meaningful vesting periods, as these features partially offset dilution concerns by reducing the likelihood that options will become exercisable unless there is a clear improvement in shareholder value; and/or
- Directors eligible to receive options under the scheme are involved in the administration of the plan.

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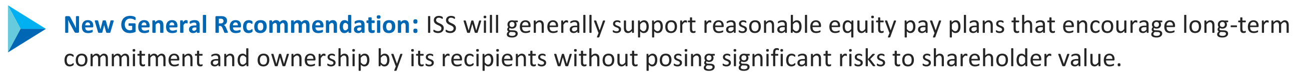
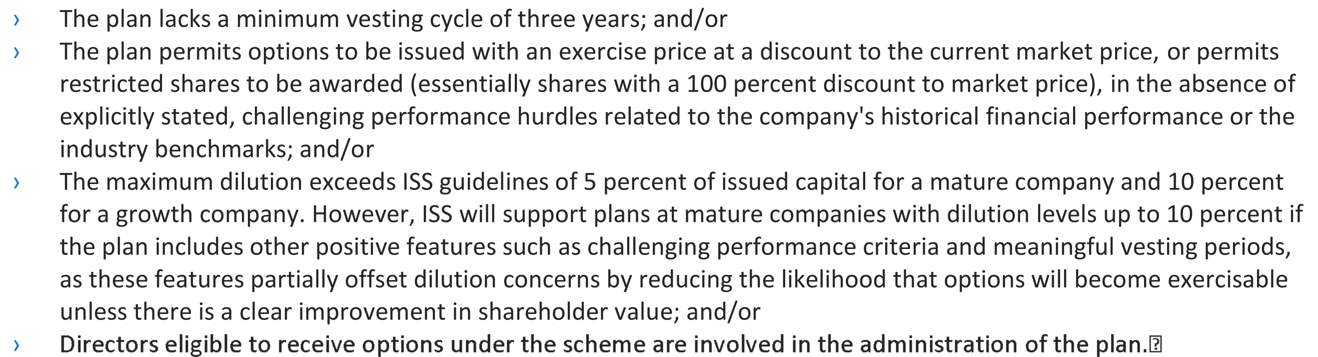
Key Changes:
Reference restricted share plans to clarify that ISS will recommend against such plans based on the proposal of full-value shares (which essentially represent a 100-percent discount to market price) in the absence of publicly disclosed performance targets and hurdles.



New General Recommendation: ISS will generally support reasonable equity pay plans that encourage long-term commitment and ownership by its recipients without posing significant risks to shareholder value.

Practically all of the plans presented since the implementation of the 2009 CVM guidelines have included reasonable dilution limits and adequate vesting conditions. Performance criteria, meanwhile, are rarely disclosed. ISS' assessments of these plans have generally hinged on the presence of discounted exercise prices (which are common in Brazil), particularly in the absence of specific performance criteria.

Vote against a stock option plan and/or restricted share plan, or an amendment to the plan, if:



- The plan lacks a minimum vesting cycle of three years; and/or
- The plan permits options to be issued with an exercise price at a discount to the current market price, or permits restricted shares to be awarded (essentially shares with a 100 percent discount to market price), in the absence of explicitly stated, challenging performance hurdles related to the company's historical financial performance or the industry benchmarks; and/or
- The maximum dilution exceeds ISS guidelines of 5 percent of issued capital for a mature company and 10 percent for a growth company. However, ISS will support plans at mature companies with dilution levels up to 10 percent if the plan includes other positive features such as challenging performance criteria and meaningful vesting periods, as these features partially offset dilution concerns by reducing the likelihood that options will become exercisable unless there is a clear improvement in shareholder value; and/or
- Directors eligible to receive options under the scheme are involved in the administration of the plan.

Rationale for Update:

Currently, ISS Brazil policy does not address restricted share plans, only stock option plans, although the latter have been seen more frequently in the last couple of years. As such, this policy update includes specific reference to restricted share plans under the current policy framework already adopted for stock options plans.

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U.S. Executive Compensation Policies

Frequently Asked Questions

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U.S. EXECUTIVE PAY OVERVIEW

1. Which named executive officers' total compensation data are shown in the Executive Pay Overview section?

The executive compensation section will generally reflect the same number of named executive officer's total compensation as disclosed in a company's proxy statement. However, if more than five named executive officers' total compensation has been disclosed, only five will be represented in the section: the CEO and the four highest paid executives. Current executives will take precedence over terminated executives (except that a terminated CEO whose total pay is within the top five will be included, since s/he was an executive officer within the past fiscal year).

2. There was a CEO transition in the last fiscal year. Which CEO's pay is shown in the report and used for the quantitative screen?

The quantitative pay-for-performance screen will generally use the CEO in office on the last day of the fiscal year; however, the longer tenured CEO may be displayed in some cases where the transition occurs very late in the year. Both CEOs' compensation may be evaluated in the qualitative review.

3. How is Total Compensation calculated?

Total Compensation = Base Salary + Bonus + Non-equity Incentive Plan Compensation + Stock Awards*+ Option Awards** (based on full grant date values, as calculated by ISS) + Change in Pension Value and Nonqualified Deferred Compensation Earnings + All Other Compensation. The calculation will generally match the Summary Compensation Table with the exception of the stock option value and/or stock awards, described further below.

*Stock Awards - Grant date value, generally as reported in the Grants of Plan-Based Awards Table for stock awards, but ISS may calculate values as deemed appropriate based on assessment of the grant. Note that performance shares (equity incentive plan awards) are generally calculated at target value (target # of shares X stock price on grant date).

**Option Awards - Grant date value of options using ISS' Black-Scholes option pricing model.

4. What inputs are used in ISS' Black-Scholes methodology?

Variable	Item	Source	Comments
C	Option Value	Calculated	
S	Stock Price	Proxy	
E	Exercise Price	Proxy	
σ	Volatility	XpressFeed	Historical three-year stock price volatility measured on a daily basis from the date of grant. If a company has not been publicly traded for at least three years, ISS measures volatility from the IPO date through grant date.

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Q	Dividend Yield	XpressFeed	Average dividend yield over five years. If a company has not been publicly traded for at least five years, ISS averages dividend yield from the IPO date and the grant date of option. Dividend yield is based on each dividend divided by the closing stock price on the last business day before the dividend date. The calculation excludes the payouts of special dividends.
R	Risk Free Rate	Dept of Treasury website	U.S. Government Bond Yield on the date of grant corresponding to the term of the option. For example, if the option has a 10-year term, the risk free rate is the 10-year U.S. Government Bond Yield on the date of grant.
T	Term/Expected Life	Proxy	Full term of the option.
E	Base of Natural Logarithm	N/A	N/A
Ln	Natural Logarithm	N/A	N/A
N(x)	Cumulative Normal Distribution Function	N/A	N/A

5. How is the present value of all accumulated pensions calculated in the CEO Tally Sheet table?

This figure represents the aggregate amounts disclosed as the present value of the benefits for all pension plans (including qualified and non-qualified), as disclosed in the Pension Benefits table of the proxy statement.

6. How is the value of Non-Qualified Deferred Compensation calculated in the CEO Tally Sheet table?

This figure represents the sum of all deferred compensation values, as disclosed in the Non-Qualified Deferred Compensation table.

7. How are Potential Termination Payments calculated in the CEO Tally Sheet table?

The values for an involuntary termination without cause and a change in control related termination are provided as disclosed under the relevant termination scenario in the Change in Control Table and/or narrative of the proxy statement.

Financial Data: Total Shareholder Return and Revenue

8. Where does ISS obtain a company's 1-year fiscal total shareholder return, 3-year fiscal total shareholder return, and revenue?

ISS obtains all financial data in the Compensation Profile from Standard & Poor's Compustat and Research Insight. Here is a link to their data dictionary.

9. How does Compustat calculate a company's TSRs and financial/operational measures?

For information on how Compustat calculates TSR and financial/operational measures, such as revenue and net income, see the data dictionary.

10. Why does CEO pay as percent of revenue or net income show as "N/A"?

This will show as "N/A" when the company's revenue or net income is not greater than zero.

MANAGEMENT SAY ON PAY (MSOP) AND ISS' EXECUTIVE PAY EVALUATION

11. What is ISS' Executive Pay Evaluation policy?

The Executive Pay Evaluation policy consists of three primary areas: Pay for Performance, Problematic Pay Practices, and Compensation Committee Communication and Responsiveness. Recommendations issued under the Executive Pay Evaluation policy may apply to any or all of the following ballot items, depending on the pay issue (as detailed in the policy): Election of Directors (primarily compensation committee members), Advisory Votes on Compensation (management say on pay -- MSOP), and/or Equity Plan proposals in certain circumstances.

12. When may ISS' compensation-related recommendations affect director election vote recommendations?

In general, if a company has an MSOP resolution on the ballot, the compensation-related recommendations will be applied to that proposal; however, if egregious practices are identified, or if there are recurring problematic issues or responisveness concerns, ISS may also recommend withhold/against votes with respect to compensation committee members or, if appropriate, the full board. In addition, if there is no advisory pay vote on the ballot, any adverse recommendations related to executive compensation may apply to compensation committee members.

13. A company has not included a say on pay proposal on ballot without a valid exemption or has not presented the proposal in adherence with the company's previously adopted frequency. What action is warranted under ISS policy?

In the absence of clearly disclosed and compelling rationale, failure to adhere to the adopted say on pay frequency or failure to include the say on pay proposal on the ballot without a valid exemption may result in against or withhold recommendations against incumbent Compensation Committee members/chair or, in exceptional circumstances, the full board. While the SEC rule requires inclusion of say on pay proposals at least once every three calendar years, if the company's annual meeting date

changes due to, for example, a change in fiscal year, or if the proposal is not presented at a meeting where shareholders may reasonably expect to see it for any other reason, companies should provide an explanation about the timing of the next say on pay resolution.

14. If one or more directors received a negative recommendation in the prior year due to ISS' concerns over compensation practices, will it have a bearing on the following year's recommendation?

The prior year recommendation is not a specific consideration in the following year's analysis, although the underlying concern may be. If one or more directors received less than 50 percent of shareholders' support (regardless whether it is a compensation issue), ISS may recommend that shareholders withhold from the entire board with the exception of new nominees if the company fails to take adequate action to respond to or remediate the issues raised in the previous report. If one or more directors received a high level of dissent (30 percent to 49.5 percent), the company should discuss any action or consideration taken to address the concern. A high level of dissent indicates an overall dissatisfaction and the board/committee should be responsive to shareholders' concerns. A lack of discussion or consideration, coupled with existing concerns may have a bearing on the following year's recommendation.

15. What impact might an identified pay for performance misalignment have on equity plan proposals?

If ISS identifies a significant pay-for-performance misalignment that results in an adverse recommendation on the say-on-pay proposal or compensation committee members, ISS may also recommend a vote against an equity plan proposal on the same ballot. Considerations in recommending against the equity plan include, but are not limited to:

- Severity of pay for performance misalignment;
- Whether problematic equity grant practices are driving the misalignment; and
- Whether equity plan awards have been heavily concentrated to the CEO and/or the other NEOs (as opposed to the plan being considered broad-based).

In determining whether the equity plan is broad-based, ISS examines the three-year average concentration ratio for equity awards made to the CEO and other NEOs. If the average concentration ratio exceeds 30% for the CEO (or 60% for all NEOs, including the CEO), this would indicate that the plan is not broad-based. Also see ISS' Equity Plan Scorecard FAQ.

Pay for Performance Evaluation

Please also see ISS' "Evaluating Pay for Performance Alignment" white paper for a detailed explanation of the quantitative methodology used in the first phase of this analysis, and a discussion of the qualitative factors considered.

16. How does ISS' quantitative pay for performance screen work?

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The first step in ISS' evaluation of pay for performance has historically been a quantitative assessment of how well a company's CEO pay has been aligned with its shareholder returns. The current screen (which, as of 2015, applies to all S&P 500 and Russell 3000E Index companies, as well as selected additional companies that are widely held) identifies companies that demonstrate a significant level of misalignment between the CEO's pay and company TSR, either on an absolute basis or relative to a group of peers similar in size and industry (see below for more information about ISS peer groups). Three independent measures assess alignment over multiple time horizons. If any or a combination of these measures indicates a pay for performance misalignment, ISS performs an in-depth qualitative review of the company's pay programs and practices to ascertain likely causal factors, or mitigating factors, and a relevant vote recommendation. Note that all companies' pay programs and practices are evaluated.

17. What are the three quantitative screens?

The quantitative screens work as follows:

- Relative Degree of Alignment. This relative measure compares the percentile ranks of a company's CEO pay and TSR performance, relative to an industry-and-size derived comparison group, annualized for the prior three fiscal year periods. Specifically, CEO pay is averaged for the three-year period; annualized TSR is the geometric mean of the three fiscal year TSRs in the period.
- Multiple of Median. This relative measure expresses the prior year's CEO pay as a multiple of the median pay of its comparison group for the same period.
- Pay-TSR Alignment. This absolute measure compares the trends of the CEO's annual pay and the value of an investment in the company over the prior five-year period.

18. How does the initial quantitative pay for performance analysis affect the ultimate compensation-related vote recommendation?

The quantitative pay for performance analysis serves as an initial screen to identify cases that suggest there has been a significant misalignment of CEO pay and performance. An elevated concern from the quantitative screen results in a more in-depth initial qualitative review of the company's pay programs and practices to identify the probable causes of the misalignment and/or mitigating factors. We note that any company can receive an in-depth qualitative review, and all companies' pay programs and practices are evaluated.

However, a company with a Low quantitative concern level may still receive an in-depth qualitative review if deemed appropriate (for example, if the prior say-on-pay proposal received substantial shareholder opposition). While the quantitative screen indicates potential pay for performance outliers, the result of ISS' in-depth qualitative review is what ultimately determines the vote recommendation.

19. What are the factors that ISS considers in conducting the qualitative review of the pay for performance analysis?

Here are some of the key factors that ISS generally considers in conducting the qualitative review of the pay for performance analysis:

- The ratio of performance- to time-based equity awards;
- The overall ratio of performance-based compensation;

- The completeness of disclosure and rigor of performance goals;
- The company's peer group benchmarking practices;
- Actual results of financial/operational metrics, such as growth in revenue, profit, cash flow, etc., both absolute and relative to peers;
- Special circumstances related to, for example, a new CEO in the prior FY or anomalous equity grant practices (e.g., bi-annual awards);
- Realizable pay compared to granted pay; and
- Any other factors deemed relevant.

20. If a company received a "low" concern in the quantitative pay for performance model, will ISS still evaluate the company's incentive programs?

Yes, ISS reviews all companies' Compensation Discussion and Analysis and highlights noteworthy issues to investors regardless of the quantitative concern level. This qualitative evaluation, as well as any in-depth qualitative evaluation subsequent to the quantitative screens, is the most important part of the analysis. Problematic incentive designs such as multi-year guaranteed payments, discretionary pay components, inappropriate perquisites (including tax gross-ups) or lack of rigorous goals are generally addressed in the qualitative analysis and may result in a negative recommendation despite a "low" quantitative concern.

21. How does ISS use realizable pay in its analysis?

ISS' standard research report will generally show three-year realizable pay compared to the three-year granted pay for S&P 1500 companies. See the next question for ISS' definition of realizable pay and how it will be calculated.

Realizable pay may be discussed in the qualitative review. For S&P 1500 companies, we may utilize the realizable pay chart to see if realizable pay is higher or lower than granted pay (see related questions below) and further explore the underlying reasons. For example, is realizable pay lower than granted pay due to the lack of goal achievement in performance based awards, or simply due to a decline in stock price? Is realizable pay higher than granted pay due to above target payouts in performance based equity awards (and, if so, are the underlying goals sufficiently rigorous), or is the difference due to increasing stock price?

For all companies, ISS' consideration of realized and/or realizable pay is to assist in determining whether the company demonstrates a strong commitment to a pay for performance philosophy. The fact that realizable pay is lower, or higher, than granted pay will not necessarily obviate other strong indications that a company's compensation programs are not sufficiently tied to performance goals designed to enhance shareholder value over time. However, in the absence of such indications, realizable pay that demonstrates a pay for performance commitment will be a positive consideration.

22. How is Realizable Pay computed?

ISS' goal is to calculate an estimated amount of "realizable pay" for the CEOs of S&P 1500 companies. It includes the cash and benefit values actually paid, and the value of any amounts "realized" (i.e., exercised or earned due to satisfaction of performance goals) from incentive grants made during a specified measurement period*, based on their value as of the end of the measurement period. Equity

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grants made during the measurement period that remain on-going as of the end of the period (i.e., not yet earned or forfeited) will be revalued using the company's stock price at the end of the period. For periods that include multiple CEOs, the departed CEO's pay (excluding any grants forfeited) will be valued as of his/her termination date.

In short, realizable pay includes all non-incentive compensation amounts delivered during the measurement period, plus the value of equity or long-term cash incentive awards made during the period and either earned or, if the award remains on-going, revalued at target level as of the end of the measurement period. The total realizable value for these grants and payments will thus be the sum of the following:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;
- Short-term (typically annual) awards reported as Non-equity Incentive Plan Compensation for all years;
- For all prospective long-term cash awards made during the measurement period, the earned value of the award (if earned during the same measurement period) or its target value in the case of on-going award cycles;
- For all share-based awards made during the measurement period, the value (based on stock price as of the end of the measurement period) of awards made during the period (less any shares/units forfeited due to failure to meet performance criteria); or, if awards remain on-going, the target level of such awards;
- For stock options granted during the measurement period, the net value realized with respect to such granted options which were also exercised during the period; for options granted but not exercised during the measurement period, ISS will re-calculate the option value, using the Black-Scholes option pricing model, as of the end of the measurement period;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

*Generally three fiscal years, based on the company's fiscal year. For realizable pay calculated as part of ISS' 2016 analyses, this will generally consist of fiscal years 2013 through 2015.

Note that ISS' realizable pay amount will be based on a consistent approach, using information from company proxy disclosures. Since current SEC disclosure rules are designed to enumerate "grant-date" pay rather than realizable pay, these estimates will be based on ISS' best efforts to determine necessary inputs to the calculation. In cases where, for example, it is not sufficiently clear whether an applicable award has been earned or forfeited during a measurement period, ISS will use the target award level granted.

23. How does ISS calculate the "Granted Pay" that is compared to a CEO's "Realizable Pay"?

The CEO's "Granted Pay" presented in the "3-Year Granted vs. Realizable CEO pay" chart in ISS' reports is calculated as the sum of the following for the 3-year measurement period:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;

- Target short-term (typically annual) awards reported as Non-equity Incentive Plan Awards in the Grants of Plan-Based Awards table, for all years; if a target award is not determinable, none will be included;
- Target long-term cash awards made during the measurement period (as reported in the Grants of Plan-Based Awards table, or elsewhere in the CD&A);
- The grant-date value of all share-based awards made during the measurement period;
- For stock options granted during the measurement period, grant-date value is calculated by ISS using the Black-Scholes option pricing model, per ISS' standard stock option valuation methodology.
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

24. Why doesn't ISS use the intrinsic value (exercise price minus current market price) of stock options when calculating realizable pay?

Top executives' stock options typically expire after seven to 10 years, meaning that even if an option is underwater in the first few years after its grant, there is a substantial likelihood it will ultimately deliver some value to the holder prior to expiration. Shareholders recognize that, in considering "realizable" pay as a pay for performance factor, it is important to include the economic value of underwater options (which will also reflect the impact of a lower stock price, if applicable).

25. A company would like to disclose ongoing and/or completed performance-based equity awards for awards made in the past three years. What type of disclosure format would ISS suggest?

Disclosure of ongoing or completed performance-based equity awards in a consistent manner would facilitate ISS' calculation of realizable pay (which is based on a best efforts extraction of necessary information from proxy statements). If a company has awarded performance-based equity awards in the past three years, disclosure of the awards in the following table would be helpful:

Grant Date	Threshold Payout (#)	Target Payout	Maximum Payout	Performance Period*	Target/Actual Earned Date	Actual Payout
3/1/2009	100,000	150,000	200,000	1 year	6/1/2010	180,000
3/1/2010	150,000	200,000	250,000	3 years	6/1/2012	Not determined yet

*Performance period does not include time-vesting requirement.

26. With respect to pay for performance alignment and realizable pay calculations, how will ISS treat CEOs who have not been in the position for three years?

The quantitative methodology will analyze total CEO pay for each year in the analysis without regard to whether all years are the same or different CEOs. If that analysis indicates significant pay for performance misalignment, the ensuing qualitative analysis may take into account any relevant factors related to a change in CEO during the period. However, given an apparent disconnect between performance and CEO pay, shareholders would expect the new CEO's pay package to be substantially performance-based.

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For years when a company has more than one CEO, only one CEO's pay will be included to calculate granted pay (generally the CEO who was in the position at or near the end of the fiscal year) for purposes of the pay-for-performance quantitative screen. CEO base salary will be annualized.

With respect to realizable pay, ISS will include both pay packages and calculate the realizable amount, as of the end of the measurement period, of the Summary Compensation Table pay reported for the CEO in office on the last day of each fiscal year in the measurement period. Pay for a terminated CEO (including the value of unforfeited awards as if they were paid out on the last day of service or the end of the fiscal year, based on information in disclosures) will also be included in realizable pay.

27. How is three-year total shareholder return (TSR) calculated? How are "peaks and valleys" accounted for in the five-year analysis?

The Relative Degree of Alignment (RDA) measure uses annualized three-year TSR – i.e., the annualized rate of the three 12-month periods in the three-year measurement period (calculated as the geometric mean of the three TSRs). TSR reflects stock price appreciation plus the impact of reinvestment of dividends (and the compounding effect of dividends paid on reinvested dividends) for the period.

Under the absolute assessment, indexed TSR represents the value of a hypothetical $100 investment in the company, assuming reinvestment of dividends. The investment starts on the day five years prior to the month-end closest to the company's most recent fiscal year end, and is measured on the subsequent five anniversaries of that date. The Pay-TSR Alignment (PTA) measure (as outlined in the ISS "Evaluating Pay for Performance Alignment" white paper) is designed to account for the possibility of "bumps" in the overall trend.

28. What TSR time period will ISS use for the subject company and the peers in the Pay for Performance analysis? What about the compensation period?

TSRs for the subject company and all its peers are measured from the last day of the month closest to the subject company's fiscal year end. For example, if the subject company's fiscal year end is September 30, then the one-year and three-year TSRs for the subject company and its peers will be based on September 30. Compensation figures for all companies are as of the most recent available date.

29. For companies with meetings early in the year, whose latest year peer CEO pay has not yet been released, what pay data does ISS use?

ISS uses the latest compensation data available for the peer companies, some of which may be from the previous year. This circumstance is considered in any related qualitative review, as deemed relevant.

30. Do you include the subject company in the derivation of the peer group median? When you say 14 companies minimum for peers, does the 14 include the subject company?

No, neither the CEO pay nor the TSR of the subject company is included in the median calculation. The subject company is also not included in the minimum number of peer companies, which will generally be 14 (also see **Determining Peer Companies**, below).

31. If a company has not been publicly traded for at least three or five years, does the relevant quantitative pay for performance evaluation still apply? Does this affect whether a company would be used as a peer?

If the company has not been publicly traded for five fiscal years, the relative assessments, specifically the relative annualized three-year TSR pay and performance rank and the multiple of pay against the peer median, will still apply. If the company has been publicly traded for less than three years, the relative assessment will be based on as many complete years of annualized TSR and CEO pay data as is available. The company's limited life as a publicly traded company will also be considered as part of any qualitative evaluation.

Generally, only companies with three full years of data will be peer companies. In limited circumstances, a company with less than three years of data may be used when the quantitative evaluation focuses on only one year.

32. How does ISS take the year-over-year change in pension benefits value into account in assessing CEO pay?

ISS includes changes in pension value in our pay assessments because companies that do not offer supplemental defined benefit pensions (SERPs) to their top executives often provide for post-retirement compensation through larger grants of equity-based awards and thus could be disadvantaged in company-to-company pay comparisons if SERP-related compensation is omitted from the annual figures. Because ISS' quantitative analysis has a long-term orientation, pay anomalies caused by issues such as a single large increase in year-over-year pension accumulations (e.g., due to interest rate changes) should not have a significant impact on the results. However, such anomalies are considered in the qualitative evaluation.

33. What actions can the company take to address concerns when ISS has issued an adverse recommendation on the basis of a pay for performance disconnect?

The pay for performance evaluation is a case-by-case analysis, and actions intended to address concerns should be tailored according to the underlying issues identified in the pay for performance disconnect. Prospective commitments to increase the proportion of performance-based pay in the future will not adequately address concerns; adjustment to recent awards to strengthen their performance linkage may be considered, however. As an example, if the primary source of a pay increase is due to time-vested equity awards, a remedy could be for the company to make a substantial portion (i.e. at least 50 percent) of such equity awards to named executive officers performance-based.

Any pay for performance action(s) should be disclosed in a public filing, such as a Form 8-K or DEFA 14A. Based on the additional disclosure, ISS may change its vote recommendation if the company's actions sufficiently remedy the pay for performance disconnect. However, ISS' recommendation will depend on the company providing compelling and sufficient evidence of action to strengthen the performance-linkage to its executives' compensation and comprehensive additional disclosure.

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34. When will ISS consider equity awards to be performance-based?

The company should disclose the details of the performance metric(s) (e.g., return on equity) and the associated goals (e.g., 15 percent) associated with the performance awards at the time they are made. From this disclosure, shareholders will know the minimum level of performance required for any equity grants to be earned. In this context, strongly performance-based equity awards do not include standard time-based stock options or performance-accelerated grants. Instead, performance-based equity awards are performance-contingent grants, where the individual will not receive the equity grant if the performance goal is unmet. Premium-priced options must have a meaningful premium in order to be considered strongly performance-based. If option vesting is contingent on the stock reaching a specified price, the price condition should be maintained for at least 30 consecutive trading days before vesting in order for the grant to be considered strongly performance-based.

In order for shareholders to assess the rigor of performance-based bonus and equity programs, the company needs to disclose the performance measures and goals. To ensure complete and transparent disclosure, the company should disclose the following:

1. the measures(s) used (and rationale for the selections);
2. the goal(s) that were set for each metric and the target (and, if relevant, threshold and maximum) payout level(s) set for each NEO;
3. the reason that each goal was determined to be appropriate for incentive pay purposes (including the expected difficulty of attaining each goal);
4. the actual results achieved with respect to each goal; and
5. the resulting award (or award portion) paid (or payable) to the NEO with respect to each goal.

35. Will ISS take into account the timing of equity grants (such as for grants made subsequent to the applicable performance year) when conducting its pay for performance evaluation?

Grant timing issue can be problematic for investors evaluating the relationship between performance and pay. The value of equity grants generally represents a significant proportion of top executives' pay; if the grants are made subsequent to the "performance year," disclosures in the Grants of Plan-Based Awards Table may distort the pay for performance link.

Some investors believe that equity awards can incentivize and retain executives for past and future performance; therefore, adjustments for such timing issues may not be relevant. In addition, ISS' pay for performance analysis has a long-term orientation, where these types of timing issues are less relevant than in an evaluation of one year's pay. Nevertheless, ISS may consider the timing of equity awards made early in a fiscal year in its qualitative assessment if complete disclosure and discussion is made in the proxy statement.

In order to ensure that pay for performance alignment is perceived, the company should discuss the specific pre-established performance measures and goals that resulted in equity awards made early in the next fiscal year. A general reference to last year's performance is not considered sufficient and meaningful to shareholders. If the company makes equity grants early in each year, based on the prior

year's specific performance achievement, shareholders should not be required to search for the information in Form 4s and compute the adjusted total compensation for the top executives in order to make a year-over-year comparison. Instead, companies should provide information about grants made in relation to the most recently completed fiscal year in the proxy statement for the shareholder meeting that follows that fiscal year (aligned with other compensation reported for that year). Many companies provide an alternate summary compensation table that takes into account the recent equity awards made in the current fiscal year. The number of options or stock awards with the relevant exercise price or grant price should be disclosed in the proxy statement. The term of the options should be provided as well. In order for ISS to compute the adjusted total compensation and include it for purposes of our narrative discussion and analysis, companies need to make transparent and complete disclosure in the proxy statement; ISS will not search for the companies' Form 4 filings to make such adjustments but will rely on the specific grant disclosures found in the proxy statement.

36. A company grants time-vesting equity awards that were contingent on meeting specific performance criteria. Does ISS consider such awards to be performance-conditioned?

ISS will generally consider such awards to be performance-conditioned if the performance measures and goals were pre-established and are disclosed in the proxy statement.

37. How does ISS capture transition period compensation?

Disclosure of transition period compensation varies across companies; therefore, ISS does not apply a standardized methodology in all cases. When transition periods represent an extension of a recently completed fiscal year (until the start of a new fiscal year period), ISS will generally include transition period pay as part of the most recently completed fiscal year pay. Cash pay components such as base salary and bonus will be annualized and equity pay components will be added, subject to a company-specific case by case review.

38. Which companies are subject to ISS quantitative pay-for-performance screens?

At a minimum, all companies in the S&P500 and Russell 3000E indexes.

39. How does ISS evaluate pay-for-performance alignment at companies for which pay data is not analyzed in the quantitative screens?

For companies outside the Russell 3000E Index (which includes all companies in the Russell 3000 and Russell Microcap indexes), ISS reviews the CD&A, including the Summary Compensation Table and other compensation tables, to assess the level of NEOs' pay relative to internal standards developed to identify potential egregious pay levels and problematic compensation practices (similar to the Problematic Pay Practices component of the Executive Pay Evaluation Policy). If that evaluation does not identify any significant concerns, the ISS research report indicates that (and notes any items that shareholders may nevertheless wish to consider). If significant concerns are identified, the ISS analysis addresses them to determine whether or not the situation warrants an adverse recommendation.

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Determining Peer Companies

40. How does ISS select constituents for the peer groups used in its pay for performance analysis?

ISS' methodology for selecting peers maintains a focus on identifying companies that are reasonably similar to the subject company in terms of industry profile, size, and market capitalization, taking into account a company's self-selected peers to guide industry selections. This peer group is used with respect to two of the three quantitative pay-for-performance screens that may trigger and in-depth review and analysis of a company's pay program in connection with say on pay evaluations.

ISS' selected peer group generally contains a minimum of 14 (and always at least 12) and maximum of 24 companies, based on the following factors:

1) The GICS industry classification of the target company
2) The GICS industry classifications of the company's disclosed CEO pay benchmarking peers
3) Size constraints for both revenue (or assets for certain financial companies) and market value.

Subject to the size constraints, and while choosing companies that push the subject company's size closer to the median of the peer group, peers are selected from a potential peer universe in the following order:

1. from the subject's own 8-digit GICS group
2. from the subject's peers' 8-digit GICS groups
3. from the subject's 6-digit GICS group
4. from the subject's peers' 6-digit GICS groups
5. from the subject's 4-digit GICS group

When choosing peers, priority is given to potential peers within the subject's "first-degree" peer group (the companies that are either in the subject's own peer group, or that have chosen the subject as a peer), and companies with numerous connections (by choosing as peer or being chosen as a peer) to these first-degree peers. All other considerations being equal, peers closer in size are preferred.

41. Will a company's self-selected peers always appear in the ISS peer group, if they meet ISS' size constraints?

Not necessarily. While the methodology does place a priority on the company's own peer selections, there are a number of reasons why a company selected peer may not appear in the final ISS list, even if it meets the relevant size (revenue or assets and market capitalization) parameters. As noted above, the methodology also places priority on other factors as it builds the peer group:

- The company's own 8-digit GICS category
- Maintaining the subject company size at or near the median of its peer group
- Maintaining the approximate distribution of GICS industry codes as reflected in the company's self-selected peer group

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At times, including a company's self-selected peer may push the subject company away from the median, or lead to an overrepresentation of that industry within the final peer group. In these cases the company's self-selected peer may not be included. In addition, if a company's self-selected peer is the only peer company in its 6- and 8-digit GICS category, that industry grouping will not be utilized in the peer selection process (since the company may have selected that peer solely due to geographic proximity, for example).

42. What are ISS' size parameters for qualifying a potential peer?

ISS applies two size constraints to qualify potential peers:

1. Revenue (or assets for certain financial companies or market capitalization for certain oil & gas companies, as described in the following question below)
   In general, peers should fall in the range of 0.4 to 2.5 times the company's revenue (or assets). These ranges are expanded when the subject company's revenue is larger than $5 billion or smaller than $200 million in revenue (assets). Companies smaller than $100 million in revenue (assets) are treated as if they have $100 million in revenue (assets).

2. Market capitalization (in millions)

   Companies are classified into market capitalization buckets as follows:

Bucket	Low end	High end
Micro	0	200
Small	200	1,000
Mid	1,000	10,000
Large	10,000	No cap

   While ISS may choose peers that fall outside a subject company's market cap bucket if necessary to reach a minimum peer group size, none may have a market cap of less than 0.25 times the low end or more than 4 times the high end of the subject's market capitalization bucket.

43. Which industry groups will not use revenue for size comparisons? What happens when a company has potential peers in industry groups measured by different size metrics?

ISS will use balance sheet assets (rather than revenue) to measure the size of companies in the following 8-digit GICS groups:

- 40101010 Commercial Banks
- 40101015 Regional Banks
- 40102010 Thrifts + mortgage
- 40202010 Consumer Finance
- 40201020 Other diversified

Additionally, ISS will use market cap rather than revenue to qualify peers for companies within these GICS groups:

- 10102010 Integrated Oil & Gas

- 10102020 Oil & Gas Exploration & Production
- 10102030 Oil & Gas Refining & Marketing
- 10102040 Oil & Gas Storage & Transportation
- 10102050 Coal & Consumable Fuels

Both subject and potential peer must be in the asset- or market cap-based GICS groups listed above in order to be compared on the basis of assets or market cap, as applicable. In cases where a subject company is in one of the asset- or market cap-based GICS groups and a potential peer is not, revenues will be used for size comparisons. This principle applies to the size comparisons made to qualify a peer for potential inclusion as a peer, to the size rankings made to maintain the subject company near the median size of the peer group, and to the size prioritization of peers.

In addition, as deemed appropriate by ISS, additional 8-digit GICS categories may be determined to utilize assets and/or market cap to identify peers.

44. When will a company's peer group have more than 14 members?

In general, the closer the industry match, the larger the subject size of the peer group: for direct matches to the company's own 8-digit GICS with respect to all potential peers, as many as 24 peers may be chosen. For matches that include the company's peers' 8-digit GICS, as many as 18 peers may be chosen, falling to a maximum of 14 peers when peers are selected solely from the company's 4-digit GICS. In all cases, however, additional peers may be selected in order to bring the target company's size closer to the median of the peers or to enhance the consistency of the pay-for-performance screens using these peer groups.

45. If the standard methodology fails to yield the minimum number of acceptable peers, what peer group will be used?

In cases where the standard methodology does not provide a sufficient number of peers, ISS will supplement those peer groups according to the principles above, generally by relaxing size parameters while maintaining the subject company at or near the median size. In selected cases, ISS may also relax industry group constraints.

In exceptional cases, the ISS peer group may contain a minimum of 12 constituents.

46. How does ISS treat foreign-domiciled or privately-held company peers?

ISS uses all company peers to identify relevant GICS industry groups, if industry data is readily available. Foreign-domiciled companies that file Def14A, 10-Qs, and 10-Ks may be included as ISS selected peers. Privately-held or other foreign-domiciled companies that do not make such filings are not included as ISS selected peers, although their GICS classifications may be utilized to select alternative peers whose data is publicly available.

47. If a company used multiple peer benchmarking groups, which group will ISS use as an input to the process? What does ISS do if a company does not employ a peer group for benchmarking?

ISS uses the company peer group that is used for CEO pay benchmarking purposes. If there is no peer group employed, the peer methodology will draw peers from the company's own 8-, 6- and 4-digit GICS groups, subject to ISS' size constraints.

48. Does ISS apply additional judgment in the process of building peer groups?

ISS generally does not adjust peer groups that are generated from the standard methodology and have the requisite minimum number of constituents. In exceptional circumstances, where a peer group appears to have inappropriate constituents at the time of our analysis, limited adjustments may be made, following the basic principles of the methodology: peers should come from similar industries and be of similar size, and company peers will be prioritized where possible.

49. When will ISS reconstruct peer groups?

Company peer groups are reconstructed during December and early January, effective for meetings as of the following February 1. A subsequent peer group construction will occur in July and August, after the Russell 3000 index is updated in July, to be in place for research in process as of September 15 (generally affecting companies that have filed DEF14As after mid-August).

50. What opportunities will companies have to communicate changes made to their benchmarking peer groups following their more recent proxy disclosures?

In December, ISS provides companies a "peer update" opportunity to communicate changes made to their benchmarking peer groups following their most recent proxy diclosures. For companies with later fiscal year-end dates (approximately September 15 through the following January), ISS provides a similar peer update opportunity after proxy season, prior to reconstruction of its peer groups per above. During the update process, companies should inform ISS of updates to the peer groups they used to benchmark executive compensation that will be reported in their upcoming proxy statements (not to benchmark the upcoming year's pay).

Companies that do not participate in the ISS peer update process will continue to have their most recently disclosed compensation peers used in the ISS peer group construction process.

51. What companies can be used as peer companies? Will ISS use companies that an issuer considers as peers (specified in the proxy) to develop the ISS comparator group?

If a company discloses the names of public companies that it uses as its peers, ISS will collect the data on them even if they are not in the index of companies that are screened through ISS' quantitative pay-for-performance model (the Russell 3000E index). If these companies fit ISS' criteria for peers, then they may be used as ISS peers as of the next update of ISS peer groups.

52. What are GICS codes? Who can I contact if I disagree with the GICS classification?

The Global Industry Classification Standard (GICS) was developed by Standard & Poor's and MSCI in response to the financial community's need for a reliable, complete (global) standard industry classification system. GICS codes correspond to various business or industrial activities, such as Oil & Gas Drilling or Wireless Telecommunication Services. GICS is based upon a classification of economic sectors, which is further subdivided into a hierarchy of industry groups, industries and sub-industries. The GICS methodology is widely accepted as the industry analysis framework for investment research, portfolio management, and asset allocation.

ISS does not classify companies into the GICS codes. Please contact Standard & Poor's at 1-800-523-4534 if you believe that a company has been misclassified.

53. Are the same peer companies that are used for the pay-for-performance analysis also used to calculate a company's Shareholder Value Transfer Benchmark related to an equity plan proposal?

No, the list of companies shown in the executive compensation section is not the same peer group used in calculating a company's SVT Benchmark. The peer group used for benchmarking executive pay is based on a combination of industry and size (revenue/assets and market cap); the peer group used for creating the SVT Benchmark for stock compensation plan proposals is based on 4-digit GICS industry groups, with adjustments for market cap size.

54. How are peer medians calculated for the Components of Pay table?

The median is separately calculated for each component of pay and for the total annual compensation. For this reason, the median *total compensation* (TC) of the peer CEOs will not equal the sum of all the peer median pay components, because the values are calculated separately for each pay component; the median TC reflects the median of TC of the peer group constituents.

Problematic Pay Practices/Commitments on Problematic Pay Practices

55. What is ISS' Problematic Pay Practices evaluation?

Pay elements that are not directly based on performance are generally evaluated on a CASE-BY-CASE basis considering the context of a company's overall pay program and demonstrated pay for performance philosophy. Based on input from client surveys and roundtables, ISS has identified certain practices that are contrary to a performance-based pay philosophy, which are highlighted in the list below. ISS evaluates these practices on a case-by-case basis, considering the facts and circumstances disclosed, in determining whether any extraordinary perks or benefits are a poor use of company assets which could also have other detrimental effects (e.g., creating or contributing to an “imperial CEO” culture).

- Egregious employment contracts:
  - Contracts containing multi-year guarantees for salary increases, non-performance based bonuses, or equity compensation.
- New CEO with overly generous new-hire package:

- Excessive "make whole" provisions without sufficient rationale;
- Problematic termination-related equity vesting provisions;
- Any of the problematic pay practices listed in this policy.
- Abnormally large bonus payouts without justifiable performance linkage or proper disclosure:
  - Includes performance metrics that are changed, canceled, or replaced during the performance period without adequate explanation of the action and the link to performance
- Egregious pension/SERP (supplemental executive retirement plan) payouts:
  - Inclusion of additional years of service not worked that result in significant benefits provided in new arrangements
  - Inclusion of performance-based equity or other long-term awards in the pension calculation
- Excessive Perquisites:
  - Perquisites for former and/or retired executives, such as lifetime benefits, car allowances, personal use of corporate aircraft, or other inappropriate arrangements
  - Extraordinary relocation benefits (including any home loss buyouts)
  - Excessive amounts of perquisites compensation
- Excessive severance and/or change in control provisions:
  - Change in control cash payments exceeding 3 times base salary plus target/average/most recent bonus;
  - New or materially amended arrangements that provide for change-in-control payments without loss of job or substantial diminution of job duties (single-triggered or modified single-triggered, where an executive may voluntarily leave for any reason and still receive the change-in-control severance package);
  - New or materially amended employment or severance agreements that provide for an excise tax gross-up. Modified gross-ups would be treated in the same manner as full gross-ups;
  - Excessive payments upon an executive's termination in connection with performance failure;
  - Liberal change in control definition in individual contracts or equity plans which could result in payments to executives without an actual change in control occurring
- Tax Reimbursements: Excessive reimbursement of income taxes on executive perquisites or other payments (e.g., related to personal use of corporate aircraft, executive life insurance, bonus, restricted stock vesting, secular trusts, etc; see also excise tax gross-ups above)
- Dividends or dividend equivalents paid on unvested performance shares or units.
- Internal pay disparity: Excessive differential between CEO total pay and that of next highest-paid named executive officer (NEO)
- Repricing or replacing of underwater stock options/stock appreciation rights without prior shareholder approval (including cash buyouts, option exchanges, and certain voluntary surrender of underwater options where shares surrendered may subsequently be re-granted).
- Other pay practices that may be deemed problematic in a given circumstance but are not covered in the above categories.

56. Which problematic practices are most likely to result in an adverse recommendation?

The list below highlights the problematic practices that carry significant weight and will likely result in adverse vote recommendations:

- Repricing or replacing of underwater stock options/SARs without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
- Excessive perquisites or tax gross-ups, potentially including any gross-up related to a secular trust or restricted stock vesting, and home loss buyouts;
- New or extended executive agreements that provide for:
  - CIC payments exceeding 3 times base salary and average/target/most recent bonus;
  - CIC severance payments without involuntary job loss or substantial diminution of duties ("single" or "modified single" triggers);
  - CIC payments with excise tax gross-ups (including "modified" gross-ups).

57. How does ISS view hedging or significant pledging of company stock by an executive or director?

Hedging is a strategy to offset or reduce the risk of price fluctuations for an asset or equity. Stock-based compensation or open market purchases of company stock should serve to align executives' or directors' interests with shareholders. Therefore, hedging of company stock through covered call, collar or other derivative transactions sever the ultimate alignment with shareholders' interests. Any amount of hedging by a company insider will be considered a problematic practice warranting a negative vote recommendation against appropriate board members.

Significant levels of pledging of company stock – regardless of whether the shares were obtained through compensation programs or whether the pledged shares exclude the number of shares required to be held under a company's stock ownership guidelines – also may raise risks for the company's stock price or for violation of insider trading restrictions. Please see the FAQ on Policies & Procedures – Board Accountability for more insight on ISS policy in this regard.

58. Does the presence of single trigger vesting acceleration in an equity plan result in an automatic against recommendation for the plan, the say on pay vote, the entire compensation committee, or the full board?

With regard to equity-based compensation, ISS policy encourages “double trigger” vesting of awards after a CIC (considered best practice), although recommendations are determined case-by-case, considering all aspects of company programs.

In the absence of double-triggered vesting, the current preferred practice is for the board to have flexibility to determine the best outcome for shareholders (e.g., to arrange for outstanding grants to be assumed, converted, or substituted), rather than the plan providing for *automatic* accelerated vesting upon a CIC.

Equity plans or arrangements that include a liberal CIC definition (such as a very low buyout threshold or a CIC occurring upon shareholder approval of a transaction, rather than its consummation), coupled with a provision for automatic full vesting upon a CIC, are likely to receive a negative recommendation. Also see the Equity Compensation Plans FAQ.

59. What level of compensation disclosure by externally-managed issuers (EMIs) would be sufficient to enable a reasonable assessment of pay programs to

make an informed say-on-pay vote and avoid an adverse say-on-pay recommendation?

Although EMIs are required to present a say-on-pay vote, most EMIs provide little, if any, disclosure regarding the compensation arrangements between their executive officers and the external manager. Based on ISS' review of EMI compensation disclosure, most EMIs provide only the aggregate management and incentive fees paid to the manager. Without more information, shareholders are unable to make a reasonable assessment of pay programs and practices applicable to the EMI's executives, and therefore are unable to cast an informed say-on-pay vote. In assessing whether an EMI has provided sufficient compensation disclosure to allow for an informed say-on-pay vote, ISS will look for all of the following disclosures:

- The portion of the EMI's management fee that is allocated to NEO compensation paid by the external manager (aggregated values for all NEOs is acceptable);
- Of this compensation, the breakdown of fixed vs. variable/incentive pay; and
- The metrics utilized to measure performance to determine NEOs' variable/incentive pay.

While the above does not represent a complete picture of executive compensation, it represents the minimum disclosure necessary to enable shareholders to reasonably evaluate pay arrangements between the EMI's executives and the external manager. Absent this disclosure, ISS will generally recommend against the EMI's say-on-pay proposal.

60. After incentive awards were earned below target, a company granted special retention awards to executives. How would ISS view such awards?

Investors do not expect boards to reward executives when performance goals are not achieved, whether by "moving the goalposts" (i.e., lowering goals) or granting other awards to compensate for the absent incentive payouts. They recognize, however, that retention of key talent may be critical to performance improvements and future shareholder value. Companies that grant special retention awards of cash or equity to executives when regular incentive plan goals are not met should provide clear and compelling rationale in their proxy disclosure. Awards should be conservative and reflect the fact that performance is lagging (i.e., should generally be significantly less than unearned target award levels). Optimally, "extra" awards designed to encourage retention should not be a regular occurrence and should also include performance conditions that will ensure strong alignment of pay and performance going forward and avoid "pay for failure" scenarios if the executive is not retained.

61. How will ISS evaluate problematic pay practices relating to agreements or decisions in the current fiscal year as opposed to those from the most recently completed fiscal year?

For problematic provisions (excise tax gross-ups, single-trigger severance, etc.) contained in a new/materially amended executive agreement, ISS will generally issue an adverse recommendation when such provisions are disclosed by the company, even if the problematic agreement was entered into or amended after the most recent fiscal year end. For example, if a company with a calendar fiscal year discloses a new problematic agreement entered into in February following the FYend, ISS will generally recommend against the current say-on-pay proposal.

However, in certain cases ISS may wait to further evaluate the problematic issue in the following year, when our analysis could be informed by additional information that would be disclosed in the following year's proxy statement. For example, ISS may wait until the following year in the case of a potentially problematic equity grant to a new CEO hired in February after the FYend, in order to evaluate the grant in the context of the new CEO's total pay as disclosed in the following year's proxy statement.

62. While guaranteed multi-year awards are problematic, is providing a guaranteed target pay opportunity for what ISS considers a performance-based vehicle acceptable?

While guaranteeing any executive pay elements (outside of salary and standard benefits) is not considered best practice, if the payout of such an award ultimately depends on the attainment of rigorous performance goals (i.e., no payout would occur if performance is below a specified standard), this would generally mitigate concerns about the guaranteed award opportunity.

63. How will ISS view existing/legacy problematic provisions in executive agreements?

While maintaining problematic provisions in legacy arrangements (i.e. agreements not entered into or amended in the most recently completed fiscal year) is not considered a best practice, such legacy arrangements generally will not on their own result in an adverse vote recommendation. However, legacy problematic provisions will be considered as part of the holistic analysis, and they should be removed whenever the agreement is amended or extended (see related questions below).

64. Are material amendments other than extensions of existing contracts a trigger for analysis with respect to problematic existing contract provisions?

Shareholders are concerned with the perpetuation of problematic practices; thus, new or recently amended agreements will face the highest scrutiny and weight in ISS' analysis. Any material amendments to such agreements will be considered an opportunity for the board to fix problematic issues.

65. Would a legacy employment agreement that is automatically extended (e.g., has an evergreen feature) but is not otherwise amended warrant an adverse vote recommendation if it contains a problematic pay practice?

Automatically renewing/extending agreements (including agreements that do not specify any term) are not considered a best practice, and existence of a problematic practice in such a contract is a concern. However, if an "evergreen" employment agreement is not materially amended in manner contrary to shareholder interests, it will be evaluated on a holistic basis, considering a company's other compensation practices along with features in the existing agreement.

66. What if a problematic pay practice is contained under a separate plan or agreement that runs indefinitely, but an executive has a separate employment agreement that is extended or modified?

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The policy relevant for "new or extended executive agreements" applies to any and all agreements or plans under which the executive whose contract is being modified is covered. In other words, ISS may view the modification to an employment agreement as also being a modification or extension of the executive's separate severance and/or CIC arrangement. Alternatively, the modification to the employment agreement should include a removal of the executive's entitlement to the problematic pay practice under the separate agreement.

67. If a company put a problematic pay practice provision in new or modified agreements in the last fiscal year, what action can they take to prevent an adverse recommendation from ISS?

The company can remove that provision from the new agreements and disclose this action in the proxy statement.

Frequency of Advisory Vote on Executive Compensation

68. In the event that a company's board decides not to adopt the say on pay vote frequency supported by a plurality of the votes cast, what are the implications in terms of ISS' voting recommendations at subsequent meetings?

If the board adopts a longer frequency for say-on-pay votes than approved by a plurality of shareholder votes, ISS will make a case-by-case recommendation, considering the following:

- The board's rationale for choosing a frequency that is different from the frequency which received a plurality;
- The company's ownership structure;
- ISS' analysis of the company's executive compensation and whether there are compensation concerns or a history of problematic compensation practices; and
- The previous year's support level on the company's say-on-pay proposal.

Advisory Vote on Golden Parachutes (SOGP)

69. If a truncated performance period is used when accelerating awards in a CIC, how would ISS determine whether the performance goals would not have been achieved had no CIC transaction occurred?

Best practice is pro rata vesting for actual achievement levels during a partial performance period. If it is impossible to measure performance under pre-determined performance criteria the board should justify paying an award as if target or highest performance goals were met.

70. How does ISS determine whether specified golden parachute payouts are "excessive"?

In evaluating disclosed payouts related to a change in control with respect to the SOGP proposal, ISS may consider a variety of factors, including the value of the payout on an absolute basis (e.g., relative to

an executive's annual compensation) or one or total payouts relative to the transaction's equity value. There are no bright line thresholds for these considerations, since they are made in conjunction with other factors in ISS' review.

71. How will ISS consider existing problematic change-in-control severance features in its SOGP evaluation?

ISS considers both new and existing problematic features and practices. Recent amendments that incorporate problematic features will tend to carry more weight on the overall analysis. However, the presence of multiple legacy problematic features will also be closely scrutinized.

The questions and answers in this FAQ are intended to provide general guidance regarding the way in which ISS' Global Research Department will analyze certain issues in the context of preparing proxy analyses and determining vote recommendations for U.S. companies. However, these responses should not be construed as a guarantee as to how ISS' Global Research Department will apply its benchmark policy in any particular situation.

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www.issgovernance.com

American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, CA 92130

Via EDGAR and Fed-Ex

July 13, 2015

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attention: Jennifer Monick, Staff Accountant
Mark Rakip, Staff Accountant

Re: American Assets Trust, Inc.
Form 10-K
Filed February 20, 2015
File No 1-35030

Dear Ms. Monick and Mr. Rakip:

The purpose of this letter is to respond to the comments of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission"), received by email on July 6, 2015 (the "Comment Letter"), with respect to the American Assets Trust, Inc. (the "Company") Form 10-K filed February 20, 2015 (the "2014 Form 10-K"). For ease of review, we have set forth below each of the numbered comments of the Comment Letter and the Company's responses thereto. All page numbers and captions in the responses below refer to the 2014 Form 10-K, except as otherwise noted below.

General

1. **Please tell us how you determined it is appropriate to provide combined periodic reports for parent and subsidiary registrants given that you owned approximately 70.9% of your operating partnership at March 31, 2015.**

   Response: The Company advises the Staff that it has assessed the appropriateness of combining periodic reports for parent (American Assets Trust, Inc. ("REIT")) and subsidiary (American Assets Trust, L.P. ("OP")) registrants for purposes of reporting under the Securities Exchange Act of 1934. We have concluded that the REIT owns substantially all of the OP, there are nominal differences between the financial statements of the REIT and OP and the non-financial disclosures of the REIT and the OP are substantially similar as described below and in our Explanatory Notes in our 2014 Form 10-K and March 31, 2015 Form 10-Q.

Furthermore, the REIT is the sole general partner of the OP and, in addition to owning the general partner interest, owned an approximate 70.9% limited partner interest in the OP at March 31, 2015. The REIT and the OP are structured to achieve economic parity between a common share of beneficial interest of the REIT and a common unit of limited partnership interest of the OP. Whenever the REIT issues common shares, the OP issues an equal number of common units to the REIT at the same price for which the common shares were sold. All of the REIT's operating activities are conducted through the OP and the OP's subsidiaries and the OP reimburses the REIT for any operating expenses (e.g., taxes and any expenses associated with the REIT's equity capital raising activities). As such, the REIT is in effect a holding company; the only assets of which are its equity interests in the OP. As the sole general partner of the OP, the REIT is exclusively vested with managerial control and authority over the business and affairs of the OP. Accordingly, the REIT's financial statements include the OP and the OP's subsidiaries. Because the REIT conducts no business operations other than through the OP and the OP's subsidiaries, the REIT's financial statements are substantially the same as the financial statements of the OP (with the most notable difference being the fact that the OP also has outside minority unitholders).

Since the overwhelming majority of the information included in the REIT's and OP's periodic reports is the same due to the organizational structure described above, we concluded that filing combined periodic reports, where possible, would significantly reduce internal costs and expenses associated with the preparation of largely duplicative reports and eliminate the risk of inadvertent or unintentional errors that could result from the process of generating two reports. Given that the users of the OP financial statements need both entities' financial statements to understand the performance of their investment given its convertible nature, we also believe the use of one report minimizes redundancy and disclosure overload. Moreover, we believe that combining the disclosure - where appropriate - helps convey the manner in which the operations and activities of the REIT and the OP are interrelated for the purposes of the REIT shareholders and OP unit holders. For this reason, we believe that a combined presentation is beneficial to an investors' understanding of the business and financial condition of and relationship between the two entities.

Additionally, the 2014 Form 10-K filing was the first presentation of combined periodic reports of the REIT and OP. The Company voluntarily began filing combined periodic reports effective as of December 31, 2014, and for all years presented, in anticipation of the OP potentially becoming a required filer. As of the date of our response, the OP is not a required filer and it does not appear probable that it will be a required filer in 2015.

American Assets Trust, L.P.

Consolidated Statements of Comprehensive Income, page F-10

2. **Please tell us why your operating partnership has adjusted for net income attributable to unitholders in the Operating Partnership in amounts equal to those applicable to American Assets Trust, Inc. In your response, please also address why you have not included the adjustment for net income attributable to unitholders in the Operating Partnership in your operating partnership's consolidated statements of comprehensive income for the interim period ended March 31, 2015.**

Response: In preparing the American Assets Trust, L.P. financial statements for the first time, we started with the American Assets Trust, Inc. financial statements because as noted above the assets, liabilities, revenues and expenses are identical and the earnings per share/units of the REIT and the OP are designed to have parity on a per share/unit basis. Due to the fact that the financial statement accounts and numbers are identical, the REIT financial statements only required changes in titles, labels and minor reformatting. During the activity of changing titles, labels and reformatting, we inadvertently did not delete the row titled “Net income attributable to unitholders in the Operating Partnership” and also neglected to update the weighted average shares of common stock outstanding - basic. This was a clerical oversight. Following the receipt of the Staff’s comment, we have determined that none of the other financial information within the Form 10-K and specifically the American Assets Trust, L.P. financial statements are impacted by the clerical error. As you noted in your comment**,** this ministerial error was not repeated in the Company’s Form 10-Q for the three months ending March 31, 2015 and 2014, respectively.

In order to correct this ministerial error, we intend to file an Amendment No. 1 to our Form 10-K/A on or about the date that we file our Form 10-Q for the period ended June 30, 2015. As American Assets Trust, L.P. is currently a voluntary filer. We believe the numbers as shown in the line item “incorrectly titled” Net Income Attributable to American Assets Trust, L.P. (as these amounts are actually the Net Income Attributable to American Assets Trust, Inc.) are not meaningful to the users of the Form10-K as the users of these financial statements are the owners of the REIT common stock and Operating Partnership units. Currently there are no direct users of the Operating Partnership’s financial statements. However, the potential users of the Operating Partnership financial statements are the holders of the operating partnership units. As the operating partnership units have the exact same economics as the REIT common stock holders, all key financial information that is needed by the unit holders is accurately reported in both the REIT and Operating Partnership financial statements, including net income and net income attributable to each class of ownership as depicted on the statement of equity, and earnings per share/unit. However we believe an Amendment to the Form 10-K should be filed so that the presentation is comparable to what is in the quarterly reports and to have the corrected information on file prior to American Assets Trust, L.P. becoming a required registrant, which may or may not happen in future periods.

In our Amended Form 10-K, we intend to present an Explanatory Paragraph as follows:

> This Amendment No.1 to Form 10-K is being filed for the purpose of correcting a ministerial error in the American Assets Trust, L.P. Consolidated Statements of Comprehensive Income on page F-10 of the annual report on Form 10-K for the year ending December 31, 2014 filed on February 20, 2015 (the “Original Report”). Specifically, this Amendment removes the line item “Net Income attributable to unitholders in the Operating Partnership” from the American Assets Trust, L.P. Statement of Comprehensive Income and updates the weighted average units outstanding, basic. These amounts were inadvertently copied from the American Assets Trust, Inc. statement of comprehensive income without appropriate modification in formatting and labeling. As a result of these changes, the calculation of earnings per unit - basic - from continuing operations is updated.

For ease of reference, this Amendment sets forth the entire Original Report as previously filed, amended only to give effect to the correction discussed above. In addition, pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, this Amendment includes new certifications of our principal executive officer and principal financial officer on Exhibits 31 and 32, each as of the date of filing this Amendment.

This Amendment does not affect any other section of the Original Report and continues to speak as of the date of the Original Report.

A summary of the corrections are as follows (which will also be included in the filing of the Amendment):

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American Assets Trust, L.P.
Consolidated Statements of Comprehensive Income
(In Thousands, Except Units and Per Unit Data)

	Year Ended December 31,		
As originally reported:	**2014**	**2013**	**2012**
NET INCOME	$ 31,145	$ 22,594	$ 51,601
Net income attributable to restricted shares	(374)	(536)	(529)
Net income attributable to unitholders in the Operating Partnership	(9,015)	(6,838)	(16,134)
NET INCOME ATTRIBUTABLE TO AMERICAN ASSETS TRUST, L.P.	$ 21,756	$ 15,220	$ 34,938
EARNINGS PER UNIT - BASIC			
Continuing operations	$ 0.52	$ 0.38	$ 0.24
Discontinued operations	—	—	0.66
Earnings per unit, basic	$ 0.52	$ 0.38	$ 0.90
Weighted average units outstanding, basic	42,041,126	39,539,457	38,736,113
EARNINGS PER UNIT - DILUTED			
Continuing operations	$ 0.51	$ 0.38	$ 0.24
Discontinued operations	—	—	0.66
Earnings per unit, diluted	$ 0.51	$ 0.38	$ 0.90
Weighted average units outstanding, diluted	59,947,474	57,515,810	57,053,909

	Year Ended December 31,		
As corrected:	**2014**	**2013**	**2012**
NET INCOME	$ 31,145	$ 22,594	$ 51,601
Net income attributable to restricted shares	(374)	(536)	(529)
NET INCOME ATTRIBUTABLE TO AMERICAN ASSETS TRUST, L.P.	$ 30,771	$ 22,058	$ 51,072
EARNINGS PER UNIT - BASIC			
Continuing operations	$ 0.51	$ 0.38	$ 0.24
Discontinued operations	—	—	0.66
Earnings per unit, basic	$ 0.51	$ 0.38	$ 0.90
Weighted average units outstanding, basic	59,947,474	57,515,810	57,053,909
EARNINGS PER UNIT - DILUTED			
Continuing operations	$ 0.51	$ 0.38	$ 0.24
Discontinued operations	—	—	0.66
Earnings per unit, basic	$ 0.51	$ 0.38	$ 0.90
Weighted average units outstanding, diluted	59,947,474	57,515,810	57,053,909

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American Assets Trust, Inc.
11455 El Camino Real, Suite 200
San Diego, CA 92130

Via EDGAR and Fed-Ex

July 30, 2015

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attention: Jennifer Monick, Staff Accountant
Mark Rakip, Staff Accountant

Re: American Assets Trust, Inc.
Form 10-K
Filed February 20, 2015
File No 1-35030

Dear Ms. Monick and Mr. Rakip:

The purpose of this letter is to respond to the comments of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission"), received by email on July 23, 2015, with respect to the American Assets Trust, Inc. (the "Company") Form 10-K filed February 20, 2015 (the "2014 Form 10-K"). For ease of review, we have set forth below each of the numbered comments of the Comment Letter and the Company's responses thereto. All page numbers and captions in the responses below refer to the 2014 Form 10-K, except as otherwise noted below.

General

1. We note your response to prior comment one. It does not appear that you qualify for combined periodic reporting given you do not appear to own substantially all of the ownership of the American Assets Trust, L.P. Please separately file the required periodic reports for the REIT and OP or advise.

Response: The Company respectfully advises the Staff that it will formally be requesting a waiver from the Staff of the Office of Chief Accountant of the Division of Corporation Finance to permit American Assets Trust, Inc. (the "REIT") and American Assets Trust, L.P. (the "OP") to be able to make combined filings of periodic reports beginning with the 2014 Form 10-K for the REIT's and the OP's fiscal year ended December 31, 2014 and for all subsequent periods.

American Capital Agency Corp.
Two Bethesda Metro Center,
14th Floor
Bethesda, MD 20814
(301) 968-9300
(301) 968-9301 Fax

April 15, 2015

VIA EDGAR AND EMAIL

Ms. Jaime G. John
Ms. Kristi Marrone
Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

RE: American Capital Agency Corp. Form 10-K for the year ended December 31, 2014 (File. No. 001-34057)

Dear Mses. John and Marrone:

American Capital Agency Corp. (the "Company") is in receipt of your comment letter dated March 17, 2015 (the "Comment Letter"), which sets forth the comments of the staff (the "Staff") of the Division of Corporate Finance (the "Division") of the Securities and Exchange Commission (the "Commission") regarding the above-mentioned filing. The numbered paragraphs below respond to each of the Staff's comments in the Comment Letter, by setting forth the Staff's comment followed by the Company's response thereto.

Note 7. Fair Value Measurements, page 99

1. We note your disclosure on page 84 that you estimate the fair value of your "non-centrally cleared" interest rate swaps using inputs from counterparty and third-party pricing models to estimate the net present value of the future cash flows. We further note that these assets and liabilities are classified within Level 2 of the fair value hierarchy. Please provide us with additional details to support your Level 2 classification.

As noted in Note 7 (page 99) of the filing, we classify assets and liabilities within Level 2 of the fair value hierarchy when the fair value of such instruments is derived from inputs based on quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

We determine the fair value of our non-centrally cleared interest rate swaps based on valuations obtained from third-party pricing services and the swap counterparty (collectively "third-party valuations"). The third-party valuations are model-driven using observable inputs consisting

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of LIBOR and the forward yield curve. We also consider the creditworthiness of both us and our counterparties and the impact of netting and credit enhancement provisions contained in each derivative agreement, such as collateral postings. All of our non-centrally cleared interest rate swaps are subject to bilateral collateral arrangements. Consequently, no credit valuation adjustment was made in determining the fair value of such instruments.

In response to the Staff's comment, in future filings we will clarify our disclosure pertaining to the classification of non-centrally cleared interest rate swaps within Level 2 of the fair value hierarchy as described above.

In submitting this letter, the Company acknowledges:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

We hope that this letter addresses the Staff's questions and comments. If we can be of assistance in facilitating the Staff's review of our responses to the Comment Letter, please contact Cydonii Fairfax at (301) 841-1384 or me at (301) 841-1405. Thank you in advance for your prompt attention to this matter.

Sincerely,

/s/ Samuel A. Flax

Samuel A. Flax
Executive Vice President and Secretary

30601 Agoura Road, Suite 200
Agoura Hills, CA 91301
(805)413-5300
www.americanhomes4rent.com

Via EDGAR May 19, 2015
Jaime G. John
Accounting Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: American Homes 4 Rent
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 1-36013

Dear Ms. John:

American Homes 4 Rent (the "Company") submits this letter to respond to the comments of the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") contained in your letter dated May 6, 2015, regarding the Company's Form 10-K for the year ended December 31, 2014. The Staff's comments are repeated below in bold italics preceding each response.

Management's Discussion and Analysis of Financial Condition and Results of Operations

Non-GAAP Measures, page 67

1. We note that NOI presented on page 68 excludes operating expenses for vacant single-family properties and therefore appears to be NOI for your leased properties only. Please advise and revise the label in future filings to clearly indicate that this measure relates to NOI for leased properties.

The Company advises the Staff that NOI excludes "vacant property operating expenses," which consists of operating expenses associated with properties that have been renovated, but not initially leased, and includes "leased property operating expenses," which consists of operating expenses associated with properties that have been initially leased, whether or not they are currently leased. Therefore, the Company's measure of NOI represents NOI from properties that have been initially leased, whether or not they are currently leased. Descriptions of "leased property operating expenses" and "vacant property operating expenses" have previously been disclosed on pages 54 and 55 of the Company's Form 10-K for the year ended December 31, 2014. In response to the Staff's comment, the Company has revised the description and label of this measure to read "Initially Leased Property Core NOI" in the Company's Form 10-Q for the quarter ended March 31, 2015, to indicate that NOI is from initially leased properties only. The Company will include the revised label in its future Exchange Act periodic reports.

2. We note that your reconciliation of FFO and Core FFO begins with Net loss attributable to common shareholders and includes an adjustment to include non-controlling interest in the Operating Partnership. It appears that your FFO and Core FFO measures represent FFO and Core FFO attributable to common shareholders and operating partnership unitholders. Please advise and revise your presentation in future filing to clearly label each measure.

The Company advises the Staff that FFO and Core FFO represent FFO and Core FFO attributable to common shareholders and operating partnership unitholders, which has been described in footnote (1) to the table appearing on page 69 of the Company's Form 10-K for the year ended December 31, 2014. In response to the Staff's comment, the Company has revised the label of each measure in the Company's Form 10-Q for the quarter ended March 31, 2015, to add "and units" after FFO and Core FFO to indicate that each is attributable to common shareholders and operating partnership unitholders. The Company will include the revised labels in its future Exchange Act periodic reports.

In connection with our responses to the Staff's comments, we hereby acknowledge that:

May 8, 2015

Correspondence Filing Via Edgar

United States Securities and Exchange Commission
Division of Corporation Finance
Office of Real Estate and Business Services
100 F Street, NE
Washington, D.C. 20549-3561
Attn: Jennifer Monick

Re: Apartment Investment and Management Company
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-13232

AIMCO Properties, L.P.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed April 24, 2015
File No. 0-24497

Ladies & Gentlemen:

This letter responds to the comments of the staff of the Securities and Exchange Commission (the "Staff") addressed to Ernest M. Freedman on behalf of Apartment Investment and Management Company ("Aimco") and AIMCO Properties, L.P., a Delaware limited partnership (collectively, the "Companies"), in a letter dated April 27, 2015. The Companies' response to the Staff's comment is set forth below.

* * * * *

Form 10-K

Balance Sheet and Liquidity, page 22

Comment: We note your use of pro forma and actual leverage ratios. It does not appear your presentation of these leverage ratios complies with Item 10(e) of Regulation S-K. Please revise future periodic filings to disclose that these leverage ratios are non-GAAP, disclose how management deems the measures useful, and provide a reconciliation of any non-GAAP measures used in these leverage ratios. Your reconciliation should reconcile any non-GAAP measures to the most directly comparable financial measure or measures calculated and presented in accordance with GAAP. Further, your reconciliation of your pro forma measures should include an explanation of any assumptions made. Please provide us with an example of your proposed disclosure.

Response: In response to the Staff's comment, the Companies will revise future periodic filings to disclose that their leverage ratios are non-GAAP, to explain how management deems these measures useful, and will provide a reconciliation of the non-GAAP measures used in these ratios to the most directly comparable financial measure or measures calculated and presented in accordance with GAAP. To the extent the Companies present any pro forma leverage ratios, the accompanying disclosures will include an explanation of any assumptions made in the pro forma calculation. As requested by the Staff, an example of the Companies' proposed disclosure is provided below.

Balance Sheet and Liquidity

Our leverage strategy seeks to increase financial returns while using leverage with appropriate caution. We target the ratio of Adjusted Debt plus Preferred Equity to Adjusted EBITDA to be below 7.0x and we target the ratio of Adjusted EBITDA Coverage of Adjusted Interest and Preferred Dividends to be greater than 2.5x. We also focus on the ratios of Adjusted Debt to Adjusted EBITDA and Adjusted EBITDA Coverage of Adjusted Interest.

We believe the ratios of ratios of Adjusted Debt to Adjusted EBITDA and Adjusted Debt plus Preferred Equity to Adjusted EBITDA are important measures as they are commonly used by investors and analysts to assess the relative financial risk associated with balance sheets of companies within the same industry, and they are additionally used by rating agencies to assess the potential for companies defaulting on their debt obligations.

The ratios of Adjusted EBITDA Coverage of Adjusted Interest and Adjusted EBITDA Coverage of Adjusted Interest and Preferred Dividends provide a measure of a company's ability to pay its current interest and preferred dividend requirements. We believe these are meaningful to investors, analysts and rating agencies in assessing financial risk associated with a company's debt levels and provide an indication of the health of the company's earnings in relation to interest and preferred dividend requirements. Additionally, these measures allow for comparison of our debt and earnings levels to those of other companies within our industry.

Adjusted Debt, Adjusted EBITDA and Adjusted Interest, as used in these ratios, are non-GAAP financial measures, which are further discussed and reconciled under the Non-GAAP Leverage Measures heading. Preferred Equity represents Aimco's preferred stock and the Aimco Operating Partnership's preferred OP Units.

Our leverage ratios for the trailing twelve month and annualized three month periods ended December 31, 2014 and 2013, are presented below:

	Pro-forma Trailing Twelve Months Ended December 31,	Actual Trailing Twelve Months Ended December 31,	
	2014 (1)	2014	2013
Adjusted Debt to Adjusted EBITDA	6.5x	7.1x	7.1x
Adjusted Debt plus Preferred Equity to Adjusted EBITDA	7.0x	7.6x	7.3x
Adjusted EBITDA Coverage of Adjusted Interest	2.9x	2.7x	2.6x
Adjusted EBITDA Coverage of Adjusted Interest and Preferred Dividends	2.7x	2.5x	2.5x

(1) During January 2015, Aimco completed a common stock offering resulting in net proceeds of approximately $367 million. The pro-forma ratios presented for the trailing twelve months ended December 31, 2014, have been adjusted to reflect the following: a) Repayment of $112.3 million of outstanding borrowings under our Credit Agreement at December 31, 2014; b) Repayment of $102.2 million of property debt that will be repaid in 2015 to further supplement Aimco's unencumbered pool; c) Repayment of $27.0 million of Aimco's CRA Preferred Stock; and d) Investment of the remaining proceeds from the common offering. The effect of the repayment of debt, redemption of preferred stock and investment of the remaining proceeds from the common offering resulted in a pro forma reduction of Interest and Preferred Dividends of $11.2 million and $0.4 million for the trailing twelve months ended December 31, 2014. The pro forma interest and preferred dividend adjustments are based on the contractual amounts for the debt repaid or preferred securities redeemed, and investment of the remaining proceeds assumed an annual return of one percent. Refer to Note 16 to the consolidated financial statements in Item 8 for additional information regarding this stock offering.

We expect future leverage reduction from both earnings growth, the lease up of redevelopment communities and from regularly scheduled property debt amortization repaid from retained earnings. We also expect to increase our financial flexibility by expanding our pool of unencumbered apartment communities. As of December 31, 2014, this pool included 15 consolidated apartment communities, which we expect to hold beyond 2015, with an estimated fair value of more than $1 billion.

Non-GAAP Financial Measures

Note: Our 10-K, as filed, includes our Funds From Operations ("FFO") and Adjusted Funds From Operations ("AFFO") discussion, along with the related non-GAAP disclosures and reconciliations, within Management's Discussion and Analysis ("MD&A"). Based on the expanded non-GAAP disclosure in response to the Staff's comment, we plan to add a Non-GAAP Financial Measures section within the MD&A in future filings, which would include our existing FFO and AFFO disclosures, along with the proposed expanded non-GAAP disclosures below. For the purpose of this Comment Letter response, we have not repeated the FFO and AFFO disclosure.

Non-GAAP Leverage Measures

Adjusted Debt represents our share of the debt obligations recognized in our consolidated financial statements, as well as our share of the debt obligations of our unconsolidated partnerships, reduced by our share of the cash and restricted cash of our consolidated and unconsolidated partnerships, and our investment in the subordinate tranches of a securitization that holds certain of our property debt (essentially, our investment in our own non-recourse property loans). We believe Adjusted Debt is useful to investors as it is a measure of our net exposure to debt obligations, assuming the application of cash and restricted cash

balances as well as reducing our leverage by our investment in our own property debt. Adjusted Debt, as used in our leverage ratios discussed under the Balance Sheet and Liquidity heading, is calculated as set forth in the table below.

Preferred Equity, as used in our leverage ratios, represents the redemption amounts for Aimco's preferred stock and the Aimco Operating Partnership's preferred OP Units. Preferred Equity, although perpetual in nature, is another component of our overall leverage.

Adjusted EBITDA is a non-GAAP performance measure. We believe Adjusted EBITDA provides investors relevant and useful information because it allows investors to view income from our operations on an unleveraged basis, before the effects of taxes, depreciation and amortization, gains or losses on sales of and impairment losses related to real estate, and various other items described below that are not necessarily representative of our ability to service our debt obligations or preferred equity requirements.

Adjusted EBITDA represents Aimco's share of the consolidated amount of our net income adjusted to exclude the effect of the following items for the reasons set forth below:

- interest, to allow investors to compare a measure of our earnings before the effects of our capital structure and indebtedness with that of other companies in the real estate industry;
- income taxes, to allow investors to measure our performance independent of income taxes, which may vary significantly from other companies within our industry due to leverage and tax planning strategies, among other drivers;
- depreciation and amortization, gains or losses on dispositions and impairment losses related to real estate, for similar reasons to those set forth in our discussion of FFO and AFFO in the preceding section;
- provisions for (or recoveries of) losses on notes receivable, gains on dispositions of non-depreciable assets and non-cash stock-based compensation, as these are items that periodically affect our operations but that are not necessarily representative of our ability to service our debt obligations;
- the interest income earned on our investment in the subordinate tranches of a securitization that holds certain of our property debt, as we subtract this income from our interest expense in our calculation of Adjusted EBITDA coverage of Adjusted Interest; and
- EBITDA amounts related to our legacy asset management business, as the debt obligations and associated interest expense for the legacy asset management business are excluded from our leverage ratios and the associated interest payments are not funded from our operations.

While Adjusted EBITDA is a relevant measure of performance, it does not represent net income as defined by GAAP, and should not be considered as an alternative to net income in evaluating our performance. Further, our computation of Adjusted EBITDA may not be comparable to similar measures reported by other companies.

Adjusted Interest, as calculated in our leverage ratios, is a non-GAAP measure that we believe is meaningful for investors and analysts as it presents our current recurring interest requirements associated with leverage. Our calculation of Adjusted Interest is set forth in the table below. We exclude from our calculation of Adjusted Interest

- the amortization of deferred financing costs, as these amounts have already been expended in previous periods and are not representative of our current or prospective debt service requirements; and
- debt prepayment penalties and other items that from time to time, affect our operating results, but are not representative of our scheduled interest obligations.

Our calculation of Adjusted Interest is also reduced by income we receive on our investment in the subordinate tranches of a securitization that holds certain of our property debt, as this income is being generated indirectly from our payments of principal and interest associated with the property debt held by the trust and such amounts will ultimately repay our investment in the trust.

Preferred Dividends represents the preferred dividends paid on Aimco's preferred stock and the preferred distributions paid on the Aimco Operating Partnership's preferred OP Units. We add Preferred Dividends to Adjusted Interest for a more complete picture of the interest and dividend requirements of our leverage, inclusive of perpetual preferred equity.

For the years ended December 31, 2014 and 2013, reconciliations of the most closely related GAAP measures to our calculations of Adjusted Debt, Preferred Equity, Adjusted EBITDA, Adjusted Interest and Preferred Dividends, as used in our leverage ratios, are as follows (in thousands):

	Year Ended December 31,	
	2014	**2013**
Total indebtedness	$ 4,135,139	$ 4,388,185
Adjustments:		
Debt related to assets classified as held for sale	27,296	—
Proportionate share adjustments related to debt obligations of consolidated and unconsolidated partnerships	(117,827)	(142,136)
Cash and restricted cash	(120,416)	(182,788)
Proportionate share adjustments related to cash and restricted cash held by consolidated and unconsolidated partnerships	2,103	15,317
Securitization trust assets	(61,043)	(58,408)
Bond repayment on December 31, 2014, effective on January 1, 2015	(34,000)	—
Adjusted Debt, as used in leverage calculations	$ 3,831,252	$ 4,020,170
Preferred stock	186,126	68,114
Preferred OP Units	87,937	79,953
Preferred Equity	274,063	148,067
Adjusted Debt plus Preferred Equity	$ 4,105,315	$ 4,168,237

	Year Ended December 31,	
	2014	2013
Net income attributable to Aimco Common Stockholders	$ 300,220	$ 203,673
Adjustments:		
Noncontrolling interests in Aimco Operating Partnership's share of net income	23,349	18,876
Preferred Dividends	7,947	2,804
Interest expense, net of noncontrolling interest	216,880	241,025
Depreciation and amortization, net of noncontrolling interest	275,175	295,584
Income tax benefit	(20,026)	(3,101)
Gains on disposition and other, net of income taxes and noncontrolling partners' interests	(265,358)	(184,382)
Provision for (recovery of) impairment losses related to depreciable assets, net of noncontrolling partners' interests	2,197	(855)
Recovery of (provision for) losses on notes receivable	(237)	(1,827)
Gains on disposition of other	(501)	(11)
Non-cash stock-based compensation	5,781	5,645
Interest income received on securitization investment	(5,697)	(5,322)
Net income of legacy asset management business, excluding interest expense	(2,556)	(3,977)
Adjusted EBITDA, as calculated in leverage ratios	$ 537,174	$ 568,132

	Year Ended December 31,	
	2014	2013
Interest expense, continuing operations	$ 220,971	$ 237,048
Interest expense, discontinued operations	—	13,346
Adjustments:		
Proportionate share adjustments related to interest of consolidated and unconsolidated partnerships	(6,064)	(10,189)
Amortization of deferred loan costs, debt prepayment penalties and other	(12,905)	(13,706)
Interest income received on securitization investment	(5,697)	(5,322)
Adjusted Interest, as calculated in leverage ratios	$ 196,305	$ 221,177
Preferred stock dividends	7,947	2,804
Preferred OP Unit distributions	6,497	6,423
Preferred dividends and distributions	14,444	9,227
Adjusted Interest and Preferred Dividends, as calculated in leverage ratios	$ 210,749	$ 230,404

August 24, 2015

VIA EDGAR AND FEDEX

Jaime G. John
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-0404

Re: Apollo Commercial Real Estate Finance, Inc.
Form 10-K for the Year-Ended December 31, 2014
Filed February 26, 2015
File No. 1-34452

Dear Ms. John:

On behalf of Apollo Commercial Real Estate Finance, Inc., a Maryland corporation (the "**Company**"), set forth below are the responses of the Company to the comments of the staff of the Division of Corporation Finance (the "**Staff**") of the Securities and Exchange Commission (the "**Commission**") by letter dated August 12, 2015 (the "**Comment Letter**") with respect to the Company's Form 10-K for the year ended December 31, 2014 (the "**Form 10-K**").

The Company's responses to the comments of the Staff contained in the Comment Letter are set out below in the order in which the comments were set out in the Comment Letter and are numbered accordingly. Defined terms used herein but not otherwise defined have the meanings given to them in the Form 10-K.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Investments, page 34

1. **We note your weighted average underwritten IRR for first mortgages and CMBS significantly exceeds your weighted average yield. Please tell us why these amounts differ.**

Company Response:

In response to the Staff's comment, the Company advises the Staff that the weighted average underwritten IRR for first mortgages and CMBS differs from the weighted average yield because the weighted average underwritten IRR takes into account borrowings assumed by the Company to finance its investments and, as is set out in footnote 3 to the table referenced in this comment, assumes that the cost of borrowings remains constant over the remaining term. The Company intends to modify the disclosure in future filings to also note that the weighted average underwritten IRR takes leverage into account.

Notes to Consolidated Financial Statements

Note 3 – Fair Value Disclosure, page 69

2. **Regarding your estimated fair value of the CMBS portfolio and your disclosure that adjustments to broker quotes are made as deemed necessary by management. Please tell us the nature of any adjustments made to broker quotes. Further, please tell us what consideration you gave to disclosing the nature of material adjustments made to broker quotes.**

Company Response:

In response to the Staff's comment, the Company advises the Staff that there were no events or instances that resulted in the Company making material adjustments to the broker quotes to value CMBS in its consolidated financial statements for the periods presented. The estimated fair value of the Company's CMBS portfolio is determined by reference to market prices provided by certain dealers who make a market in these financial instruments. However, broker quotes are only indicative of fair value and may not necessarily represent what the Company would receive in an actual trade for the applicable instrument. The Company generally seeks multiple broker quotes for a CMBS and uses the average value of the prices received to determine fair value. The Company then evaluates such pricing information taking into account factors such as recent trades, weighted average life, duration, coupon, prepayment experience, fixed/adjustable rate, coupon index and similar credits, among other factors. If the Company determines (based on such a comparison and management's market knowledge and expertise) that a security is priced significantly differently than similar securities, it may contact brokers for additional information regarding such brokers' valuation of the security. The Company may further adjust the value from the broker quotes based on its analysis of the above market-based factors.

* * * * *

In regards to the Form 10-K, the Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Should the Staff have additional questions or comments regarding any of the foregoing, please do not hesitate to contact the undersigned at (212) 822-0726 or Jay L. Bernstein or Andrew S. Epstein of Clifford Chance US LLP, counsel to the Company at (212) 878-8527 or (212) 878-8332.

March 4, 2015

VIA EDGAR

U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549
Attention: Jaime G. John, Branch Chief

Re: Ares Commercial Real Estate Corporation
Form 10-K for the Fiscal Year Ended December 31, 2013
Filed March 17, 2014
File No. 1-35517

Dear Ms. John:

This letter sets forth the responses to the comment of the Staff of the Division of Corporation Finance (the "Staff") contained in your letter dated February 18, 2015 relating to the above-referenced filing (the "10-K").

Set forth below is the comment of the Staff contained in the Staff's letter and immediately below the comment is the response with respect thereto and the location in the relevant filing of the requested disclosure.

Item 8. Financial Statements and Supplementary Data

Consolidated Statements of Operations, page F-4

1. *We note in your response to prior comment 1 of our letter dated January 27, 2015 that you elected to use the proceeds from the convertible notes to repay outstanding amounts under your secured funding agreements. Therefore, please revise your presentation of net interest margin in future filings to reflect the interest associated with this convertible debt.*

   Response: In response to the Staff's comment, the Company will revise its presentation of net interest margin in future filings to include the interest expense associated with the convertible notes in "Interest Expense" within the consolidated statements of operations.

The Company understands that:

(a) the Company is responsible for the adequacy and accuracy of the disclosure in the filings;

(b) Staff comments or changes to disclosure in response to Staff comments in the filings reviewed by the Staff do not foreclose the SEC from taking any action with respect to the filings; and

(c) the Company may not assert Staff comments as a defense in any proceeding initiated by the SEC or any person under the federal securities laws of the United States.

Please do not hesitate to call me at (202) 721-6111 if you have any additional questions or require any additional information.

Very truly yours,

/s/Tae-Sik Yoon
Tae-Sik Yoon
Chief Financial Officer

Enclosures

cc: Todd Schuster, Ares Commercial Real Estate Corporation
Michael Weiner, Ares Commercial Real Estate Corporation
Anton Feingold, Ares Commercial Real Estate Corporation
Monica J. Shilling, Proskauer Rose LLP

Boston Properties, Inc.
800 Boylston Street, Suite 1900
Boston, MA 02199-8103

May 8, 2015

VIA EDGAR

Ms. Jaime G. John
Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7010

Re: **Boston Properties, Inc.**
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 001-13087

Boston Properties Limited Partnership
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 000-50209

Dear Ms. John:

This letter is submitted in response to the comments of the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") with respect to the Forms 10-K for the year ended December 31, 2014 of Boston Properties, Inc. (the "Company") and Boston Properties Limited Partnership (the "Operating Partnership"), as set forth in your letter (the "Comment Letter") dated May 1, 2015 to Michael E. LaBelle, Chief Financial Officer of the Company.

For reference purposes, the text of the Comment Letter has been reproduced herein with responses below each numbered comment.

General

Comment No. 1

1. *Please revise all future filing of Boston Properties, Inc. as well as Boston Properties Limited Partnership in response to these comments, as applicable.*

Response to Comment No. 1

The Company will revise all of its future filings and those of the Operating Partnership in response to the Staff's comments in the Comment Letter.

Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations

Capitalization, page 99

Comment No. 2

2. *We note your disclosure of total adjusted debt on Page 100. Please provide a tabular reconciliation to your total consolidated debt recognized in accordance with GAAP in future filings.*

Response to Comment No. 2

In future periodic filings, including the Forms 10-Q for the quarterly period ended March 31, 2015, each of the Company and the Operating Partnership will provide a tabular reconciliation of total consolidated debt in accordance with GAAP to total adjusted debt in the relevant portion of the section entitled "Debt Summary." An example of the disclosure as it would have appeared on page 101 of the Company's Form 10-K and page 98 of the Operating Partnership's Form 10-K is set forth below:

	December 31,	
	2014	2013
	(dollars in thousands)	
Debt Summary:		
Balance		
Fixed rate mortgage notes payable	$ 4,309,484	$ 4,449,734
Variable rate mortgage notes payable	—	—
Unsecured senior notes, net of discount	5,287,704	5,835,854
Unsecured exchangeable senior notes, net of discount and adjustment for the equity component allocation	—	744,880
Unsecured Line of Credit	—	—
Mezzanine notes payable	309,796	311,040
Total consolidated debt	9,906,984	11,341,508
Add:		
Our share of unconsolidated joint venture debt	351,500	329,188
Deduct:		
Partners' share of consolidated mortgage notes payable	(1,057,879)	(759,239)
Partners' share of consolidated mezzanine notes payable	(123,918)	(124,416)
Total adjusted debt	$ 9,076,687	$10,787,041

Funds from Operations, page 105

Comment No. 3

3. *Please revise the labels on your reconciliation in future filings to clarify that you are presenting $899 million of "Funds from Operations (FFO) attributable to common shareholders and Operating Partnership unitholders" and $808 million of "FFO attributable to Boston Properties, Inc. common shareholders", reconciled from $433 million of "Net income attributable to Boston Properties, Inc. common shareholders."*

Response to Comment No. 3

In future periodic filings, the Company will revise the labels on its Funds from Operations (FFO) reconciliation in the form requested by the Staff. However, as discussed with the Staff on May 5, 2015, the Company intends to clarify that it is presenting $899 million of "Funds from Operations (FFO) attributable to Operating Partnership common unitholders (including Boston Properties, Inc.)." Because the number of outstanding shares of common stock of the Company at all times equals the number of common units of the Operating Partnership that are owned by the Company, we believe this language (which is slightly different from that proposed by the Staff) is more accurate and will lessen the chance that a reader will believe that "double-counting" has occurred.

As requested in the Comment Letter, the Company hereby acknowledges the following:

(1) the Company is responsible for the adequacy and accuracy of the disclosure in the filing;

(2) Staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and

(3) the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions concerning these responses, please contact me at (617) 236-3352.

Sincerely,

/s/ Michael E. LaBelle

Michael E. LaBelle
Senior Vice President, Chief Financial Officer of Boston Properties, Inc.

cc: Eric G. Kevorkian
Senior Vice President, Senior Corporate Counsel
Lori Silverstein
Vice President, Controller
Daniel Adams, Esq.
Goodwin Procter LLP

420 Lexington Avenue : New York, NY 10170 : 800.468.7526

April 16, 2015

Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Attn: Ms. Jennifer Monick, Staff Accountant

Re: Brixmor Property Group Inc.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 19, 2015
File No. 1-36160

Brixmor Operating Partnership LP
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 19, 2015
File No. 333-201464-01

Dear Ms. Monick:

This letter sets forth the response of Brixmor Property Group Inc. and Brixmor Operating Partnership LP (collectively, the "Company") to the comment letter from the Staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission"), received by email on April 13, 2015, relating to the Company's Form 10-K for the year ended December 31, 2014, filed with the Commission on February 19, 2015. For your convenience, we have set forth each of the Staff's original comments immediately preceding our response.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, Page 35

1. On pages F-19 and F-20, you disclose that you capitalize personnel costs to real estate under redevelopment and deferred leasing costs. Please tell us the amount of personnel costs you have capitalized. To the extent material, in future periodic filings, please separately quantify and disclose personnel costs capitalized to real estate under redevelopment and deferred leasing costs for all periods presented and discuss fluctuations in capitalized personnel costs for all periods presented within your MD&A. To the extent you do not believe these amounts are material, please tell us how you made that determination.

Response

In response to the Staff's comment, in our future periodic filings we will, to the extent material, separately quantify and disclose personnel costs capitalized to real estate under redevelopment and deferred leasing costs for all periods presented and discuss significant fluctuations in capitalized personnel costs for all periods presented within our MD&A. For the years ended December 31, 2014 and 2013, the Company capitalized personnel costs of $5.8 million and $5.2 million, respectively, to real estate under redevelopment and $15.1 million and $13.3 million, respectively, to deferred leasing costs.

Notes to Consolidated Financial Statements, page F-16
16. Commitments and Contingencies, page F-34
Insurance captive, page F-34

2. In future periodic filings, please disclose a roll forward of your insurance reserves for each year presented. The roll forward should include the amount of incurred claims, any changes in the provision for prior year events, and the amount of payments made. Please provide an example of your proposed disclosure. To the extent you do not believe this disclosure is material, please tell us how you made that determination.

Response

In response to the Staff's comment, in our future annual reports we will disclose a roll forward of the Company's insurance reserves for each year presented as follows:

	201X	201X
Balance at the Beginning of the year	$ XXX	$ XXX
Incurred related to:		
Current year	X	X
Prior years	X	X
Total incurred	X	X
Paid related to:		
Current year	X	X
Prior years	X	X
Total paid	X	X
Changes in the provision for prior year events	X	X
Balance at the end of the year	$ XXX	$ XXX

CAMDEN
Living Excellence

June 3, 2015

Mr. Tom Kluck
Branch Chief
Securities and Exchange Commission
100 F Street, N. E., Mail Stop 3010
Washington, D.C. 20549

RE: Camden Property Trust
Form 10-K
Filed February 20, 2015
File No. 001-12110

Dear Mr. Kluck:

The following is the response of Camden Property Trust to the comments contained in the Staff's comment letter dated May 26, 2015 concerning the above-referenced report.

FORM 10-K

General

1. **Please advise us whether you consider net operating income and same property net operating income to be key performance indicators. We may have further comment.**

   We do not consider net operating income and same property net operating income to be key performance indicators. They are two of many individual operating metrics used by the real estate industry to assess company performance. Accordingly, Camden provides these measurements to securities analysts and investors.

   Unlike Funds From Operations as defined by the National Association of Real Estate Investment Trusts ("NAREIT"), there is no standard industry definition regarding the method of calculation of either net operating income or same property net operating income. As a result, neither net operating income nor same property net operating income is consistently defined or calculated by peer companies or investors. Net operating income, for example, does not take into account all aspects of the Company's performance as net operating income does not include the impact of certain revenues and expenses such as equity in income of joint ventures, interest expense, income taxes, and general and administrative expenses.

Camden Property Trust
11 Greenway Plaza, Suite 2400 Houston, TX 77046 P 713 354 2500 F 713 354 2700

<u>**Risk Factors, page 3**</u>

2. **We note that your Geographic Diversification table on page 26 indicates that 18.4% of your real estate assets were concentrated in Washington, D.C. Metro and 9.5% of your real estate assets were concentrated in Houston, Texas. To the extent that you consider this geographic concentration to represent a material risk, please include a risk factor specifically addressing this risk in future Exchange Act periodic reports.**

   We refer you to the first risk factor on page 3 of our Form 10-K under the heading **"Risks Associated with Capital Markets, Credit Markets, and Real Estate -** ***Volatility in capital and credit markets, or other unfavorable changes in economic conditions, either nationally or regionally in one or more of the markets in which we operate, could adversely impact us."***

   In this risk factor, we discuss key economic risks for (a) local conditions in the first bullet point, (b) declines in market rental rates in the third bullet point, and, (c) regional economic downturns affecting geographic markets in the sixth bullet point.

<u>**Item 2. Properties, page 8**</u>

3. **We note your disclosure to the effect that your operating properties have an average age of 12 years, "calculated on the basis of investment dollars." In future Exchange Act periodic reports, please clarify how this number is calculated.**

   The average age of our operating properties is based upon the average of the product of the gross capitalized cost of each property multiplied by the property's physical age divided by gross capitalized costs. We will clarify this calculation in future Exchange Act periodic reports.

<u>**Management's Discussion and Analysis of Financial Condition and Results of Operations**</u>

<u>**Completed Construction in Lease-Up, page 24**</u>

4. **In future Exchange Act periodic reports, with respect to any disclosure on costs incurred with respect to completed construction in lease-up, please clarify whether costs incurred include leasing costs.**

With respect to our disclosure on costs incurred for completed construction in lease-up, we do not include leasing costs. Leasing costs are expensed as incurred. We will clarify leasing costs are expensed as incurred in future Exchange Act periodic reports.

Proxy Statement

General

5. We were unable to locate the disclosures required by Item 407(d)(4) of Regulation S-K. Please revise your future Exchange Act periodic reports or proxy statements, as applicable, to include such disclosures or advise.

The establishment of a separately-designated audit committee, comprised solely of independent trust managers, is disclosed on page 4 of our recently-filed proxy statement and a further description of the Company's Audit Committee, including the identity of each committee member, is disclosed on page 7 of our proxy. In future filings, we will clarify the Audit Committee has been established in accordance with Section 3(a)(58)(A) of the Exchange Act.

We acknowledge:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and,
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions, please do not hesitate to contact the undersigned at (713) 354-2500.

Very truly yours,

/s/ Michael P. Gallagher
Michael P. Gallagher
Senior Vice President - Chief Accounting Officer

CBL & ASSOCIATES PROPERTIES, INC.
CBL Center
2030 Hamilton Place Blvd., Suite 500
Chattanooga, Tennessee 37421

June 1, 2015

Mr. Daniel L. Gordon
Senior Assistant Chief Accountant
U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549-3561

RE: CBL & Associates Properties, Inc. (herein "CBL")
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed March 2, 2015
SEC File No. 001-12494

CBL & Associates Limited Partnership (herein the "Operating Partnership")
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed March 2, 2015
SEC File No. 333-182515-01

Dear Mr. Gordon:

In reference to your comment letter of May 15, 2015 and with respect to your review of our Form 10-K for the fiscal year ended December 31, 2014, filed March 2, 2015, this letter sets forth CBL's and the Operating Partnership's (collectively, the "Company") responses to each comment, numbered to correspond to the Staff's letter.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Same-center Net Operating Income, page 55

1. **It appears that the NOI measures on page 56 are inclusive of NOI attributable to non-controlling interests in the OP. Please revise labels of these non-GAAP measures in future filings to indicate that they include both the company's share and the non-controlling interests' share of property NOI and same-center NOI.**

We acknowledge the Staff's comment. The following is an example of the revised disclosure we intend to include in future filings related to same-center net operating income to clarify our presentation, using the disclosure from our Form 10-K for the Fiscal Year Ended December 31, 2014 as an example, with the revisions highlighted in red below:

Same-center Net Operating Income

NOI is a supplemental measure of the operating performance of our shopping centers and other Properties. We define NOI as property operating revenues (rental revenues, tenant reimbursements and other income) less property operating expenses (property operating, real estate taxes and maintenance and repairs).

~~Similar to FFO,~~ W~~w~~e compute NOI based on our Operating Partnership's pro rata share of both consolidated and unconsolidated Properties. We believe that presenting NOI and same-center NOI (described below) based on our Operating Partnership's pro rata share of both consolidated and unconsolidated Properties is useful since we conduct substantially all of our business through our Operating Partnership and, therefore, it reflects the performance of the Properties in absolute terms regardless of the ratio of ownership interests of our common shareholders and the noncontrolling interest in the Operating Partnership. Our definition of NOI may be different than that used by other companies and, accordingly, our calculation of NOI may not be comparable to that of other companies.

Since NOI includes only those revenues and expenses related to the operations of our shopping center Properties, we believe that same-center NOI provides a measure that reflects trends in occupancy rates, rental rates and operating costs and the impact of those trends on our results of operations. Our calculation of same-center NOI excludes lease termination income, straight-line rent adjustments, and amortization of above and below market lease intangibles in order to enhance the comparability of results from one period to another, as these items can be impacted by one-time events that may distort same-center NOI trends and may result in same-center NOI that is not indicative of the ongoing operations of our shopping center and other Properties. Same-center NOI is for real estate properties and does not include the results of operations of our subsidiary that provides janitorial, security and maintenance services.

We include a Property in our same-center pool when we have owned all or a portion of the Property since January 1 of the preceding calendar year and it has been in operation for both the entire preceding calendar year ended December 31, 2013 and the current year ended December 31, 2014. New Properties are excluded from same-center NOI, until they meet this criteria. The only Properties excluded from the same-center pool that would otherwise meet this criteria are Non-core Properties, Properties under major redevelopment, Properties being considered for repositioning, Properties where we intend to renegotiate the terms of the debt secured by the related Property and Properties included in discontinued operations. Madison Square and Madison Plaza were classified as Non-core Properties as of December 31, 2014. Lender Properties consisted of Gulf Coast Town Center, Triangle Town Center and Triangle Town Place as of December 31, 2014. Properties under major redevelopment as of December 31, 2014 included the Annex at Monroeville, CoolSprings Galleria and Northgate Mall. Properties where we are considering alternatives to reposition the Property included Chesterfield Mall and Wausau Center at December 31, 2014.

Due to the exclusions noted above, same-center NOI should only be used as a supplemental measure of our performance and not as an alternative to GAAP operating income (loss) or net income (loss). A reconciliation of our same-center NOI to net income attributable to the Company for the years ended December 31, 2014 and 2013 is as follows (in thousands):

	Year Ended December 31,	
	2014	**2013**
Net income ~~attributable to the Company~~	**$ 253,033**	$ 110,370
Adjustments: (1)		
Depreciation and amortization	**326,237**	319,260
Interest expense	**272,669**	266,843
Abandoned projects expense	**136**	334
Gain on sales of real estate assets	**(6,329)**	(2,002)
(Gain) loss on extinguishment of debt	**(87,893)**	9,108
Gain on investment	**—**	(2,400)
Loss on impairment	**18,539**	75,283
Income tax provision	**4,499**	1,305
Lease termination fees	**(3,808)**	(4,217)
Straight-line rent and above and below market rent	**(3,359)**	(1,502)
Net income attributable to noncontrolling interests in ~~earnings of Operating Partnership~~ other consolidated subsidiaries	**(3,777)**	(18,041)
Gain on discontinued operations	**(276)**	(1,144)
General and administrative expenses	**50,271**	48,867
Management fees and non-property level revenues	**(36,386)**	(23,552)
~~Company's~~ Operating Partnership's share of property NOI	**783,556**	778,512
Non-comparable NOI	**(63,968)**	(75,492)
Total same-center NOI	**$ 719,588**	$ 703,020

(1) Adjustments are based on our Operating Partnership's pro rata ownership share, including our share of unconsolidated affiliates and excluding noncontrolling interests' share of consolidated Properties.

Same-center NOI increased $16.6 million for the year ended December 31, 2014 compared to 2013. Our NOI growth of 2.4% for 2014 was driven primarily by increases of $13.4 million in minimum rent and $4.1 million in tenant reimbursements. The increases in rental rates were a result of our positive leasing spreads of 12.6% for our Stabilized Mall portfolio as we continued to upgrade our tenant mix. Additionally, maintenance and repair expenses, as compared to the prior-year period, were relatively flat for 2014 as a $1.0 million increase in snow removal expenditures was offset by a similar decline in maintenance and supplies expense due to operating efficiencies.

Funds from Operations, page 81

2. We note your reconciliation of FFO and FFO, as adjusted on page 82. In future filings, please revise the labels of these non-GAAP measures to indicate that the measure represents Funds from operations of the Operating Partnership common unitholders and Funds from operations of the Operating Partnership common unitholders, as adjusted.

We will modify our presentation of our FFO reconciliations in future filings as follows, using the disclosure from our Form 10-K for the Fiscal Year Ended December 31, 2014 as an example, with the changes shown in red below:

Funds From Operations

FFO is a widely used measure of the operating performance of real estate companies that supplements net income (loss) determined in accordance with GAAP. The National Association of Real Estate Investment Trusts ("NAREIT") defines FFO as net income (loss) (computed in accordance with GAAP) excluding gains or losses on sales of depreciable operating properties and impairment losses of depreciable properties, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures and noncontrolling interests. Adjustments for unconsolidated partnerships and joint ventures and noncontrolling interests are calculated on the same basis. We define FFO ~~allocable to common shareholders~~ as defined above by NAREIT less dividends on preferred stock of the Company or distributions on preferred units of the Operating Partnership, as applicable. Our method of calculating FFO ~~allocable to common shareholders~~ may be different from methods used by other REITs and, accordingly, may not be comparable to such other REITs.

We believe that FFO provides an additional indicator of the operating performance of our Properties without giving effect to real estate depreciation and amortization, which assumes the value of real estate assets declines predictably over time. Since values of well-maintained real estate assets have historically risen with market conditions, we believe that FFO enhances investors' understanding of our operating performance. The use of FFO as an indicator of financial performance is influenced not only by the operations of our Properties and interest rates, but also by our capital structure.

We present both FFO allocable to ~~of our~~ Operating Partnership common unitholders and FFO allocable to common shareholders, as we believe that both are useful performance measures. We believe FFO allocable to ~~of our~~ Operating Partnership common unitholders is a useful performance measure since we conduct substantially all of our business through our Operating Partnership and, therefore, it reflects the performance of the Properties in absolute terms regardless of the ratio of ownership interests of our common shareholders and the noncontrolling interest in our Operating Partnership. We believe FFO allocable to common shareholders is a useful performance measure because it is the performance measure that is most directly comparable to net income (loss) attributable to common shareholders.

In our reconciliation of net income (loss) attributable to common shareholders to FFO allocable to Operating Partnership common unitholders ~~shareholders~~ that is presented below, we make an adjustment to add back noncontrolling interest in income (loss) of our Operating Partnership in order to arrive at FFO of the ~~our~~ Operating Partnership common unitholders. We then apply a percentage to FFO of the ~~our~~ Operating Partnership common unitholders to arrive at FFO allocable to common shareholders. The percentage is computed by taking the weighted-average number of common shares outstanding for the period and dividing it by the sum of the weighted-average number of common shares and the weighted-average number of Operating Partnership units held by noncontrolling interests during the period.

FFO does not represent cash flows from operations as defined by GAAP, is not necessarily indicative of cash available to fund all cash flow needs and should not be considered as an alternative to net income (loss) for purposes of evaluating our operating performance or to cash flow as a measure of liquidity.

FFO, as adjusted, for the year ended December 31, 2014 excludes an $83.2 million gain on extinguishment of debt, net of non-cash default interest expense, primarily related to the conveyance of Chapel Hill Mall and Columbia Place and the foreclosure of Citadel Mall. It also excludes a partial litigation settlement of $7.8 million, net of related expenses. FFO, as adjusted, for the year ended December 31, 2013, excludes a $9.1 million loss on extinguishment of debt, a $2.4 million gain on investment and an $8.2 million partial litigation settlement. In 2012, we recorded a gain on investment of $45.1 million related to the acquisition of the remaining 40% noncontrolling interest in Imperial Valley Mall in December 2012. Considering the significance and nature of these items, we believe that it is important to identify the impact of these changes on our FFO measures for a reader to have a complete understanding of our results of operations. Therefore, we have also presented FFO excluding these items.

FFO of the Operating Partnership increased 24.7% to $545.5 million for the year ended December 31, 2014 compared to $437.5 million for the prior year. Excluding the litigation settlements, the gain on investments, non cash default interest expense and gain (loss) on extinguishment of debt, FFO of the Operating Partnership increased 4.3% for the year ending December 31, 2014 to $454.6 million compared to $435.9 million in 2013.

The reconciliation of ~~FFO to~~ net income attributable to common shareholders to FFO allocable to Operating Partnership common unitholders is as follows (in thousands):

	Year Ended December 31,		
	2014	**2013**	**2012**
Net income attributable to common shareholders	**$ 174,258**	$ 40,312	$ 84,089
Noncontrolling interest in income of Operating Partnership	**30,106**	7,125	19,267
Depreciation and amortization expense of:			
Consolidated properties	**291,273**	278,911	255,460
Unconsolidated affiliates	**41,806**	39,592	43,956
Discontinued operations	**—**	6,638	13,174
Non-real estate assets	**(2,311)**	(2,077)	(1,841)
Noncontrolling interests' share of depreciation and amortization	**(6,842)**	(5,881)	(5,071)
Loss on impairment, net of tax benefit	**18,434**	73,485	50,343
Gain on depreciable property	**(937)**	(7)	(652)
Gain on discontinued operations, net of taxes	**(273)**	(647)	(566)
FFO~~unds from operations of the~~ allocable to Operating Partnership common unitholders	**545,514**	437,451	458,159
Litigation settlement, net of related expenses	**(7,763)**	(8,240)	—
Gain on investments	**—**	(2,400)	(45,072)
Non cash default interest expense	**4,695**	—	—
(Gain) loss on extinguishment of debt	**(87,893)**	9,108	(265)
FFO~~unds from operations of the~~ allocable to Operating Partnership common unitholders, as adjusted	**$ 454,553**	$ 435,919	$ 412,822

The reconciliations of FFO allocable to ~~of the~~ Operating Partnership common unitholders to FFO allocable to common shareholders, including and excluding the litigation settlements, gain on investments, non cash default interest and the gain (loss) on extinguishment of debt are as follows (in thousands):

	Year Ended December 31,		
	2014	**2013**	**2012**
FFO~~unds from operations of the~~ allocable to Operating Partnership common unitholders	**$ 545,514**	$ 437,451	$ 458,159
Percentage allocable to common shareholders [1]	**85.27%**	84.97%	81.36%
FFO~~unds from operations~~ allocable to common shareholders	**$ 465,160**	$ 371,702	$ 372,758
FFO~~unds from operations of the~~ allocable to Operating Partnership common unitholders, as adjusted	**$ 454,553**	$ 435,919	412,822
Percentage allocable to common shareholders [1]	**85.27%**	84.97%	81.36%
FFO~~unds from operations~~ allocable to common shareholders, as adjusted	**$ 387,597**	$ 370,400	$ 335,872

(1) Represents the weighted-average number of common shares outstanding for the period divided by the sum of the weighted-average number of common shares and the weighted-average number of Operating Partnership units held by noncontrolling interests during the period.

[LETTERHEAD OF CHESAPEAKE LODGING TRUST]

July 7, 2015

VIA EDGAR

Mr. Daniel Gordon
Ms. Kristi Marrone
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Chesapeake Lodging Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed on February 19, 2015
File No. 001-34572

Ladies and Gentlemen:

This letter is submitted in response to the comments of the staff of the Division of Corporation Finance (the "*Staff*") of the Securities and Exchange Commission (the "*Commission*") contained in the Commission's letter dated May 26, 2015 (the "*Letter*") with respect to the Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "*Form 10-K*") of Chesapeake Lodging Trust (the "*Trust*"), which was filed with the Commission on February 19, 2015.

For convenience of reference, each Staff comment is reprinted below in italics, numbered as it was in the Letter, and is followed by the Trust's corresponding response.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Results of Operations, page 28

1. *In future filings, please include a discussion of the significant individual components of revenue and hotel operating expenses. For example, we note that almost half of hotel operating expenses consist of "indirect" expense. Please clarify the types of indirect expenses included and provide an analysis of significant changes from the prior year, as well as any known trends.*

   RESPONSE: The Trust acknowledges the comment and will provide additional responsive disclosure in future filings.

Hotel Operating Results, page 30

2. *Please remove the term "pro forma" from your narrative disclosure of hotel operating metrics since their presentation is not in accordance with Article 11.*

RESPONSE: As discussed with the Staff, the Trust uses the term "pro forma" to describe its comparisons of the Trust's key metrics of hotel operating performance (occupancy, ADR, RevPAR, Adjusted Hotel EBITDA and Adjusted Hotel EBITDA Margin) as if the Trust had owned each of its hotels owned at the end of the applicable reporting period for the entirety of each comparative period. The Trust's disclosures clearly indicate the meaning of the term as used in this context and do not create any implication that the term is intended to connote Article 11 compliance. Please see the Trust's response to comment 3, below, for further information as to why the Trust believes presentation of these "pro forma" operating metrics is valuable for its investors.

Non-GAAP Financial Measures, page 31

3. *We note that you present Hotel EBITDA and Adjusted Hotel EBITDA including results of operations for certain hotels prior to acquisition and that the measure is reconciled to revenues. To the extent that you present these measures in future filings, please exclude hotel operations prior to acquisition. Item 10(e) of Regulation S-K requires reconciliation of all non-GAAP measures to the most comparable measure calculated in accordance with GAAP. The inclusion of pre-acquisition operating data makes it impossible to reconcile these non-GAAP measures to your historical financial statements and is therefore impermissible. Also see Question 103.02 of the Compliance and Disclosure Interpretations that states that these types of measures should be reconciled to net income.*

RESPONSE: Based on feedback it has received, the Trust continues to believe that presenting Hotel EBITDA and Adjusted Hotel EBITDA on a "pro forma" basis, in a manner that includes the operating results of hotels prior to their acquisition by the Trust, and therefore permits easy comparison of these operating metrics irrespective of the owner of the hotels across comparative periods, provides useful information for its investors and securities analysts. The Trust notes, however, that its acquired hotels generally have a different cost basis (i.e., depreciation expense) and capital structure (i.e., interest expense) under prior ownership for the periods prior to the Trust's acquisitions of the hotels, and as a result does not believe that it would be informative to investors and securities analysts to provide a reconciliation of Hotel EBITDA of the acquired hotels to the prior owners' net income. Accordingly, the Trust proposes to provide a reconciliation of pro forma Hotel EBITDA and Adjusted Hotel EBITDA, including the impact of pre-acquisition operating results from its acquired hotels, to the Trust's reported net income as shown on Exhibit A.

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies, page F-9

4. *Please include a description of your capitalization policy as it relates to renovation and repositioning costs, clearly describing your treatment of interest, salaries, real estate taxes, general and administrative and any other significant amounts that are capitalized during the construction phase. Your disclosure should include a discussion of the periods of capitalization, including when the capitalization period ends.*

   RESPONSE: The Trust acknowledges the comment but notes that its past practice generally has been to conduct renovation and repositioning efforts by taking only a portion of the affected hotel out of service at any point in time (i.e., the hotel continues to operate and generate cash flow). In addition, much of the renovation and repositioning activity in which the Trust has been engaged at its hotels has focused on replacement of soft and hard goods and has occurred over short periods of time. As a result, the Trust has not capitalized interest, salaries, real estate taxes or other general and administrative costs related to these efforts.

*   *   *

EXHIBIT A

CURRENT PRESENTATION:

	Three Months Ended March 31, 2015 Pro Forma
Total revenue	$ 119,870
Less: Total hotel operating expenses	90,145
Hotel EBITDA	29,725
Add: Non-cash amortization	(81)
Adjusted Hotel EBITDA	$ 29,644
Adjusted Hotel EBITDA Margin	24.7%

PROPOSED PRESENTATION:

		Three Months Ended March 31, 2015
Net income		$ 1,552
Add:	Interest expense	7,179
	Depreciation and amortization	14,927
	Air rights contract amortization	130
	Hotel acquisition costs	369
	Corporate general and administrative	4,577
Less:	Income tax benefit	(3,348)
	Interest income	—
Hotel EBITDA		25,386
Less:	Non-cash amortization(1)	(81)
Adjusted Hotel EBITDA		25,305
Add:	Prior owner Hotel EBITDA(2)	4,339
Pro forma Adjusted Hotel EBITDA(2)		$ 29,644
Total revenue		$ 109,290
Add:	Prior owner total revenue(2)	10,580
Pro forma total revenue(2)		$ 119,870
Pro forma Adjusted Hotel EBITDA Margin(2)		24.7%

(1) Includes non-cash amortization of ground lease asset, deferred franchise costs, deferred key money, and unfavorable contract liability.
(2) Includes results of operations for certain hotels prior to our acquisition.

[LETTERHEAD OF CHESAPEAKE LODGING TRUST]

July 17, 2015

VIA EDGAR

Mr. Daniel Gordon
Ms. Kristi Marrone
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Chesapeake Lodging Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed on February 19, 2015
File No. 001-34572

Ladies and Gentlemen:

This letter is submitted in response to the comments of the staff of the Division of Corporation Finance (the "*Staff*") of the Securities and Exchange Commission (the "*Commission*") contained in the Commission's letter dated July 14, 2015 (the "*Letter*") with respect to the Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "*Form 10-K*") of Chesapeake Lodging Trust (the "*Trust*"), which was filed with the Commission on February 19, 2015.

For convenience of reference, each Staff comment is reprinted below in italics, numbered as it was in the Letter, and is followed by the Trust's corresponding response.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Non-GAAP Financial Measures, page 31

1. *In future filings revise your disclosure to clearly explain what is included in the adjustments for corporate general and administrative and non-cash amortization and why each of these adjustments is appropriate.*

   RESPONSE: The Trust acknowledges the comment and will include appropriately responsive disclosure in future filings.

* * *

Chimera Investment Corporation
1211 Avenue of the Americas
New York, NY 10036

April 27, 2015

Ms. Jaime G. John
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Chimera Investment Corporation
Form 10-K
Filed March 2, 2015
File No. 00133796

Dear Ms. John:

On behalf of Chimera Investment Corporation ("we", "our" or the "Company"), set forth below is our response to the comments of the staff of the Division of Corporation Finance of the Securities and Exchange Commission, received by letter dated April 13, 2015 in which you provided comments to the reports referenced above.

For your convenience, we have reproduced your comment followed by our corresponding response.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 51

Liquidity and Capital Resources, page 74

1. *We note that your disclosure on page 76 provides the weighted average haircut on your repurchase agreements collateralized by your Agency RMBS separately from your non-Agency RMBS. Please disclose the weighted average haircut on your repurchase agreements collateralized by both your Agency and non-Agency RMBS as of the end of each period presented and discuss any known trends or material changes from the prior year.*

Response:

We will disclose the weighted average haircut on our repurchase agreements collateralized by both our Agency and Non-Agency RMBS as of the end of each period presented and discuss any known trends or material changes from the prior year in our subsequent filings with the SEC.

The combined weighted average haircut on our repurchase agreements collateralized by both Agency and Non-Agency RMBS was 4.8% and 8.0% as of December 31, 2013 and December 31, 2014, respectively. The increase was due to the addition of Non-Agency repurchase agreements during the period ending December 31, 2014 which generally required higher collateral requirements. The combined weighted average haircut remained unchanged from the period ending September 30, 2014.

SEC Comment:

Note 3. Residential Mortgage-Backed Securities, page F-17

2. *We note that you define Alt-A mortgage securities on page F-23 as non-Agency RMBS where (i) the underlying collateral has weighted average FICO scores between 680 and 720 or (ii) for instances where FICO scores are greater than 720, RMBS have 30% or less of the underlying collateral composed of full documentation loans. This appears to be a more narrow definition than the one used prior to September 30, 2014. Please explain to us the reasons why management changed the internal definition used to classify Alt-A loans, and disclose in future filings.*

Response:

As part of our financial statement review, we evaluate ways to improve our disclosures, including making our disclosures more comparable with others in the industry. As part of this effort, we reviewed public information of our peers and, as a result of this review, we updated our definition of Alt-A residential mortgage loans. We believe the updated definition is consistent with others in the financial industry. We will disclose this in our first quarter filing with the SEC.

****

In connection with responding to your comments, we acknowledge that:

- the Company is responsible for the adequacy and accuracy of the disclosures in its filing
- SEC Staff comments or changes to disclosures in response to SEC Staff comments do not foreclose the Commission from taking action with respect to such filings; and
- the Company may not assert SEC Staff comments as a defense in any proceeding initiated by the commission or any person under the federal securities laws of the United States.

Please feel free to contact me at 212-696-0100 with any comments or questions you may have with respect to our responses.

Very truly yours,

/s/ Rob Colligan

Rob Colligan
Chief Financial Officer

cc: R. Nicholas Singh, Esq.
Fixed Income Discount Advisory Company

ColonyCapital, Inc.

May 19, 2015

Ms. Jennifer Monick
Mr. Isaac Esquivel
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Ms. Monick and Mr. Esquivel:

This letter is submitted in response to comments from the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") in a letter dated May 5, 2015 (the "Comment Letter") with respect to Colony Capital, Inc.'s (the "Company") Form 10-K for the fiscal year ended December 31, 2014, which was filed with the Commission on February 27, 2015 (the "Form 10-K"), as amended on March 31, 2015, and Form 8-K filed on February 20, 2015 (the "Form 8-K").

For your convenience, the Staff's numbered comments set forth in the Comment Letter have been reproduced in bold herein with responses immediately following each comment. Unless otherwise indicated, page references in the reproductions of the Staff's comments refer to the Form 10-K or the Form 8-K, as applicable.

Form 10-K for the year ended December 31, 2014
Notes to Consolidated Financial Statements
6. Investments in Unconsolidated Joint Ventures, page F-22

1. We note you have a 75% ownership interest in Portfolio 8 Investors, LLC and we further note your disclosure that the minority member has control over the day-to-day operations. Given the ownership interest in the entity, please elaborate and explain to us in detail the facts and circumstances specific about this entity that would cause you to conclude that equity method treatment is more appropriate than consolidation. Please cite applicable guidance in your response.

Portfolio 8 Investors, LLC ("Portfolio 8") is a joint venture established to invest in a portfolio of multifamily properties. The Company owns an 83% interest in a separate consolidated entity ("Preferred Member"), which holds a preferred equity interest in Portfolio 8, representing 75% of the total equity of Portfolio 8. The remaining 25% of equity in Portfolio 8 is held by a third party sponsor ("Common Member"). In addition to a 12% preferred return, the Company's preferred equity is entitled to a 30% profit participation after each member has attained a 12% internal rate of return. Although the Company's preferred equity interest represents more than 50% of the total equity of Portfolio 8, the Company determined that the Common Member controls the venture and that the Company does not currently have the ability to exercise substantive participating or liquidation rights that would overcome the presumption of control by the Common Member. Accordingly, the Company accounts for its investment using the equity method under ASC 323.

Variable Interest Assessment

To evaluate Portfolio 8 for consolidation, the Company first considered the applicability of the variable interest model. While the Company has a variable interest in Portfolio 8 through its preferred equity investment, the Company determined that Portfolio 8 did not meet any of the following characteristics of a variable interest entity under ASC 810-10-15-14:

- *Insufficient equity investment at risk* — At inception, Portfolio 8 was capitalized with $55 million of equity and $171 million of third party non-recourse debt financing, with equity investment at risk representing approximately 24% of the venture's total assets. The Company's preferred equity in Portfolio 8 was deemed to be "at risk" because it participates significantly in both profits and losses, albeit not on a pari passu basis with the Common Member. The Preferred Member participates significantly in profits of Portfolio 8 through its 12% preferred return and 30% of residual return. Based upon these equity-like returns, we determined that the Preferred Member participates significantly in profits of Portfolio 8. The Preferred Member also participates significantly in losses as there is no recourse to the Common

Member, thus the preferred equity investment is subject to total loss. The third party debt obtained by Portfolio 8 was based on customary market terms and without significant guaranties from its equity owners or any of their related parties. In light of the venture's ability to obtain customary third-party debt and its debt-to-total capital ratio, which is consistent with other entities that hold similar assets, the Company concluded that Portfolio 8 has sufficient equity at risk to finance its activities without additional subordinated financial support.

- *Holders of equity investment at risk lack the characteristics of a controlling financial interest* — Portfolio 8 is controlled by a Board of Directors (the "Board") which has delegated day-to-day management of the venture to the Administering Member, which is initially the Common Member. The Common Member cannot be removed as Administering Member without unanimous consent of the Board (composed of two members appointed by the Company and a single member appointed by the Common Member). As the Administering Member, the Common Member is responsible for all aspects of the day-to-day operations, leasing and management of the underlying investment properties, and identifying future investment opportunities, which are deemed to be the activities that most significantly impact the economic performance of the venture. While the members' participation in profits and losses are not on a pari passu basis (due to the preferred return and sharing of residual returns that are not proportionate to the members' economic interests), there are no contractual or other arrangements which protect the members, as a group, from absorbing losses or cap their returns. Since the equity holders, as a group, have the ability to elect the Board, thereby appoint the Administering Member, and have the obligation to absorb expected losses and the right to receive expected residual returns, the equity holders, as a group, have the characteristics of a controlling financial interest.

- *Entity is established with non-substantive voting interests* — The manner in which profits and losses are shared between the members (as noted above) are not proportionate to the members' voting rights (which are split 66.7%/33.3% between the Company and the Common Member, respectively, based upon the members' Board representation and 50%/50% where unanimous consent is required). However, the Company concluded that Portfolio 8 is not established with non-substantive voting interests as substantially all of the activities of Portfolio 8 are not conducted on behalf of, or involve, a member with disproportionately few voting rights relative to its economic interest. In making this qualitative assessment, the Company considered the following:
  - Both the Company and the Common Member invest in real estate; accordingly, the operations of Portfolio 8 are substantially similar in nature to the activities of both members.
  - While the members have rights to buy or sell their equity interest under certain circumstances, these rights are not equivalent to an option with a fixed price or "in the money" put or call feature.
  - While there are transfer restrictions on each member's equity interest, de facto agents identified by ASC 810-10-25-43(d) are not considered in applying the anti-abuse clause, and there are no other arrangements which would create a de facto agency relationship between the members.

Since none of the characteristics of ASC 810-10-15-14 were present, Portfolio 8 was evaluated for consolidation under the voting model.

Voting Interest Assessment
After considering the voting interest model, the Company concluded that Portfolio 8 is a limited liability company which has governing provisions that are the functional equivalent of a limited partnership. Although Portfolio 8 is governed by a Board, the Board has effectively delegated its powers and ceded control over day-to-day operation and management of the investment properties, which represent the core activities of Portfolio 8, to the Common Member as the Administering Member. The role of the Administering Member is akin to that of a general partner in a limited partnership or a managing member in a limited liability company, which is typical in real estate joint ventures. In this regard, the Preferred Member is analogous to a limited partner.

Under the voting interest model for limited partnerships, ASC 810-20-25-3 provides a presumption that the general partner controls the limited partnership, regardless of the extent of its ownership interest. This presumption of control by the general partner can be overcome if the limited partners have either substantive liquidation rights, or substantive kick-out rights without cause, or substantive participating rights that could be exercised by a simple majority vote of limited partners (or by a single limited partner).

The Company does not currently have substantive kick-out or liquidation rights since removal of the Common Member as the Administering Member without cause and liquidation of the venture require unanimous consent of the Board (including the Common Member). Although the Company has the rights to control certain decisions made by the Board, such decisions, which include liquidation of the entity, protection against dilution in economic rights and ownership interests, and new asset acquisition, are protective in nature. Similarly, while the Board is required to approve the venture's annual business plan, the plan is subject to automatic approval as long as it provides for sufficient cash flow to pay debt service and

fund the preferred return. Accordingly, the budget approval right does not allow the Company to participate in decision-making in the ordinary course of business. As the rights retained by the Board are non-substantive, the presumption of control by the Administering Member is not overcome.

Based upon the foregoing analysis, the Company concluded that controlling financial interest over Portfolio 8 resides with the Common Member. The Company's preferred equity investment allows it to exert significant influence but not control over Portfolio 8. Accordingly, the Company accounts for its investment in Portfolio 8 under the equity method.

There have been no reconsideration events or changes in the contractual rights of the members since the inception of the investment that affected the assessment described above. We will continue to evaluate any changes in the rights or duties of the members which are conditioned upon future contingent events (including the Common Member's fulfillment of its obligations as Administering Member) to assess if there may be a change to the presumption of control by the Common Member at that time.

Schedule IV, page F-54

2. We note your footnote (3) to your table. Please tell us if you have aggregated loans whose carrying values are individually greater than 3% of the total carrying value. Specifically, address the line item Hotel -various, USA with two loans that have a combined carrying value of $328 million. Please refer to Rule 12-29 of Regulation S-X.

At December 31, 2014, the Company had four loans whose carrying values individually exceeded 3% (or approximately $63.9 million) of total carrying value of loans, all of which are listed individually in Schedule IV.

The two mezzanine loans included in Schedule IV on an aggregate basis were originated as part of a single refinancing of a portfolio of 152 hotels located throughout the United States and represent two subordinate tranches of the debt stack comprising a first mortgage loan owned by third parties with a principal balance of $775 million and two partial mezzanine positions owned by the Company with a combined carrying value of $328 million. The mezzanine loans include a first mezzanine loan with a carrying value of $25 million and a second mezzanine loan with a carrying value of $303 million. Since the carrying value of the first mezzanine loan is less than the 3% threshold, it would have been aggregated with other unrelated loans. However, since the loans share the same collateral pool that is cross-collateralized for the entire debt stack and management views and manages the loans as a single investment, the Company determined that it was more appropriate to combine the two related mezzanine positions for presentation in Schedule IV.

3. Please tell us how you complied with Rule 12-29 of Regulation S-X, or tell us how you determined it was not necessary to disclose the aggregate cost for Federal income tax purposes.

The Company acknowledges the Staff's comment and notes that the aggregate cost basis for Federal income tax purposes as of December 31, 2014 for the mortgage, subordinated and mezzanine loans included in Schedule IV was approximately $2.12 billion, which is not materially different from the GAAP carrying value of $2.13 billion. In future filings, the Company will include this additional information.

Form 8-K Filed on February 20, 2015
Exhibit 99.1 Press Release dated February 19, 2015

4. We note that you present fair value as a non-GAAP financial measure in your press release. Please explain to us how this presentation complies with Regulation G; specifically, please tell us how you determined it was not necessary to provide a reconciliation of this measure to your net book value. If after further consideration you determine to revise your disclosure of the non-GAAP presentation, please provide us with your revised presentation to be included in future filings.

Until recently, the majority of the Company's investment portfolio had been composed of financial instruments (including loans receivable and equity investments in unconsolidated entities) for which we disclose fair value on a quarterly basis in accordance with ASC 825. Certain mortgage REITs that we once viewed as our peers had elected the fair value option for similar financial instruments, and the fair value metrics in our press release were furnished to provide our investors a basis for comparison, as if we had made a similar election.

However, given our increased focus on equity investments and recent combination with Colony Capital, LLC, we view fair value to no longer be relevant to our investors since equity REITs and asset managers that we now view as our peers do not report this metric. Accordingly, beginning in the first quarter of 2015, we have eliminated our disclosure of fair value in our

press release. Nonetheless, we acknowledge the Staff's comment and have provided below a reconciliation of the fair value metrics disclosed in our press release, which are primarily derived from our GAAP financial statements.

(In thousands)	Book Value		Fair Value		Excess of Fair Value Over Book Value
Loans receivable, net	$ 2,131,134	(1)	$ 2,163,500	(2)	$ 32,366
Real estate assets, net	1,643,997	(1)	1,650,276	(3)	6,279
Investments in unconsolidated joint ventures	1,646,977	(1)	1,963,965	(2)	316,988
CMBS debt	537,268	(1)	536,927	(2)	341
Convertible senior notes	604,498	(1)	617,763	(2)	(13,265)
Noncontrolling interests	518,313	(1)	527,158	(4)	(8,845)
Total excess of fair value over book value attributable to stockholders					$ 333,864

(In thousands, except per share data)	December 31, 2014	
Total stockholders' equity	$ 2,417,480	(1)
Excess of fair value over book value attributable to stockholders as calculated above	333,864	
Less: Preferred stock liquidation preference	(338,250)	(1)
Fair value of common equity	2,413,094	
Shares of common stock outstanding	109,634	(1)
Fair value per common share	$ 22.01	

____

(1) Derived from the Company's audited consolidated balance sheet as of December 31, 2014

(2) Derived from Note 11 of the Company's audited consolidated financial statements for the year ended December 31, 2014

(3) Estimated based upon discounted cash flows and/or recent transaction prices

(4) Calculated based upon noncontrolling interests' share of each investment entity's estimated fair value of equity under hypothetical liquidation at fair value.

Given that we no longer provide fair value metrics other than as required by GAAP, we do not expect to include such reconciliation in our future filings.

* * * * *

The Company acknowledges that:

- The Company is responsible for the adequacy and accuracy of the disclosure in the filings;
- Staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filings; and
- The Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions concerning this letter or if you would like any additional information, please do not hesitate to call me at (310) 552-7230.

Sincerely,

/s/ Darren J. Tangen

Darren J. Tangen
Chief Financial Officer and Treasurer

cc: Ronald M. Sanders
Colony Capital, Inc.
David W. Bonser
James E. Showen
Hogan Lovells US LLP

July 8, 2015

Via EDGAR

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549
Attn: Ms. Jennifer Monick, Staff Accountant

Re: Columbia Property Trust, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 12, 2015
File No. 1-36113

Form 10-Q for the quarterly period ended March 31, 2015
Filed April 30, 2015
File No. 1-36113

Dear Ms. Monick:

On behalf of Columbia Property Trust, Inc. (the "Company"), we are responding to the comments from the Securities and Exchange Commission Staff (the "Staff") contained in its letter dated June 23, 2015 regarding our Annual Report filed on Form 10-K for the fiscal year ended December 31, 2014 and our Quarterly Report filed on Form 10-Q for the quarterly period ended March 31, 2015 (together, the "Filings"). For your convenience, this letter sets forth in italics each of the Staff's comments before each response.

Form 10-K for the fiscal year ended December 31, 2014

General

1. *We note you jointly filed a Form S-3ASR with Columbia Property Trust Operating Partnership, L.P. ("Columbia LP") on September 15, 2014, and, on March 10, 2015, you jointly filed a 424B with Columbia LP relating to senior notes. We further note the disclosure in Note 15 of your financial statements. Please tell us how you considered (i) whether Columbia LP is an Exchange Act reporting company, (ii) whether it was required to be an Exchange Act reporting company at the time the Form S-3ASR was filed and (iii) whether it has satisfied its reporting obligations.*

   Response: In accordance with Rule 3-10(c) of Regulation S-X, the Company is permitted to include, and does include, in its periodic reports condensed consolidating financial information in

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lieu of separate financial statements of Columbia LP (the subsidiary issuer) because all of the following criteria are met:

(1) Columbia LP (the subsidiary issuer) is 100% owned by the Company (the parent guarantor);

(2) the guarantee is full and unconditional; and

(3) no other subsidiary of the Company (the parent guarantor) guarantees the senior notes.

In addition, in accordance with Rule 12h-5(a) of the Exchange Act, Columbia LP, as the issuer of a guaranteed security that is permitted to omit financial statements by Rule 3-10(c) of Regulation S-X, is exempt from the requirements of Section 13(a) or 15(d) of the Exchange Act.

Therefore, we respectfully advise the Staff that:

(I) Columbia LP is exempt from the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act;

(II) Columbia LP was exempt from the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act at the time of the filing of the Form S-3ASR because (i) all of the conditions described above were met for the Company to include condensed consolidating financial information in lieu of separate financial statements of Columbia LP, and (ii) such information was included in the Company's periodic reports at such time, thereby exempting Columbia LP under Rule 12h-5(a) of the Exchange Act; and

(III) based on (i) and (ii) above, we believe Columbia LP has satisfied any reporting obligations.

Item 2. Properties

Property Statistics, page 14

2. *In future Exchange Act periodic reports, please revise to provide disclosure, here or in MD&A, regarding the relationship of rental rates on leases that expired in the reporting period and the rental rates on renewals or new leases on the same space. In addition, please disclose the relationship between rents on leases scheduled to expire in the current period and current market rents for the expiring space.*

   Response: In future periodic Exchange Act reports, beginning with our Form 10-Q for the period ended June 30, 2015, the Company will provide disclosure within the MD&A Overview to discuss the relationship between the rental rates on leases that expired in the reporting period and the rental rates on renewals or new leases on the same space. Further, to the extent material, the Company will also provide commentary regarding the relationship between rental rates on leases scheduled to expire over the near term and the Company's view on current market rents for those spaces within the MD&A Overview.

3. *Please also supplement your disclosure in future Exchange Act periodic reports to discuss leasing costs, including tenant improvement costs and leasing commissions, for both renewals and new leases*

on a per square foot basis.

Response: In future periodic Exchange Act reports beginning with our Form 10-Q for the period ended June 30, 2015, the Company will provide disclosure within the MD&A Overview of the Company's tenant improvement costs and leasing commissions for both renewals and new leases on a per square foot basis.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 22

4. *Please tell us the amount, if any, of internal costs you capitalize to deferred leasing costs and real estate assets for all periods presented. If material, please confirm for us that you will disclose this information within future periodic filings and discuss any significant fluctuations in such capitalized internal costs within your MD&A.*

Response: We have capitalized the following internal costs to deferred leasing costs and real estate assets for the periods presented in the Filings (in thousands):

	For the Years Ended December 31,			For the Three Months Ended March 31,	
	2014	**2013**	**2012**	**2015**	**2014**
Deferred leasing costs	$ 47	$ —	$ —	$ 18	$ 6
Real estate assets	$ 271	$ 187	$ —	$ 81	$ 68

We do not believe these amounts are material, and therefore, do not intend to disclose them. However, in the event these items become material in future periods, the Company confirms that it will disclose the amount of internal costs capitalized to deferred leasing costs and real estate assets and discuss any significant fluctuations in such amounts within MD&A.

Overview, page 22

5. *In future Exchange Act periodic reports, please revise to provide net operating income as well as same store net operating income or advise.*

Response: In future periodic Exchange Act reports beginning with our Form 10-Q for the period ended June 30, 2015, the Company will disclose net operating income and same store net operating income within MD&A. The Company monitors performance metrics that are considered most useful to investors, analysts and other financial statement users. In the future, to the extent the Company deems it appropriate to use different performance metrics or to revise the manner in which such metrics, including net operating income and same store net operating income, are calculated to improve their utility, such revisions will be made consistently in the Company's Exchange Act periodic reports and in its supplemental financial reports.

Results of Operations

Comparison of the Year Ended December 31, 2014 to 2013

Continuing Operations, page 25

6. *In future Exchange Act periodic reports, please revise here or elsewhere in MD&A to address period to period changes in net income for the comparable pool and also include disclosure addressing the relative impact of same store occupancy changes and average rent changes on the results.*

   Response: In future periodic Exchange Act reports beginning with our Form 10-Q for the period ended June 30, 2015, the Company will discuss within MD&A the period to period changes impacting net income for the comparable pool of properties, including addressing the relative impact of same store occupancy and average rental rate changes on the Company's operating results.

Notes to Consolidated Financial Statements

2. Summary of Significant Accounting Policies

Intangible Assets and Liabilities Arising from In-Place Leases Where Columbia Property Trust is the Lessor

7. *With respect to your below-market lease intangibles, please tell us how you considered any fixed rate renewal options in your estimate of the remaining term of the underlying leases and your basis for your determination. Your response should address, but not necessarily be limited to, whether or not you use a threshold in your evaluation. To the extent you use thresholds, please tell us how you concluded that these thresholds are appropriate and tell us the potential impact to your financial statements if you were to conclude that all below market fixed rate renewal options would be exercised.*

   Response: We amortize below-market in-place lease intangibles over the remaining non-cancelable term of the respective lease, including fixed rate below-market renewal options for which exercise of the renewal option appears to be reasonably assured.

   In estimating the fair value of below-market lease intangibles, we assume that tenants with a fixed rate renewal option would be reasonably assured to exercise the option if the present value of the option rent is at least 10% less than the present value of the corresponding market rent. We utilize a third-party expert to assist us in this determination. For example, if the present value of the market rent over the option term is $100 per square foot and the present value of the contractual option rent over the option term is $90 per square foot, we assume the renewal will be exercised. We have utilized this assumption, which we believe to be reasonable, because we believe that such a discount would be compelling and that tenants would elect to renew their leases under such favorable terms relative to market.

   At a discount of less than 10%, we believe the tenant's consideration of qualitative factors may outweigh the discount in deciding whether to renew a below-market lease. Such qualitative factors may include the tenant's long-term projected space needs, employee and customer preference

related to location, image and functionality of the building and office space, and convenience and proximity to transportation, amenities and housing.

As of March 31, 2015, less than $3.0 million of our net intangible below-market lease liability balance of $78.1 million relates to fixed-rate renewal options at our in-place leases. If we had determined that all fixed rate below-market renewal options at our in-place leases would be exercised, there would not have been a material change to the intangible below-market lease liability balance or to the related amortization for any of the periods presented in the Filings.

In future Exchange Act periodic reports, the Company will include the following additional disclosure related to the accounting policies used to measure and amortize below market tenant lease intangibles, including the effect of below market renewal options:

Identifiable intangible assets and liabilities are calculated for above-market and below-market tenant and ground leases where we are either the lessor or the lessee. The difference between the contractual rental rates and our estimate of market rental rates is measured over a period equal to the remaining non-cancelable term of the leases, including significantly below market renewal options for which exercise of the renewal option appears to be reasonably assured.

The remaining term of leases with renewal options at terms significantly below market reflect the assumed exercise of such below market renewal options and assume the amortization period would coincide with the extended lease term.

Schedule III, page S-1

8. *Please tell us how you complied with Rule 12-28 of Regulation S-X, or tell us how you determined it was not necessary to disclose the aggregate cost for Federal income tax purposes of your real estate assets.*

   Response: The Company acknowledges that disclosure of the aggregate cost of its real estate assets for Federal income tax purposes is required by Rule 12-28 of Regulation S-X. The Company will include such disclosure in a footnote to Schedule III beginning in our Form 10-K for the year ended December 31, 2015. As of December 31, 2014, the aggregate gross cost of the Company's real estate assets for Federal income tax purposes is $5.807 billion.

Form 10-Q for the quarterly period ended March 31, 2015

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Results of Operations, page 30

9. *We note you have multiple factors that impact your results of operations for several line items. In future periodic filings, please confirm that you will separately quantify the impact from each factor.*

Response: In future periodic Exchange Act reports beginning with our Form 10-Q for the period ended June 30, 2015, the Company will quantify the impact of the individual factors impacting the line items discussed in Results of Operations when multiple factors are present.

The Company acknowledges that it is responsible for the adequacy and accuracy of the disclosure in the Filings, and that Staff comments or changes to disclosure in response to Staff comments do not foreclose the Securities and Exchange Commission from taking any action with respect to the Filings. The Company further acknowledges that it may not assert Staff comments as a defense in any proceeding initiated by the Securities and Exchange Commission or by any person under the federal securities laws of the United States.

If we can be of any assistance in explaining these responses, please let us know. Please contact me with any questions or comments at (404) 465-2200.

Very truly yours,

/s/ James A. Fleming
James A. Fleming

cc: Isaac Esquivel, Securities and Exchange Commission
Jerard Gibson, Securities and Exchange Commission
Jennifer Gowetski, Securities and Exchange Commission
Alan Prince, King & Spalding LLP
Mark Scalese, Deloitte & Touche LLP

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Ms. Jaime G. John
Accounting Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

July 31, 2015

Re: Corporate Office Properties Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed February 18, 2015
File No. 1-14023

Corporate Office Properties, L.P.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 18, 2015
File No. 333-189188

Dear Ms. John:

Corporate Office Properties Trust ("COPT") and Corporate Office Properties, L.P. ("COPLP") are writing in response to the letter dated July 21, 2015 received from the Staff of the Securities and Exchange Commission (the "Commission") regarding COPT's and COPLP's Annual Reports on Form 10-K for the year ended December 31, 2014 (the "2014 Form 10-K" or the "filing"). Our responses to the Staff's comments appearing in the letter are set forth below. For reference, the Staff's comments, set forth in bold font, precede the Company's responses.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds from Operations, page 50

1. **Given that you indicate that Basic FFO represents FFO available to common share and common unit holders, in future periodic filings revise Basic and Diluted FFO in your reconciliation on page 52 to clearly label this measure.**

Response: We will clearly label those measures in future filings.

Item 8. Financial Statements and Supplementary Data

Note 17 — Operating Leases, page F-47

2. **We note your disclosure on page 34 that the majority of your leases with the United States Government consist of a series of one-year renewal options or provide for early termination rights. Please tell us how these leases are reflected in your table on page F-47 of gross minimum future rentals on noncancelable leases and tell us the percentage of each amount in the table that includes such leases.**

Response: Our disclosure of gross minimum future rentals in the table on page F-47 includes rents from our leases with the United States Government when we conclude that the exercise of these renewal options is reasonably assured. Rents from these leases comprise the following percentages of each amount in the table:

2015	18%
2016	19%
2017	20%
2018	18%
2019	19%
Thereafter	27%

In connection with our response to the Staff's comments, COPT and COPLP acknowledge that:

- COPT and COPLP are responsible for the adequacy and accuracy of the disclosure in the filing;

Corrections Corporation of America
10 Burton Hills Blvd.
Nashville, TN 37215

July 10, 2015

VIA EDGAR

Mr. Jaime G. John
Branch Chief
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7010

Re: Corrections Corporation of America
Form 10-K for Fiscal Year Ended December 31, 2014
Filed February 25, 2015
Form 8-K filed on May 7, 2015
File No. 1-16109

Dear Mr. John:

This letter is in response to your comment letter dated July 6, 2015, with respect to the documents referenced above filed by Corrections Corporation of America (the "Company").

Given the Staff's comments and the Company's proposed responses, we respectfully request that the Company be permitted to make any necessary changes in future filings beginning with the Company's Form 10-K for the fiscal year ended December 31, 2015, as indicated in your comment letter. In any event, we would appreciate the opportunity to discuss our proposed responses with you to determine if they appropriately address the Staff's concerns. We have prepared these responses with the assistance of our counsel and the proposed responses have been read by our independent registered public accounting firm. In accordance with your instructions, we have keyed our responses to the specific numbered comments contained in your letter dated July 6, 2015.

In accordance with your letter dated July 6, 2015, the Company acknowledges that the Company is responsible for the adequacy and accuracy of the disclosure in any Company filing and that Staff comments or changes to disclosures in response to Staff comments do not foreclose the Securities and Exchange Commission (the "Commission") from taking any action with respect to the filing. The Company also acknowledges that it may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Form 10-K for the Fiscal Year Ended December 31, 2014

General

1. In future Exchange Act reports, please include a schedule of facility contract expirations for each of the next ten years, stating the number of facility contracts expiring, the total number of beds covered by such contracts, the annual revenue represented by such contracts, and the percentage of total annual revenue represented by such contracts. Refer to Item 15(f) of Form S-11 as a guide.

Response to Question 1:

We typically enter into facility contracts with governmental entities for terms of up to five years, with additional renewal periods at the option of the contracting governmental agency. Most of our facility contracts also contain clauses that allow the government agency to terminate the contract at any time without cause and our contracts are generally subject to annual or bi-annual legislative appropriations of funds. As a result, there is not significant incremental risk to our contracts which have expired or are scheduled to expire within twelve months from the reporting date to those contracts that have remaining renewal options.

We have exchanged correspondence with the Commission on matters similar to the question raised herein on a letter dated March 25, 2010 from us with follow up correspondence submitted on April 9, 2010 regarding disclosures made in our Form 10-K for the year ended December 31, 2009. In that correspondence we agreed to include a statement in future periodic filings that we believe we will renew all contracts that have expired or are scheduled to expire within the next twelve months that would have a material effect on our financial statements if not renewed, other than those contracts with customers that are specifically disclosed to be terminated or for which management believes that it is reasonably likely that a renewal will not be obtained and for which the non-renewal would have a material effect on our financial statements.

For each reporting period we assess the facts and circumstances related to our contracts to determine which contracts, if any, we believe are reasonably likely to expire upon termination or which contracts the customer is reasonably likely to elect to terminate prior to expiration and would have a material impact to revenue or income from continuing operations. We also determine which contracts are necessary to disclose as a risk of termination and make such disclosure in our Management's Discussion and Analysis of Financial Condition and Results of Operations in our quarterly periodic filings along with the statement that we believe we will renew all other contracts. We have included such disclosure for each quarterly period since our correspondence with the Commission on April 9, 2010.

We have reviewed the information in Item 15(f) of Form S-11 as well as examples of similar tabular disclosures from other public REITs. Given that many of our contracts are short-duration, three to five years in most cases, and, unlike other REITs, are subject to fluctuations in revenue based on fluctuations in inmate populations, we believe that such a disclosure may misleadingly suggest that a larger portion of our contracts are likely to terminate in the near term than has historically been the case. We believe our renewal rate on existing contracts remains high as a result of a variety of reasons including, but not limited to, the constrained

supply of available beds within the U.S. correctional system, our ownership of the majority of the beds we operate, and the quality of our operations. Similarly, a table of contract expirations may mistakenly suggest that revenue from a contract is secure through contract expiration when, in fact, the government customer has the right to terminate prior to its expiration. Based on the foregoing, we respectfully request that the Commission reconsider the need for a tabular schedule presenting the revenues of all contracts scheduled to expire over the next ten years.

Item 1A. Risk Factors

We are subject to terminations, non-renewals, or competitive re-bids of our government contracts, page 27

2. We note your disclosure on page 27 that twenty-three of your facility contracts are scheduled to expire by December 31, 2015. In future Exchange Act reports please revise your risk factor disclosure regarding such expiring contracts to quantify the revenue and the percentage of total revenues represented by the facility contracts as of the most recent fiscal year.

Response to Question 2:

We advise the Staff that in future Annual Reports on Form 10-K we will disclose in the risk factor the revenue and the percentage of total revenues represented by the facility contracts that are scheduled to expire within the next twelve months. The aggregate revenue earned during the year ended December 31, 2014 for the twenty-three contracts with scheduled maturity dates, notwithstanding contractual renewal options, on or before December 31, 2015 was $526.1 million, or 32% of total revenue.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Critical Accounting Policies

Self-Funded Insurance Reserves, page 53

3. Please provide to us a roll forward of your insurance reserves. The roll forward should include the amount of incurred claims, any changes in the provision for prior year events, and the amount of payments made.

Response to Question 3:

Self-funded insurance reserves include accrued liabilities for employee health, workers' compensation, and automobile insurance claims. We have consistently accrued the estimated liability for employee health insurance claims based on our history of claims experience and the estimated time lag between the incident date and the date we pay the claims. We have accrued the estimated liability for workers' compensation claims based on a third-party actuarial valuation of the outstanding liabilities, discounted to the net present value of the outstanding liabilities, using a combination of actuarial methods to project ultimate losses, and our automobile insurance claims based on estimated development factors on claims incurred. Please see the roll forward of our self-funded insurance reserves. *(in millions):*

Balance as of December 31, 2013	$ 33.8
Claims provision	81.2
Payments	(83.0)
Balance as of December 31, 2014	$ 32.0

Investing activities, page 76

4. We note from your disclosure on page F-10 that you capitalize construction costs directly associated with the development of a correctional facility. In future filings please disclose the total amount of soft costs capitalized, such as payroll and other G&A costs, for the respective years. Also provide a narrative discussion for fluctuations from year to year, if material.

Response to Question 4:

The only soft cost that has historically been capitalized by us during the development of a correctional facility is capitalized interest which we disclose in both the statement of cash flows and the Management's Discussion and Analysis of Financial Condition and Results of Operations in our periodic filings. In the future, if we undertake the development of real estate and capitalize internal soft costs in accordance with Accounting Standards Codification ("ASC") 970-10-15, "Real Estate – General" we will disclose the material components of the amounts capitalized.

Item 8. Financial Statements and Supplementary Data

Notes to Consolidated Financial Statements

Note 18. Condensed Consolidating Financial Statements of CCA and Subsidiaries, page F-40

5. Please tell us the consideration you gave to presenting the material components of investing and financing activities in your condensed consolidating statements of cash flows. Refer to Rule 3-10(i)(1) and Rule 10-01(a)(4) of Regulation S-X.

Response to Question 5:

According to Rule 3-10 of Regulation S-X, we are required to provide condensed consolidating financial information with a separate column for the parent company, subsidiary issuer(s), combined subsidiary guarantor(s), combined subsidiary non-guarantors (if not minor) and each subsidiary issuer or subsidiary guarantor that is not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries. Further, Rule 10-01(a)(4) of Regulation S-X provides guidance specific to the cash flow presentation. It states that that the statement of cash flows may be abbreviated starting with a single figure of net cash flows from operating activities and showing cash changes from investing and financing activities individually only when they exceed 10% of the average of net cash flows from operating activities for the most recent three years. Notwithstanding this test, §210.4-02 applies and de minimis amounts therefore need not be shown separately.

Our basis for the abbreviated disclosure in the condensed consolidating statement of cash flows was primarily that substantially all cash flow activity occurs within either the parent or the guarantor subsidiaries. In our view, the primary benefit of this statement to the users of the financial statements would be the disclosure of any material cash flows occurring within non-guarantor subsidiaries. Given that the activity reported in the Consolidating Adjustments and Other column reflect only intercompany eliminations and thus there is no cash flow activity occurring in non-guarantor subsidiaries, we did not feel that an expanded disclosure would add meaningful value to the overall disclosure since the expanded data is already provided in the consolidated statements of cash flows.

Schedule III – Real Estate Assets and Accumulated Depreciation, page F-48

6. Please tell us the consideration you gave to instruction 6 to Rule 12-28 of Regulation S-X which requires disclosure of the aggregate cost for Federal income tax purposes of your real estate assets.

Response to Question 6:

The Company has omitted the disclosure in prior filings because the aggregate cost of real estate assets for federal income tax purposes has not differed materially from the gross value reported in schedule III. Given the Staff's comment, however, we confirm that we will include the disclosure in future filings. The aggregate cost of real estate assets for federal income tax proposes was approximately $3.1 billion at December 31, 2014, the same as the gross cost of the real estate.

Form 8-K filed on May 7, 2015

Exhibit 99.1 Press Release dated May 6, 2015

7. We note that you present net operating income in your earnings releases as a non-GAAP measure. Please revise future earnings releases to include all of the disclosures required by Item 10(e)(1)(i) of Regulation S-K for this measure. In your response, provide an example of your proposed disclosure.

Response to Question 7:

Net operating income is a measure that we believe supplements our discussion and analysis of our results of operations and is a measure that is used by management to assess operating performance. We confirm that to the extent we continue to use net operating income in future press releases we will include all of the disclosures required by Item 10(e)(1)(i) of Regulation S-K for this measure. An example of our disclosure and the related reconciliation to the most comparable GAAP measure is included as requested.

Adjusted Net Income, net operating income (NOI), EBITDA, Funds From Operations (FFO), Normalized FFO and Adjusted Funds From Operations (AFFO), and their corresponding per share metrics are non-GAAP financial measures. CCA believes that these measures are important operating measures that supplement discussion and analysis of the Company's

results of operations and are used to review and assess operating performance of the Company and its correctional facilities and their management teams. CCA believes that it is useful to provide investors, lenders and security analysts' disclosures of its results of operations on the same basis that is used by management. FFO and AFFO, in particular, are widely accepted non-GAAP supplemental measures of REIT performance, each grounded in the standards for FFO established by the National Association of Real Estate Investment Trusts (NAREIT).

NAREIT defines FFO as net income computed in accordance with generally accepted accounting principles, excluding gains (or losses) from sales of property and extraordinary items, plus depreciation and amortization of real estate and impairment if depreciable real estate. EBITDA, NOI, FFO, and AFFO are useful as supplemental measures of performance of the Company's correctional facilities because they add back non-cash expenses such as depreciation and amortization, or with respect to EBITDA, the impact of the Company's tax provisions and financing strategies.

(Amounts in thousands)	For the Three Months Ended March 31,	
	2015	2014
Net income	$ 57,277	$ 51,738
Income tax expense	1,385	1,367
Other income	(26)	(387)
Interest expense, net	10,190	10,348
General and administrative	26,872	25,392
Depreciation and amortization	28,685	28,384
Asset impairments	955	—
Net operating income	$ 125,338	$ 116,842

If you have any questions concerning our responses to your questions and comments, please do not hesitate to contact me at (615) 263-3008, or by facsimile at (615) 263-3010 or our outside counsel, William J. Cernius of Latham & Watkins at (714) 755-8172 or by facsimile at (714) 755-8290.

Sincerely,

David M. Garfinkle
Executive Vice President and
Chief Financial Officer

Corrections Corporation of America
10 Burton Hills Blvd.
Nashville, TN 37215

July 31, 2015

<u>VIA EDGAR</u>

Mr. Jaime G. John
Branch Chief
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7010

Re: Corrections Corporation of America
Form 10-K for Fiscal Year Ended December 31, 2014
Filed February 25, 2015
Form 8-K filed on May 7, 2015
File No. 1-16109

Dear Mr. John:

On Wednesday, July 22, 2015, the SEC provided comments with respect to Corrections Corporation of America's (the "Company") response dated July 10, 2015 to the comments issued by the Staff in its letter dated July 6, 2015 in relation to the Company's Form 10-K for the year ended December 31, 2014. For your ease of reference, we have included your original comments in italics below and have provided a response after the comment.

We have prepared this response with the assistance of our counsel and the proposed response has been read by our independent registered public accounting firm. The Company acknowledges that the Company is responsible for the adequacy and accuracy of the disclosure in any Company filing and that Staff comments or changes to disclosures in response to Staff comments do not foreclose the Securities and Exchange Commission (the "Commission") from taking any action with respect to the filing. The Company also acknowledges that it may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Critical Accounting Policies

Self-Funded Insurance Reserves, page 53

We note your response to prior comment 1. Please tell us the consideration you gave to disclosing the amount of claims provisions and payments. Additionally, confirm to us that you did not adjust your claims provision for re-estimates due to prior year loss development.

Response:

As we noted in our response dated July 10, 2015, our self-funded insurance reserves include accrued liabilities for employee health, workers' compensation, and automobile insurance claims. We have consistently accrued the estimated liability for employee health insurance claims based on our history of claims experience and the estimated time lag between the incident date and the date we pay the claims. We review the time lag related to our employee health claims on a monthly basis and have found it to be consistent and short-term in nature, with a range between 45 and 50 days. Due to the short-term nature of the time lag, we do not believe re-estimates due to prior year loss development, if any, would have a material impact on our reserve for employee health claims. Further, as of December 31, 2014, our employee health claims reserve accrual was $8.6 million, which represented approximately 3% of total current liabilities and less than 1% of total liabilities.

Additionally, as noted in our response on July 10, 2015, we have accrued the estimated liability for workers' compensation claims based on a third-party actuarial valuation of the outstanding liabilities, discounted to the net present value of the outstanding liabilities, using a combination of actuarial methods to project ultimate losses, and our automobile insurance claims based on estimated development factors on claims incurred. Generally, our payments and incurred expense under our workers' compensation and automobile insurance claim provisions are consistent from period to period. For the years ended 2014 and 2013, management reviewed the impact of the prior year loss development re-estimates on projected workers' compensation ultimate losses as provided by our third-party actuary. We noted a change of approximately $34,000 in the workers' compensation liability from 2013 to 2014 related to these re-estimates. Given the immaterial amounts of re-estimates for prior year loss development, we presented the amounts in the claims provision in our roll forward provided in our July 10, 2015 response. Further, as of December 31, 2014, our workers' compensation reserve accrual was $22.5 million, which represented approximately 7% of total current liabilities and 1% of total liabilities. As of December 31, 2014, our automobile insurance claim accrual was $0.9 million, which represented less than 1% of total current liabilities and less than 1% of total liabilities.

In response to the Staff's comment and based on the information provided, we believe our current disclosure of our accounting policies related to our self-insurance reserves provides a balanced presentation of such estimates. Further, based on our analyses, we do not believe

re-estimates due to prior year loss development, if any, were material to our self-insurance reserves and, thus, would not necessitate separate disclosure. Further, when we have experienced material fluctuations in the total provision for self-insured insurance reserves we have disclosed the impact in our Results of Operations section of Management's Discussion and Analysis. In future filings, if we identify material changes in the re-estimates of prior year loss development or material changes in the development of self-insured losses we will consider the need to emphasize the factors that led to such a change within the Critical Accounting Policy as well as our Results of Operations.

If you have any questions concerning our responses to your questions and comments, please do not hesitate to contact me at (615) 263-3008, or by facsimile at (615) 263-3010 or our outside counsel, William J. Cernius of Latham & Watkins at (714) 755-8172 or by facsimile at (714) 755-8290.

Sincerely,

David M. Garfinkle
Executive Vice President and
Chief Financial Officer

July 8, 2015

Via EDGAR

Jamie G. John
Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F St. Street, NE
Washington, D.C. 20549

Re: CubeSmart
Form 10-K for the Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-32324

CubeSmart, L.P.
Form 10-K for the Year Ended December 31, 2014
Filed February 27, 2015
File No. 000-54462

Dear Mr. John:

This letter is submitted on behalf of CubeSmart and CubeSmart, L.P. (collectively, the "***Company***") in response to the comments regarding the above-referenced filings (the "***Filings***") that you provided on behalf of the staff of the Division of Corporate Finance (the "***Staff***") of the Securities and Exchange Commission (the "***Commission***") to Timothy M. Martin, the Company's Chief Financial Officer, in your letter dated June 23, 2015 (the "***Comment Letter***"). The responses are set out in the order in which the comments were set out in the Comment Letter and are numbered accordingly. For reference purposes, the text of the comments contained in the Comment Letter have been reproduced herein (in italics), with the Company's response below such comment.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Revenues, page 50

1. *We note your disclosure that your same-store portfolio provided an $18.7 million increase in rental income during 2014 as compared to 2013, due to increases in net rental rates and average occupancy. In future Exchange Act reports, please expand upon your narrative description of same-store performance to explain whether the increases in*

net rental rates were a result of increased rates on new tenants or existing tenants, reduced promotional discounts, or otherwise.

Response: In response to the Staff's comment, in future reports filed by us pursuant to the Securities Exchange Act of 1934, as amended, ("***Exchange Act reports***") in which we discuss same-store performance, we will include an explanation of whether changes in net rental rates are the result of changes in rates on new tenants or existing tenants, changes to promotional discounts, or otherwise.

Non-GAAP Financial Measures

FFO, as adjusted, page 55

2. *We note that your presentation of FFO appears to represent "FFO attributable to common shareholders and Operating Partnership unitholders". Please advise and revise your label accordingly in future filings.*

Response: We confirm that the presentation of funds from operations ("***FFO***") in the Filings does represent FFO attributable to common shareholders and Operating Partnership unitholders. In our future Exchange Act reports where FFO is presented, we will label the presentation of FFO accordingly.

Item 11. Executive Compensation

Definitive Proxy Statement filed on April 17, 2015

Compensation Discussion and Analysis, page 23

3. *We note your disclosure on pages 23 through 24 regarding the 2014 peer group your Compensation Committee used "for benchmarking purposes." In future Exchange Act reports, please provide more detail about how you benchmark compensation against the compensation of your peer group. Please refer to Item 402(b)(2)(xiv) of Regulation S-K.*

Response: In response to the Staff's comment, in future Exchange Act reports where we disclose information regarding the peer group our Compensation Committee uses for benchmarking purposes, we will provide additional detail regarding how our Compensation Committee benchmarks the compensation of our management against the compensation of similarly situated management in the peer group.

Annual Incentive Compensation, page 26

4. *We note your disclosure on page 26 that the Annual Incentive Compensation is measured in part by your funds from operations growth, same-store net operating income growth, and the achievement of "strategic goals consisting of external growth." In future Exchange Act reports, please identify the strategic goals for external growth. Please also*

disclose your target levels with respect to these metrics, or provide us with your analysis for concluding that the disclosure of such targets is not required because it would result in competitive harm and that such disclosure may be omitted pursuant to Instruction 4 to Item 402(b) of Regulation S-K. To the extent you omit disclosure of targets because it will result in competitive harm, please include a discussion in future Exchange Act reports of how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed target level or other factor or criteria. Please see Instruction 4 to Item 402(b) and Regulation S-K Compliance & Disclosure Interpretation 118.04..

Response: In response to the Staff's comment, in future Exchange Act reports where we include a discussion of annual incentive compensation (or other, similar compensation based upon the achievement of specific performance metrics), we will identify the goals or performance metrics and disclose target levels with respect to such metrics. However, to the extent we believe that the disclosure of the target levels of such goals or performance metrics will cause us competitive harm, we will not disclose such target levels, but rather will provide an analysis of why we concluded that disclosure of such target levels will cause us competitive harm, allowing us to forgo such disclosure of the target levels. Further, to the extent we do not disclose the target levels of relevant goals and performance metrics, we will include a discussion of how difficult it will be for the executive, or how likely it will be for the Company, to achieve the undisclosed target levels of such goals and performance metrics.

In responding to the Staff's comments, the Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Filings;
- the Staff's comments or changes to disclosure in response to the Staff's comments do not foreclose the Commission from taking any action with respect to the Filings; and
- the Company may not assert the Staff's comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Sincerely,

/s/ Timothy M. Martin

Timothy M. Martin
Chief Financial Officer

July 8, 2015

Via EDGAR

Jamie G. John
Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F St. Street, NE
Washington, D.C. 20549

Re: CubeSmart
Form 10-K for the Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-32324

CubeSmart, L.P.
Form 10-K for the Year Ended December 31, 2014
Filed February 27, 2015
File No. 000-54462

Dear Mr. John:

This letter is submitted on behalf of CubeSmart and CubeSmart, L.P. (collectively, the "***Company***") in response to the comments regarding the above-referenced filings (the "***Filings***") that you provided on behalf of the staff of the Division of Corporate Finance (the "***Staff***") of the Securities and Exchange Commission (the "***Commission***") to Timothy M. Martin, the Company's Chief Financial Officer, in your letter dated June 23, 2015 (the "***Comment Letter***"). The responses are set out in the order in which the comments were set out in the Comment Letter and are numbered accordingly. For reference purposes, the text of the comments contained in the Comment Letter have been reproduced herein (in italics), with the Company's response below such comment.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Revenues, page 50

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net rental rates were a result of increased rates on new tenants or existing tenants, reduced promotional discounts, or otherwise.

Response: In response to the Staff's comment, in future reports filed by us pursuant to the Securities Exchange Act of 1934, as amended, ("***Exchange Act reports***") in which we discuss same-store performance, we will include an explanation of whether changes in net rental rates are the result of changes in rates on new tenants or existing tenants, changes to promotional discounts, or otherwise.

Non-GAAP Financial Measures

FFO, as adjusted, page 55

2. *We note that your presentation of FFO appears to represent "FFO attributable to common shareholders and Operating Partnership unitholders". Please advise and revise your label accordingly in future filings.*

Response: We confirm that the presentation of funds from operations ("***FFO***") in the Filings does represent FFO attributable to common shareholders and Operating Partnership unitholders. In our future Exchange Act reports where FFO is presented, we will label the presentation of FFO accordingly.

Item 11. Executive Compensation

Definitive Proxy Statement filed on April 17, 2015

Compensation Discussion and Analysis, page 23

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Response: In response to the Staff's comment, in future Exchange Act reports where we disclose information regarding the peer group our Compensation Committee uses for benchmarking purposes, we will provide additional detail regarding how our Compensation Committee benchmarks the compensation of our management against the compensation of similarly situated management in the peer group.

Annual Incentive Compensation, page 26

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Response: In response to the Staff's comment, in future Exchange Act reports where we include a discussion of annual incentive compensation (or other, similar compensation based upon the achievement of specific performance metrics), we will identify the goals or performance metrics and disclose target levels with respect to such metrics. However, to the extent we believe that the disclosure of the target levels of such goals or performance metrics will cause us competitive harm, we will not disclose such target levels, but rather will provide an analysis of why we concluded that disclosure of such target levels will cause us competitive harm, allowing us to forgo such disclosure of the target levels. Further, to the extent we do not disclose the target levels of relevant goals and performance metrics, we will include a discussion of how difficult it will be for the executive, or how likely it will be for the Company, to achieve the undisclosed target levels of such goals and performance metrics.

In responding to the Staff's comments, the Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Filings;
- the Staff's comments or changes to disclosure in response to the Staff's comments do not foreclose the Commission from taking any action with respect to the Filings; and
- the Company may not assert the Staff's comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Sincerely,

/s/ Timothy M. Martin

Timothy M. Martin
Chief Financial Officer

July 15, 2015

VIA EDGAR
Mr. Jaime G. John, Branch Chief
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

RE: CYS Investments, Inc.
Form 10-K for fiscal year ended December 31, 2014
Filed on February 17, 2015
File No. 1-33740

Dear Mr. John:

This letter is submitted in response to the comment of the Staff of the Division of Corporation Finance (the "**Staff**") of the Securities and Exchange Commission (the "**Commission**") contained in your letter dated July 6, 2015 with respect to the Form 10-K for the fiscal year ended December 31, 2014 of CYS Investments, Inc. (the "**Company**"), which was filed with the Commission on February 14, 2015 (the "**Form 10-K**").

For convenience of reference, the Staff comment contained in your July 6, 2015 comment letter is reprinted below in italics, and followed by the corresponding response of the Company.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Quantitative and Qualitative Disclosures about Short-Term Borrowings, page 46

In future annual filings, please quantify the average quarterly balance for all periods presented, the period end balance for each of those quarters and the maximum balance at any month-end. Additionally, explain significant variances among these amounts. Provide an example of your proposed revisions within your response.

RESPONSE: In the Company's future annual filings with the Commission, it will include the average quarterly balance for all periods presented, the period end balance for each of those quarters and the maximum balance at any month-end. Additionally, the Company will endeavor to explain significant variances among these amounts. An example of such disclosure that the Company anticipates in its future Exchange Act annual reports is as follows:

"The following table discloses quantitative data about our short-term repo borrowings during the years ended December 31, 2014 and 2013:

(Dollars in millions)

Quarter ended	December 31, 2014	September 30, 2014	June 30, 2014	March 31, 2014
Outstanding at period end	$ 11,290	$ 10,403	$ 9,874	$ 10,014
Weighted average rate at period end	0.35%	0.20%	0.30%	0.31%
Average outstanding during period	$ 10,854	$ 10,189	$ 9,981	$ 10,868
Weighted average rate during period	0.34%	0.30%	0.30%	0.35%
Largest month end balance during period	$ 11,290	$ 10,403	$ 10,095	$ 11,771

Quarter ended	December 31, 2013	September 30, 2013	June 30, 2013	March 31, 2013
Outstanding at period end	$ 11,207	$ 11,735	$ 13,809	$ 13,760
Weighted average rate at period end	0.41%	0.39%	0.39%	0.41%
Average outstanding during period	$ 11,384	$ 12,181	$ 13,871	$ 14,108
Weighted average rate during period	0.41%	0.39%	0.41%	0.43%
Largest month end balance during period	$ 11,735	$ 13,809	$ 14,050	$ 14,544

From quarter to quarter, fluctuations occur in our short-term repo borrowings that are fairly tightly correlated with the expansion and contraction of our investment portfolio. Though it varies by quarter, we currently require repo borrowing funding for approximately 85-90 percent of our investment portfolio."

* * * *

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions or comments regarding the foregoing, or have additional questions or comments, please do not hesitate to contact me at (617) 639-0403.

Very truly yours,

/s/ Frances R. Spark

Frances R. Spark, Chief Financial Officer

FRS/tar
c: Kevin E. Grant, Chief Executive Officer
Thomas A. Rosenbloom, General Counsel
S. Gregory Cope, Esquire, Hunton & Williams LLP
Gregory L. Comeau, Deloitte & Touche LLP

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LATHAM&WATKINS LLP

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May 22, 2015

VIA EDGAR

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.,
Washington, D.C. 20549
Attention: Daniel Gordon

Re: Digital Realty Trust, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 1-32336

Digital Realty Trust, L.P.
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 0-54023

Dear Mr. Gordon:

This letter sets forth the response of Digital Realty Trust, Inc. and Digital Realty Trust, L.P. (collectively, the "***Subject Companies***") to the comments received on May 19, 2015 from the staff (the "***Staff***") of the Division of Corporation Finance of the United States Securities and Exchange Commission (the "***Commission***") regarding the Form 10-K (the "***2014 Form 10-K***") filed by the Subject Companies on March 2, 2015.

For ease of review, we have set forth below the numbered comment of the Staff in its letter dated May 19, 2015 and the Subject Companies' response thereto.

4. Investments in Unconsolidated Joint Ventures

Griffin Capital Essential Asset REIT, Inc. Joint Venture, page 127

1. **We note you contributed a property valued at $185.5 million in September 2014 to a joint venture with Griffin Capital Essential Asset REIT, Inc., and net of proceeds received, recognized a gain of $93.5 million. Please provide to us the basis of your conclusion to deconsolidate the property and record a gain on the sale of the 80% interest in the joint venture, and cite the appropriate accounting literature in your response. Also in your response, outline all decisions determined by the company to be major that require approval of the GCEAR member as well as those decisions that do not require such approval.**

Response: Pursuant to our agreement with Griffin Capital Essential Asset REIT, Inc. ("***GCEAR***"), the Subject Companies contributed a wholly owned property to the joint venture in exchange for cash and a retained 20% interest in the joint venture (the "***Venture***"). We considered the consolidation guidance in ASC 810 to determine our subsequent accounting for our interest in the Venture. We note that the Venture did not meet the criteria to be considered a variable interest entity as the entity has sufficient equity to finance its activities, the equity interest holders are the only parties with the ability to direct the activities of the entity, and there are no non-substantive voting rights. Thus we concluded that our accounting for our interest in the Venture should follow the voting interest model. We note that the unanimous member consent requirements of the Venture agreement give GCEAR the right and ability to approve all significant decisions related to the Venture. As a result, we concluded that even though we are the managing member of the Venture, GCEAR had substantial participating rights that precluded our ability to control the Venture, and thus we concluded that the equity method of accounting for our retained interest in the Venture was appropriate.

A summary of the decisions that require approval of GCEAR are noted below:

1. Adopt or amend any Annual Plan or cause the joint venture to materially deviate from the Annual Plan.
2. Acquire any real property, or interest therein, either directly or indirectly.
3. Acquire any other material asset for the use, operation, maintenance, repair, construction, financing, refinancing, pledge, encumbrance, ownership, leasing, redevelopment, renovation, improvement, or disposition of the property.
4. Cause the property or any portion thereof to be sold.
5. Market the property or any portion thereof.
6. Obtain, prepay or amend any financing other than the incurrence of trade payables.
7. Issue a joint venture interest.
8. Issue or sell any debt securities of the joint venture.
9. Make any distribution other than amounts authorized by the agreement.
10. File or initiate the filing of a bankruptcy, reorganization or insolvency petition.
11. Enter into, modify or terminate any Lease in excess of 8,000 square feet.
12. Initiate, negotiate, or settle any litigation in excess of $100,000.
13. Enter into, amend, modify, or terminate any agreement with a member notwithstanding GCEAR's rights enumerated elsewhere in the agreement.
14. Make any decision regarding tax matters.
15. Change or replace KPMG as accountant.
16. Make or settle any claims or make any adjustments under the contribution agreement.
17. Approve, determine or take any other action expressly reserved to the Subject Companies and GCEAR under the agreement.

In determining whether a gain should be recognized in connection with the contribution of the property and the amount of such gain, the Subject Companies considered the guidance in ASC 970-323-30-3 which indicates that in situations where an investor receives a cash distribution upon the contribution of properties to a venture and is not otherwise committed to reinvest that cash in the venture, the substance of the transaction is a partial sale of an interest in the properties contributed. As the Subject Companies are not required to make further capital contributions to the Venture, the Subject Companies concluded that this transaction met the requirements for partial sale accounting and looked to the guidance in ASC 360-20-40-46 through 360-20-40-49 to determine the amount of any gain to recognize. Further, the Subject Companies are not obligated to support the operations of the Venture to an extent greater than its proportional interest, and the agreement governing the Venture provides GCEAR with a priority on cash distributions. Thus, the Subject Companies concluded that the amount of gain to be recognized would be limited to the amount by which the net proceeds the Subject Companies received were in excess of the costs of the contributed property, in accordance with ASC 360-20-46-49. The gain of $93.5 million recorded by the Subject Companies was calculated as the difference between the net proceeds received of $167.5 million less the carrying value of the property sold to the Venture of $74.0 million, including deferred rent receivables and other required costs related to the property.

****

Please do not hesitate to contact me by telephone at (213) 891-8371 or by fax at (213) 891-8763 with any questions or comments regarding this correspondence.

Very truly yours,

/s/ Julian T.H. Kleindorfer

Julian T.H. Kleindorfer
of LATHAM & WATKINS LLP

cc: A. William Stein, Digital Realty Trust, Inc. and Digital Realty Trust, L.P.
Joshua A. Mills, Digital Realty Trust, Inc. and Digital Realty Trust, L.P.

May 22, 2015

VIA EDGAR

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.,
Washington, D.C. 20549
Attention: Daniel Gordon

Re: Digital Realty Trust, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 1-32336

Digital Realty Trust, L.P.
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 0-54023

Dear Mr. Gordon:

In connection with the letter dated May 22, 2015 pursuant to which Digital Realty Trust, Inc. and Digital Realty Trust, L.P. (collectively, the "***Subject Companies***") responded to the comments of the staff of the Division of the Corporate Finance of the Securities and Exchange Commission (the "***Commission***"), received by electronic mail on May 19, 2015, the Company hereby acknowledges that, (a) the Company is responsible for the adequacy and accuracy of the disclosure in the filings it makes with the Commission, (b) staff comments or changes to disclosures in response to staff comments do not foreclose the Commission from taking any action with respect to the filings, and (c) the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Very truly yours,

DIGITAL REALTY TRUST, INC.
DIGITAL REALTY TRUST, L.P.

By: /s/ Joshua A. Mills
Name: Joshua A. Mills
Title: Senior Vice President, General Counsel and Secretary

600 East 96th Street
Suite 100
Indianapolis, IN 46240
317.808.6000
www.dukerealty.com

June 8, 2015

VIA EDGAR

Ms. Jennifer Monick
Staff Accountant
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: Duke Realty Corporation
Duke Realty Limited Partnership (collectively referred to as the "Company")
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 20, 2015
File Numbers 1-9044 and 0-20625

Dear Ms. Monick:

The Company is providing this letter to you in response to the comments of the staff of the Division of Corporate Finance (the "Staff") of the Securities and Exchange Commission (the "Commission"), as set forth in your letter, dated May 27, 2015 (the "Comment Letter") related to the Company's 2014 Annual Report on Form 10-K (the "2014 Form 10-K"). The numbered paragraph below corresponds to the numbered paragraph in the Comment Letter. To facilitate your review, the Company has reproduced below the original text of the Staff's comment, and has included its response immediately following such comment.

Please note that the Company is filing this response letter via EDGAR submission.

FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2014

General

1. Please provide us with your Rule 3-09 significance test calculations for 2014. Additionally, please tell us how you determined the unconsolidated joint venture that sold an office tower in Atlanta, Georgia during 2014 was not significant under Rule 3-09.

Response:

We have included our Rule 3-09 significance test calculations as requested. As shown in these calculations, none of our individual unconsolidated joint ventures, including the unconsolidated joint venture that sold an office tower in Atlanta, Georgia during 2014 (3630 Peachtree Road Holdings Limited Partnership or "3630 Peachtree"), were determined to be significant under Rule 3-09.

The 2014 Rule 3-09 significance tests were computed as follows (in thousands):

Investment Test	**Texas Dugan LLC**	**Duke/Hulfish LLC**	**Duke HHC Realty Development LLC**	**Linden Development LLC**	**All Other - Investments Individually Less than $20 million**	**Total as Presented in 2014 Form 10-K**
Investment in Unconsolidated Entity (Numerator for Investment Test)	$ 102,869	$ 45,894	$ 40,040	$ 32,104	$ 72,743	$ 293,650
Total Assets per 2014 Form 10-K - Duke Realty Corporation ("DRE") and Duke Realty Limited Partnership ("DRLP") - (Denominator for Investment Test)	$7,754,839	$ 7,754,839	$ 7,754,839	$ 7,754,839		
Significant Subsidiary Calculation	**1.3%**	**0.6%**	**0.5%**	**0.4%**		
Significant Pursuant to S-X 3-09 for Investment Test?	**No**	**No**	**No**	**No**		

-

Income Test

	3630 Peachtree		Dugan Millennia LLC		Duke/Hulfish LLC		Texas Dugan LLC		All Other - Registrant Share of Equity in Earnings Individually Less than $5 million	Total as Presented in 2014 Form 10-K
Equity in Earnings - 2014	$ 58,612		$ 15,656		$ 6,759		$ 6,475		$ 6,815	$ 94,317
Less Basis Differences and Registrant Share of Investee -Level Earnings from Discontinued Operations	(58,458)	**(1)**	(15,462)	**(1)**	(19)		—		(500)	
Numerator for Significance Test	**$ 154**	**A**	**$ 194**	**A**	**$ 6,740**	**A**	**$ 6,475**	**A**	**$ 6,315**	
Income from Continuing Operations Before Taxes per 2014 Form 10-K (DRE and DRLP)	$ 225,125		$ 225,125		$ 225,125		$ 225,125			
Less Equity in Earnings Amounts Excluded from Numerator of Test	(58,458)		(15,462)		(19)		—			
Less DRE Noncontrolling Interest Attributable to Continuing Operations	(2,607)		(2,607)		(2,607)		(2,607)			
DRE Income from Continuing Operations Attributable to Common Shareholders (Denominator for Income Test)	**$ 164,060**	**B**	**$ 207,056**	**B**	**$ 222,499**	**B**	**$ 222,518**	**B**		
Add Back DRE Noncontrolling Interest Attributable to Continuing Operations	2,607		2,607		2,607		2,607			
Less DRLP Noncontrolling Interest Attributable to Continuing Operations	(240)		(240)		(240)		(240)			
DRLP Income from Continuing Operations Attributable to Common Shareholders (Denominator for Income Test)	**$ 166,427**	**C**	**$ 209,423**	**C**	**$ 224,866**	**C**	**$ 224,885**	**C**		
DRE - Significant Subsidiary Calculation (A/B)	**0.1%**		**0.1%**		**3.0%**		**2.9%**			
DRLP - Significant Subsidiary Calculation (A/C)	**0.1%**		**0.1%**		**3.0%**		**2.9%**			
Significant Pursuant to S-X 3-09 for Income Test?	**No**		**No**		**No**		**No**			

(1) The sole purpose of these joint ventures was to own and operate real estate assets. During 2014, both of these joint ventures sold all of their real estate assets, repaid their third party debt and distributed the resultant cash proceeds to us and their other owners. The gain on sale of those real estate assets, and all of the pre-sale operations from those real estate assets, met the criteria to be classified within discontinued operations at the investee level. Such items meeting the criteria to be classified as discontinued operations at the investee level were excluded from the income significance test based on the guidance in Section 2410.3 of the Commission's Financial Reporting Manual, which indicates that the numerator in the income test is calculated based on the registrant's share of pre-tax income from continuing operations reflected in the separate financial statements of the investee prepared in accordance with U.S. GAAP for the period in which the registrant recognizes income or loss from the investee under the equity method, adjusted for any basis differences.

Equity in earnings related to basis differences excluded from both the numerator and denominator of the income significance tests pertain primarily to impairment charges on the investment in the 3630 Peachtree joint venture recognized at the registrant level (and not in the investee's separate financial statements) during 2009, which caused a basis difference. Additionally, the equity in earnings impact at the registrant level of any other basis differences written off as a direct result of the sale of the underlying joint venture assets, which were not reflected in the separate financial statements of the investee, are excluded from both the numerator and the denominator of the income significance test.

Because the sales of the assets underlying these joint ventures represented the effective liquidation of our ownership interests in these joint ventures, we believe the results of these sales would also be appropriately excluded from the numerator of the income test, pursuant to the guidance in section 2410.8 of the Commission's Financial Reporting manual, had the sales been included in income from continuing operations at the investee level.

August 10, 2015

VIA EDGAR

Ms. Jennifer Monick
Senior Staff Accountant
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: DuPont Fabros Technology, Inc.
Form 10-K for the Year Ended December 31, 2014
Filed February 25, 2015
File No. 001-33748

DuPont Fabros Technology, L.P.
Form 10-K for the Year Ended December 31, 2014
Filed February 25, 2015
File No. 333-165465-17

Dear Ms. Monick:

Reference is made to your letter, dated July 29, 2015, regarding comments made by the Staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") with respect to the above referenced Annual Report on Form 10-K for the year ended December 31, 2014. This letter repeats the comment in the Staff's letter in bolded typeface followed by a response prepared by management of DuPont Fabros Technology, Inc. and DuPont Fabros Technology, L.P. together with our legal representatives. We have also sent to your attention courtesy copies of this letter.

General

1. **Please tell us how you determined it is appropriate to provide combined periodic reports for parent and subsidiary registrants given that you owned approximately 81.1% of your operating partnership at December 31, 2014.**

COMPANY RESPONSE: Management has determined it is appropriate to provide combined periodic reports for DuPont Fabros Technology, Inc. (the "Company") and DuPont Fabros Technology, L.P. (the "Operating Partnership"). The Company began presenting combined periodic reports in 2010. In evaluating that presentation, management believed (and continues to believe) combining the periodic reports of the Company and the Operating Partnership into a single report provides several benefits, including:

- enhancing investors’ understanding of the Company and the Operating Partnership by enabling investors to view the business as a whole in the same manner as management views and operates the business (discussions with investors support that this benefit has resulted from the combined presentation);
- eliminating duplicative disclosure and provides a more streamlined and readable presentation since a substantial portion of the disclosure in the periodic reports applies to both the Company and the Operating Partnership; and
- creating time and cost efficiencies through the preparation of one combined report instead of two separate reports.

We have considered the SEC staff guidance in Section 1370 of the Division of Corporate Finance Financial Reporting Manual (“FRM”). Although “substantially all” is not defined, we believe there is not a material difference in the financial statement presentation between 81.1% ownership and a higher percentage, particularly in this case where the Company is the sole general partner of the Operating Partnership and, as such, has exclusive control of the day-to-day management of the Operating Partnership. Since the Company owned approximately 81.1% of the Operating Partnership as of December 31, 2014, we considered the nature of 18.9% of the Operating Partnership not owned by the Company. The units of limited partnership interest (“OP units”) in the Operating Partnership held by limited partners have the economic equivalent of, and are convertible on a one for one basis for, shares of common stock of the Company. Therefore, we believe the overall substance of the relationship between the entities and their owners is economically equivalent to the Company owning 100% of the equity interests in the Operating Partnership. We believe the holders of OP units have equal or greater interest in the performance of the Company as they do in the Operating Partnerships and it would be less effective and potentially confusing to investors to present the information in two separate filings.

Management believes it is important for investors to understand that there are no differences between the Company and the Operating Partnership in the context of how the Company and the Operating Partnership operate as a consolidated company and believes the preparation of combined periodic reports best enhances this understanding. The only difference between the assets of the Company and those of the Operating Partnership is a cash balance of about $4 million. There is no difference from a financial, business or operational perspective between ownership levels of 81.1% and 99% in the Company’s UPREIT structure.

In preparing combined periodic reports for the Company and the Operating Partnership, management complies with the staff position set forth in Section 1370 of the FRM. The combined periodic reports of the Company and the Operating Partnership include separate audit reports, separate reviewed interim financial statements (where applicable), separate reports on disclosure controls and procedures and internal controls over financial reporting, separate complete financial statements, separate footnotes for areas that differ and separate CEO/CFO certifications. Given the Company’s compliance with these requirements and the other considerations cited above, management believes it is appropriate to provide combined periodic reports for the Company and the Operating Partnership

2. **We note your triple-net lease with Microsoft represents 20.5% of your annualized base rent and 21.6% of your consolidated revenues for the year ended December 31, 2014. Please tell us if Microsoft leases in excess of 20% of your assets as of December 31, 2014. To the extent that Microsoft leases in excess of 20% of your assets, please tell us how you determined it was unnecessary to include a statement referring investors to a publicly-available website with the lessee’s SEC filed financial statements.**

COMPANY RESPONSE: As of December 31, 2014, Microsoft leased less than 20% of our total assets. Therefore, we were not required to include a statement referring investors to a publicly-available website with the lessee's SEC filed financial statements. Management will continue to monitor the percentage of our total assets leased by our most significant customers.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Reconciliation of Same Store Operating Income to Same Store Net Operating Income and Cash Net Operating Income, page 41

3. **It appears from your disclosure in footnote (1) on page 41 that you have reconciled NOI and Cash NOI to the operating income attributable only to the properties included in the analysis. In future filings, please include a reconciliation of these non-GAAP measures to operating income as a whole as presented in your consolidated statements of operations. Refer to Item 10(e)(1)(i)(B) of Regulation S-K.**

COMPANY RESPONSE: Beginning with the 10-Q for the quarter ending September 30, 2015 we will include a reconciliation of same store NOI and same store Cash NOI to operating income as a whole as presented on our consolidated statements of operations.

The Company acknowledges that:

- the company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact me at (202) 478-2333 in connection with questions or comments concerning the above response. Thank you for your attention to this matter.

Very truly yours,

/s/ Jeffrey H. Foster

Jeffrey H. Foster
Executive Vice President and Chief Financial Officer

July 6, 2015

Mr. Tom Kluck

Legal Branch Chief

U.S. Securities and Exchange Commission

Division of Corporation Finance

100 F Street, NE

Washington, DC 20549

Re: EastGroup Properties, Inc.

Form 10-K for the year ended December 31, 2014

Filed February 17, 2015

File No. 001-07094

Dear Mr. Kluck:

In connection with your review of the EastGroup Properties, Inc. (the “Company”) Form 10-K for the year ended December 31, 2014 (the “2014 Form 10-K”), we respectfully submit the following responses to the comments included in your letter dated July 1, 2015. Each of the Staff’s comments are restated in bold with our responses to the comments following immediately thereafter.

<u>Properties, page 10</u>

1. **Please tell us what consideration you have given to disclosing in greater detail your tenant-type concentration.**

Response: We consider tenant-type concentration when preparing our disclosures. We disclose the fact that we are geographically concentrated in the Sunbelt region of the United States and we discuss the risks associated with our geographic concentration in “Item 1A. Risk Factors-Risks Associated with Our Properties-We face risks due to lack of geographic and real estate sector diversity” on page 7 of the 2014 Form 10-K. We also disclose in that risk factor that as of December 31, 2014, we owned operating properties totaling 6.2 million square feet in Houston, which represents 18.6% of the Company’s total Real estate properties on a square foot basis. We supplementally note that as of December 31, 2014 no single tenant in Houston accounted for more than 5% of that market on a square foot basis and that the Company estimates that tenants that are directly

involved in the oil and gas industry represent approximately 24% of the Houston market on a square foot basis and approximately 5% of the Company's aggregate annualized base rent. Accordingly, we have not historically included any information regarding tenant-type concentration under Item 2-Properties. In preparing disclosure in our future Exchange Act periodic reports we will continue to evaluate our portfolio with respect to tenant-type concentration and will include appropriate disclosure, if a material concentration is identified.

Management's Discussion and Analysis of Financial Condition and Results of Operations, page 15

2. **We note your disclosure on page 17 comparing the same property average rental rates in 2013 to 2014. In future Exchange Act periodic reports, please disclose whether average rental rate is based on effective rent that includes free rent periods.**

Response: We calculate average rental rates in accordance with GAAP. In light of the Staff's comment we will disclose in future Exchange Act periodic reports that our average rental rates are calculated in accordance with GAAP and are based on effective rent that includes free rent periods.

Exhibits

3. **We note that you incorporate by reference your Articles of Incorporation from your proxy statement for your annual meeting held on June 5, 1997. It appears that the document has been on file with the Commission for more than five years. See Item 10(d) or Regulation S-K. In future Exchange Act filings, please file the Articles of Incorporation as an exhibit or advise.**

Response: We note that Item 10(d)(2) provides an exception to the five-year rule for "[d]ocuments that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule." We further note that the 1997 proxy statement was filed by the Company via EDGAR on April 24, 1997 under file number 1-07094 and that the retention period under the Records Control Schedule for proxy materials is 30 years. Accordingly in future Exchange Act filings we will specifically reference the SEC file number when incorporating by reference any document on file with the Commission for more than five years.

***

In connection with our responses, the Company acknowledges the following:

- The Company is responsible for the adequacy and accuracy of the disclosure in its filings;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filings; and
- The Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you need additional information, please contact me at (601) 354-3555.

Sincerely,

/s/ N. Keith McKey

N. Keith McKey

Executive Vice President, Chief Financial Officer,

Treasurer and Secretary

cc: Michael Donlon

999 S. Shady Grove Road, Ste. 600
Memphis, TN 38120
901.259.2500 phone
www.EdRtrust.com

July 24, 2015

Via EDGAR

Kevin Woody
Branch Chief
United States Securities and Exchange Commission
Division of Corporate Finance
450 Fifth Street, N.W.
Washington, D.C. 20549

**RE: Education Realty Trust, Inc.
Form 10-K
Filed February 27, 2015
File No. 001-32417**

Dear Mr. Woody:

The following sets forth the responses of Education Realty Trust, Inc. (the "***Company***") to the comments issued by the staff (the "***Staff***") of the Securities and Exchange Commission (the "***Commission***") with respect to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "***2014 Form 10-K***") in the Staff's letter (the "***Comment Letter***") dated July 21, 2015. For your convenience, we have restated the Staff's comment in italics with the Company's response immediately following the comment.

Form 10-K for the fiscal year ended December 31, 2014

Item 7. Management's discussion and analysis of financial condition and results of operations, page 34

Non-GAAP measures, page 56

Funds from operations (FFO), page 56

Comment: *We note that your calculation of FFO includes an adjustment for gain on insurance settlement. Please tell us whether management determined that this adjustment is in compliance with NAREIT's definition of FFO. Please tell us management's consideration for presenting an FFO, as an adjusted amount.*

Response: Management of the Company determined that the calculation of FFO disclosed in the 2014 Form 10-K has been prepared in compliance with the NAREIT definition of FFO and is consistent with the standards established by the Board of Governors of NAREIT in its March 1995 White Paper (as amended). As disclosed on page 56 of the 2014 Form 10-K, the Company makes certain adjustments in its calculation of FFO, including a deduction for "gain on insurance settlement." The Company believes this

gain on insurance settlement is synonymous with a gain on sale of a depreciable real estate asset, and therefore, has determined that the inclusion of such adjustment is consistent with the NAREIT definition of FFO.

One of the Company's income-producing communities was partially destroyed by a fire and sustained significant property damage. Costs to rebuild the community were covered under an existing insurance policy, and during the fiscal year ended December 31, 2014, the insurance claim related to the rebuild was settled with the insurance carrier. The insurance settlement exceeded the net book value of this asset, resulting in a gain on insurance proceeds of $8.1 million. Management of the Company believes that this gain is similar in nature and has the same characteristics as an adjustment for gains/losses from the sale of depreciable property, which are required to be excluded from FFO under NAREIT's definition.

For the reasons discussed above, management of the Company believes that the presentation of FFO and its reconciliation to net income is both consistent with NAREIT's definition of FFO and provides users of the Company's financial statements the ability to assess the Company's operating performance relative to its performance in prior reporting periods and relative to the operating performance of other REITs.

****

In responding to the Staff's comments, the Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- the Staff's comments or changes to disclosure in response to the Staff's comments do not foreclose the Commission from taking any action with respect to the filing; and
- The Company may not assert the Staff's comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions concerning our responses to your questions and comments, please do not hesitate to contact the undersigned at (901) 259-2507.

Sincerely,

/s/Edwin B. Brewer, Jr.
Edwin B. Brewer, Jr.
Executive Vice President and Chief Financial Officer

Empire State Realty Trust, Inc.
Empire State Realty OP, L.P.
One Grand Central Place
60 East 42nd Street
New York, New York 10165

August 21, 2015

VIA EDGAR

Ms. Jaime G. John
Branch Chief
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

RE: Empire State Realty Trust, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 27, 2015
File No. 1-36105

Empire State Realty OP, L.P.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 27, 2015
File No. 1-36106

Dear Ms. John:

We are writing in response to your letter dated July 31, 2015, setting forth the comments of the Staff of the Division of Corporation Finance (the "Staff") on the above mentioned filings for Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. (together, the "Company"). We have considered the Staff's comments and our responses are set forth below. To facilitate the Staff's review, we have keyed our responses to the headings and numbered comments used in the Staff's comment letter, which we have reproduced in bold print.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Results of Operations, page 53

1. **We note that you have provided a discussion of "combined" financial data for the predecessor period ended October 6, 2013 and the successor period ended December 31, 2013. Please note that your primary discussion should be of the actual results for each period (i.e. predecessor and successor separately). It is inappropriate to merely combine information for predecessor and successor periods. You can supplement your**

discussion of the actual historical results of operations with a discussion of pro forma financial information (e.g. predecessor period plus successor period plus pro forma adjustments).

The pro forma financial information should be presented in a format consistent with Article 11 of Regulation S-X and any discussion of such pro forma information should supplement and not be given greater prominence than actual results. Please tell us how you to intend to revise the disclosure in future filings.

Response: In response to the Staff's comment, the Company respectfully notes that in preparing the presentation of operating results in its Form 10-K, the Company considered that presenting historical 2013 results on a combined basis would facilitate the most comprehensive and meaningful discussion of results of operations and that, conversely, the presentation of pro forma financial information, as required by Article 11 of Regulation S-X, would not provide meaningful information or be useful to investors, and would potentially be confusing.

Per the Staff's comment, however, the Company respectfully advises the Staff that in future filings that require disclosure of our results for periods that include both the predecessor and successor periods, we will not base our results of operations discussion for such periods on combined financial information, but rather, we will present separate results for each of the respective predecessor and successor periods. Any pro forma financial information that we may include in future filings will comply with Article 11 of Regulation S-X.

Funds from Operations ("FFO"), page 66

2. **We note that your FFO calculation includes an adjustment for preferred unit distributions. Based upon your reconciliation, it appears that the $214.8 million FFO for the year ended December 31, 2014 represents FFO attributable to common shareowners and non-controlling interests. Please revise your presentation in future filings to clearly label the FFO measure. Also make adjustments to earnings releases filed on Form 8-K, as appropriate.**

Response: The Company hereby confirms that, in future filings after the date of this response letter, including future earnings releases filed on Form 8-K, Empire State Realty Trust, Inc. will use the label "Funds from Operations attributable to common stockholders and non-controlling interests" and Empire State Realty OP, L.P. will use the label "Funds from Operations attributable to common unitholders."

Item 8. Financial Statements and Supplementary Data

Note 10 – Commitments and Contingencies

Litigation, page F-28

3. **We note your disclosure on F-31 regarding the risk of a material adverse effect related to the "Second Class Actions" and the defense and indemnity rights held by certain other defendants. Please expand your disclosure to comply with the requirements of ASC 450-20-50 including disclosure of an estimate of the reasonably possible range of loss or a statement that such an estimate cannot be made.**

Response: In response to the Staff's comment, the Company respectfully notes that members of our internal legal and financial teams quarterly evaluate the status of legal matters in determining the probability of the incurrence of a loss and whether a loss is reasonably possible and estimable, along with evaluating the quarterly disclosures regarding such matters for compliance with ASC 450-20-50. We consider the facts and the applicable laws, and obtain the opinion of counsel, if applicable, in order to make this determination on a case by case basis.

With respect to the "Second Class Actions" and the defense and indemnity rights held by certain other defendants with respect thereto, a loss accrual has not been provided for in the historical financial statements because we believe we cannot reasonably estimate a possible range of potential loss at this time due to the excessive nature of the claims and damages sought by plaintiffs, the spectrum of remedies which may be available to the court in the event of an adverse ruling, and the difficulties at the current stage of the litigation of determining potential exposure related to each of the defendants in the matter. In future filings beginning with the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2015, to the extent still applicable, we will expand the disclosure to state that an estimate of the additional loss or range of loss cannot be made with respect to the "Second Class Actions," which such disclosure may be similar to the following:

> *At this time, due to the spectrum of remedies which may result from the outcome of the matter and the difficulty in calculating and allocating damages (if any) among the defendants, we cannot reasonably assess the timing or outcome of this litigation and any related indemnification obligations, estimate the amount of loss, or assess their effect, if any, on our financial statements.*

Exhibits 31.1 and 31.2

4. **The certifications do not conform exactly to the certification in Item 601(b)(31)(i) of Regulation S-K. Specifically, you have omitted the reference to internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d- 15(f)) in the introduction to paragraph 4 and omitted paragraph 4(b). Please amend your filings to include the introductory language required by paragraph 4 and to include paragraph 4(b) of Item 601(b)(31)(i) of Regulation S-K. Please note that this comment also applies to the Form 10-Q filed May 6, 2015.**

Response: The Company respectfully advises the Staff that following resolution of the Staff's comments, each of Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. will file amendments to their Annual Reports on Form 10-K for the fiscal year ended December 31, 2014,

their Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 2015 and their subsequently filed Quarterly Reports on Form 10-Q for the fiscal quarter ended June 30, 2015 to include revised officer certifications in the exact form as set forth in Item 601(b)(31)(i) of Regulation S-K. As discussed telephonically with the Staff, the amended filings will contain the cover page, explanatory note, signature page and certifications.

[Remainder of this page left intentionally blank]

June 26, 2015

VIA EDGAR

Ms. Jennifer Gowetski
Special Counsel
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Equity Commonwealth (the "Company")
Form 10-K for the fiscal year ended December 31, 2014
Filed February 19, 2015 (the "Filing")
File No. 1-9317

Dear Ms. Gowetski:

The Company is writing in response to your letter dated June 22, 2015. For your convenience, each of your original comments appears below in italicized text and is followed by the Company's response.

Form 10-K for fiscal year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 51

Overview, Page 51

1. *We note your disclosure on page 52 that, effective October 1, 2014, you engaged CBRE to conduct your day-to-day property management services for your U.S. properties. We further note you pay CBRE a property-by-property management services fee and will reimburse CBRE for certain expenses incurred in the performance of its duties. In future Exchange Act periodic reports, please more specifically describe how such fees are determined and quantify the aggregate fees and reimbursements that you have paid or are payable to CBRE or advise.*

   Company Response: The Company respectfully requests the amounts and methodology for determining the fees and reimbursements that it pays to CBRE for property management services (the "Confidential Material") be afforded confidential treatment under the Freedom of Information Act ("FOIA") pursuant to 17 C.F.R. Section 200.83. Pursuant to Rule 12b-4 promulgated under the Securities Exchange Act of 1934, as

   amended, the Confidential Material is being provided to the Staff on a confidential, supplemental basis only and is not to be filed with or deemed part of the Company's SEC filings. Pursuant to Rule 12b-4, the Company hereby requests that the Confidential Material be returned using the self-addressed envelope included with this submission to the undersigned promptly following completion of the Staff's review of the Confidential Material.

   The amount of the fees payable were determined and negotiated with CBRE across the Company's portfolio. The specific amounts are commercially sensitive information for both the Company and CBRE and are the subject of confidentiality agreements. It would be detrimental to both the Company and CBRE for this information to be publicly disclosed. Furthermore, the Company believes that although this information is very commercially sensitive, the specific amount of fees payable on a property by property basis is not material to an investor's understanding of the Company's business or results of operations. As a result, the Company is seeking confidential treatment of the methodology and amount of the property management fees it pays to CBRE.

2. *We note your disclosure on page 51 that leases entered into during the year ended December 31, 2014, including both lease renewals and new leases, had weighted average cash rental rates that were approximately 1.7% lower than prior rental rates for the same space and weighted average GAAP rental rates that were approximately 3.4% higher than prior rental rates for the same space. In future Exchange Act periodic reports, please revise to separately compare rental rates for lease renewals and new leases as well as briefly explain the reasons for the difference between weighted average cash rental rates and weighted average GAAP rental rates.*

Company Response: The Company acknowledges this comment, understands the usefulness of these additional disclosures and intends to comply with the request.

3. *We note that leases representing approximately 11% of your annualized rental revenue and square footage will expire by the end of the current fiscal year. In future Exchange Act periodic reports, please discuss the relationship of market rents and expiring rents.*

Company Response: The Company acknowledges this comment, understands the usefulness of these additional disclosures and intends to comply with the request.

Funds From Operations (FFO) and Normalized FFO, page 69

4. *Please tell us why management did not exclude the excess redemption price over carrying value of preferred shares in calculating FFO attributable to Equity Commonwealth common shareowners.*

Company Response: It is our intent to calculate FFO in a manner consistent with National Association of Real Estate Investment Trusts' ("NAREIT"'s) *White Paper on Funds from Operations*, which provides the real estate industry standard for calculating FFO. This

publication does not contemplate an adjustment to FFO for the item mentioned in your letter. Thus, we use our judgment to adjust FFO for items we consider relevant to a common shareholder to arrive at FFO attributable to Equity Commonwealth common shareholders.

For the information of the staff of the Securities and Exchange Commission (the "Staff"), page F-27 of our 2014 Annual Report on Form 10-K describes the excess redemption price paid over carrying value of preferred shares. As described therein, a Fundamental Change Conversion Right (commonly referred to as a "change-in-control") event was triggered when the Company's Prior Trustees were removed on March 25, 2014. This event allowed our series D preferred shareholders to exchange their shares for Equity Commonwealth common shares between April 9, 2014 and May 14, 2014. As a result, holders of the series D preferred shares converted 10,263,003 series D preferred shares for 10,411,779 of the Company's commons shares. The *excess redemption price paid over carrying value of preferred shares* was the one-time, non-cash excess of the current market value of the Company's common shares issued above the carrying value of the series D preferred shares redeemed.

For the information of the Staff, page 68 of our Annual Report on Form 10-K describes the usefulness of FFO. As noted therein, we recommend FFO be considered in conjunction with GAAP measures such as net income attributable to Equity Commonwealth common shareholders. Such GAAP measures include excess redemption price paid over carrying value of preferred shares.

Given the nonrecurring and non-cash nature of the excess redemption price paid over carrying value of preferred shares, as well as the uses for FFO discussed above, the Company feels that the disclosure as presented is appropriate.

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the Filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

The Company appreciates your comments and welcomes the opportunity to discuss with you the responses provided above. Please call me at 312-646-2839 if you have any questions or require additional information.

Sincerely,

Equity Commonwealth

By: /s/ Adam Markman
Adam Markman
Treasurer & Chief Financial Officer

July 21, 2015

VIA EDGAR

Ms. Jennifer Gowetski
Special Counsel
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Equity Commonwealth (the "Company")
Form 10-K for the fiscal year ended December 31, 2014
Filed February 19, 2015 (the "Filing")
File No. 001-9317

Dear Ms. Gowetski:

The Company is writing in response to your letter dated July 20, 2015. For your convenience, your original comment appears below in italicized text and is followed by the Company's response.

Form 10-K for fiscal year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 51

Overview, Page 51

1. *We considered your response to comment 1. Our comment was directed at eliciting additional disclosure of the aggregate fees and reimbursements paid or payable to CBRE and a general explanation how such fees are determined. Please confirm that you will include a disclosure of the aggregate fees and reimbursements paid or payable to CBRE and a general explanation of how such fees are determined or advise.*

   Company Response: The Company acknowledges this comment, understands the usefulness of these additional disclosures and hereby confirms that it will comply with the request.

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Filing;

- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any

ESSEX
PROPERTY TRUST, INC.

May 13, 2015

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549
Attention: Wilson K. Lee, Senior Staff Accountant

Re: Essex Property Trust, Inc. and Essex Portfolio, L.P. (the "Companies")
Form 10-K for Fiscal Year Ended December 31, 2014 for each of the Companies
Filed March 2, 2015 for each of the Companies
File Nos. 1-13106 and 333-44467-01, respectively

Dear Mr. Lee:

Essex Property Trust, Inc. (the "Company" or "Essex") submits this letter in response to comments from the staff (the "Staff') of the Securities and Exchange Commission (the "SEC") received by a letter, dated April 28, 2015, related to the above filing. On May 8, 2015, we submitted a response to the Staff's April 28th comment letter. As a result of subsequent discussions with the Staff, we are hereby modifying our response to the Staff's comment. The response set forth below supersedes the response set forth in our May 8, 2015 letter.

In this letter, we have recited the comment from the Staff in italicized, bold type, and have followed the comment with the Company's response in regular type.

Form 10-K for the year ended December 31, 2014 for each of the Companies

Item 6. Selected Financial Data, pages 32-36

1. In arriving at Funds from operations, you start with Net income available to common stockholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity stockholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common stockholders".

Response:

Funds from Operations ("FFO") includes net income attributable to the noncontrolling interest of limited partner unit holders of the Company's operating partnership, Essex Portfolio, L.P. ("EPLP"), and excludes net income attributable to other noncontrolling interests and dividends relating to preferred stockholders. Accordingly, we will re-title "Funds from operations" as "Funds from operations attributable to common stockholders and unitholders" in future periodic filings.

We acknowledge that the adjustment for noncontrolling interest attributable to the limited partner unitholders of EPLP was included, without specificity, as an "other" adjustment in the line item "Depreciation add back from unconsolidated co-investments, and other, net" on page 34 of the Form 10-K for the year ended December 31, 2014 and that our FFO table does not clearly set forth that the FFO amount also includes that noncontrolling interest adjustment. Accordingly, in future periodic filings, we will set forth in a separate line item, the add back of net income allocated to such noncontrolling interest.

* * *

ESSEX
PROPERTY TRUST, INC.

May 8, 2015

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549
Attention: Wilson K. Lee, Senior Staff Accountant

Re: Essex Property Trust, Inc. and Essex Portfolio, L.P. (the "Companies")
Form 10-K for Fiscal Year Ended December 31, 2014 for each of the Companies
Filed March 2, 2015 for each of the Companies
File Nos. 1-13106 and 333-44467-01, respectively

Dear Mr. Lee:

Essex Property Trust, Inc. (the “Company” or “Essex”) submits this letter in response to comments from the staff (the “Staff”) of the Securities and Exchange Commission (the “SEC”) received by a letter, dated April 28, 2015, related to the above filing.

In this letter, we have recited the comment from the Staff in italicized, bold type, and have followed the comment with the Company’s response in regular type.

Form 10-K for the year ended December 31, 2014 for each of the Companies

Item 6. Selected Financial Data, pages 32-36

1. ***In arriving at Funds from operations, you start with Net income available to common stockholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity stockholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common stockholders".***

Response:

In calculating Funds from operations, or “FFO”, we add back the net income attributable to the noncontrolling interest of the limited partner unit holders of the Company’s operating partnership, Essex Portfolio, L.P. (the “Operating Partnership”). This noncontrolling interest add back is included within the line item "Depreciation add back from unconsolidated co-investments and other, net" in the "Other Data" table on page 34 of the Form 10-K for the year ended December 31, 2014. By adding this amount back, it converts the “net income available to common stockholders” to an amount attributable to both the common stockholders and the Operating Partnership limited partners. Accordingly,

the weighted average numbers of shares outstanding, diluted, used to calculate FFO and Core FFO per diluted share includes both common shares and Operating Partnership units outstanding for the year.

As the FFO amount also includes net income attributable to the noncontrolling interest of limited partner unit holders, we respectfully submit that it would not be appropriate to re-title "Funds from operations" as "Funds from operations attributable to common stockholders."

We acknowledge that the adjustment for non-controlling interest was included, without specificity, as an "other" adjustment in the line item "Depreciation add back from unconsolidated co-investments, and other, net" and that our FFO table does not clearly set forth that the FFO amount also includes that noncontrolling interest adjustment. Accordingly, in future periodic filings, we will set forth in a separate line item the add back of net income allocated to such noncontrolling interest.

* * *

The Company hereby acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please direct any questions or additional comments regarding this response to the undersigned.

Sincerely,

/s/ Michael T. Dance

Michael T. Dance
Executive Vice President, Chief Financial Officer
Essex Property Trust, Inc.
925 East Meadow Drive
Palo Alto, CA 94303

Phone: +1 650 494 3700
Fax: +1 650 494 8743
Email: mdance@essexpropertytrust.com

ESSEX
PROPERTY TRUST, INC.

May 13, 2015

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549
Attention: Wilson K. Lee, Senior Staff Accountant

Re: Essex Property Trust, Inc. and Essex Portfolio, L.P. (the "Companies")
Form 10-K for Fiscal Year Ended December 31, 2014 for each of the Companies
Filed March 2, 2015 for each of the Companies
File Nos. 1-13106 and 333-44467-01, respectively

Dear Mr. Lee:

Essex Property Trust, Inc. (the "Company" or "Essex") submits this letter in response to comments from the staff (the "Staff') of the Securities and Exchange Commission (the "SEC") received by a letter, dated April 28, 2015, related to the above filing. On May 8, 2015, we submitted a response to the Staff's April 28th comment letter. As a result of subsequent discussions with the Staff, we are hereby modifying our response to the Staff's comment. The response set forth below supersedes the response set forth in our May 8, 2015 letter.

In this letter, we have recited the comment from the Staff in italicized, bold type, and have followed the comment with the Company's response in regular type.

Form 10-K for the year ended December 31, 2014 for each of the Companies

Item 6. Selected Financial Data, pages 32-36

1. In arriving at Funds from operations, you start with Net income available to common stockholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity stockholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common stockholders".

Response:

Funds from Operations ("FFO") includes net income attributable to the noncontrolling interest of limited partner unit holders of the Company's operating partnership, Essex Portfolio, L.P. ("EPLP"), and excludes net income attributable to other noncontrolling interests and dividends relating to preferred stockholders. Accordingly, we will re-title "Funds from operations" as "Funds from operations attributable to common stockholders and unitholders" in future periodic filings.

We acknowledge that the adjustment for noncontrolling interest attributable to the limited partner unitholders of EPLP was included, without specificity, as an "other" adjustment in the line item "Depreciation add back from unconsolidated co-investments, and other, net" on page 34 of the Form 10-K for the year ended December 31, 2014 and that our FFO table does not clearly set forth that the FFO amount also includes that noncontrolling interest adjustment. Accordingly, in future periodic filings, we will set forth in a separate line item, the add back of net income allocated to such noncontrolling interest.

* * *

545 E. JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TX 75062
PH: 972-444-4900
NYSE: FCH

JEFFREY D. SYMES
SENIOR VICE PRESIDENT
CHIEF ACCOUNTING OFFICER AND CONTROLLER

July 23, 2015

VIA EDGAR

U.S. Securities and Exchange Commission
Division of Corporation Finance
Mail Stop 3010
Washington, D.C. 20549

Re: FelCor Lodging Trust Incorporated
Form 10-K for the year ended December 31, 2014
File No. 001-14236

FelCor Lodging Limited Partnership
Form 10-K for the year ended December 31, 2014
File No. 333-39595-01

Ladies and Gentlemen:

On behalf of FelCor Lodging Trust Incorporated and FelCor Lodging Limited Partnership (together "FelCor"), we hereby file FelCor's response to comments contained in the letter from the U.S. Securities and Exchange Commission, Division of Corporation Finance (the "Commission"), dated July 21, 2015. For your convenience, we have repeated the comment prior to our response.

Form 10-K for the year ended December 31, 2014

Note 8 – Joint Venture Transaction, pages 78 – 79

1. **Given the significance of your gain on sale of investment in unconsolidated entities, please clarify how you determined the related unconsolidated entities were not significant to require separate financial statements pursuant to Rule 3-09 of Regulation S-X.**

In connection with preparing our Annual Report on Form 10-K for the year ended December 31, 2014 (our "2014 Form 10-K"), we evaluated the significance of our equity method investees to determine if separate financial statements pursuant to Rule 3-09 of Regulation S-X were required. We determined that each investee failed both the first and third significant subsidiary tests described in Rule 1-02(w) of Regulation S-X for all financial statement periods presented in our 2014 Form 10-K (substituting 20% for 10%). As provided for in the Division of Corporation Finance's Financial Reporting Manual Topic 2 - Sections 2020.4 and 2410.3, we excluded both our 2014 gain on the disposition of investment in unconsolidated entities and our 2014 gain from remeasurement to fair value of previously unconsolidated entities from the numerator when calculating each investee's share of our 2014 income from continuing operations.

545 E. JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TX 75062
PH: 972-444-4900
NYSE: FCH

JEFFREY D. SYMES
SENIOR VICE PRESIDENT
CHIEF ACCOUNTING OFFICER AND CONTROLLER

July 23, 2015

VIA EDGAR

U.S. Securities and Exchange Commission
Division of Corporation Finance
Mail Stop 3010
Washington, D.C. 20549

Re: FelCor Lodging Trust Incorporated
Form 10-K for the year ended December 31, 2014
File No. 001-14236

FelCor Lodging Limited Partnership
Form 10-K for the year ended December 31, 2014
File No. 333-39595-01

Ladies and Gentlemen:

On behalf of FelCor Lodging Trust Incorporated and FelCor Lodging Limited Partnership (together "FelCor"), we hereby file FelCor's response to comments contained in the letter from the U.S. Securities and Exchange Commission, Division of Corporation Finance (the "Commission"), dated July 21, 2015. For your convenience, we have repeated the comment prior to our response.

Form 10-K for the year ended December 31, 2014

Note 8 – Joint Venture Transaction, pages 78 – 79

1. **Given the significance of your gain on sale of investment in unconsolidated entities, please clarify how you determined the related unconsolidated entities were not significant to require separate financial statements pursuant to Rule 3-09 of Regulation S-X.**

In connection with preparing our Annual Report on Form 10-K for the year ended December 31, 2014 (our "2014 Form 10-K"), we evaluated the significance of our equity method investees to determine if separate financial statements pursuant to Rule 3-09 of Regulation S-X were required. We determined that each investee failed both the first and third significant subsidiary tests described in Rule 1-02(w) of Regulation S-X for all financial statement periods presented in our 2014 Form 10-K (substituting 20% for 10%). As provided for in the Division of Corporation Finance's Financial Reporting Manual Topic 2 - Sections 2020.4 and 2410.3, we excluded both our 2014 gain on the disposition of investment in unconsolidated entities and our 2014 gain from remeasurement to fair value of previously unconsolidated entities from the numerator when calculating each investee's share of our 2014 income from continuing operations.

September 25, 2015

VIA EDGAR

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attn: Wilson K. Lee, Senior Accountant
Peter McPhun, Staff Accountant

Re: First Potomac Realty Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed February 20, 2015
File No. 001-31824

Dear Mr. Lee:

This letter is in response to the comments of the Staff of the Division of Corporation Finance (the "**Staff**") of the United States Securities and Exchange Commission (the "**Commission**"), received by e-mail on September 17, 2015, with respect to the Annual Report on Form 10-K for the fiscal year ended December 31, 2014 of First Potomac Realty Trust, a Maryland real estate investment trust (the "**Company**"), which was filed with the Commission on February 20, 2015.

For ease of review, the Staff comment contained in your September 17, 2015 letter is reprinted below in bold and is followed by the Company's corresponding response thereto.

Form 10-K for the year ended December 31, 2014

Form 10-Q for the three months ended March 31, 2015 and the three and six months ended June 30, 2015

Exhibit 31.2

1. **We note that paragraph 2 of the Executive Vice President and Chief Financial Officer certifications filed in Exhibit 31.2 duplicates paragraph 4 and excludes the language for paragraph 2 outlined within Item 601(b)(31) of Regulation S-K. Please amend your filings to include corrected certifications that contain the required statement.**

   RESPONSE: As discussed telephonically with the Staff, the Company will file abbreviated amendments to the above-referenced quarterly reports on Form 10-Q, which will include corrected certifications.

September 23, 2015

VIA EDGAR

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549
Attention: Tom Kluck – Legal Branch Chief
Mail Stop 4561

Re: Franklin Street Properties, Inc.
Form 10-K
Filed February 17, 2015
File No. 001-32470

Dear Mr. Kluck:

Franklin Street Properties Corp. (the "Company") has set forth below a response to the comment to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 provided by you to Mr. John G. Demeritt in a letter dated September 15, 2015 (the "Letter"). The response is keyed to the numbering of the comment in the Letter and to the headings used in the Letter.

Item 2. Properties

1. In future Exchange Act periodic reports, please provide a lease expiration table for ten years, starting with the year in which the report is filed, stating (i) the number of tenants whose leases will expire, (ii) the total area in square feet covered by such leases, (iii) the annual rental represented by such leases, and (iv) the percentage of gross annual rental represented by such leases.

Response

In future Annual Reports on Form 10-K, the Company undertakes to include a lease expiration table for ten years, starting with the year in which the report is filed, stating (i) the number of tenants whose leases will expire, (ii) the total area in square feet covered by such leases, (iii) the annual rental represented by such leases, and (iv) the percentage of gross annual rental represented by such leases.

FSP INVESTMENTS LLC ▪ FSP PROPERTY MANAGEMENT LLC

401 Edgewater Place ▪ Suite 200 ▪ Wakefield, MA 01880 ▪ Telephone: 781 246 4900 ▪ Fax: 781 246 2807

March 24, 2015

<u>Via EDGAR</u>
Mr. Kevin Woody
Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: ***General Growth Properties, Inc.***
Form 10-K for the year ended December 31, 2014 (the "Form 10-K")
Filed March 2, 2015
File No. 001-34948

Dear Mr. Woody:

I am writing on behalf of General Growth Properties, Inc. (the "Company", "we", "GGP" or "our") in response to comments of the staff (the "Staff") of the Securities and Exchange Commission ("the Commission") contained in your correspondence dated March 17, 2015. The heading and page number below from the Company's Annual Report on Form 10-K ("Annual Report") corresponds to the heading and page number referenced in your letter. In addition, for your convenience, I have reproduced your comments in this letter and included our responses directly below each comment. Capitalized terms not defined herein shall have the meanings given to them in the Company's periodic reports.

<u>Note 2 – Summary of Significant Accounting Policies, page F-13</u>

1. *In future filings, please disclose your accounting policy for dispositions of assets, and in particular, contributions of assets to joint ventures.*

<u>Response:</u> We acknowledge the Staff's comment and note that in future Exchange Act periodic reports, we will disclose our accounting policy for dispositions of assets, and in particular, contributions of assets to joint ventures. As an illustration of the disclosure approach we expect to take with respect to the December 31, 2015 10-K, below is a markup of our proposed changes to the disclosure on pages F-15 and F-16 of our Form 10-K for Year Ended December 31, 2014 (with the proposed addition in bold and brackets):

<u>Revenue Recognition and Related Matters (F-16)</u>

Tenant recoveries are established in the leases or computed based upon a formula related to real estate taxes, insurance and other property operating expenses and are generally recognized as revenues in the period the related costs are incurred.

[Real estate sales are recognized whenever (1) a sale is consummated, (2) the buyer has demonstrated an adequate commitment to pay for the property, (3) the Company's receivable is not subject to future subordination, and (4) the Company has transferred to the buyer the

risks and rewards of ownership and does not have continuing involvement. Unless all conditions are met, recognition of all or a portion of the profit shall be postponed.]

We provide an allowance for doubtful accounts against the portion of accounts receivable, including straight-line rents, which is estimated to be uncollectible. Such allowances are reviewed periodically based upon our recovery experience. The following table summarizes the changes in allowance for doubtful accounts:

Investment in Unconsolidated Real Estate Affiliates (F-15)

Partially owned, non-variable interest joint ventures over which we have controlling financial interest are consolidated in our consolidated financial statements. In determining if we have a controlling financial interest, we consider factors such as ownership interest, authority to make decisions, kick-out rights and substantive participating rights. Partially owned joint ventures where we do not have a controlling financial interest, but have the ability to exercise significant influence, are accounted for using the equity method.

[To the extent that the Company contributes assets to a joint venture accounted for using the equity method, the Company's investment in the joint venture is recorded at the Company's cost basis in the assets that were contributed to the joint venture. The Company will recognize gains and losses on the contribution of its real estate to joint ventures, relating solely to the outside partner's interest, to the extent the buyer is independent of the Company, the collection of the sales price is reasonably assured, and the Company will not be required to support the operations of the property or its related obligations to an extent greater than its proportionate interest.]

[The combined summarized financial information of unconsolidated joint ventures is disclosed in Note 6 to the Consolidated Financial Statements.]

We continually analyze and assess reconsideration events, including changes in the factors mentioned above, to determine if the consolidation treatment remains appropriate. Decisions regarding consolidation of partially owned entities frequently require significant judgment by our management.

The Company hereby acknowledges that the Company is responsible for the adequacy and accuracy of the disclosure in the filing; Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact me at 312-960-5044 if you have any questions about the foregoing, or if you would like to further discuss any of the matters raised in this response letter.

Sincerely,

/s/ Michael Berman

Michael Berman
Chief Financial Officer

521 Fifth Avenue
30th Floor
New York, NY 10175

212.297.1000
www.gptreit.com

NYSE: GPT

GRAMERCY
PROPERTY TRUST

August 27, 2015

Eric McPhee
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Gramercy Property Trust Inc. (the "Company")
Form 10-K for the year ended December 31, 2014
Filed on March 9, 2015
File No. 001-32248

Dear Mr. McPhee:

We are transmitting for filing the Company's response to the comments of the Staff of the Securities and Exchange Commission (the "Commission") contained in your letter to Jon W. Clark of the Company, dated August 21, 2015 (the "August 21st Letter"). For convenience of reference, the Staff comments contained in the August 21st Letter are reprinted below in italics and are followed by the corresponding response of the Company.

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities - Dividends

1. In future periodic filings, please disclose the tax status of distributions per unit pursuant to Rule 3-15(c) of Regulation S-X.

Response: In response to the Staff's comment, the Company undertakes to include this disclosure in future annual filings.

Funds from Operations, pages 72 – 73

2. We note that in your earnings release and supplemental information you discuss other Non-GAAP Financial Measures such as Core FFO, Adjusted FFO, and Net Operating Income. Please clarify whether you utilize these measures as key performance indicators. To the extent you do, in future periodic filing, please include such Non-GAAP financial measures, discussion of any related and relevant fluctuations, and the required Non-GAAP disclosures outlined within Item 10(e) of Regulation S-K for each respective measure.

Response: In response to the Staff's comment, the Company advises the Staff that for future filings, it will include Core FFO and Adjusted FFO in its periodic filings and provide related detailed reconciliations to GAAP net income (loss) as well as any relevant fluctuations, as the Company intends to utilize Core FFO and Adjusted FFO as key performance measures in addition to Funds from operations which has already been included in the Company's periodic filings. Net operating income is not utilized as a key performance indictor to evaluate the Company's performance as a whole. Net operating income is used only to provide additional information for specific property acquisitions and for individual properties owned in the Company's investment portfolio.

3. In arriving at Funds from operations, you start with Net income available to common stockholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity stockholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common stockholders".

Response: In response to the Staff's comment, the Company advises the Staff that for future periodic filings, it will retitle "Funds from operations" to "Funds from operations attributable to common stockholders and unitholders". Using the title "Funds from operations" and starting the table with net income available to common stockholders was only intended to present a performance indicator that excludes dividends that are attributable solely to preferred stockholders. The denominator for Funds from operations per share represents both common stockholders and operating partnership unit holders but excludes preferred stockholders.

Consolidated Statements of Operations, page 80

4. Please revise future periodic filings to clarify the types of expenses that are included in operating expenses and general and administrative expenses. Within your response, please provide an example of your proposed disclosure.

Response: In response to the Staff's comment, the Company advises the Staff that, for future periodic filings, the Company will revise footnote 2 of its financial statements, which describes the Company's significant accounting policies, to include additional detail regarding the types of costs included in property operating expenses and those included in general and administrative expenses. The following is an example of our proposed disclosure:

> "Property operating expenses include insurance, property management, repairs and maintenance, security, janitorial, landscaping and other administrative expenses incurred to operate the Company's properties as well as costs directly related to its asset management business on properties owned by third parties in both the United States and Europe.
>
> General and administrative expenses represent costs unrelated to property operations or acquisition related costs. These expenses primarily include corporate office expenses, employee compensation and benefits as well as costs related to being a listed public company including certain audit fees, directors and officer's insurance, legal costs and other professional fees."

In connection with the Company's response to the August 21st Letter, the Company acknowledges that:

- It is responsible for the adequacy and the accuracy of the disclosures in the filing;

Hatteras Financial Corp.
751 West Fourth Street, Suite 400
Winston Salem, North Carolina 27101

May 21, 2015

Via EDGAR

Jaime G. John, Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3010
Washington, D.C. 20549

Re: Hatteras Financial Corp.
Form 10-K for the Fiscal Year Ended December 31, 2014
File No. 1-34030

Dear Jaime G. John:

This correspondence is our response to your comment letter dated May 13, 2015, regarding our Form 10-K for the fiscal year ended December 31, 2014. The attached Annex A itemizes each of your comments and our responses thereto.

We acknowledge the following:

- we are responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- we may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any further questions concerning the response letter, please contact our outside counsel, Kerry E. Johnson at Hunton & Williams LLP at (212) 309-1040, or Kenneth A. Steele at (336) 760-9331.

Sincerely,

Hatteras Financial Corp.

/s/ Kenneth A. Steele
Kenneth A. Steele, Chief Financial Officer

cc: Securities and Exchange Commission
Isaac Esquivel, Staff Accountant
Hunton & Williams LLP
Kerry E. Johnson

Annex A

Item 8. Financial Statements and Supplementary Data

Consolidated Balance Sheets, page F-2

1. **We note that cash and cash equivalents include pledged cash of $323.8 million and $225.4 million as of December 31, 2014 and 2013, respectively. Please explain to us why pledged cash is not considered restricted and presented as such in the consolidated financial statements.**

   Response: Our cash and cash equivalents include cash pledged to derivative counterparties, which is held in margin accounts as collateral related to interest rate swap agreements, futures contracts and forward commitments to purchase to-be-announced mortgage-backed securities. Pursuant to the terms of the related ISDA, futures trading and MSFTA agreements, we are allowed to pledge cash or securities as collateral, and can actively manage the nature and amount of collateral pledged as margin requirements fluctuate. The pledged cash is held in demand deposit bank accounts to which we have direct access without restriction. We view the fact pattern as similar to "arrangements (that) exist but are not agreements which legally restrict the user of cash amounts shown on the balance sheet" (excerpted from Regulation S-X Rule 5.02). Accordingly, we disclose the nature of these arrangements and the amounts involved in the footnotes to our consolidated financial statements and include a parenthetical disclosure on the face of the balance sheet to further highlight the existence of these contractual arrangements.

Consolidated Statements of Comprehensive Income, page F-4

2. **Please tell us your basis for presenting comprehensive income (loss) per share on the face of this statement.**

   Response: Because fair value adjustments on our mortgage-backed securities portfolio flow through other comprehensive income while fair value adjustments on our derivatives flow through earnings, management considers comprehensive income to be a meaningful measure of our operating results, in addition to net income. As such, beginning with our Quarterly Report on Form 10-Q for the period ended September 30, 2014, we have included a discussion of comprehensive income in our results of operations. While we are not aware of any GAAP or SEC guidance validating comprehensive income per share as a formal GAAP measure, neither are we aware of any guidance precluding it. In addition, our calculation of comprehensive income per share directly mirrors the Financial Accounting Standards Board guidance for earnings per share calculations, in accordance with ASC 260-10-45-5. While ASC 260-10-45-5 states that per share amounts that are not required to be presented should not be shown on the face of the income statement, we did not interpret that provision as preventing comprehensive income per share from being shown on the face of the statement of comprehensive income. Further, we believe that the presentation of comprehensive income per share has practical benefits for users of our financial statements.

Hatteras Financial Corp.
751 West Fourth Street, Suite 400
Winston Salem, North Carolina 27101

June 8, 2015

Via EDGAR

Jaime G. John, Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3010
Washington, D.C. 20549

Re: Hatteras Financial Corp.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 24, 2015
File No. 1-34030

Dear Jaime G. John:

This correspondence is our response to your comment letter dated June 4, 2015, regarding our Form 10-K for the fiscal year ended December 31, 2014, which references our May 21, 2015 response to your comment letter dated May 13, 2015. For convenience, we reproduced your comment before our response thereto below.

We acknowledge the following:

- we are responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- we may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Consolidated Statements of Comprehensive Income, page F-4

1. We note your response to prior comment 2. As discussed in ASC 260-10-45-2, per-share information relating to income from continuing operations and net income is required on the face of the income statement. Further, ASC 260-10-45-5 states that per-share amounts not required to be presented by this Subtopic shall be disclosed only in the notes to the financial statements. Therefore, please revise future filings to remove this measure from the face of your consolidated statements of comprehensive income.

   Response: In response to your comment, in future filings we will not present comprehensive income per share on the face of our statement of comprehensive income.

MARCH 27, 2015

VIA EDGAR AND FEDEX

Howard Efron
Staff Accountant
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: HCP, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed on February 10, 2015
File Number: 1-08895

Dear Mr. Efron:

HCP, Inc. hereby submits this letter in response to the comment letter from the Staff of the Securities and Exchange Commission (the "Staff") dated March 19, 2015. For your convenience, the Staff's comment has been reprinted in italics below and our responses are in bold print. References to "we", "our" or the "Company" in this response are to HCP, Inc.

Form 10-K for the fiscal year ended December 31, 2014
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations
Non-GAAP Financial Measures
Funds Available for Distribution, page 38

1. *We note your disclosure appears to indicate that FAD is a liquidity measure as management views it as a supplemental measure which meaningfully measures the ability to fund ongoing dividend payments. Please tell us how you have met the reconciliation requirement under Item 10(e) of Regulation S-K as you have reconciled the amount to net income applicable to common shares through FFO as adjusted applicable to common shareholders. Additionally, please tell us how you determined it was appropriate to provide FAD per share within your filing in light of Question 102.5 of Compliance and Disclosure Interpretations on Non-GAAP financial measures.*

Response: We respectfully advise the Staff that we view FAD primarily as a performance measure and not a liquidity measure. This is consistent with how real estate equity analysts and investors evaluate our performance as FAD represents one of the key supplemental benchmarks to measure our operating performance and profitability (along with NAREIT FFO). Further, FAD, as a performance measure, is: 1) included as part of our Annual Operating Plan presented to and approved by our Board of Directors; 2) reported in our quarterly earnings releases; 3) discussed on earnings calls and with investors as a performance benchmark; and 4) one of the performance criteria in determining a portion of our named executive officers' compensation, as described in our 2014 and 2015 Proxy Statements. Therefore, since the Company views FAD as a performance measure, we believe net income applicable to common shares is the most directly comparable GAAP measure.

While dividends can be analyzed in comparison to FAD, as much as they are analyzed in comparison to FFO or net income, it is not our intent to imply that this is the primary purpose of this measure.

For the avoidance of doubt, we respectfully advise the Staff that we will revise our disclosure in future periodic filings to state:

Other REITs or real estate companies may use different methodologies for calculating FAD, and accordingly, our FAD may not be comparable to those reported by other REITs. Although our FAD computation may not be comparable to

that of other REITs, management believes FAD provides a meaningful supplemental measure of our performance and is frequently used by analysts, investors, and other interested parties in the evaluation of our performance as a REIT. FAD does not represent cash generated from operating activities determined in accordance with GAAP, is not necessarily indicative of cash available to fund cash needs, and should not be considered as an alternative to net income (determined in accordance with GAAP).

For the Staff's benefit, we have included an Appendix to this letter which outlines our revised disclosure, which is marked for changes from the disclosure included in our Form 10-K for the fiscal year ended December 31, 2014.

Response: We respectfully advise the Staff, because FAD is considered a performance measure (as clarified above), we believe it is appropriate to present FAD per share in our filings in accordance with Item 10(e) of Regulation S-K and Question 102.5 of Compliance and Disclosure Interpretations of Non-GAAP financial measures.

In connection with responding to your comment, we acknowledge that:

- we are responsible for the adequacy and accuracy of the disclosure in the filings;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filings; and
- we may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Thank you for your consideration of our responses. Should you have any questions, please call the undersigned at (949) 407-0707.

Very truly yours,

/s/ TIMOTHY M. SCHOEN
Timothy M. Schoen
Executive Vice President and
Chief Financial Officer

cc: James W. Mercer, Esq.
Scott A. Anderson
Rochelle Rausch
Troy E. McHenry, Esq.

Appendix

Other REITs or real estate companies may use different methodologies for calculating FAD, and accordingly, our FAD may not be comparable to those reported by other REITs. Although our FAD computation may not be comparable to that of other REITs, management believes FAD provides a meaningful supplemental measure of our ~~ability to fund our ongoing dividend payments~~ ***performance and is frequently used by analysts, investors, and other interested parties in the evaluation of our performance as a REIT***. ~~In addition, management believes that in order to further understand and analyze our liquidity, FAD should not be compared with net cash flows from operating activities as determined in accordance with GAAP and presented in our consolidated financial statements.~~ FAD does not represent cash generated from operating activities determined in accordance with GAAP, ***is not necessarily indicative of cash available to fund cash needs,*** and ~~FAD~~ should not be considered as an alternative to net income ~~(~~determined in accordance with GAAP~~)., as an alternative to net cash flows from operating activities (as~~

~~determined in accordance with GAAP), or as a measure of our liquidity.~~

June 5, 2015

VIA EDGAR

Mr. Daniel Gordon
Senior Assistant Chief Accountant
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Healthcare Trust of America, Inc.**
Form 10-K for the year ended December 31, 2014
Filed February 23, 2015
File No. 001-35568

Healthcare Trust of America Holdings, LP
Form 10-K for the year ended December 31, 2014
Filed February 23, 2015
File No. 333-190916

Dear Mr. Gordon:

On behalf of Healthcare Trust of America, Inc., a Maryland corporation ("**HTA**"), and Healthcare Trust of America Holdings, LP, a Delaware limited partnership (together with HTA, the "**Company**"), we hereby respond to the letter dated May 22, 2015 (the "**Letter**") setting forth comments of the staff (the "**Staff**") of the Securities and Exchange Commission (the "**Commission**") on the Company's above-referenced Form 10-K.

On behalf of the Company, we are responding below to the Staff's Letter. For the convenience of the Staff, the comment from the Letter is restated in **bold** prior to our response on behalf of the Company.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 37

1. On page 71, you disclose that you capitalized internal leasing related costs. Please tell us the amount of internal costs you capitalize to deferred leasing costs and real estate investments for all periods presented. If material, please confirm for us that you will disclose this information within future periodic filings and discuss any significant fluctuations in such capitalized internal costs within your MD&A.

In response to the Staff's comment, during the years ended December 31, 2014, 2013 and 2012, the Company capitalized $2.1 million, $1.6 million and $0.7 million, respectively, of internal costs to deferred leasing costs. In addition, during the years ended December 31, 2014, 2013 and 2012, the Company capitalized $0.7 million, $0.5 million and $0.4 million, respectively, of internal costs to real estate investments. The Company confirms that, to the extent material, it will disclose amounts capitalized in future periodic filings with the Commission, starting with our Form 10-Q for the six months ending June 30, 2015, and discuss in the Company's MD&A any significant fluctuations in the amount of internal costs capitalized to deferred leasing costs and real estate investments.

FFO and Normalized FFO, page 44

2. We note that your calculation of FFO starts with Net income attributable to common stockholders and as such, it appears that the resulting amount of FFO represents FFO attributable to common stockholders rather than FFO for the entire company. In future filings please re-label "Funds from operations" to "Funds from operations attributable to common stockholders".

In response to the Staff's comment, the Company confirms that it will add the above referenced "Funds from operations attributable to common stockholders" language in future filings with the Commission.

* * *

Hospitality Properties Trust

Two Newton Place, 255 Washington Street, Newton, Massachusetts 02458-1634
(617) 964-8389 tel (617) 969-5730 fax www.hptreit.com

May 28, 2015

VIA EDGAR

Kevin R. Woody
Branch Chief
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Hospitality Properties Trust (the "Company")
Form 10-K for the fiscal year ended December 31, 2014 (the "Filing")
Filed February 27, 2015
File No. 1-11527

Dear Mr. Woody:

We are in receipt of your letter dated May 14, 2015, regarding the above referenced Filing. For your convenience, each of your original comments appears in bold text and is followed by our response.

Form 10-K for the fiscal year ended December 31, 2014

Non-GAAP Measures, page 87

1. **In arriving at Funds from operations, you start with Net income available for common shareholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common shareholders instead of all equity shareholders. In future periodic filings please designate that FFO is attributable to common shareholders. Additionally, apply this comment to Normalized FFO as well.**

   Company Response:

   In future periodic filings, we will designate that FFO and Normalized FFO are attributable to common shareholders.

Financial Statements

6. Management Agreements and Leases, F-15

2. **We note the Morgan agreement expires in 2103 and that you recognize rents on a cash basis due to uncertainty with future rent collection. Please describe if there have been any significant changes or updates related to the future collection of rent under the Morgan lease. Additionally, tell us how your testing of impairment related to**

the Clift Hotel was adjusted related to rent collectability issues with the lessee.

Company Response:

In 2004, a subsidiary of Morgans Hotel Group, or the Morgans Subsidiary, entered into a 99 year lease for the Clift Hotel located in San Francisco, CA. We acquired the Clift Hotel in December 2012. As of the acquisition date, the lease provided for annual base rent to us of $6.0 million. The annual base rent due to us was scheduled to increase in October 2014 based on changes in the CPI, as defined, with a minimum increase of 20% of the current rent amount and a maximum increase of 40%. On each fifth anniversary thereafter during the lease term, the base rent due to us will increase further based on changes in the CPI, as defined, with minimum increases of 10% and maximum increases of 20%.

When performing our analysis to determine the appropriate accounting treatment of this acquired lease, we determined that the lease did not meet the collectability criteria under ASC 840-10-25-42(a) and classified it as an operating lease. When we acquired the hotel in 2012, the operations of the hotel were not generating sufficient cash flow to cover the rent payments required under the lease and the Morgans Subsidiary had no assets or other resources available to fund its cash flow deficit. Although Morgans Hotel Group had on occasion funded cash shortfalls sustained by the Morgans Subsidiary in order to enable it to make lease payments, it had no legal obligation under the terms of the lease to do so in the future. We also considered the impact that the scheduled 20% to 40% rent increase in 2014 would have on the Morgans Subsidiary's ability to meet its future payment obligations under the lease. For the above reasons, we concluded that the collectability of future rent payment under the lease was not reasonably assured.

Although operating results of the Clift Hotel have improved since we acquired the hotel, historical cash flows before capital expenditures and management fees have not been sufficient to cover the current annual base rent amount. In addition, we believe that the hotel will require a major renovation in the next few years (last renovated in 2001) at an estimated cost of $30 million to $35 million. If these renovations occur, the cost of this renovation is an obligation of the Morgans Subsidiary under the terms of the lease agreement. For the above reasons, we believe that the collectability of future rent payments under the lease continue to not be reasonably assured.

We regularly evaluate whether events or changes in circumstances have occurred that could indicate impairment in the value of our real estate properties. If there is an indication that the carrying value of a property is not recoverable, we estimate the future undiscounted cash flows of the property to determine if we should recognize an impairment loss. In performing our analysis for the Clift Hotel, we have not based our estimate of the future undiscounted cash flows of the hotel on the contractual rent payments required under our lease with the Morgans Subsidiary. Instead, we have estimated the future undiscounted cash flows of the hotel using a rent amount we believe a market participant would pay to lease the hotel. We considered the historical and projected operating performance of the hotel and the return expectations of market participants in developing our estimate of a market rent. Based on our analysis, we determined no impairment loss should be recognized for this property.

In connection with our responses above, we acknowledge that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the Filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

We appreciate your comments and welcome the opportunity to discuss with you our responses provided above. If you have any

September 29, 2015

Via EDGAR

Mr. Robert F. Telewicz, Jr.
Accounting Branch Chief
Office of Real Estate and Commodities
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

RE: Iron Mountain Incorporated (the "Company")
Form 10-K for the fiscal year ended December 31, 2014
Filed February 27, 2015
File No. 1-13045 (the "Form 10-K")

Form 10-Q for the quarterly period ended June 30, 2015
Filed July 30, 2015
File No. 1-13045 (the "Form 10-Q")

Dear Mr. Telewicz:

The purpose of this letter is to respond to your letter of September 21, 2015. For your convenience, the original staff comments have been repeated in bold typeface, followed by our responses.

Form 10-K for the fiscal year ended December 31, 2014
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations
Non-GAAP Measures, page 39

1. We note the use of Funds from Operations Applicable to Iron Mountain, or FFO (NAREIT) in your earnings commentary and supplemental information. Please tell us whether you consider this measure to be a key performance indicator. To the extent this measure is considered a key performance indicator, in future periodic filings please include the measure as well as the required disclosures in accordance with Item 10(e) of Regulation S-K within your Management's Discussion and Analysis.

RESPONSE:

1. In response to the staff's comment, we consider FFO (NAREIT) and FFO Applicable to Iron Mountain (Normalized) ("FFO (Normalized)"), to be key performance indicators of our business since our Board of Directors, in the second quarter of 2014, approved our conversion to a real estate investment trust for federal

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income tax purposes ("REIT") for the taxable year beginning January 1, 2014. Accordingly, commencing with our Form 10-Q for the quarterly period ending September 30, 2015, we will include FFO (NAREIT) and FFO (Normalized) within the Non-GAAP Measures section of Management's Discussion and Analysis of Financial Condition and Results of Operations for each of the current and prior periods presented therein. As required by Item 10(e) of Regulation S-K, our disclosure will include a reconciliation of FFO (NAREIT) and FFO (Normalized) to the most comparable generally accepted accounting principles measure, as well as disclosure regarding why we believe that FFO (NAREIT) and FFO (Normalized) provide useful information to investors regarding our financial condition and results of operations.

Financial Statements
Notes to Consolidated Financial Statements
Note 2. Summary of Significant Accounting Policies
g. Goodwill and Other Intangible Assets, page 86

2. Please explain to us in greater detail the reason for the $32,265 fair value and other adjustment made to goodwill and deferred income taxes. Cite any relevant accounting literature in your response.

RESPONSE:

2. In October 2013, we acquired Cornerstone Records Management, LLC and its affiliates ("Cornerstone"), a national, full solution records and information- management company with operations in the United States, in a cash transaction for approximately $191.0 million. At December 31, 2013, our purchase accounting for the Cornerstone acquisition was incomplete, as noted in Note 6. *Acquisitions* to our

Form 10-K for the fiscal year ended December 31, 2013 in which we state "The purchase price allocations of the 2013 acquisitions are subject to finalization of the assessment of the fair value of…income taxes (primarily deferred income taxes)." As of and for the year ended December 31, 2013, provisional purchase accounting amounts in accordance with Accounting Standards Codification ("ASC") No. 805, *Business Combinations* ("ASC 805") related to the Cornerstone acquisition were recorded.

Throughout the first half of fiscal year 2014 and within the applicable measurement period (as described in ASC 805), we were reconciling historical Cornerstone acquisition-date tax records and positions with Cornerstone's predecessor tax advisor associated with the 2013 Cornerstone tax return. In conjunction with that analysis, we obtained new additional detailed information and historical data regarding certain acquisition-date deferred income tax attributes. We determined that this information represented, in accordance with ASC 805-25-13, "*new information about facts that existed as of the acquisition date that, if known, would have affected the measurement of the amounts recognized as of that date.*" Accordingly, we

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adjusted the provisional purchase accounting amounts related to the acquisition-date deferred income tax attributes for the Cornerstone acquisition by $33.3 million during the first and second quarters of fiscal year 2014, resulting in an increase in deferred tax assets (primarily associated with the valuation of net operating loss carryforwards) of $9.7 million and a net decrease in deferred tax liabilities (primarily associated with the identification of additional tax basis in certain assets) of $23.6 million. The effect of these adjustments to the deferred income tax attributes was a net decrease in goodwill associated with the Cornerstone acquisition of $33.3 million. This decrease in goodwill associated with the Cornerstone acquisition, which was partially offset by approximately $1.0 million of other deferred income tax fair value adjustments associated with other 2013 acquisitions, accounts for the $32,265 of fair value adjustments to deferred income taxes disclosed on page 89 of our Form 10-K.

Additionally, we assessed with contemporaneous documentation, both from a quantitative and qualitative perspective, whether the impact of the Cornerstone deferred income tax adjustments was material to our previously issued consolidated balance sheets as of December 31, 2013 or March 31, 2014, as well as our consolidated statements of operations for the year ended December 31, 2013 and the three months ended March 31, 2014 (collectively, the "Prior Period Financial Statements"). Based on this analysis, we concluded that the impact of the Cornerstone deferred income tax adjustments was not material to the Prior Period Financial Statements and, accordingly, we did not restate in accordance with ASC 805 any of the Prior Period Financial Statements as a result of the Cornerstone deferred income tax adjustments.

Financial Statements
Notes to Consolidated Financial Statements
Note 2. Summary of Significant Accounting Policies
q. Allowance for Doubtful Accounts and Credit Memo Reserves, page 100

3. **Please tell us the reasons for your credit memo reserve. Your response should include a discussion of the types and frequency of disputes that arise that create the need for the reserve. Cite any relevant accounting literature in your response.**

RESPONSE:

3. We maintain a credit memo reserve associated with disputes from our customers related to billing and service issues. Billings to our customers are based upon contractually agreed upon prices and represent a homogenous pool of a large volume of generally small billings associated with storage and service delivery (which includes pick-up, retrieval, refile, indexing, permanent removal, destruction and transportation of customer materials, among other services). Billing and service delivery issues include unit price, quantity, type of service (regular or expedited) and

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quality of service (on-time or accuracy), among others. No one customer represents greater than 2% of our consolidated revenues and our customer billings are spread over more than 155,000 customer accounts on a global basis.

We issued customer credits totaling approximately $47.1 million, or approximately 1.5% of consolidated revenues, in the year ended December 31, 2014. Our credit memo reserve as of December 31, 2014 was approximately $18.1 million, or approximately 2.8% of gross accounts receivable and approximately 0.6% of consolidated revenues for the year ended December 31, 2014.

With respect to our accounting for the credit memo reserve, we analogize to the provisions of ASC 605-15-25, *Revenue Recognition — Products — Sales of Product when Right of Return Exists* ("ASC 605-15-25"), which states, in part:

> *"If an entity sells its product but gives the buyer the right to return the product, revenue from the sales transaction shall be recognized at time of sale only if all of the following conditions are met:*

a. The seller's price to the buyer is substantially fixed or determinable at the date of sale.

b. The buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product…

c. The buyer's obligation to the seller would not be changed in the event of theft or physical destruction or damage of the product.

d. The buyer acquiring the product for resale has economic substance apart from that provided by the seller…

e. The seller does not have significant obligations for future performance to directly bring about resale of the product by the buyer.

f. The amount of future returns can be reasonably estimated."

We assessed our credit memo reserve accounting based on the literature above and determined that revenue recognition is appropriate as we meet each of the necessary conditions. Specifically, we note that (a) our prices are fixed or determinable as our prices are based upon the terms of our contracts with our customers and (b) the customer is obligated to pay us for services rendered. Items "c" through "e" in ASC 605-15-25 above are not applicable to us, as our storage rental and related services are not subject to theft or destruction, nor are they subject to resale by our customers.

With respect to item "f" in ASC 605-15-25 above, our credit memo reserve represents a reasonable estimate of amounts recognized as revenue and billed to our customers as of the applicable reporting period which may subsequently be disputed by our customers for the issues noted above. The credit memo reserve is determined by calculating (a) the period for which credit memos are unissued, or the lag, multiplied by (b) the average amount of credit memos issued over the period of the lag (which is based upon a review of the type, volume and trending of historical

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credit memo activity). With respect to our ability to reasonably estimate the amount of credit memos that will be issued in order to calculate our credit memo reserve, we believe that we have significant historical experience with respect to our credit memo activity as the volume of credit memos has historically not been subject to any significant volatility. Credit memos charged against consolidated revenue represented 1.3%, 1.6% and 1.5% of consolidated revenues for the fiscal years ended December 31, 2012, 2013 and 2014, respectively, and total credit memos have ranged from 1.3% to 1.6% of consolidated revenues over the past five fiscal years.

Form 10-Q for the quarterly period ended June 30, 2015
Notes to Consolidated Financial Statements
Note 5. Debt, page 30

4. We note that you entered into an accounts receivable securitization program in March 2015. In future filings, please revise your summary of significant accounting policies to include the accounting policy that you apply for the accounts receivable securitization program.

RESPONSE:

4. As disclosed in the Form 10-Q, in March 2015 we entered into an accounts receivable securitization program (the "AR Securitization Program") involving several of our wholly owned subsidiaries and certain financial institutions. Under the AR Securitization Program, certain of our subsidiaries sell substantially all of their United States accounts receivable balances to certain special purposes subsidiaries (the "Special Purposes Subsidiaries") which are also wholly owned by us. The Special Purpose Subsidiaries use these accounts receivable balances to collateralize loans obtained from financial institutions.

In response to the staff's comment and in order to provide users of our financial statements greater clarity with respect to our accounting for the AR Securitization Program, we will provide incremental disclosure in future filings regarding our accounting for the AR Securitization Program. However, we believe that providing such disclosure in the context of the description of the transaction itself within our Debt footnote, rather than within the significant accounting policies section of our filings, is more appropriate. We intend to revise the disclosure in our Debt footnote as it will appear in our Form 10-Q for the quarterly period ending September 30, 2015 to include the following incremental language:

"The Special Purpose Subsidiaries are consolidated subsidiaries of IMI. The Accounts Receivable Securitization Program is accounted for as a collateralized financing activity, rather than a sale of assets and, therefore: (a) accounts receivable balances pledged as collateral are presented as assets and borrowings are presented as liabilities on our consolidated balance sheet, (b) our consolidated statement of operations reflects the associated charges for bad debt expense related to pledged accounts receivable (a

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component of selling, general and administrative expenses) and reductions to revenue due to billing and service related credit memos issued to customers and related reserves, as well as, interest expense associated with the collateralized borrowings and (c) receipts from customers related to the underlying accounts receivable are reflected as operating cash flows and borrowings and repayments under the collateralized debt are reflected as financing cash flows within our consolidated statement of cash flows."

****

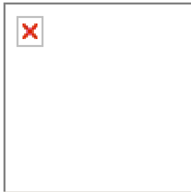
As requested, the Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions concerning the content of this letter, please do not hesitate to contact me.

Sincerely,
IRON MOUNTAIN INCORPORATED

By: /s/ Roderick Day
Roderick Day
Executive Vice President and Chief Financial Officer



September 23, 2015

Mr. Robert F. Telewicz, Jr.
Accounting Branch Chief
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: iStar Inc.
Form 10-K
Filed March 2, 2015
File No. 0001-15371

Dear Mr. Telewicz:

On behalf of iStar Inc. (the "Company" or "we"), set forth below are the responses of the Company to the comments of the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission"), received by letter dated September 11, 2015 (the "September 11 Letter"), with respect to the Company's Form 10-K for the year ended December 31, 2014 (the "Form 10-K"). The responses to the Staff's comments are set out in the order in which the comments were set out in the September 11 Letter and are numbered accordingly.

Form 10-K for the fiscal year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Liquidity and Capital Resources, page 37

1. *We note your disclosure that you generated approximately $1.1 billion of proceeds from loan repayments and asset sales within your portfolio during the year ended December 31, 2014. We further note that this amount is inclusive of amounts generated from consolidated and equity method investments. Please clarify for us whether this amount includes the total cash proceeds generated by equity method investments or your pro rata share.*

1114 Avenue of the Americas
New York, NY 10036

T 212 930 9400
www.istar.com

Response:

The $1.1 billion of proceeds from loan repayments and asset sales, which is inclusive of amounts generated from consolidated and equity method investments, includes only the Company's pro rata share of cash proceeds generated from equity method investments.

In future filings the Company will disclose that cash proceeds from equity method investments represent only the Company's pro rata share.

Item 8. Financial Statements and Supplemental Data Note 6 - Other investments

Real Estate Equity Investments, page 69

1. *Please tell us the following with respect to the unconsolidated entity you formed with a sovereign wealth fund during the year ended December 31, 2014*

1) *Explain to us how you determined the entity did not meet the definition of a VIE in accordance with ASC Topic 810-10-15-14. Your response should include, but not be limited to, an explanation of how you considered your promote and management fee when evaluating the criteria under ASC Topic 810-10-15-14c.*
2) *Please provide us a summary of the substantive participating rights of your partner. Your response should include a description of how any disputes that arise between you and your partner are resolved.*

Response:

1) The Company partnered with a sovereign wealth fund in 2014 to form a new entity to acquire and develop net lease assets. The Company determined that the entity did not meet the definition of a variable interest entity ("VIE") in accordance with ASC 810-10-15-14.

   The Company determined, in accordance with ASC 810-10-15-14(a), that the initial equity investment at risk for this entity, which was $34 million or 36% of the initial asset acquisition price, was sufficient to permit the legal entity to finance its activities without additional subordinated financial support provided by any parties, including equity holders. In addition, the governing documents of the venture preclude the entity leverage from exceeding 65% on a portfolio basis or 70% on an individual asset basis.

   The Company also determined in accordance with ASC 810-10-15-14(b), that the equity holders as a group do not lack the power, through voting rights or similar rights, to direct the activities of the entity that most significantly impact the entity's performance, and neither party can exercise kick out rights unilaterally. Additionally, the equity holders have the right to participate in earnings or obligation to absorb the expected losses of the entity and the right to receive residual returns.

In accordance with ASC Topic 810-10-15-14(c)(1), the Company determined that it does have disproportionate voting rights (50.0%) relative to its participation rights in earnings or losses (52.5% inclusive of related party interests). In addition, the Company is responsible for sourcing new opportunities and managing the venture and its assets in exchange for a management fee and potential promote payment. The management fee and promote structure for the services provided is commensurate with the level of effort required to provide those services and is consistent with market rates for similar services. The Company analyzed from a quantitative perspective, in accordance with ASC 810-10-15-14(c)(2), if the economics of the venture (e.g. capital at risk, participation in profits, etc.) would be heavily skewed towards the Company. The Company concluded that because our partner receives a 47.5% pari passu economic interest in the entity, after payment of management fees and promote the economics of the venture are not expected to be heavily skewed towards the Company. The Company then analyzed from a qualitative perspective, in accordance with ASC Topic 810-10-15-14(c)(2), whether substantially all of the activities of the venture are conducted on behalf of the member who has the disproportionately fewer voting rights. The Company did not identify any strong indicators that would indicate that substantially all of the activities of the venture were conducted on the Company's behalf. For example, the Company is not obligated to fund substantially all additional capital contributions to the venture, the principal purpose of this entity is to conduct business that is complementary to the business activities of all members and the Company did not sell non-performing assets to the venture.

Therefore, the Company concluded the venture is not a VIE.

1) The Company's partner has substantive participating rights over all major decisions of the venture. The venture cannot enter into a major decision without the consent of both the Company and its partner. Major decisions include, but are not limited to, approval of the business plan, acquiring any asset or making any investment, approval of operating plans and budgets, lease arrangements, the incurrence of indebtedness, transferring of membership interests, sales of a project, selection of contractors, bankruptcy matters and dissolution of the venture. Further, the members effectively participate in all significant decisions related to the venture through their approval of the initial business plan and the requirement that they vote on any major change to the business plan.

   If the Company and its partner do not agree on a major decision, the major decision is not consummated. However, both the Company and its partner are obligated to act in good faith and in the best interests of the venture, with each member reserving the right to elect to arbitrate and compel arbitration of any dispute through final and binding arbitration.

* * * * *

In connection with responding to the Staff's comments, we acknowledge the following:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;

April 10, 2015

VIA EDGAR

Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Attn: Mr. Eric McPhee
Staff Accountant

Re: Kimco Realty Corporation
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-10899

Dear Mr. McPhee:

This letter sets forth the response of Kimco Realty Corporation (the "Company") to the comment letter from the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission"), received by email on March 30, 2015, relating to the Company's Form 10-K for the year ended December 31, 2014, filed with the Commission on February 27, 2015 (the "2014 Form 10-K"). For your convenience, we have set forth each of the Staff's original comments immediately preceding our response.

Form 10-K for the year ended December 31, 2014

Combined Same Property net Operating Income, page 32

1. Please provide the disclosures required by Item 10(e) related to the non-GAAP measures Combined Same Property NOI, before foreign currency impact, and U.S. Same Property NOI, in future filings, including the reasons why you believe presentation of these measures provides useful information to investors and any additional purposes for which you use the measures.

Response

In response to the Staff's comment, in our future filings we will include additional disclosure related to the non-GAAP measures Combined Same Property NOI, before foreign currency impact, and U.S. Same Property NOI, including the reasons why the Company believes presentation of these measures provides useful information to the Company's analysis and investors. As an example of our expected future disclosure, the below excerpt from the 2014 Form 10-K has been revised to include the requested additional disclosure (for your convenience additions to our existing disclosure are shown in bold):

Combined Same Property Net Operating Income

Combined Same Property Net Operating Income ("Combined Same Property NOI") is a supplemental non-GAAP financial measure of real estate companies' operating performance and should not be considered an alternative to net income in accordance with GAAP or as a measure of liquidity. Combined Same Property NOI is considered by management to be an important performance measure of the Company's operations and management believes that it is helpful to investors as a measure of the Company's operating performance because it includes only the net operating income of properties that have been owned for the entire current and prior year reporting periods including those properties under redevelopment and excludes properties under development and pending stabilization. Properties are deemed stabilized at the earlier of (i) reaching 90% leased or (ii) one year following a projects inclusion in operating real

estate. As such, Combined Same Property NOI assists in eliminating disparities in net income due to the development, acquisition or disposition of properties during the particular period presented, and thus provides a more consistent performance measure for the comparison of the Company's properties.

Combined Same Property NOI is calculated using revenues from rental properties (excluding straight-line rents, lease termination fees, above/below market rents and includes charges for bad debt) less operating and maintenance expense, real estate taxes and rent expense, plus the Company’s proportionate share of Combined Same Property NOI from unconsolidated real estate joint ventures, calculated on the same basis.

The Company also presents Combined Same Property NOI, before foreign currency impact, as it considers it an important supplemental non-GAAP financial measure of the Company's operations and believes it is frequently used by securities analysts and investors. Combined Same Property NOI, before foreign currency impact, derives an appropriate measure of period-to-period operating performance by removing the effect of foreign currency exchange rate movements from Combined Same Property NOI. The effect of foreign currency exchange rate movements is determined by using the current period exchange rate to translate from local currency into U.S. dollars for both periods.

Additionally, the Company presents U.S. Same Property Net Operating Income ("U.S. Same Property NOI"), which excludes the impact of foreign currency exchange rates and the Company's Canadian operations from Combined Same Property NOI. The Company provides U.S. Same Property NOI because it believes such measure is frequently used by securities analysts and investors as a valuable measure of period-to-period U.S. operating performance.

The Company's method of calculating Combined Same Property NOI, Combined Same Property NOI, before foreign currency impact and U.S. Same Property NOI may differ from methods used by other REITs and, accordingly, may not be comparable to such other REITs.

Notes to Consolidated Financial Statements

Business, page 48

2. We note your disclosure on page 48 that you believe you have a single reportable segment in part because you do not group your operations on a geographical basis for purposes of measuring performance. Please tell us how you considered your presentation of the non-GAAP measure U.S. Same Property NOI in coming to this determination.

Response

The Company currently evaluates performance on a property specific or transactional basis and does not distinguish its principal business or group its operations on a geographical basis for purposes of measuring performance. The Company's business activities, regardless of geographical location, involve owning and operating real estate. The Company provides U.S. Same Property NOI in its non-GAAP measures because this item has been requested by securities analysts to allow them to compare the Company's operating performance to other REITs that solely operate in the U.S.. Although the Company believes that the disclosure of U.S. Same Property NOI is an important measurement that allows for such a comparison the Company does not use these comparisons to make decisions about resources or to assess performance on a geographical basis.

* * *

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

* * *

Should you have any questions or require further clarification with regard to our responses, please feel free to contact me directly at (516) 869-7290.

July 8, 2015

<u>VIA EDGAR AND UPS</u>

Mr. Daniel L. Gordon
Senior Assistant Chief Accountant
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-3010

Re: Kite Realty Group Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed February 27, 2015
File No. 1-32268

Dear Mr. Gordon:

This letter sets forth the responses of Kite Realty Group Trust (the "Company") to the comments contained in the letter from the Staff of the Division of Corporation Finance of the Securities and Exchange Commission, dated June 24, 2015, to the Company's Form 10-K for the fiscal year ended December 31, 2014. For your reference, we have set forth each of the Staff's original comments in italics immediately preceding our response.

General

1. *We note that you jointly filed with Kite Realty Group, L.P. ("Kite LP") a Form S-3 on March 11, 2015, and you jointly filed with Kite LP a Form 8-K on March 18, 2015. Please ensure that your Exchange Act periodic filings as well as those of Kite LP are filed under each respective CIK number or advise.*

In response to the Staff's comment, in future periodic filings, we will ensure our filings are filed under each respective CIK number.

Item 2. Properties
Lease Activity - New and Renewal, page 42

2. In future Exchange Act periodic reports, in this section or elsewhere as appropriate, please revise to discuss the relationship of market rents and expiring rents as well as leasing costs on a per square foot basis, for both renewals and new leases, to the extent material.

In response to the Staff's comment, in future filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, we will expand the disclosures of new and renewal leasing activity to include material amounts of leasing-related costs per square foot. In addition, we will expand our disclosure of the rent spreads achieved in the current period to discuss any material changes in the market rents and the expiring rents.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Same Property Net Operating Income, page 54

3. In future Exchange Act periodic reports, please revise your narrative disclosure in this section to more specifically describe how you determine the properties that fall within the "same property" pool, including a discussion of any properties that were excluded from the pool that were owned in all periods compared and a description of how you classify properties within, and transfer properties from, operating portfolio to redevelopment status.

In response to the Staff's comment, in future filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, we will expand our disclosure to explain how we determine the properties to include within the "same property" pool including a discussion of properties that were excluded from the pool that were owned in all periods and the reason for the exclusion. This disclosure will include more information to enable the reader to understand the factors we consider in deciding whether to classify a property in redevelopment status and transfers to/from such classification.

Funds From Operations, page 55

4. We note that your FFO reconciliation starts with consolidated net loss, but adjusts to exclude the impact of dividends on preferred shares; therefore your FFO allocable to the Company would appear to represent FFO attributable to common shareholders. Please revise future filings to clearly label your non-GAAP measure or tell us why that is not necessary.

In response to the Staff's comment, in future filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, the Company will clearly label our non-GAAP measure as Funds From Operations attributable to common shareholders.

Results Of Operations

Comparison of Operating Results for the Years Ended December 31, 2014 and 2013, page 56

5. Given the significant increase in your portfolio from the acquisition of properties from Inland Diversified in July 2014, in future periodic filings please consider revising your disclosures to provide a discussion reflecting property operating expenses as a percentage of revenue for all periods presented. In addition, please also provide more robust disclosure regarding the changes in your specific expenses included within the property expense line items (e.g., maintenance, insurance, etc.).

In response to the Staff's comment, in future filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, we will expand our disclosure to present operating expenses as a percentage of revenues and we will include a discussion of the causes of any material changes in these percentages. In addition, we will expand our discussion of property operating expenses to include material changes in property expense line items such as repairs and maintenance, landscaping, insurance, etc.

6. We note your reference in the Business section to period to period increase in same property net operating income and your disclosure on page 58 describing the increase in rental income. In future Exchange Act periodic reports, please revise your disclosure in this section to specifically discuss the relative contribution of same store occupancy changes and average base rent changes on the results.

In response to the Staff's comment, in future filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, we will expand our disclosure to discuss the relative contribution of same property occupancy changes and average base rent changes on our results of operations.

Form 10-Q for the interim period ended March 31, 2015

7. In future periodic filings, please ensure that your officer certifications are in the exact format as prescribed by Item 601(b)(31) of Regulation S-K.

In response to the Staff's comment, in future periodic filings beginning with the Company's Form 10-Q for the quarter ended June 30, 2015, we will ensure our officer certifications are in the exact format as prescribed by Item 601(b)(31) of Regulation S-K.

The Company acknowledges that:

- It is responsible for the adequacy and accuracy of the disclosure in the filing.
- Staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- It may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

LEXINGTON REALTY TRUST
One Penn Plaza, Suite 4015
New York, NY 10119-4015

July 16, 2015

VIA EDGAR

Securities and Exchange Commission
Division of Corporate Finance
100 F Street, N.E.
Washington, D.C. 20549
Attn: Eric McPhee, Staff Accountant

Re: Lexington Realty Trust
Lepercq Corporate Income Fund L.P.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 26, 2015
File Nos. 001-12386 and 033-04215

Dear Mr. McPhee:

This letter sets forth the response of Lexington Realty Trust ("Lexington" or "we") to the Staff's comment letter, dated July 2, 2015, in connection with the Staff's review of the Form 10-Ks for the fiscal year ended December 31, 2014 of Lexington and Lepercq Corporate Income Fund L.P. ("Lepercq") (as applicable, the "Form 10-K"). Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Form 10-K, as applicable. For your convenience, we have repeated the Staff's comment prior to our response below.

Form 10-K for the year ended December 31, 2014

Consolidated Balance Sheets, page 61

1. **Please tell us what gave rise to the significant increase in Rent receivable – deferred during 2014, and clarify how these amounts are accounted for.**

   Lexington and Lepercq invest in single-tenant net-leased assets many of which have annual fixed-rate escalation clauses. Due to these annual fixed-rate escalations, rent is not paid on a straight-line basis. Per Financial Accounting Standards Board ASC 840-20-25-1, lessors should account for leases with fixed-rate escalations on a straight-line basis, see footnote 2 in the respective Form 10-K for the revenue recognition policy. The difference between the rental revenue recognized on a straight-line basis and the current contractual rent due is accounted for on the balance sheet as Rent receivable – deferred.

Tel: (212) 692-7200 ● Fax: (212) 594-6600 ● Website: www.lxp.com

The significant increase in Rent receivable – deferred at December 31, 2014 as compared to December 31, 2013 relates primarily to the impact of the acquisition of single-tenant net-leased assets subject to long-term leases (greater than 10 years) with fixed-rate escalation clauses in 2014 and the fourth quarter of 2013. See footnote 4 in Lexington's Form 10-K and footnote 3 in Lepercq's Form 10-K for the year ended December 31, 2014 for the disclosure of the acquisitions in 2014 and 2013.

* * *

At the request of the Staff, each of Lexington and Lepercq acknowledges that:

- it is responsible for the adequacy and accuracy of the disclosure in its filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to its filings; and
- it may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

We would greatly appreciate your prompt attention in resolving any remaining open issues. If you have any questions regarding the responses to the Staff's comments, please call the undersigned at (212) 692-7215.

Sincerely,

/s/ Patrick Carroll
Patrick Carroll, Chief Financial Officer

cc: Elizabeth Noe, Esq., Paul Hastings LLP

July 21, 2015

Tom Kluck
Legal Branch Chief
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Mack-Cali Realty Corporation
Form 10-K for the year ended December 31, 2014
Filed on February 19, 2015
File No. 001-13274

Dear Mr. Kluck:

On behalf of Mack-Cali Realty Corporation (the "Registrant"), and in connection with the Annual Report on Form 10-K for the year ended December 31, 2014 of the Registrant (the "Report"), I respectfully submit this letter in response to the comments by the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") contained in your letter dated July 16, 2015 (the "Comment Letter"). For convenience of reference, each comment is recited in bold face type and is followed by the Registrant's response thereto. Capitalized terms used herein and not defined shall have the meaning ascribed to such terms in the Report.

Results from Operations, page 51

1. In future Exchange Act periodic reports, please discuss in greater detail how the company defines same-store properties. In this regard, please disclose whether the "in-service" properties exclude redeveloped or repositioned properties and, if so, how many have been removed for these reasons in the last year.

Response: In future filings, the Registrant will disclose that its in-service same-store properties exclude redeveloped and repositioned properties. An example of which follows:

"… "Same-Store Properties" represent all in-service properties owned by the Company at December 31, 2012 (for the 2014 versus 2013 comparisons), and represent all in-service properties owned by the Company at December 31, 2011 (for the 2013 versus 2012 comparisons), excluding properties that were sold, disposed of, removed from service ***or being redeveloped or repositioned,*** *through December 31, 2014."*

Also in future filings, the Registrant will disclose the number of properties being redeveloped or repositioned that have been removed from in-service properties in the last year.

2. In future Exchange Act periodic reports, please discuss in greater detail the relative impact of occupancy and rental rate changes in your period to period changes for your same-store properties.

Response: In future filings, the Registrant will discuss in greater detail the relative impact of occupancy and rental rate changes for period to period changes of same-store properties in its MD&A discussion.

On behalf of the Registrant, I hereby confirm that the Registrant acknowledges that:

- It is responsible for the adequacy and accuracy of the disclosure in its filings;
- Staff comments or changes to disclosure in response to comments do not foreclose the Commission from taking any action with respect to the filing; and
- It may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me at 732-590-1000.

Very truly yours,

/s/ Anthony Krug
Anthony Krug
Chief Financial Officer

Medical Properties Trust

April 23, 2015

Mr. Wilson K. Lee
Senior Staff Accountant
United States Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Medical Properties Trust, Inc.
Form 10-K for the year ended December 31, 2014
Filed March 2, 2015
File No. 001-32559

Dear Mr. Lee:

The purpose of this letter is to respond to your letter dated April 9, 2015. To assist you in reviewing our responses, we will precede each response with a copy (in bold type) of the comment as stated in your letter.

Form 10-K for the fiscal year ended December 31, 2014

Financial Statements

3. Real Estate and Loans Receivable

Median Transaction, page 82

1. **It appears that you expect the second step of the Median Transaction to close in early 2015 and that this transaction is a sale/leaseback transaction where you will be acquiring the property subject to the transaction and then leasing it back to the seller. Please clarify whether you plan to account for the Median Transaction as a business combination or asset purchase. Your response should address the basis for your conclusion and cite the relevant facts, circumstances, and accounting literature relied upon. In addition, your response should outline all assets acquired and explain whether your acquisition will include any assets in addition to real estate property such as medical records, medical equipment, licenses, intangibles, and other components of the healthcare operations.**

All of the real estate assets expected to be acquired as part of Step 2 of the Median transaction will be simultaneously leased back to the seller (as required per the purchase/sale agreements) and will be accounted for as an acquisition of a business. As part of this transaction, we expect to acquire land (unless subject to ground lease), land improvements, buildings (including fixed furniture/fixtures) and related lease intangibles, if any. We will not acquire medical records, medical equipment, intangibles, or other components of the healthcare operations – those assets will stay with the operator of the properties.

In determining whether our real estate property acquisitions are acquisitions of a business or an asset purchase, we use the guidance provided in Topic 805, Business Combinations. A business is defined as "[a]n integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs, or other economic benefits directly to investors or other owners, members, or participants." In the case of the Median transaction, the real estate being acquired is the "Input" of the business, the lease which is effective at the acquisition date (and a requirement to close on the real estate as stated above) is the "Process", and the rent paid to us pursuant to the lease is the "Output". As such, we have determined that the real estate assets to be acquired as part of the Median Transaction and leased back to the seller meet the definition of a business and will be accounted for as acquisitions of a business.

Concentration of Credit Risks, page 90

2. **You have disclosed that Prime represented or exceeded 20% of your total assets as of December 31, 2014 and 2013. These assets are leased to Prime under master lease agreements on a long-term, triple net-lease basis. As a result, it appears that financial information related to Prime would be relevant to investors given Prime's concentration to your business. It appears such information was provided in previous years. Please clarify your basis for no longer providing such information and/or amend your 10-K to include such financial information.**

Our concentration disclosure about Prime on page 90 includes both our investment in properties leased backed to Prime on a triple net-lease basis and our investment in properties for which we hold a mortgage loan. In total, these investments made up 20.0% and 24.5% of our total assets at December 31, 2014 and 2013, respectively; however, our investment in properties leased to Prime on a triple net-lease basis represents, in the aggregate, significantly less than 20% of our total assets as follows:

	Concentration %	
Investment Type	***December 31, 2014***	***December 31, 2013***
Triple-net leases	*12.6 %*	*15.3 %*
Mortgage loans	*7.4 %*	*9.2 %*
Total	*20.0 %*	*24.5 %*

Pursuant to SEC Staff Training Manual, Topic II.B – Properties Subject to Net Lease, "the disclosure pertaining to a material lessee, including its audited financial statements if the investment exceeds 20% of total assets, should be provided in filings made under both the Securities Act and the Exchange Act." Since our investments under a triple-net lease basis to Prime are below 20% of our total assets at December 31, 2014 or 2013, we do not believe Prime's financial statements are required to be filed with our 2014 Form 10-K.

July 28, 2015

VIA EDGAR & FACSIMILE
Kevin Woody
Accounting Branch Chief
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

RE: National Health Investors, Inc.
Form 10-K
Filed February 17, 2015
File No. 1-10822

Dear Mr. Woody:

On behalf of National Health Investors, Inc. (the "Company"), this letter is written in response to your letter dated July 15, 2015 regarding the Company's filing referenced above. Our responses are keyed to the comments in your letter.

Form 10-K for the fiscal year ended December 31, 2014

SEC Comment

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

FFO, AFFO & FAD, page 47

1. It appears that your presentation of funds from operations is actually funds from operations attributable to common stockholders. Please revise your characterization of the non-GAAP measure in future filings.

Company Response

In our reconciliation of funds from operations, we begin with net income attributable to common stockholders. In future filings, we will revise our presentation of funds from operations to clearly characterize such measure as being attributable to common shareholders.

SEC Comment

Notes to consolidated financial statements, page 59

Note 2. Real Estate, page 63

Prestige, page 64

1. Please explain to us why you accounted for the acquisition of Prestige Senior Living's four facilities as an asset acquisition in light of the guidance contained in ASC 805-10-55-4.

Company Response

In the context of our practice of acquiring properties for our real estate portfolio, we follow Section 805, *Business Combinations* of the FASB Accounting Standards Codification in evaluating each purchase transaction to determine whether the acquired property meets the definition of a business as described in ASC 805-10-20 or is an asset purchase.

Applying the guidance in ASC 805-10-55-4 through 55-9, in an acquisition in which the selling party, who is not the operator or an affiliate of the operator, previously leased the property, we have determined that the essential elements of a business are present. We identify the real estate asset involved as inputs, the lease billing and collection cycle as processes, and the receipt and distribution of cash payments as outputs of the leasing business. As a result, we account for these transactions as business combinations. With the four facilities owned and operated by Prestige Senior Living, we have determined that the inputs, processes and outputs essential to the definition of a business are not present, and therefore, we consider the acquisition to be of assets alone.

Our approach to accounting for acquisitions is consistent with definitions contained in the SEC's *Financial Reporting Manual*, at ¶2330.10, where it is noted that property previously owner-occupied does not constitute real estate operations. We believe analogy to this guidance is relevant as, similar to what is described in 2330.10, "no prior rental history exists" with an owner/operator, and thus the "processes" - the second essential element of what constitutes a business - do not exist, and the conditions of §805 are not met.

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filings;

August 13, 2015

VIA EDGAR

Jennifer Monick
Senior Staff Accountant
U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549-7010

Re: Newcastle Investment Corp.
Form 10-K for the Fiscal Year ended December 31, 2014
Filed March 2, 2015
File No. 001-31458

Dear Ms. Monick,

On behalf of Newcastle Investment Corp. (the "Company"), the undersigned submits this letter in response to comments from the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") received by letter, dated July 28, 2015 (the "Comment Letter"), relating to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (File No. 001-31458) filed on March 2, 2015 (the "2014 10-K"). To facilitate your review, the undersigned has reproduced the text of the Staff's comments in italics below, and the headings and comment numbers in this letter correspond to the headings and comment numbers in the Comment Letter. In addition, capitalized terms used but not defined herein shall have the meanings assigned to such terms in the 2014 10-K.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Other Income, Net, page 58

1. *Please provide to us additional details of the nature of the restructuring of certain properties related to the Golf business that resulted in a $7.2 million gain, and tell us the accounting guidance upon you which you relied.*

Response

We respectfully advise the Staff that the $7.2 million gain is primarily related to the write-off of unfavorable leasehold interest intangible liabilities as a result of restructuring lease agreements for two properties in the Golf business which we acquired in 2013. We also terminated lease agreements of five properties in the Golf business in 2014, which contributed a net gain of less than $0.1 million.

In connection with the accounting for our acquisition of the Golf business, we recognized unfavorable leasehold interest intangibles on the consolidated balance sheet as of the date the Golf business was acquired in accordance with ASC 805-20-25-4 and ASC 805-20-25-12. This was appropriate as we assumed certain lease agreements with unfavorable leasehold interests, in which contracted rent payments were unfavorable relative to market rents at the date of the acquisition.

Subsequent to the acquisition, we initiated negotiations with course owners to restructure or terminate certain lease agreements with unfavorable terms. In the third and fourth quarters of 2014, we negotiated and amended two assumed lease agreements with net unfavorable leasehold interest intangible liabilities of $2.0 million and $5.2 million, respectively, to current market rates with substantially different terms and payment requirements. As a result of these amendments and the substantially different terms that the Company was able to secure, including pricing more representative of prevailing market rates, we concluded that the unfavorable terms under the previous lease agreements relative to market rates no longer existed, and that the write-off of the unfavorable leasehold interest intangible liabilities was appropriate in accordance with ASC 350-30-35-14. Consequently, we reported $5.2 million under "Other income, net" in the consolidated statement of income in the 2014 Form 10-K.

Liquidity and Capital Resources, page 61

2. *We note that you paid dividends of $145.3 million and had net cash provided by operating activities of $40.4 million during the year ended December 31, 2014. In future periodic filings, please discuss the source(s) of these distributions within your Management´s Discussion and Analysis of Financial Condition and Results of Operations, as this disparity raises concerns about the sustainability of distributions into the future. Please provide an example of your proposed disclosure.*

Response

We respectfully advise the Staff that the Company's dividend distributions are not exclusively impacted by net cash provided by operating activities. As a Real Estate Investment Trust ("REIT"), we are required, among other things, to distribute at least 90% of our annual taxable income to our shareholders. We have disclosed in the past and will continue to disclose differences between GAAP and taxable calculations, and the impact of timing differences between the receipt of cash and the recognition of taxable income, including in Risk Factors in the 2014 Form 10-K.

The Company's business model focuses on opportunistic investments in a wide range of real estate related debt and golf related real estate and operations, and, as a result, the sources of our dividends are, taken together, all cash inflows that represent our return on our portfolio of investments in real estate debt and golf related real estate and operations, which are reflected in our net cash provided by operating activities, net cash provided by investing activities and available cash equivalents. Our Board does not specifically match each use of funds with a particular source, but rather assesses all known or anticipated sources as a group when considering a dividend distribution.

In fiscal year 2014, the Company paid dividends of $145.3 million and had net cash provided by operating activities of $40.4 million, net cash provided by investing activities of $319.9 million and cash and cash equivalents of continuing operations of $42.1 million as of January 1, 2014. Thus far in fiscal year 2015, we have paid dividends of $15.9 million. For the six months ended June 30, 2015, the Company had net cash used in operating activities of $14.6 million and net cash provided by investing activities of $157.3 million, and cash and cash equivalents of $73.7 million as of December 31, 2014.

We respectfully acknowledge the Staff's comment and have revised our disclosures to include the following language in our Form 10-Q for the quarter ended June 30, 2015, and will include similar disclosures in future periodic filings:

> The sources of our distributions are net cash provided by operating activities, net cash provided by investing activities and cash equivalents as they represent the return on our portfolio of investments in real estate debt and golf related real estate and operations. The Company has paid dividends of $15.9 million thus far in fiscal year 2015. For the six months ended June 30, 2015, the Company reported net cash used in operating activities of $14.6 million and net cash provided by investing activities of $157.3 million, and cash and cash equivalents of $73.7 million as of December 31, 2014. The timing and amount of distributions are in the sole discretion of our board of directors, which considers our earnings, financial performance and condition, liquidity, debt service obligations and applicable debt covenants, contractual restrictions, REIT qualification requirements and other tax considerations, as well as capital expenditure requirements, business prospects and other factors that our board of directors may deem relevant from time to time. See "Risk Factors—Risks Related to Our REIT Status and the 1940 Act" for more information.

Repurchase Agreements, page 63

3. *With respect to your repurchase agreements, we note your presentation of the balance at end of period, the average daily amount outstanding and the maximum amount outstanding during the three months and year ended December 31, 2014. In future annual filings, please expand your disclosure to present this information for any quarterly periods within the most recent three years for which you have any repurchase agreement activity. In addition, your revised disclosure should also provide explanations for the significant variances among these amounts.*

Response

We respectfully acknowledge the Staff's comment and will expand our repurchase agreement disclosures in future annual filings to include the quarterly average daily amount outstanding and the maximum amount outstanding of repurchase agreements comparatively over each of the most recent three fiscal years. In addition, we will provide explanations for any significant variances among these amounts. Set forth below is an example of our proposed expanded disclosure, for 2014:

The following table summarizes the quarterly average daily amount outstanding and the maximum amount outstanding of repurchase agreements comparatively over each of the most recent three years as of December 31, 2014:

	Avg Daily Amount Outstanding	Maximum Amount Outstanding	Avg Daily Amount Outstanding	Maximum Amount Outstanding	Avg Daily Amount Outstanding	Maximum Amount Outstanding	Avg Daily Amount Outstanding	Maximum Amount Outstanding
	For the Three Months Ended							
	March 31, 2012		**June 30, 2012**		**September 30, 2012**		**December 31, 2012**	
FNMA/FHLMC	$ 228,708	$ 231,345	$ 259,472	$ 319,431	$ 459,495	$ 541,996	$ 637,434	$ 778,914
CDO Securities	$ 8,374	$ 8,728	$ 7,493	$ 7,525	$ 7,283	$ 7,384	$ 6,569	$ 7,118
Non-Agency RMBS	—	—	—	—	$ 52,058	$ 60,575	$ 71,866	$ 150,922

	For the Three Months Ended							
	March 31, 2013		**June 30, 2013**		**September 30, 2013**		**December 31, 2013**	
FNMA/FHLMC	$ 896,063	$ 1,330,432	$ 801,520	$ 1,351,728	$ 350,792	$ 378,624	$ 489,862	$ 547,366
CDO Securities	—	—	—	—	$ 3,272	$ 15,050	$ 15,054	$ 15,094
Non-Agency RMBS	$ 154,549	$ 158,029	$ 133,178	$ 302,033	—	—	—	—
Linked transaction	—	—	$ 3,954	$ 59,968	$ 59,968	$ 59,968	$ 60,064	$ 60,646
Residential Mortgage Loans	—	—	—	—	—	—	$ 13,359	$ 25,119

	For the Three Months Ended							
	March 31, 2014		**June 30, 2014**		**September 30, 2014**		**December 31, 2014**	
FNMA/FHLMC	$ 129,137	$ 516,134	—	—	—	—	$ 204,340	$ 385,282
CDO Securities	$ 44,325	$ 49,500	$ 52,380	$ 79,712	$ 71,701	$ 91,752	$ 63,265	$ 63,804
Linked transaction	$ 58,385	$ 60,646	$ 36,046	$ 58,563	—	—	—	—
Residential Mortgage Loans	$ 25,154	$ 25,363	$ 23,613	$ 25,363	$ 250	$ 22,965	—	—

During 2012, we purchased $626.3 million face amount of FNMA/FHLMC securities for approximately $663.3 million, which were financed with $628.9 million of repurchase agreements. We also purchased $456.0 million face amount of non-Agency RMBS for approximately $288.4 million, which were financed with $149.4 million of repurchase agreements.

In connection with the spin-off of New Residential in May 2013, $1.0 billion of repurchase agreements financing FNMA/FHLMC securities and $301.4 million of repurchase agreements financing non-Agency RMBS were transferred to New Residential. In June 2013, we purchased $116.8 million face amount of securities which were collateralized by certain repackaged Newcastle CDO VIII notes, and financed with $60.0 million of repurchase agreements. We accounted for this transaction as a linked transaction as we purchased and financed this transaction with the same counterparty contemporaneously. In November 2013, we financed a portfolio of residential mortgage loans with $25.1 million of repurchase agreements, which were previously unencumbered on Newcastle's balance sheet. In September 2013, we financed previously repurchased CDO debt with $15.1 million of repurchase agreements.

In January 2014, we sold $503.0 million face amount of the FNMA/FHLMC securities for total proceeds of $532.2 million and repaid $516.1 million of repurchase agreements. We also financed additional repurchased CDO debt with $30.8 million of repurchase agreements. In June 2014, we repaid $60.0 million of repurchase agreements associated with our linked transaction as the underlying assets were paid off. Additionally, in June 2014 we financed previously repurchased CDO debt with $26.3 million of repurchase agreements. In July 2014, we sold $37.4 million face amount of residential mortgage loans for total proceeds of $34.7 million and repaid $23.0 million of repurchase agreements associated with these loans.

Core Earnings, page 76

4. *Please tell us and revise future periodic filings to clarify how the components of "Impairment (reversal), other (income) loss and other adjustments from discontinued operations" presented on page 77 are reflected in your disclosure of discontinued operations on page 107.*

Response

We respectfully advise the Staff that the components of Impairment (reversal), other (income) loss and other adjustments from discontinued operations are detailed in the table below:

	Year Ended December 31,		
	2014	2013	2012
Depreciation and Amortization	$ 90,627	$ 30,969	$ 6,975
Depreciation and amortization non-controlling interest	(708)	2,121	0
Other income (loss)	(1,444)	(6,464)	(17,339)
Acquisition and spin-off related expenses	15,751	13,348	4,625
Impairment (reversal), other (income) loss and other adjustments from discontinued operations	$ 104,226	$ 39,974	$ (5,739)

We respectfully acknowledge the Staff's comment, and have revised our disclosures in our Form 10-Q for the quarter ended June 30, 2015 to add a footnote to the Core Earnings table detailing the components of this line item, and will include similar disclosures in future periodic filings (see underlined text for revisions to page 77):

Set forth below is a reconciliation of core earnings to the most directly comparable GAAP financial measure (in thousands).

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	**2014**	**2015**	**2014**
Income available for common stockholders	$ 17,019	$ 30,532	$ 14,927	$ 34,055
Add (Deduct):				
Impairment (reversal)	13,679	1,526	14,084	2,772
Other (income) loss(A)	(29,044)	(39,510)	(29,231)	(55,357)
Impairment (reversal), other (income) loss and other adjustments from discontinued operations(B)	(317)	26,634	(306)	60,758
Depreciation and amortization(C)	9,837	8,952	19,309	17,757
Acquisition, restructuring and spin-off related expenses	333	1,115	371	2,277
Core earnings	$ 11,507	$ 29,249	$ 19,154	$ 62,262

(A) Net of $1.9 million of deal expenses relating to the sale of the manufactured housing portfolio which were recorded to general and administrative expense under GAAP during 2014.

(B) Includes gain on settlement of investments of $0.3 million and $0.3 million and depreciation and amortization of $0 and less than $0.1 million for the three and six months ended June 30, 2015, respectively. Includes depreciation and amortization of $23.2 million and $50.7 million (gross of $0 and $0.7 million related to non-controlling interests), acquisition and spin-off related expenses of $3.4 million and $10.7 million, and other loss of less than $0.1 million and less than $0.1 million for the three and six months ended June 30, 2014, respectively.

(C) Including accretion of membership deposit liability of $1.5 million and $2.9 million and amortization of favorable and unfavorable leasehold intangibles of $1.2 million and $2.5 million in the three and six months ended June 30, 2015, respectively. Including accretion of membership deposit liability of $1.4 million and $3.1 million and amortization of favorable and unfavorable leasehold intangibles of $1.2 million and $2.5 million in the three and six months ended June 30, 2014, respectively. The accretion of membership deposit liability was recorded to interest expense and the amortization of favorable and unfavorable leasehold intangibles was recorded to operating expenses - golf.

We have also revised our disclosures in our Form 10-Q for the quarter ended June 30, 2015 to add a footnote to the discontinued operations disclosure detailing the portion of general and administrative expense that is related to acquisition and spin-off related expenses, and will include similar disclosures in future periodic filings (see underlined text for revisions to page 107):

Results from discontinued operations were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Interest income	$ —	$ —	$ —	$ —
Interest expense	—	13,592	—	29,389
Net interest income (loss)	—	(13,592)	—	(29,389)
Media income	—	—	—	68,213
Rental income	50	54,595	549	107,485
Care and ancillary income	—	5,666	—	11,127
Gain on settlement of investments	318	—	318	—
Other income (loss)	—	(22)	—	(22)
Total media, rental and other income	368	60,239	867	186,803
Media operating expenses	—	—	—	65,826
Property operating expenses	(157)	26,459	187	52,419
General and administrative expenses (A)	1	4,911	30	12,463
Depreciation and amortization	—	23,245	11	50,733
Income tax (benefit) expense	—	536	—	(224)
Total expenses	(156)	55,151	228	181,217
Income (loss) from discontinued operations	$ 524	$ (8,504)	$ 639	$ (23,803)
Net income attributable to noncontrolling interests	$ —	$ —	$ —	$ 522

(A) Includes acquisition and spin-off related expenses of $3.4 million and $10.7 million for the three and six months ended June 30, 2014.

Depreciation and amortization and other (income) loss are reflected in the disclosure for discontinued operations. The acquisition and spin-off related expenses are included as a portion of general and administrative expense in the disclosure of discontinued operations.

Note 2 Summary of Significant Accounting Policies

Golf Revenues, page 94

5. *Please refer also to your disclosure on page 103 relating to Membership Deposit Liabilities and Deferred Revenue. Please tell us the guidance upon which you relied for your accounting treatment of refundable initiation fees including your consideration of SAB Topic 13. Tell us the amount of revenues recognized under this accounting policy.*

Response

We respectfully advise the Staff that private country club members generally pay an initiation fee upon their acceptance as a member to one of our country clubs. A member is contractually entitled to an unconditional refund of such initial member's non-interest bearing initiation fee deposit (the refund obligation) 30 years from the effective date of the membership, and at no point before 30 years.

The refund obligation component (the "Membership Deposit Liability") of the refundable initiation fee deposit from our private country club members is determined at the date of a member's payment of initiation fee deposits and is calculated as the present value of the refund obligation contractually due in 30 years, utilizing a market discount rate in accordance with ASC 835. It is important to note that the initiation fee deposits bear no interest, therefore requiring that the discount rate be applied over the 30 year contractual period as the terms of the refundable fees are not at market. No revenue is ever recognized on the Membership Deposit Liability. The initiation fee deposits received less the present value of the Membership Deposit Liability are recorded as deferred revenue. We believe that this amount represents the consideration paid by our members at contract inception for the right to access ongoing benefits during the membership, as long as each member continues to pay annual dues. As such, deferred revenue is recognized on a straight-line basis over the expected life of an active membership.

In recognizing deferred revenue, we considered SAB Topic 13.A.4.a, which provides for the recognition of refundable initiation fee deposits, net of estimated refunds (equal to the Membership Deposit Liability in this case), as unearned revenue to be recognized over the expected life of an active membership. SAB Topic 13.A.4.a further indicates that refunds need to be reliable estimates, made on a timely basis. At the inception of a member's initial membership and throughout the contract period, the amount of the refund at the end of the 30 year period is (i) fixed and determinable, (ii) only paid at its original amount and bears no interest and (iii) is only refundable upon the 30th anniversary of the membership effective date.

Pursuant to our Significant Accounting Policies disclosed on page 94 in the 2014 10-K, we recognized approximately $502,000 of revenue during fiscal year 2014, or approximately 0.2% of total revenues.

6. *Please tell us how you estimate the present value of the refund obligation and the expected life of the active membership. Also, explain to us your basis for using a different amortization period for the refund obligation and the deferred revenue.*

Response

As indicated in our response to the Staff's comment number 5, the present value of the refund obligation of the initiation fee deposit is recorded as a Membership Deposit Liability in the consolidated balance sheet. This liability is calculated as the present value of the refund obligation contractually due in 30 years utilizing a market discount rate in accordance with ASC 835. The initiation fee deposits bear no interest, therefore requiring that the discount rate be applied over the 30 year contractual period. As such, this liability accretes over 30 years when the refund obligation is contractually due using the effective interest method, and the accretion is recorded as interest expense in the consolidated statements of income.

As stated in our response to comment number 5, the initiation fee deposits received less the Membership Deposit Liability represent the consideration paid by members at contract inception for the right to access ongoing benefits during the membership, for as long as members continue to pay annual dues. Such difference is recorded as deferred revenue and is recognized as revenue over the expected life of an active membership. As there is no contractual membership period stipulated in the private club membership arrangement, revenue related to the initiation fee deposits is recognized over the expected term of active membership pursuant to SAB Topic 13.A.3.f.

Accordingly, deferred revenue related to the initiation fee deposits is recognized on a straight-line basis over the expected life of an active membership, which is calculated annually, using historical enrollment and attrition data. During fiscal year 2014, we performed our annual assessment of the estimated expected life of each of our private club memberships, and determined that our estimated expected life of a private club membership is approximately seven years.

We determined the expected life of an active membership by calculating a historical average of enrollment and attrition rates. Based on our history of operating country clubs, we believe that considering membership types is an important factor in estimating the expected life of a member, as attrition rates vary depending on the type of membership. Therefore, we analyze attrition rates on a disaggregated basis to consider various types of membership (e.g., social membership with no golf privileges as compared to full golf memberships). Depending on membership type, our historical experience is that the expected lives of various private club memberships ranged from six to seven years for 2012, 2013 and 2014. Based on our historical and periodic analysis, the Company has observed that average expected lives of private club memberships have been consistent over the years presented in the 2014 10-K.

Further, we have performed various sensitivity analyses and believe it is unlikely that changes in our expected life of an active membership would have a material impact on our financial statements. We have calculated the impact of the change in our estimated average membership lives and determined that the impact to revenue for a one year increase or decrease would be approximately $0.1 million, or less than 0.1% of total revenues for fiscal year 2014.

Because the accretion of the Membership Deposit Liability follows the specific terms of the membership agreement pursuant to ASC 835, which contractually sets the right to refund 30 years after inception, while deferred revenue related to initiation fee deposits are recognized over the expected term of active memberships pursuant to SAB Topic 13, the Company has concluded that the accretion period for Membership Deposit Liability and the amortization period for deferred revenue related to initiation fee deposits are appropriately distinct in nature and different in length, and applies a different basis for interest and revenue recognition.

We have revised our disclosures in our Form 10-Q for the quarter ended June 30, 2015, and will include similar disclosures in future periodic filings (see underlined text for revisions to page 55):

> Private country club members generally pay an advance initiation fee deposit upon their acceptance as a member to the country club. Initiation fee deposits are generally refundable, without interest, 30 years after the date of acceptance as a member. The difference between the initiation fee deposit paid by the member and the present value of the refund obligation is deferred and recognized into revenue in the consolidated statements of operations on a straight-line basis over the expected life of an active membership, which is estimated to be seven years.
>
> The present value of the refund obligation is recorded as a membership deposit liability in the consolidated balance sheet and accretes over a 30-year nonrefundable term using the effective interest method. This accretion is recorded as interest expense in the consolidated statements of operations.

Repurchase Agreements, page 103

7. *We note that you disclose that securities sold under repurchase agreements will be treated as collateralized financing transactions, unless they meet sale treatment. Please tell us whether any of those agreements were accounted for as sales for accounting purposes in your financial statements. If so, please:*

    a. *Quantify the amount of repurchase agreements qualifying for sales accounting at each quarterly balance sheet date for each of the past three years.*

    b. *Quantify the average quarterly balance of repurchase agreements qualifying for sales accounting for each of the past three years.*

    c. *Describe all the differences in transaction terms that result in certain of your repurchase agreements qualifying as sales versus collateralized financings.*

d. Provide a detailed analysis supporting your use of sales accounting for your repurchase agreements.

e. Describe the business reasons for structuring the repurchase agreements as sales transactions versus collateralized financings. To the extent the amounts accounted for as sales transactions have varied over the past three years, discuss the reasons for quarterly changes in the amounts qualifying for sales accounting.

f. Describe how your use of sales accounting for certain of your repurchase agreements impacts any ratios or metrics you use publicly, provide to analysts and credit rating agencies, disclose in your filings with the SEC, or provide to other regulatory agencies.

g. Tell us whether the repurchase agreements qualifying for sales accounting are concentrated with certain counterparties and/or concentrated within certain countries. If you have any such concentrations, please discuss the reasons for them.

h. Tell us whether you have changed your original accounting on any repurchase agreements during the last three years. If you have, explain specifically how you determined the original accounting as either a sales transaction or as a collateralized financing transaction noting the specific facts and circumstances leading to this determination. Describe the factors, events or changes which resulted in your changing your accounting and describe how the change impacted your financial statements.

Response

We respectfully advise the Staff that no securities sold under repurchase agreements have been accounted for as sales for accounting purposes in our consolidated financial statements.

As indicated under ASC 860-10-40-5(c)(1), the transferor is presumed to maintain effective control over the transferred financial asset if there is an agreement that both entitles and obligates the transferor to repurchase it before its maturity. Repurchase agreements are examples of typical arrangements containing such provisions. Therefore, we maintain effective control over the transferred securities in the transaction which results in a collateralized financing accounting treatment.

We have revised our disclosures to include the following language in our Form 10-Q for the quarter ended June 30, 2015, and will include similar disclosures in future periodic filings:

Securities sold under repurchase agreements are treated as collateralized financing transactions.

Note 6. Real Estate Related and Other Loans, Residential Mortgage Loans and Subprime Mortgage Loans, page 116

8. We note your disclosure on page 117 that the sale of your manufactured housing portfolio through a securitization was treated as a sale for accounting purposes. Please tell us how this transaction met all of the criteria of ASC 860-10-40-5 to be accounted for as sale.

Response

In connection with the securitization transaction of our manufactured housing portfolio, we performed an accounting analysis to determine whether the transfer of loans to trust would meet the conditions for sale accounting pursuant to ASC 860.

Pursuant to ASC 860-10-40-5, a transfer of an entire group of financial assets in which the transferor surrenders control over those financial assets shall be accounted for as a sale if all of the following conditions are met: (i) legal isolation of the transferred financial assets; (ii) transferee has the right to pledge or exchange the transferred financial assets; and (iii) the transferor does not maintain effective control over the transferred financial assets.

In our manufactured housing portfolio transaction, through a two-step securitization, we sold, transferred, assigned, and conveyed all of our rights, titles and interests in and to the loans to the trusts without recourse and with only standard representations and warranties as a seller of loans. As a result, we concluded that we achieved the conditions for sale accounting and derecognition of the transferred financial assets for this securitization.

The determination of whether the transferred financial assets have been isolated from the transferor is a legal determination rather than an accounting determination. We obtained and relied on true sale and non-consolidation legal opinions from nationally recognized external legal counsel to provide reasonable assurance that the transfer of financial assets is a true sale at law to a bankruptcy remote entity that would not be consolidated.

The transferee must have the right to pledge or exchange the transferred financial assets in order to obtain the benefits of ownership (i.e., the cash inflows) of the asset, and having the right to the economic benefits of such financial assets is considered to be indicative of control over the financial asset. We confirmed that as transferees, the securitization note-holders are not restricted or constrained from pledging or exchanging the transferred financial assets, with the only exception being Rule 144A of the Securities Act of 1933, which does not preclude sale accounting per ASC 860-10-40-18.

Determining whether the transferor maintains effective control over the transferred financial assets depends on if there is any continuing involvement by the transferor and whether the transferor has the ability to reclaim such transferred financial assets. We did not hold any direct or indirect legal beneficial ownership interest in the loans. In addition, the agreements governing the sale of financial assets did not contain terms with respect to transferor repurchase obligations, transferee put options or any other conditions whereby we could reclaim the transferred financial assets.

Based on the above analysis, we determined that we surrendered control over the transferred financial assets, and met all the conditions in ASC 860-10-40-5 to be accounted for as a sale.

Note 10. Fair Value of Financial Instruments

Recurring Fair Value Measurements – Real Estate Securities and Derivatives, page 130

9. *We note that you use the label "Market Quotations" for both Level 2 and Level 3 hierarchy. Please tell us, and disclosed in future filings, the difference between these inputs as used in each hierarchy, and reconcile with your disclosure on page 51-52 that broker and pricing service quotations that you receive are generally classified as Level 3 inputs.*

Response

We respectfully inform the Staff that we categorize broker and pricing service quotations received for real estate securities issued by government agencies, including the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) and plain vanilla derivative instruments, including interest rate swaps based on LIBOR swap rate and to-be-announced securities (TBA) as level 2 inputs. Quotations received for all other real estate securities and derivative instruments are level 3 inputs.

Pursuant to ASC 820, the fair value hierarchy establishes three levels to classify inputs to the valuation techniques used to measure fair value. Level 1 inputs are quoted market prices (unadjusted) in active markets for identical assets or liabilities. Level 2 inputs are inputs other than quoted market prices included in Level 1 that are observable for the asset or liability, either directly (such as prices of similar asset or liability), or indirectly. Level 3 inputs are unobservable (supported by little or no market activity), such as non-corroborative indicative prices for a particular instrument provided by a third party.

Government agency securities as well as plain vanilla derivative instruments transact in active and liquid market which provides broker and pricing service with large volumes of pricing data (i.e., market observable inputs) on similar securities. Therefore, we categorized such market quotations as level 2 inputs. Conversely, the market quotations of all other real estate securities are quoted prices in generally inactive and illiquid markets for identical or similar securities. These quotations are generally based on models prepared by the brokers, and are indicative of market transactions. Therefore, we categorized such market quotations as level 3 inputs.

In response to the Staff's comment, in our Form 10-Q for the quarter ended June 30, 2015, we have added "Observable" and "Unobservable" to the "Market Quotations" columns for Levels 2 and 3, respectively, in the fair value table under Footnote 13 – Fair Value as of June 30, 2015, and will include similar disclosures in future filings. The table below illustrates the modifications to our tabular disclosure on fair value inputs.

	Fair Value		
Carrying Value	Level 2	Level 3	Total
	Market Quotations (Observable)	Market Quotations (Unobservable)	Internal Pricing Models

In addition, we have included in our Form 10-Q for the quarter ended June 30, 2015 the disclosure below, which refines our existing Level 2 and Level 3 disclosure (see underlined text for revisions to page 129):

Level 1 - Quoted prices in active markets for identical instruments.

Level 2 - Valuations based principally on observable market parameters, including

- quoted prices for similar assets or liabilities in active markets,
- inputs other than quoted prices that are observable for the asset or liability (such as interest rates and yield curves observable at commonly quoted intervals, implied volatilities and credit spreads), and
- market corroborated inputs (derived principally from or corroborated by observable market data).

Level 3 - Valuations determined using unobservable inputs that are supported by little or no market activity, and that are significant to the overall fair value measurement. Level 3 assets and liabilities include financial instruments whose value is determined using non-binding market quotations, pricing models, discounted cash flow methodologies, or similar techniques where significant inputs are unobservable, as well as instruments for which the determination of fair value requires significant management judgment or estimation.

We also included the revised disclosure below in our Form 10-Q for the quarter ended June 30, 2015 (see underlined text for revisions to pages 51-52):

> We generally classify non-binding broker and pricing service quotations we receive as level 3 inputs~~, except for certain liquid securities~~. Such quotations are quoted prices in generally inactive and illiquid markets for identical or similar securities. These quotations are generally received via email and contain disclaimers which state that they are “indicative” and “not actionable” - meaning that the party giving the quotation is not bound to actually purchase the security at the quoted price. These quotations are generally based on models prepared by brokers, and we have little visibility into the inputs they use. Based on quarterly procedures we have performed with respect to quotations received from such brokers, including comparison to the outputs generated from our internal pricing models and transactions we have completed with respect to these securities, as well as on our knowledge and experience of these markets, we have generally determined that these quotes represent a reasonable estimate of fair value. For the $631.5 million carrying value of securities valued using quotations as of December 31, 2014, a 100 basis point change in credit spreads would impact estimated fair value by approximately $24.0 million.

Pursuant to the Comment Letter, we acknowledge that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

* * *

Mike Ritz
Direct: (410) 427-1728

May 21, 2015

VIA EDGAR

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington DC 20549
Attn: Jennifer Monick, Staff Accountant

Re: Omega Healthcare Investors, Inc.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-11316

Ladies and Gentlemen:

On behalf of Omega Healthcare Investors, Inc. ("Omega"), I am responding to the comment received from your office by letter dated May 12, 2015 (the "May Letter") with respect to the above-referenced Form 10-K (the "Form 10-K").

I have restated and responded to your comments in the May Letter below. Capitalized terms used in this letter have the meanings ascribed to them in the Form 10-K. All page references (excluding those in the headings and the staff's comment) refer to the pages of the Form 10-K.

Form 10-K for the fiscal year ended December 31, 2014

Item 2. Properties, page 33

1. *We note your disclosure on page 36 that your investments with New Ark Investments, Inc. represent 13% of your total investments. We also note your disclosure that the Ark leases are 50 year leases that expire in 2063. Please clarify and tell us whether all of your leases with New Ark are 50 year leases. In future Exchange Act periodic reports, please disclose the material terms of your agreements with new Ark or advise.*

Response: The New Ark investment is comprised of (i) four fifty-year direct financing leases that expire in 2063 and (ii) one twelve-year operating lease that expires in 2026. We note that Item 2 – Properties includes the total investment value of (i) $539,232 for

our investment in the four New Ark direct financing leases under the section titled "Investment in Direct Financing Leases" and (ii) $34,600 for our investment in one New Ark operating lease under the section "Leased Facilities". The combined investment of $573,832 represents approximately 13% of our total investments.

In addition to our disclosure in Item 2 – Properties, we refer to our disclosure of our investments in direct financing leases in our consolidated financial statements. Note 5 Direct Financing Leases states the following:

> On November 27, 2013, we closed on an aggregate $529 million purchase/leaseback transaction in connection with the acquisition of Ark Holding Company, Inc. ("Ark Holding") by 4 West Holdings Inc. At closing, we acquired 55 SNFs and 1 ALF operated by Ark Holding and leased the facilities back to Ark Holding, now known as New Ark Investment Inc. ("New Ark"), pursuant to four 50-year master leases, with rental payments yielding 10.6% per annum over the term of the leases. The purchase/leaseback transaction is being accounted for as a direct financing lease.
>
> The lease agreements allow the tenant the right to purchase the facilities for a bargain purchase price plus closing costs at the end of term. In addition, commencing in the 41st year of each lease, the tenant will have the right to prepay the remainder of its obligations thereunder for an amount equal to the sum of the unamortized portion of the original aggregate $529 million investment plus the net present value of the remaining payments under the lease, and closing costs. In the event the tenant exercises either of these options, we have the right to purchase the properties for fair market value at the time.

In addition to the disclosure of our investment in direct financing leases, we disclosed the acquisition of the three facilities subject to the operating lease in Note 3 – Properties. The following is an excerpt from Note 3 – Properties:

> *Acquisition of Three SNFs in South Carolina and Georgia*
>
> On June 27, 2014, we purchased two SNFs from an unrelated third party for approximately $17.3 million and leased them to an existing operator of Omega. The SNFs, located in Georgia and South Carolina with a total of 213 beds, were combined into a new 12 year master lease with an initial annual cash yield of 9.5%.
>
> In the third quarter of 2014, we purchased a third SNF in South Carolina with 132 beds that was added to the master lease. The combined purchase price, including the third SNF was $34.6 million.

In our future periodic Exchange Act reports, we will disclose the material terms of all material leases with New Ark and will clarify that only the four direct financing leases with New Ark have 50 year terms.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 40

2. *In future Exchange Act periodic reports, for material properties or operators, please discuss occupancy for those facilities that are not materially occupied.*

Response: As of December 31, 2014 and 2013, the Company does not have any material properties or operators with facilities that are not materially occupied. In future periods if a material property or operator is not materially occupied, we will make appropriate disclosures regarding the occupancy of those facilities that are not materially occupied.

Notes to Consolidated Financial Statements

Note 2 – Summary of Significant Accounting Policies, page F-8

In-Place Leases, page F-10

3. *With respect to your below-market lease intangibles, please tell us how you considered any fixed rate renewal options in your estimate of the remaining term of the underlying leases and your basis for your determination.*

Response: For assumed leases with below market rents, the Company evaluates whether the term of the renewal option should be included or excluded in our estimate of the remaining term of the underlying lease by considering several factors, including (i) the comparison of the contractual rent renewal rate versus our estimate of projected future market rental rates coupled with the length of the renewal term, (ii) the length of time between the acquisition date and the renewal date(s) as well as (iii) the current and expected operating performance of the facility and/or lessee. If we determine that it is reasonably assured the renewal option will be exercised, we include the renewal period in our estimate of the remaining term of the underlying lease.

Note 6 – Mortgage Notes Receivable, page F-21

4. *Please tell us how you complied with paragraph 29 of ASC 310-10-50, or tell us how you determined it was not necessary to provide applicable disclosures regarding credit quality information for your mortgage notes receivables.*

Response: The objective of ASC 310-10-50 paragraph 29 is to provide information that enables the financial statement users to (i) understand how and to what extent management monitors the credit quality of its financing receivables in an ongoing manner and (ii) assess the quantitative and qualitative risks arising from the credit quality of its financing receivables.

We have one class of financing receivables.

We note the December 31, 2014 mortgage balance is approximately 17% of our total assets with the majority (92%) of the balance comprised of three mortgage notes.

We address the qualitative and quantitative provisions of paragraph 29 in different areas of our disclosures. Our evaluation process is largely focused on the qualitative risk factors. We refer to our disclosure in Note 2 to our consolidated financial statements "Loan and Direct Financing Lease Impairments" for our discussion regarding the credit quality of our mortgage notes and receivables in general. Within our Loan and Direct Financing Lease Impairments disclosure, we specifically discuss credit quality indicators similar to those set forth in ASC 310-10-55-19. Specifically, we evaluate the following when determining the collectability of our mortgage notes receivable such as (i) non-payment under the loan documents, (ii) impairment of the underlying collateral, (iii) financial difficulty of the operator or other circumstances that may impair full execution of the loan documents. The following is an excerpt from our Note 2 disclosure:

> Management evaluates our outstanding mortgage notes, direct financing leases and other notes receivable. When management identifies potential loan or direct financing lease impairment indicators, such as non-payment under the loan documents, impairment of the underlying collateral, financial difficulty of the operator or other circumstances that may impair full execution of the loan documents or direct financing leases, and management believes it is probable that all amounts will not be collected under the contractual terms of the loan or direct financing lease, the loan or direct financing lease is written down to the present value of the expected future cash flows. In cases where expected future cash flows are not readily determinable, the loan or direct financing lease is written down to the fair value of the collateral. The fair value of the loan or direct financing lease is determined by market research, which includes valuing the property as a nursing home as well as other alternative uses.

We also refer to our disclosure in Note 5 to our consolidated financial statements "Mortgage Notes Receivable" sub note (1) which states:

> As of December 31, 2013 and 2014, we have no allowance for loan loss for any of our mortgages.

We believe we have met the objectives of this disclosure requirement.

Note 20 – Consolidating Financial Statements, page F-40

5. *Please tell us how you determined it was not necessary to provide a consolidating statement of cash flows. Please refer to Rule 3-10 of Regulation S-X.*

Response: For the periods ending December 31, 2014 and 2013, 2012 we did not include the consolidating statement of cash flows in Note 20 - Consolidating Financial Statements because we determined the disclosure was immaterial given the limited nature of the non-guarantor subsidiaries activities. We note that the non-guarantor subsidiaries relate to the subsidiaries that have secured HUD debt associated with them. Due to the regulations regarding HUD debt, we have not historically engaged in investing activities with the subsidiaries. Accordingly, the cash flow activity of the non-guarantor subsidiaries has historically been limited primarily to operating activity or operating cash flows and financing activity primarily related to scheduled principal payments on the HUD debt, both of which we believe we have adequately disclosed. We note the following disclosure regarding our operating cash flow within Note 20:

> For the years ended December 31, 2014 and 2013, the operating cash flow of the non-guarantor subsidiaries approximated net income of the non-guarantor subsidiaries, adjusted for depreciation and amortization expense and rent recorded on a straight-line basis.

In addition, we note the following disclosure regarding the investing and financing activity within Note 20:

> For the years ended December 31, 2014, 2013 and 2012, the non-guarantor subsidiaries did not engage in investing or financing activities other than the principal payment of $4.4 million, $4.0 million and $3.1 million, respectively for the HUD mortgages on the facilities owned by the non-guarantor subsidiaries. All of the Subsidiary Guarantors of our outstanding Senior Notes and 2014 Credit Facilities, and all of our non-guarantor subsidiaries, are 100% owned by Omega.

We believe the above noted disclosures adequately reflect the cash flow activities of the non-guarantor subsidiaries for the periods presented. We also note that a significant portion of the HUD debt outstanding as of December 31, 2014 was retired in early 2015. As a result, in 2015, we will remove the unrestricted status of these subsidiaries resulting in us retroactively eliminating all assets, liabilities and operating activities associated with these non-guarantor subsidiaries from the non-guarantor subsidiaries column in our consolidating financial statements. In doing so, we will further reduce the materiality of the cash flow activities of the non-guarantor subsidiaries.

Effective April 1, 2015 we closed on the acquisition of Aviv REIT, Inc. (Aviv) via merger. The acquisition of Aviv creates increased complexities regarding our non-guarantor subsidiary activity, including the potential for investing activity. Accordingly, beginning with the second quarter of 2015, we will provide a consolidating statement of cash flows within our disclosures in future Exchange Act filings.

[Letterhead of Omega Healthcare Investors, Inc.]

June 10, 2015

VIA EDGAR AND OVERNIGHT DELIVERY

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington DC 20549
Attn: Jennifer Monick, Staff Accountant

RE: Omega Healthcare Investors, Inc.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 27, 2015
File No. 001-11316

Ladies and Gentlemen:

On behalf of Omega Healthcare Investors, Inc. ("Omega" or the "Company"), I am responding to the comment received from your office by letter dated June 2, 2015 (the "June Letter") with respect to the above-referenced Form 10-K (the "Form 10-K") and in response to our response letter dated May 21, 2015.

I have restated and responded to your comments in the June Letter below. Capitalized terms used in this letter have the meanings ascribed to them in the Form 10-K. All page references (excluding those in the headings and the staff's comment) refer to the pages of the Form 10-K.

Form 10-K for the fiscal year ended December 31, 2014

Notes to Consolidated Financial Statements

Note 2 – Summary of Significant Accounting Policies, page F-8

In-Place Leases, page F-10

1. *We note your response to our prior comment three. Please address the following:*
   a. *Please provide more information regarding how you evaluate items (i) and (ii) noted in your response. Your response should address, but not necessarily be limited to, whether or not you use a threshold in your evaluation. To the extent you use thresholds, please tell us how you concluded that these thresholds are appropriate.*
   b. *Please tell us how you consider multiple factors in your evaluation. Your response should address, but not be limited to, if you consider all three factors noted in your response for each lease with a below market fixed rate renewal option, or if you only consider one or two of these items in certain circumstances.*

c. *Please tell us the potential impact to your financial statements, including the impact from the acquisition of Aviv, if you were to conclude that all below market fixed rate renewal options would be exercised.*

Response:

a. For each lease we assume through an acquisition of a property, we apply ASC 805-20-25-12 to determine whether the terms of the lease are favorable or unfavorable compared with the market terms of a lease for a similar property at the acquisition date. If the terms are favorable, an above-market lease intangible asset is recorded, and if the terms are unfavorable, a below-market lease liability is recorded. ASC 805-20-25-12 does not provide us with further guidance on how to arrive at the fair value of the above- or below-market lease intangible asset or liability, so we refer to ASC 820 and ASC 840 for the appropriate valuation guidance. We have historically used a discounted cash flow model to estimate the value of all assumed above and below market lease assets or liabilities based on the estimated difference between the projected future market rent and the contractual rent.

   ASC 820 provides detailed guidance for using management's judgment and other market participant considerations in assessing fair value when quoted prices are not available. We have extensive experience in underwriting and negotiating lease terms in the long-term healthcare and senior healthcare markets. Prior to the acquisition of Aviv on April 1, 2015, we had more than 500 facilities under lease, a significant portion of which were acquired from third parties and simultaneously leased to a new lessee, accordingly, no above or below market evaluation was required because no lease was assumed. We leverage our knowledge of acquiring these properties together with the knowledge gained through the countless lease transactions throughout our entire portfolio over the years as well as our understanding of market activities regarding the terms of other transactions that have recently closed in the long-term healthcare and senior housing industry to estimate the projected future market rent.

   Primarily all of our existing above and below market leases (with one exception of one below market lease assumed in 2013 which is not material) resulted from our 2009 and 2010 acquisition of a 143 facility portfolio that was comprised of 58 leases, including several master lease agreements that covered multiple facilities. We evaluated each assumed lease individually to determine if it was above or below market. Based on our evaluation, we determined that twenty-four of the assumed leases were below market.

For all leases determined to be below market, we do not use a “bright line” threshold in our evaluation of whether we should include any or all lease extension options in our in-place lease evaluation. We considered each lease individually based on a collective evaluation of the following factors: (i) the significance of the estimated rent differential between projected future market rent and contractual rent, in conjunction with (ii) the time between the acquisition closing date(s) and (iii) lease extension date(s). We also consider the length of the period covered by the lease renewal option as well as the current and expected operating performance of the facility and/or lessee to evaluate the likelihood of their ability to comply with the terms of the lease agreement, including any renewal periods that we may include in our below market lease analysis. We do not believe it is appropriate to limit our analysis to any one factor or using a “bright line” in applying our judgment to evaluate how a market participant would value the in place lease. Accordingly, we believe that a renewal option must be “reasonably assured” of being exercised under ASC 840-10-20 (which defines bargain renewal options).

In every lease we have assumed, the lease agreement requires the lessee to be in compliance with the terms of the lease agreement at the time of the renewal notification in order to extend the lease the additional term; accordingly, evaluating the current and expected operating performance is an important part of the evaluations process we use to determine whether or not to included renewal options in our below market lease evaluation. If we determine the lessee is experiencing or may experience operational issues that could cause them to fail to comply with the lease terms, we would likely excluded any renewal periods. We also consider our history with the operator. We have not typically excluded renewal terms due to operator performance issues in the past, but may do so in the future if we determine it appropriate to do so.

We use this approach because we believe it reflects quantitative and qualitative factors that our tenants typically reference in making renewal decisions.

Example 1:
For example, for a lease assumed with a modest projected below market rent, but a relatively close extension date (i.e., a renewal notification period with in a few years of the acquisition date), we would likely include the first lease extension in our evaluation because it is unlikely that the market conditions between the acquisition date and the renewal notification date would change dramatically enough to change our assumption of projected market rent at the time of the lease renewal notification, however, depending on the renewal terms (including the length of the additional lease term) we may or may not include additional renewals.

Example 2:
Assume the same facts in the previous example. Also assume that the lease includes two 10 year renewal options. As noted above, we may include the first renewal option that was due to be exercised in a few years of the date of acquisition because we would have a higher degree of confidence that the projected future market rent will not change significantly and therefore, believe it is reasonable assured that the renewal option will be exercised. However, it is less likely that we would include the second renewal option in our below market in-place lease evaluation because of the uncertainty regarding market rent more than a decade away.

Example 3:
Assume the same modest projected below market rent, but with a single lease renewal extension notification date that is 10 years from the date of acquisition, we would not include the extension in our evaluation for the same reason noted in example 2 (i.e., the uncertainty regarding market rent a decade away) unless there were other significant indicators present that led us to believe that renewal was reasonably assured.

In summary, to determine whether to include the lease renewal term(s) in our in-place lease evaluations we use all three of the factors collectively as noted above in our evaluation. Depending on the individual facts and circumstances of each lease, we assess whether to include any or all lease renewal periods.

b. As noted in our response to (a) above, we consider all three factors in our evaluation of each assumed leases.

c. We closed the Aviv acquisition on April 1, 2015. Due to the timing of the Aviv acquisition, we have not completed our evaluation of our preliminary purchase price accounting, including the determination of assumed below market leases. Accordingly, we are not in a position to estimate the impact of including all of the renewal options for below market leases of Aviv. However, as noted above, we will review each lease individually and include any renewal options that we believe are reasonably assured to be exercised in the lease term.

In response to your request, we quantified the incremental impact to our financial statements if we assumed all below market renewal options for in-place leases assumed in connection with all acquisitions through December 31, 2014. The following table summarizes the incremental impact of including all of the renewal options for below market leases ($ in millions):

Impact on financial statements	Projected incremental below market lease	
Increase in acquired lease intangible liabilities	$	22.3
Total assets as of December 31, 2014	$	4,598.0
% of total assets as of December 31, 2014		0.48%

In addition to the above, we estimate the additional rental income related to amortizing the acquired lease intangible liabilities would have resulted in less than $0.1 million in additional rental income in 2014. The additional rental income if recorded would have been less than 0.01% of our consolidated total operating revenue and net income for the year ended December 31, 2014.

Based on the foregoing, we respectfully represent to the Staff that the projected impact from including all below market renewal options, as opposed to the below market renewal options that we have included in our below market in-place lease analysis, would not have a material impact on our consolidated 2014 financial statements.

* * * * *

We would respectfully request your prompt consideration of our responses to your comments. We sincerely hope that the staff views our responses as complete and would very much appreciate the staff contacting us as soon as possible by telephone if there are any remaining issues. Please note that because Omega's Form S-4 (SEC File No. 333-203447) was not declared effective on or before June 8, 2015, Omega is obligated to pay liquidated damages accruing at an annual rate of 0.25% on $250,000,000 of outstanding senior notes until such Form S-4 is declared effective. Accordingly, Omega is committed to promptly addressing any remaining questions you may have so that Omega may promptly request that the Form S-4 be declared effective.

If you have any questions or if we can be of further assistance to you in the review process, please contact me at 410/427-1728 (fax: 410/427-8828), or Eliot W. Robinson of our counsel Bryan Cave LLP at 404/572-6785.

OMEGA HEALTHCARE INVESTORS, INC.

By: /s/ Michael Ritz
Michael Ritz
Chief Accounting Officer

MDR/dmt

PARKWAY PROPERTIES, INC.
390 North Orange Avenue, Suite 2400
Orlando, FL 32801

September 9, 2015

BY EDGAR AND OVERNIGHT MAIL

Ms. Jaime G. John
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Parkway Properties, Inc.
Form 10-K for the year ended December 31, 2014
Filed February 25, 2015
File No. 001-11533

Dear Ms. John:

This letter is submitted by Parkway Properties, Inc. (the "***Compan***y") in response to comments from the staff of the Division of Corporation Finance (the "***Staff***") of the Securities and Exchange Commission (the "***Commission***") in a letter dated August 25, 2015 (the "***Comment Letter***") with respect to the Company's Annual Report on Form 10-K for year ended December 31, 2014 (File No. 001-11533) filed with the Commission on February 25, 2015 (the "***Form 10-K***").

For your convenience, the Staff's numbered comments set forth in the Comment Letter have been reproduced in italics herein with responses immediately following each comment. Unless otherwise indicated, page references in the reproductions of the Staff's comments refer to the Form 10-K. Defined terms used herein but not otherwise defined herein have the respective meanings given to them in the Form 10-K.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 38

1. *We note that you disclose NOI and same store NOI in your earnings releases and supplemental materials. Please tell us if you consider these measures to be key performance indicators. To the extent these measures are considered to be key performance indicators, in future filings please include the measures as well as the required disclosure in accordance with Item 10(e) of Regulation S-K within your Management's Discussion and Analysis. Include an example of any future disclosure in your response.*

Response to Comment No. 1

In future filings under the Securities Exchange Act of 1934, as amended ("***Exchange Act periodic reports***"), the Company will disclose NOI and same-store NOI because it does consider these measures to be key performance indicators. Future Exchange Act periodic reports will include disclosure substantially along the lines of the following (except to the extent permitted to be excluded by Item 10(e)(iii) of Regulation S-K):

NOI and Same-Store NOI

We define net operating income ("NOI") as income from real estate operations less property operating expenses (before interest expense, impairment charges and depreciation and amortization). NOI excludes interest expense, depreciation and amortization, management company income and expenses, general and administrative expenses, acquisition costs, gain/loss on sale of real estate, impairments and other non-operating items. NOI measures 100% of the operating performance of Parkway Properties LP's real estate properties in which Parkway Properties, Inc. owns an interest. We consider NOI to be a useful performance measure to investors and management because it reflects the revenues and expenses directly associated with owning and operating our properties and the impact to operations from trends in occupancy rates, rental rates and operating costs not otherwise reflected in net income.

We also evaluate performance based upon same-store NOI ("SSNOI"). SSNOI reflects the NOI from properties that were owned for the entire current and prior reporting periods presented and excludes properties acquired or sold during those periods, which eliminates disparities in net operating income due to acquisitions and dispositions of properties during such period. We believe that this measure provides a more consistent metric for the comparison of our properties from period to period.

NOI and SSNOI as reported by us may not be comparable to similar measures reported by other REITs that do not define the measures as we do. NOI and SSNOI are not measures of operating results as measured by GAAP and should not be considered alternatives to net income.

The following table presents a reconciliation of our net income (loss) to NOI and SSNOI for [the periods to be provided in the filing] (in thousands):

Net income (loss) for Parkway Properties, Inc.
Add (deduct):
Interest expense
Loss on extinguishment of debt
Depreciation and amortization
Management company expenses
Income tax expense
General and administrative
Acquisition costs
Equity in (earnings) loss of unconsolidated joint ventures
Sale of condominium units
Cost of sales - condominium units
Net income (loss) attributable to noncontrolling interests
Loss from discontinued operations
Gains on sale of real estate
Impairment loss on real estate
Management company income
Interest and other income
Net operating income from consolidated office and parking properties
Less: Net operating income from non same-store properties
Same-store net operating income

Funds from Operations ("FFO"), page 62

2. *Please expand your disclosure to include a statement disclosing the reasons why you believe the presentation of "recurring funds from operations" provides useful information to investors in accordance with Item 10(e)(1)(i)(C) of Regulation S-K.*

Response to Comment No. 2

In future Exchange Act periodic reports, to the extent the Company uses recurring funds from operations ("***recurring FFO***") as a key performance indicator, it will include a statement substantially along the lines of the following (except to the extent permitted to be excluded by Item 10(e)(iii) of Regulation S-K) to disclose why it believes recurring FFO provides useful information to investors in accordance with Item 10(e)(1)(i)(C) of Regulation S-K:

> In addition to FFO, we also disclose recurring FFO, which excludes our share of non-cash adjustments for interest rate swaps, realignment expenses, adjustments for non-recurring lease termination fees, gains and losses on extinguishment of debt and acquisition costs. Although this is a non-GAAP measure that differs from NAREIT's definition of FFO, we believe it provides a meaningful presentation of operating performance because it allows investors to compare our operating performance to our performance in prior reporting periods without the effect of items that by their nature are not comparable from period to period and tend to obscure our actual operating results. Recurring FFO measures 100% of the operating performance of Parkway Properties LP's real estate properties in which Parkway Properties, Inc. owns an interest.

EBITDA, page 63

3. *We note your presentation of EBITDA and the definition in footnote 1 to the reconciliation on page 65, which differs from EBITDA as defined by Exchange Act Release No. 47226. To the extent that this non-GAAP measure is presented in future filings, please revise the label to distinguish this measure from EBITDA (e.g., "Adjusted EBITDA"). Refer to Question 103.01 of the C&DIs on Non-GAAP Financial Measures.*

Response to Comment No. 3

In future Exchange Act periodic reports, the Company will include a reconciliation of EBITDA as defined by Exchange Act Release No 47226, and show further adjustments to EBITDA as "Adjusted EBITDA." Future Exchange Act periodic reports will include disclosure substantially along the lines of the following (except to the extent permitted to be excluded by Item 10(e)(iii) of Regulation S-K):

EBITDA and Adjusted EBITDA

We believe that using EBITDA as a non-GAAP financial measure helps investors and our management analyze our ability to service debt and pay cash distributions. We define EBITDA as net income before interest expense, income taxes and depreciation and amortization. We further adjust EBITDA to exclude acquisition costs, gains and losses on early extinguishment of debt, impairment of real estate, share-based compensation expense and gains and losses on sales of real estate ("Adjusted EBITDA").

Adjustments for Parkway's share of partnerships and joint ventures are included in the computation of Adjusted EBITDA on the same basis.

However, the material limitations associated with using EBITDA and Adjusted EBITDA as non-GAAP financial measures compared to cash flows provided by operating, investing and financing activities are that EBITDA and Adjusted EBITDA do not reflect our historical cash expenditures or future cash requirements for working capital, capital expenditures or the cash required to make interest and principal payments on our outstanding debt. Although EBITDA and Adjusted EBITDA have limitations as an analytical tool, we compensate for the limitations by only using EBITDA and Adjusted EBITDA to supplement GAAP financial measures. Additionally, we believe that investors should consider EBITDA and Adjusted EBITDA in conjunction with net income and the other required GAAP measures of our performance and liquidity to improve their understanding of our operating results and liquidity. EBITDA and Adjusted EBITDA measure 100% of the operating performance of Parkway Properties LP's real estate properties in which Parkway Properties, Inc. owns an interest.

We view EBITDA and Adjusted EBITDA primarily as a liquidity measure and, as such, the GAAP financial measure most directly comparable to them is cash flows provided by operating activities. Because EBITDA and Adjusted EBITDA are not measures of financial performance calculated in accordance with GAAP, they should not be considered in isolation or as a substitute for operating income, net income, or cash flows provided by operating, investing and financing activities prepared in accordance with GAAP. The following table reconciles cash flows provided by operating activities to EBITDA and Adjusted EBITDA for [the periods to be provided in the filing] (in thousands):

Cash flows provided by operating activities
Interest expense, net
Tax expense - current
EBITDA
Amortization of below market leases, net
Acquisition costs
Loss on extinguishment of debt
Change in deferred leasing costs
Change in condominium units
Change in receivables and other assets
Change in accounts payable and other liabilities
Adjustments for noncontrolling interests and unconsolidated joint ventures
Adjusted EBITDA

The following table reconciles net income (loss) for Parkway Properties, Inc. to EBITDA and Adjusted EBITDA for [the periods to be provided in the filing] (in thousands):

Net income (loss) for Parkway Properties, Inc.
Adjustments to net income (loss) for Parkway Properties, Inc.:
Interest expense, net
Income tax expense
Depreciation and amortization
EBITDA
EBITDA adjustments - noncontrolling interest in real estate partnerships and unconsolidated joint ventures
Impairment loss on real estate
Gains on sale of real estate (Parkway's share)
Loss on extinguishment of debt
Noncontrolling interest - unit holders
Acquisition costs
Amortization of share-based compensation
Adjusted EBITDA

Item 8. Financial Statements and Supplementary Data.

Note 13 - Noncontrolling Interests, page 101

4. *We note your disclosure on page 74 that you consolidate joint ventures where you are the sole general partner and the limited partners do not possess kick-out rights or other substantive participating rights. Please provide us with a detailed analysis to support your conclusion to consolidate Fund II and address any substantive participating rights held by TRST.*

Response to Comment No. 4

The Company respectfully submits that it has analyzed its interest in Fund II and determined that the Company controls Fund II and it is proper to consolidate this interest in its financial statements.

On May 14, 2008, the Company, through affiliated entities, entered into a limited partnership agreement forming a $750 million discretionary fund ("***Fund II***") with the Teacher Retirement System of Texas ("***TRST***") for the purpose of acquiring multi-tenant office properties. TRST is a 70% limited partner investor and the Company, through affiliated entities, is a 30% investor and serves as the general partner.

The Company first considered whether the entity was a variable interest entity under ASC 810. The Company's management concluded that the entity does not meet the definition of a variable interest entity under ASC 810-10 because it does not have any of the following characteristics:

a. the entity does not have enough equity to finance its activities without additional subordinated financial support;

b. the equity holders, as a group, lack the characteristics of a controlling financial interest; and

c. the legal entity is structured with non-substantive voting rights (i.e., an anti-abuse clause).

Pursuant to ASC 810-20-25-3, the general partner in a limited partnership is presumed to control that limited partnership regardless of the extent of the general partner's ownership interest in the limited partnership.

Furthermore, pursuant to ASC 810-20-25-5, the assessment of whether the rights of the limited partners overcome the presumption of control by the general partner is a matter of judgment that depends on facts and circumstances. The general partner does not control the limited partnership if the limited partners have either of the following:

a. the substantive ability to dissolve (liquidate) the limited partnership or otherwise remove the general partner without cause (as distinguished from with cause); or

b. substantive participating rights.

The Company's management evaluated these criteria and concluded neither criteria was met.

Criteria (a) was not met because the limited partner only has the ability to remove the general partner for cause or under a change in control. Section 13.1 of the limited partnership agreement of Fund II (the "***Fund II LPA***") states, in relevant part:

> "TRST shall have the right to remove the General Partner at any time for Cause upon thirty (30) days' prior written notice, except that in the event of potential material harm to the business or value of the Partnership, the General Partner shall be removed immediately upon written notice. In addition, TRST may remove the General Partner upon thirty (30) days' prior written notice in the event there is a Change of Control."

Criteria (b) was not met because the limited partner does not have substantive participating rights. ASC 810-20-20 defines participating rights as rights that allow the limited partners to participate in certain financial and operating decisions of the limited partnership that are made in the ordinary course of business.

Section 7.1 of the Fund II LPA, states, in relevant part:

"The management, operation, and control of the Partnership and its business and the formulation of its investment policy, including, by means of example and not limitation, the day-to-day responsibility for acquiring, operating, financing and managing the Investments, shall be vested exclusively in the General Partner…."

Section 7.1 of the Fund II LPA continues:

"The General Partner shall, in its sole discretion, exercise all powers necessary and convenient for the purposes of the Partnership and all of the power conferred by the [Delaware Revised Uniform Limited Partnership Act] on the general partner of a limited partnership, including the power to conduct the Partnership's business."

Furthermore Section 1.4 of the Fund II LPA, states, in relevant part:

"Subject to the limitations set forth herein, the business and purposes of the Partnership shall be to, directly and indirectly, acquire, hold, maintain, operate, improve, renovate, expand, originate, use, lease, finance, manage and dispose of Investments (as hereinafter defined) and to engage in any and all activities as are related or incidental to the foregoing, as determined by the General Partner in its sole discretion."

Finally, the Company's management evaluated ASC 810-20-25-13, which states that a limited partner's rights (whether granted by contract or by law) that would allow limited partners to effectively participate in the following actions of the limited partnership shall be considered substantive participating rights and would overcome the presumption that the general partner controls the limited partnership:

a. selecting, terminating and setting the compensation of management responsible for implementing the limited partnership's policies and procedures; and

b. establishing operating and capital decisions of the limited partnership, including budgets, in the ordinary course of business.

The Company's management concluded neither criteria was met by reference to the applicable sections noted above. Section 7.6 of the Fund II LPA explicitly states that:

"No Limited Partner, in its capacity as a Limited Partner, shall participate in the management of the business and affairs of the Partnership. No Limited Partner, in its capacity as a Limited Partner, shall have any right or power to sign for or to bind the Partnership in any manner or for any purpose whatsoever, or have any rights or powers with respect to the Partnership except those expressly granted to such Limited Partner by the terms of this Agreement or those conferred upon such Limited Partner by law, and no prior consent or approval of the Limited Partners shall be required in respect of any act or transaction to be taken by the General Partner on behalf of the Partnership unless otherwise provided in this Agreement."

Based on the guidance of ASC 810-20-25-3 and ASC 810-20-25-5, the Company's management concluded that the Company controls Fund II, the presumption of control by the general partner has not been overcome because the limited partner does not have kick-out rights or substantive participating rights, and, therefore, the Company properly consolidates Fund II.

****

September 18, 2015

VIA EDGAR

Kristi Marrone
Staff Accountant
Office of Real Estate and Commodities
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Pennsylvania Real Estate Investment Trust**
Form 10-K for the year ended December 31, 2014
Filed February 23, 2015
File No. 001-06300

Dear Ms. Marrone:

Pennsylvania Real Estate Investment Trust (the "Company") has considered carefully each of the comments in your letter dated September 8, 2015, and on behalf of the Company, I respectfully provide the Company's responses to your comments below. For your convenience, the text of each comment is reproduced below before the applicable response.

Form 10-K for the Year Ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds From Operations, page 56

Comment 1:

Please tell us how your definition of FFO is consistent with the NAREIT definition of FFO, specifically addressing your adjustments for extraordinary items (computed in accordance with GAAP) and significant non-recurring events that materially distort the comparative measurement of company performance over time.

Response:

In future filings, the Company will state only the main definition set forth in NAREIT's White Paper on Funds From Operations (April 2002) (the "White Paper"). The clause regarding "extraordinary items (computed in accordance with GAAP) and significant non-recurring events that materially distort the

comparative measurement of company performance over time" was derived from Section III.B of the White Paper, "Treatment of Non-recurring and Extraordinary Items," but it is not part of the main definition, and will be omitted in the future.

The Company's calculation of FFO has always been entirely consistent with the main definition in the White Paper and was not affected by the inclusion of that clause as we have not excluded any extraordinary items or significant non-recurring events. We note that we do exclude impairment write-downs of depreciable real estate, in accordance with NAREIT's longstanding guidance that it is consistent with NAREIT's definition to exclude impairment write downs of depreciable real estate. In 2011, NAREIT reiterated its guidance that excluding such impairments is consistent with the NAREIT definition. Thus, the Company's definition of FFO and our determination of FFO in accordance with that definition are wholly consistent with the NAREIT definition.

Comment 2:

We note that your calculation of FFO includes an adjustment for preferred share dividends. Please revise your presentation in future filings to clearly label your FFO measure (e.g., FFO attributable to common shareholders). Also make similar revisions to your future earnings releases filed on Form 8-K, as appropriate.

Response:

In future filings, the Company will revise its presentation to clearly label the applicable FFO measure, including in future earnings releases furnished on Form 8-K, as follows:

FFO attributable to common shareholders and OP Unit holders

Reconciliation of GAAP Net Income (Loss) to Non-GAAP Measures, page 58

Comment 3:

We note your reconciliations on pages 59 - 60 where you have adjusted the GAAP financial information to allocate your share of revenue and expense from unconsolidated partnerships. Please tell us the consideration you gave to Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

Response:

The Company has given consideration to that Question as follows: Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures addresses the presentation of a "full non-GAAP income statement." In the Company's view, as noted in its June 3, 2011 response to the Commission's May 16, 2011 comment letter, the tables on pages 59 and 60 of the Form 10-K constitute a selected or summary income statement, not a full non-GAAP income statement.

As also noted in that prior response, in connection with the preparation of its Form 10-K a few years ago, the Company obtained feedback from shareholders and investment research analysts as part of a process designed to develop a presentation format for this reconciliation table that displayed the information in a user-friendly, logical, accessible and succinct manner. The Company believes that its presentation constitutes informative, useful and easily understandable disclosure. The Company also believes that showing the relationship among these measures as well as the contribution from consolidated properties and

unconsolidated partnerships in a single table is helpful to investors. For the foregoing reasons, in the Company's view, the Company's presentation constitutes valuable, clear and meaningful disclosure and is not inconsistent with Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

Comment 4:

To the extent that this non-GAAP measure and reconciliation format is presented in future filings, please provide the following additional disclosures:

- **clearly label the "total" column as a non-GAAP measure**
- **explain why the current presentation is useful to investors and any limitations to its use**
- **explain the process used to derive the amounts reported in the "share of unconsolidated partnerships" column**
- **include explicit disclosure that the company does not control the unconsolidated partnerships or have legal claim to the assets, liabilities, revenues or expenses of the unconsolidated partnerships**
- **explain the economics of the unconsolidated partnerships to which the company is entitled under the partnership agreements.**

Please provide us with your proposed revisions.

Response:

In future filings, the Company will revise the presentation and explanations of the non-GAAP measures and the reconciliation as follows:

- The Company will clearly label the "total" column as a non-GAAP measure
- We note that, in accordance with Item 10(e)(1)(i)(C) and (D) of Regulation S-K, the Company has previously included on pages 52-53 and 56-57 statements disclosing the reasons why management believes that presentation of the non-GAAP financial measures of Net Operating Income ("NOI")(the determination of which involves use of the proportionate-consolidation method) and FFO provide useful information to investors and, to the extent material, the additional purposes for which the registrant's management uses these non-GAAP financial measures, as well as the limitations on the use of such measures. The Company will include in this disclosure an explanation as to why the presentation of the Company's share of the revenue and expenses from unconsolidated partnerships is useful to investors, as follows:

  "We believe that this presentation is helpful to management and investors because it provides comparable information about the operating results of our unconsolidated partnerships and is thus indicative of the return on property investment and of operating performance over time. Results based on our share of the results of unconsolidated partnerships do not represent cash generated from operating activities of our unconsolidated partnerships and should not be considered to be an alternative to cash flow from unconsolidated properties' operating activities as a measure of our liquidity, because we do not have a direct legal claim to the revenues or expenses of the unconsolidated partnerships beyond our rights as an equity owner or tenant in common owner."

- The Company will explain the process used to derive the amounts reported in the "share of unconsolidated partnerships" column as follows:

  "The amounts presented in the 'Share of Unconsolidated Partnerships' column are derived using the 'proportionate-consolidation method' (a non-GAAP measure), which includes our share of the results of our unconsolidated partnerships based on our ownership percentage in each such unconsolidated partnership.

  Under the partnership agreements relating to our current unconsolidated partnerships with third parties, we own a 25% to 50% economic interest in such partnerships. As such, in general, we have an indirect economic interest in our proportionate share of the revenue and expenses of the unconsolidated partnership, and, if there were to be some type of distribution of the assets and liabilities of the partnership, our proportionate share of those items. There are generally no provisions in such partnership agreements relating to special non-proportionate allocations of income or loss, and there are no preferred or priority returns of capital or other similar provisions. Thus, we believe that the proportionate-consolidation method represents a valuable means of showing the share of the operating results of our unconsolidated partnership properties that would be allocated to us based on our economic interest under the partnership agreement."

- The Company will include explicit disclosure that the Company does not control the unconsolidated partnerships or have legal claim to the assets, liabilities, revenues or expenses of the unconsolidated partnerships, as follows:

  "We hold a non-controlling interest in each of our unconsolidated partnerships, and account for such partnerships using the equity method of accounting. We do not control any of these equity method investees for the following reasons:

  - Except for two properties that we co-manage with our partner, all of the other entities are managed on a day-to-day basis by one of our other partners as the managing general partner in each of the respective partnerships. In the case of the co-managed properties, all decisions in the ordinary course of business are made jointly.

  - The managing general partner is responsible for establishing the operating and capital decisions of the partnership, including budgets, in the ordinary course of business.

  - All major decisions of each partnership, such as the sale, refinancing, expansion or rehabilitation of the property, require the approval of all partners.

  - Voting rights and sharing of profits and losses are generally in proportion to the ownership percentages of each partner.

  We do not have a direct legal claim to the assets, liabilities, revenues or expenses of the unconsolidated partnerships beyond our rights as an equity owner, in the event of any liquidation of such entity, and our rights as a tenant in common owner of certain unconsolidated properties.

  We record the earnings from the unconsolidated partnerships using the equity method of accounting under the statements of operations caption entitled 'Equity in income of partnerships,' rather than consolidating the results of the unconsolidated partnerships with our results. Changes in our investments in these entities are recorded in the balance sheet caption entitled 'Investment in

partnerships, at equity.' In the case of deficit investment balances, such amounts are recorded in 'Distributions in excess of partnership investments.

We hold legal title to properties owned by three of our unconsolidated partnerships through tenancy in common arrangements. For each of these properties, such legal title is held by us and another person or persons, and each has an undivided interest in title to the property. With respect to each of the three properties, under the applicable agreements between us and the other persons with ownership interests, we and such other persons have joint control because decisions regarding matters such as the sale, refinancing, expansion or rehabilitation of the property require the approval of both us and the other person (or at least one of the other persons) owning an interest in the property. Hence, we account for each of the properties like our other unconsolidated partnerships using the equity method of accounting. The balance sheet items arising from these properties appear under the caption entitled 'Investments in partnerships, at equity.'

For further information regarding our unconsolidated partnerships, see note 3 to our consolidated financial statements."

- With respect to the Company's explanation of the economics of the unconsolidated partnerships to which the Company is entitled under the partnership agreements, the Company has set forth its proposed revisions in response to the third bullet point under this Response to Comment 4.

***

In connection with the responses to your comments set forth above, the Company acknowledges that:

- The Company is responsible for the adequacy and accuracy of the disclosure in its filings;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Securities and Exchange Commission from taking any action with respect to the filing; and
- The Company may not assert Staff comments as a defense in any proceeding initiated by the Securities and Exchange Commission or any person under the federal securities laws of the United States.

If you have any questions about any of the Company's responses to your comments or require further explanation, please do not hesitate to contact Robert McCadden, the Company's Chief Financial Officer, at (215) 454-1295 or Jonathen Bell, the Company's Chief Accounting Officer, at (215) 875-0426.

Sincerely,

/s/ Robert F. McCadden

Robert F. McCadden

Executive Vice President and Chief Financial Officer

cc: Bruce Goldman, Esq. (PREIT)
Daniel Pliskin, Esq. (PREIT)
Robert Juelke, Esq. (Drinker Biddle & Reath LLP)
Andrew Michal (KPMG LLP)

July 7, 2015

Jennifer Monick
Staff Accountant
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

SUBJECT: Response to your comment letter
PennyMac Mortgage Investment Trust
Form 10-K for the fiscal year ended December 31, 2014
Filed March 2, 2015
File No. 1-34416

Dear Ms. Monick:

I am writing in response to your letter dated June 22, 2015 regarding your review of the Annual Report on Form 10-K of PennyMac Mortgage Investment Trust (the "Company") for the fiscal year ended December 31, 2014 as filed on March 2, 2015.

Following are our responses to your comments. For ease of review, we have reprinted your comments in bold face followed by our responses.

General

1. **Please tell us how you complied with Rule 5-04 of Regulation S-X, or tell us how you determined it was not necessary to provide a Schedule IV.**

The Company provides mortgage loan concentration data in *Management's Discussion and Analysis of Financial Condition and Results of Operations – Investment Portfolio Composition – Mortgage Loans* that provides portfolio composition information for eight different attributions. The Company believes that its analysis provides more useful information than that required by Rule 5-04, given the nature of the assets acquired – distressed mortgage loans. The Company's presentation includes much of the information specified by Rule 12-29.

Specifically:

- the second table included in the Company's analysis groups its mortgage loans by categories (first or second trust deed);
- the first table included in the Company's analysis identifies mortgage loans between mortgage loans where principal and interest is payable at level amounts over life to maturity as well as those subject to balloon payments.

The tables also include information on:

- owner occupancy (the third table in the Company's presentation);
- loan seasoning (the fourth table in the Company's presentation);
- borrower creditworthiness as expressed by the borrower's FICO score (the fifth table in the presentation);
- current loan-to-value of the mortgage loans (the sixth table in the presentation);
- geographic distribution of the mortgage loans (the seventh table in the presentation); and
- the payment status of the mortgage loans (the eighth table in the presentation).

The Company does not group its mortgage loans at fair value by original loan amount as its mortgage loan investments are primarily comprised of distressed single-family mortgage loans that are carried at fair value, and the mortgage loans' fair values are generally significantly less than the mortgage loans' unpaid principal balances ("UPB"). Original loan amount and UPB are not significant indicators of risk. The Company believes that the attributes presented in Management's Discussion and Analysis of Financial Condition and Results of Operations are more relevant than the groupings of the portfolio's original mortgage loan amounts.

The Company supplements the loan attribution disclosures contained in Management's Discussion and Analysis of Financial Condition and Results of Operations in Note 8 – *Fair Value* and Note 12 – *Mortgage Loans at Fair Value* to its consolidated financial statements. In Note 8, the Company rolls forward its investment in distressed mortgage loans and discloses both the principal amount due upon maturity and the fair value

of the mortgage loans. In Note 12 to its consolidated financial statements, the Company discloses the fair value and the unpaid principal balance by mortgage loan type.

The Company believes that its business operations have characteristics that are more similar to those of a bank holding company than those of a commercial company. Accordingly, the Company's financial statements in certain areas are prepared following the guidance of Article 9 of Regulation S-X. The Company also believes this position is supported by comment four of the staff's comment letter issued to the Company dated August 6, 2013 and in subsequent correspondence between the Company and staff relating thereto, whereby the Company was advised to conform with Rule 9-04 of Regulation S-X as it related to income statement presentation.

The Company therefore believes that the schedule specified in Rule 5-04 of Regulation S-X is rendered unnecessary as it is duplicative of much of the information provided by the Company and less relevant for understanding the Company's portfolio than the information provided in Management's Discussion and Analysis of Financial Condition and Results of Operations and the Notes to the consolidated financial statements.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources, page 84

2. **You indicated in a response to the SEC Staff dated July 31, 2014 that in future annual reports, you would provide the average quarterly balance for your asset repurchase agreements for each of the past three years, the period-end balance for each of those quarters, and the maximum balance outstanding during each quarter and explain the cause and business reasons for material variances of such repurchase agreements. We are unable to locate such disclosure; please advise.**

The Company respectfully advises the staff that it inadvertently omitted the data from the Liquidity and Capital Resources section of the Company's Annual Report on Form 10-K (the "Annual Report") for the year ended December 31, 2014. The Company will include the tables in future Annual Reports.

Data on the average annual balance for the Company's repurchase agreements, the fiscal year-end balance and the maximum balance outstanding during each fiscal year are provided in Note 17 to the consolidated financial statements contained in the Company's Annual Report for the fiscal year ended December 31, 2014 and in Notes 18 – 22 to the consolidated financial statements contained in the Company's Annual Reports for the fiscal years ended December 31, 2013 and 2012.

Information on average and maximum balances outstanding, including the cause and business reasons for material variances between average and maximum balances of repurchase agreements, has also been included on a voluntary basis in the Liquidity and Capital Resources section of every Quarterly Report on Form 10-Q and Annual Report filed by the Company since the period ended September 30, 2010.

In its future Annual Reports, the Company will include the tabular disclosure of the average quarterly balance of assets sold under agreements to repurchase for each of the past three years, the period-end balance for each of those quarters, and the maximum balance outstanding during each quarter, along with an explanation of the cause and business reason for material variances of such repurchase agreements. The quarterly information for 2014, 2013 and 2012 is presented below.

	2014 quarter ended			
Assets sold under agreements to repurchase:	**December 31**	**September 30**	**June 30**	**March 31**
Average balance outstanding	$ 2.462.496	$2,501,816	$2,253,127	$1,795,702
Maximum daily balance outstanding	$ 3,187,742	$2,815,572	$2,814,572	$2,079,090
Ending balance	$ 2,730,130	$2,416,686	$2,701,755	$1,887,778

	2013 quarter ended			
Assets sold under agreements to repurchase:	**December 31**	**September 30**	**June 30**	**March 31**
Average balance outstanding	$ 1,839,662	$1,755,850	$1,385,350	$1,221,766
Maximum daily balance outstanding	$ 2,362,467	$2,736,873	$2,108,956	$1,619,022
Ending balance	$ 2,039,605	$1,980,058	$1,565,896	$1,615,050

Assets sold under agreements to repurchase:	2012 quarter ended December 31	September 30	June 30	March 31
Average balance outstanding	$ 1,031,394	$ 886,601	$ 736,305	$ 564,170
Maximum daily balance outstanding	$ 1,394,732	$1,372,720	$1,017,397	$ 734,585
Ending balance	$ 1,256,102	$1,041,371	$1,007,712	$ 501,441

The difference between the maximum and average daily amounts outstanding was due to increasing volume and the timing of mortgage loan purchases and sales in our correspondent production business and timing of distressed mortgage loan acquisitions.

Contractual Obligations, page 86

3. **It does not appear that you include interest expense related to certain debt agreements. In future periodic filings, please confirm that you will disclose the amount of interest related to your debt in future filings, or tell us why such information is not meaningful. Refer to footnote 46 of SEC Interpretive Release 33-8350 dated December 19, 2003.**

In future filings, the Company will include anticipated interest expense relating to its long-term debt agreements in its tabular disclosure of contractual obligations.

Consolidated Financial Statements – Note 8—Fair Value, page F-27 – Financial Statement Items Measured at Fair Value on a Recurring Basis

4. **We note that the mortgage loans at fair value consisting of fixed-rate jumbo loans held in a VIE are categorized as level 2 in the fair value hierarchy. Please tell us the differences in the valuation characteristics of these mortgages to those that underlie the remaining amount of mortgage loans at fair value categorized as level 3.**

The fixed-interest rate jumbo mortgage loans held in a VIE are prime-credit quality mortgage loans that the Company securitized shortly after acquisition. The Company has been able to estimate these mortgage loans' fair values using broker indications of fair value for all of the individual securities issued by the securitization trust to derive a fair value for the mortgage loans. The Company validates the brokers' indications of fair value using pricing models and inputs that are similar to the models and inputs used by other market participants. The Company believes that such methods and inputs are market-observable and therefore has classified such mortgage loans as "Level 2" financial statement items.

The remaining mortgage loans at fair value — mortgage loans classified as "Level 3" financial statement items — represent mortgage loans that were both seasoned and either severely delinquent or at heightened risk of default at acquisition. The market for such loans is limited and difficult to observe. Valuation of such mortgage loans therefore relies on significant unobservable inputs. Accordingly, such loans are categorized as "Level 3" financial statement items and their fair values are estimated using a discounted cash flow approach.

In future filings the Company will enhance its disclosure of its valuation techniques and inputs in Note 8 – *Fair Value* to further clarify its basis for classifying its mortgage loans held at fair value held in a VIE by adding the following sentences: For the mortgage loans at fair value held in a VIE, the fair values of all of the individual securities issued by the securitization trust are used to derive a fair value for the mortgage loans. The Company obtains indications of fair value from nonaffiliated brokers based on observed transactions for comparable securities and validates the brokers' indications of fair value using pricing models and inputs the Investment Manager believes are similar to the models and inputs used by other market participants.

Plum Creek Timber Company, Inc.
601 Union Street, Suite 3100
Seattle, Washington 98101
(206) 467-3600

May 6, 2015

Ms. Erin E. Martin, Senior Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-3010

Re: Plum Creek Timber Company, Inc. Form 10-K for the Fiscal Year Ended December 31, 2014

Dear Ms. Martin:

This letter is submitted on behalf of Plum Creek Timber Company, Inc. ("Plum Creek") in response to your letter dated April 23, 2015 ("Comment Letter") concerning Plum Creek's Form 10-K Annual Report for the Year Ended December 31, 2014 ("Form 10-K"). Plum Creek's response to the Comment Letter, along with certain requested acknowledgements, are hereby submitted below.

Segment Information, page 4

1. ***We note the disclosure of your aggregate standing timber inventory. Please tell us what consideration you have given to providing additional detail, to the extent available to management, regarding inventory data broken out by species and/or age of trees.***

Response: Plum Creek strives to provide meaningful and transparent disclosures in its periodic reports filed with the Securities and Exchange Commission. We try to strike a balance between providing enough details for our investors to understand the company's business while at the same time not overwhelming the reader with excess information that is not material to the company's results of operations or financial condition.

We believe that our current disclosure strikes that balance by providing investors with the most important information about our timber inventory: future harvest volume trends. By disclosing our current and forecasted harvest volumes, both short-term (5 years) and long-term (ten years and beyond), we provide our investors with one of the most important items of information necessary for estimating expected future cash flows from our timber segments. Coupled with price and cost information, harvest volume data is the key to understanding expected future cash flows, which we believe is of primary importance to our investors. That is why we focus on disclosure addressing these three items in our periodic reports filed with the Securities and Exchange Commission.

For example, on page 43 of our Form 10-K (Results of Operations, Northern Resources Segment), we explain why our 2014 northern sawlog and pulpwood harvest volumes have changed compared to the prior year. On page 44 of our Form 10-K (Results of Operations, Southern Resources Segment) we explain why our 2014 southern sawlog and pulpwood harvest volumes have changed compared to the prior year. Finally, on pages 41 and 42 of our Form 10-K (Events and Trends Affecting Operating Results, Harvest Plans), we explain how harvest levels in 2015 are expected to compare to 2014 and the reasons for the change, along with our expectations for short and long-term future harvest levels. In all cases, we provide this information for both our Northern Resources Segment and our Southern Resources Segment, broken out in each segment by sawlog and pulpwood data, because we believe this level of detail is most helpful to our investors to understand expected future harvest trends, and therefore, expected future cash flows from our timber segments. On the other hand, disclosing our timber inventory data by species

and/or age class would not, in our opinion, help investors better assess expected future cash flows from our timber segments.

We believe that by disclosing our expected current and future harvest volume trends, we provide investors with material information that is more meaningful than disclosing our current timber inventory data broken out by species and/or age of trees. We hold quarterly calls with analysts, and we receive inquiry from analysts, investors, and prospective investors each day, and we are rarely asked about our inventory by species or age class. Each year we evaluate whether our periodic filings with the Securities and Exchange Commission provide investors with meaningful and material information. In the past, we have considered disclosing more detailed information about our timber inventory, but have concluded that disclosing future harvest levels is more meaningful to our investors because timber inventory is only one of many factors in determining future harvest levels.

In addition to the foregoing response to the Comment Letter, Plum Creek hereby acknowledges that:

- Plum Creek is responsible for the adequacy and accuracy of the disclosure in its Form 10-K;
- Staff comments or changes to disclosure in response to staff comments do not foreclose the Securities and Exchange Commission from taking any action with respect to the Form 10-K; and
- Plum Creek may not assert staff comments as a defense in any proceeding initiated by the Securities and Exchange Commission or any person under the federal securities laws of the United States.

If you have any questions regarding this matter, please contact Jose J. Quintana, our Assistant General Counsel, at (206) 467-3694.

Sincerely,

/s/ Rick R. Holley

Rick R. Holley
Chief Executive Officer
Plum Creek Timber Company, Inc.

May 1, 2015

Via E-mail

Mr. Daniel L. Gordon
Senior Assistant Chief Accountant
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, D.C. 20549

Re: Potlatch Corporation
Form 10-K for the fiscal year ended December 31, 2014
Filed February 13, 2015
File No. 1-32729

Dear Mr. Gordon:

This letter is submitted on behalf of Potlatch Corporation (we and our) and responds to the Staff's comment letter of April 21, 2015 relating to our Form 10-K for our fiscal year ended December 31, 2014. For your convenience, we have reproduced the Staff's comments below and have provided our responses accordingly.

Form 10-K for the fiscal year ended December 31, 2014

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer

Repurchases of Equity Securities, page 19

1. *We are unable to locate the summary of shares authorized for issuance under your equity compensation plans, as contemplated by Item 201(d) of Regulation S-K. Please advise.*

Response:

The summary of shares authorized for issuance under our equity compensation plans, as required by Item 201(d) of Regulation S-K, was inadvertently omitted in our Annual Report on Form 10-K for the year ended December 31, 2014. The following table provides the information with respect to our equity compensation plans as of December 31, 2014:

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants or rights [1]	Weighted average exercise prices of outstanding options, warrants or rights [2]	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders	376,040	—	1,388,704
Equity compensation plans not approved by security holders	—	—	—
Total	376,040	—	1,388,704

[1] Includes 160,233 performance shares, 32,455 restricted stock units (RSUs), 60,570 deferred RSUs and 122,782 deferred compensation director stock equivalent units.

[2] Performance shares, RSUs, deferred RSUs and director stock equivalent units do not have exercise prices.

The information in the equity compensation plan table is substantially disclosed in footnote 15 of our 2014 Annual Report on Form 10-K, which includes the number of outstanding performance shares, RSUs and deferred compensation director stock equivalent units. In addition, footnote 15 discloses approximately 1.1 million shares authorized for future use, which is lower than the number of securities remaining available for future issuance because we apply the maximum number of contingent performance shares to the calculation.

We will include the summary of shares authorized for issuance under our equity compensation plans in accordance with Item 201 (d) of Regulation S-K in our 2015 Annual Report on Form 10-K or by incorporation by reference in our 2015 Proxy Statement.

Management's Discussion and Analysis of Financial Condition and Results of Operations

2. *We note your use of EBITDDA and FAD in your investor presentation filed on March 10, 2015. Please tell us if you consider these measures to be key performance indicators. To the extent a measure is considered to be a key performance measure, in future filings please include the measure as well as the required disclosure in accordance with Item 10(e) of Regulation S-K within your Management's Discussion and Analysis. Please include an example of any future disclosure in your response.*

Response:

We do not consider EBITDDA or FAD to be key performance indicators for Potlatch. Our internal segment reports and variance analyses provided to our chief operating decision maker focus on our GAAP results. External discussions of our results in our Management's Discussion and Analysis, earnings release and earnings scripts utilize these GAAP internal segment reports and variance analyses, which serve to provide a view through the eyes of management. Our internal segment reports include EBITDDA as supplementary information at the bottom of a table or the back of a report, without commentary or analysis, consistent with our view that EBITDDA is not a key performance indicator. FAD is not presented in reports provided to our chief operating decision maker. We do not believe that adding EBITDDA and FAD to our Management's Discussion and Analysis would improve the ability of investors to assess our financial condition or results of operations.

Consolidated Results Comparing 2014 and 2013

Cost of Goods Sold, page 29

3. *You indicate impacts to your cost of goods sold line item for the increase from 2013 to 2014 include higher logging costs and forest management expenses in your Resource segment and higher log costs and labor-related expenses for your Wood Products segment. In future filings please quantify for us the consolidated amounts applicable to the material components of cost of goods sold and provide explanations for variances at this lower level or tell us why this is not necessary.*

Response:

Commencing with our Quarterly Report for the three months ended March 31, 2015, which was filed contemporaneously with this letter, we will present in tabular format the material components of cost of goods sold for each segment, along with explanations for variances at this lower level. Due to the alignment with segment revenues, we believe this segment level detail is more meaningful than consolidated cost of sales balances. Our segment footnote remains unchanged.

We hereby acknowledge that:

- the company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact me at 509-835-1508 if you have any questions or comments relating to the matters referenced above. Thank you for your attention to this matter.

Sincerely,

/s/ Stephanie A. Brady

Stephanie A. Brady
Controller and Principal Accounting Officer

Prologis, Inc. and Prologis, L.P.
Pier 1, Bay 1
San Francisco, California 94111

April 6, 2015

VIA EDGAR

Jennifer Monick
Accountant
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: Prologis, Inc. and Prologis, L.P.
Form 10-K for the year ended December 31, 2014
Filed February 25, 2015
File No. 1-13545 and No. 1-14245

Dear Ms. Monick:

We are writing in response to your letter dated March 31, 2015, setting forth the comments of the staff of the Division of Corporation Finance (the "Staff") on the Form 10-K of Prologis, Inc. and Prologis, L.P. (together, the "Company") for the year ended December 31, 2014, filed with the Securities and Exchange Commission (the "SEC") on February 25, 2015 ("Form 10-K"). We have carefully considered the Staff's comments and our responses are set forth below. To facilitate the Staff's review, we have reproduced the Staff's comments in italicized text and added our response below.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Same Store Analysis, page 26

1. *In future annual filings, please reconcile same store portfolio – rental income, rental expenses and NOI on a full year basis. Additionally, please confirm for us and revise your disclosure in future periodic filings to reflect, if true, that the reconciling item for unconsolidated co-investment ventures represents your share of the unconsolidated co-investment. To the extent that the reconciling item for unconsolidated co-investment ventures represents total rental income, rental expenses and NOI for the unconsolidated co-investment ventures, please tell us how you determined that presentation is appropriate.*

We evaluate our operating properties in our same store pool on a quarterly basis and adjust the pool of properties to reflect dispositions for the quarter. We aggregate the net operating income

("NOI") for the same store pool for each of the four quarters to calculate a cumulative annual same store NOI. In our future annual filings, we will reconcile our same store rental income, rental expenses and NOI to amounts presented in our Consolidated Statements of Operations on an annual basis.

In our response dated June 26, 2008 (the "2008 Response") to the Staff's question regarding our Form 10-K for the year ended December 31, 2007, we had previously discussed with the Staff the appropriateness of our presentation of same store NOI with respect to our unconsolidated co-investment ventures. (Note that, ProLogis was the accounting acquirer in the 2011 merger between AMB Property Corporation and ProLogis. The 2008 Response was issued by ProLogis, the accounting predecessor of the combined companies.) The relevant sections from our 2008 Response are set forth below:

> "On June 16, 2008, Mr. Bill Sullivan and Mr. Jeff Finnin, the company's Chief Financial Officer and Chief Accounting Officer, respectively, spoke with Daniel Gordon and Jonathan Wiggins about the proposed disclosure of same store information in future filings. As we discussed, we include the results of our unconsolidated investees in our same store analysis due to our business model. We develop properties and then contribute such properties to unconsolidated investees but we continue to manage these properties after contribution and, as such, they are included in our same store analysis. We believe this presentation is more meaningful to investors because it more accurately represents our total portfolio of properties in which we invest and manage and it presents a more comprehensive and accurate reflection of the global rental markets in which we operate."

As further discussed in the 2008 Response

> "…we have separated the amounts included in the same store analysis and reflected them under the separate headings of "Consolidated" and "Unconsolidated Investees", we added Footnote (3) to the table to clearly disclose that the total amounts include the results of the properties owned by our unconsolidated investees and managed by us and we added the detail reconciliation to net operating income. As we agreed, we did not add a further reconciliation to operating income since we have reconciled to rental income, rental expenses and net operating income as disclosed in or computed from our consolidated statements of earnings, which are the most comparable measures included in our financial statements.
>
> A property that meets the definition to be included in the same store portfolio on an aggregate basis, would not always meet that definition if the same store portfolio was calculated on a stand alone basis for us or the unconsolidated investees. For example, if ProLogis contributed a property to an unconsolidated investee on January 1, 2008, the rental income and expenses of that property would be included in our consolidated rental income and expenses for the three months ended March 31, 2007 and in the rental income and expenses of the unconsolidated investee for the three months ended March 31, 2008. On a

combined basis it would be appropriate to include the results in a same store analysis, but on a ProLogis consolidated basis it would not be appropriate and would misrepresent the same store analysis, as the pools of properties are not consistent. We have further disclosed this in Footnote (1) to the table."

Since 2008, we have continued to disclose a reconciliation for same store NOI in a similar format as discussed in our 2008 Response. The explanation we provided to the Staff in our 2008 Response continues to be applicable to our business today. During the three year period ended December 31, 2014, we contributed 405 properties with more than 100 million aggregated square feet valued at $8.7 billion. We continue to monitor this disclosure to determine if additional information is necessary. To that end, we recently added additional disclosure by providing cumulative annual same store NOI in the Form 10-K, as discussed above. As stated above, in our future annual filings, we will reconcile our same store rental income, rental expenses and NOI to amounts presented in our Consolidated Statements of Operations on an annual basis.

Funds from Operations ("FFO"), page 37

2. *In the table on page 40, please tell us how the line items "Gains on dispositions of non-development properties and revaluation of equity investments upon acquisition of a controlling interest, net" and "Net gains on dispositions of development properties and land, net" are derived. For all periods presented, tell us how these line items reconcile to the line items "Gains on dispositions of investments in real estate and revaluation of equity investments upon acquisition of a controlling interest, net" and "Net gains on dispositions, including related impairment charges and taxes" from your consolidated statements of operations.*

In our FFO measure, we include "Gains (losses) from the contribution or sale of land and properties we develop." In our Core FFO measure, we exclude all gains. Prior to 2014, these gains could be reflected in continuing operations or discontinued operations. See below for a derivation of the line items "Gains on dispositions of non-development properties and revaluation of equity investments upon acquisition of a controlling interest, net" and "Net gains on dispositions of development properties and land, net" and a reconciliation to the amounts provided in our Statements of Operations.

	For the Year Ended December 31,		
	2014	2013	2012
Net gains per our Statements of Operations - by line item			
Continuing Operations			
Gains on dispositions of investments in real estate and revaluation of equity investments upon acquisition of a controlling interest, net	$ 725,790	$ 597,656	$ 305,607
Discontinued Operations			
Net gains on dispositions, including related impairment changes and taxes	—	116,550	35,098
Add back Impairment charges and taxes included in Discontinued Operations	—	1,187	30,828
Total gains included in our Statements of Operations	**$725,790**	**$715,393**	**$371,533**
Gains by type			
Net gains on dispositions of development properties and land, net (included in NAREIT and Prologis defined FFO, excluded from Core FFO)	$ 172,492	$ 428,738	$ 121,303
Gains on dispositions of non-development properties (excluded from FFO measures)	351,979	251,868	(36,105)
Gain on revaluation of equity investments upon acquisition of a controlling interest (excluded from FFO measures)	201,319	34,787	286,335
Total gains	**$725,790**	**$715,393**	**$371,533**
In our reconciliation from Net earnings (loss) to NAREIT defined FFO, we subtract gains not included in FFO.			
Gains on Dispositions of non-Development properties and revaluation of equity investments			
Gains on dispositions of non-development properties (excluded from FFO measures)	$ 351,979	$ 251,868	$ (36,105)
Gain on revaluation of equity investments upon acquisition of a controlling interest (excluded from FFO measures)	201,319	34,787	286,335
Adjustment for accumulated depreciation on development properties in discontinued operations	—	(15,340)	(43,197)
Total of adjustment "gains on dispositions of non-development properties and revaluation of equity investments upon acquisition of a controlling interest, net"	**$553,298**	**$271,315**	**$207,033**
In our reconciliation from FFO, as defined by Prologis, to Core FFO we subtract all gains and related items included in NAREIT and Prologis defined FFO.			
Net gains on dispositions of development properties and land, net			
Net gains of dispositions of development properties and land, net (included in NAREIT and Prologis defined FFO, excluded from Core FFO)	$ 172,492	$ 428,738	$ 121,303
Current tax expense recognized related to gains on dispositions of development properties and land (included in NAREIT and Prologis defined FFO, excluded from Core FFO)	(15,499)	(88,947)	—
Acquisition costs (included in NAREIT and Prologis defined FFO, excluded from Core FFO)	(4,195)	(2,976)	—
Total of adjustment "Net gains on dispositions of development properties and land, net"	**$152,798**	**$336,815**	**$121,303**

3. *In the table on page 40, please tell us the nature of the line item "Reconciling items related to noncontrolling interests." Further, please tell us how this adjustment is consistent with NAREIT defined FFO.*

In our calculation of NAREIT defined FFO, we make certain adjustments as outlined in the definition of FFO provided in our Form 10-K. For consolidated entities, these adjustments are made at 100% of the item included in our consolidated financial statements. In the line item "reconciling items related to noncontrolling interests" in the table on page 40 (the "FFO Reconciliation"), we remove the third-party share of the adjustments we made on a consolidated basis related to our consolidated co-investment ventures. For similar reasons we include a line item "our share of reconciling items included in earnings from unconsolidated entities" in the

FFO Reconciliation, which includes our share of the adjustments within the unconsolidated co-investment ventures. These adjustments primarily relate to depreciation expense and gains from disposition of properties in conformance with the NAREIT definition and result in a calculation of FFO that only includes our share of the FFO of these entities.

Financial Statements

Notes to Consolidated Financial Statements

17. Earnings/Loss per Common Share/Unit, page 86

4. *We note your disclosure on page 81 and 82 that RSUs and LTIP Units are considered participating securities. Please tell us how you considered these participating securities in your earnings per share calculation. Please refer to ASC 260-10-45-61A.*

We calculated earnings per share including participating securities in accordance with ASC 260-10-45-61A. The impact to earnings per share was less than $0.01 per share for both calculations and not considered significant to disclose. We will continue to calculate the impact each quarter and disclose the impact if it is significant.

* * * * *

In addition, we acknowledge that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact the undersigned at (415) 733-9405 if you have any questions or require additional information.

Sincerely,

/s/ Thomas S. Olinger

Thomas S. Olinger
Chief Financial Officer

Prologis, Inc. and Prologis, L.P.
Pier 1, Bay 1
San Francisco, California 94111

April 24, 2015

VIA EDGAR

Jennifer Monick
Accountant
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: Prologis, Inc. and Prologis, L.P.
Form 10-K for the year ended December 31, 2014
Filed February 25, 2015
File No. 1-13545 and No. 1-14245

Dear Ms. Monick:

We are writing in response to your letter dated April 17, 2015, setting forth the comments of the staff of the Division of Corporation Finance (the "Staff") on the Form 10-K of Prologis, Inc. and Prologis, L.P. (together, the "Company") for the year ended December 31, 2014, filed with the Securities and Exchange Commission (the "SEC") on February 25, 2015 ("Form 10-K"). We have carefully considered the Staff's comments and our responses are set forth below. To facilitate the Staff's review, we have reproduced the Staff's comments in italicized text and added our response below.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds from Operations ("FFO"), page 37

1. *We note your response to prior comment 2. In the reconciliation, you adjust "Net gains on dispositions of development properties and land, net" for "Current tax expense recognized related to gains and dispositions of development properties and land (included in NAREIT and Prologis defined FFO, excluded from Core FFO)". Please clarify for us how you derived the 2014 and 2013 amounts for "Current tax expense recognized related to gains and dispositions of development properties and land*

(included in NAREIT and Prologis defined FFO, excluded from Core FFO)". Your response should include, but not necessarily limited to, a reconciliation of the "Current tax expense recognized related to gains and dispositions of development properties and land (included in NAREIT and Prologis defined FFO, excluded from Core FFO)" line item to your income statement and tell us the nature of any reconciling items.

Although we are a real estate investment trust ("REIT") under the Internal Revenue Code in the U.S., many of the foreign countries in which we have operations do not recognize REITs or do not accord REIT status under their respective tax laws to our entities that operate in their jurisdiction. In the United States, our taxable REIT subsidiaries are subject to taxation and we are taxed in certain states in which we operate.

When we dispose of a property, we may be required to pay a capital gains tax in the applicable jurisdiction based on the taxable gain. We derived the 2014 and 2013 current tax related to the sale of investments in real estate by totaling the taxes payable relating to property sales as well as the contributions of properties to our co-investment ventures in Mexico, Europe and Japan.

For purposes of calculating Core FFO, we exclude gains related to the sale of real estate and therefore, we adjust Prologis defined FFO to exclude any current tax specifically related to the sale of investments in real estate. To reconcile current tax expense related to the sale of investments in real estate to Current Income Tax Expense included in our Statements of Operations, we need to include the portion of current income tax expense that was offset by the deferred tax liability related to the real estate that was sold, plus other tax expense related to operating taxable income and state taxes.

Please see the below reconciliation of current tax expense related to the sale of investments in real estate (the amount we have excluded from Core FFO), to Current Income Tax Expense included in our Statements of Operations.

	2014	2013
Current tax expense related to the sale of investments in real estate (included in NAREIT and Prologis defined FFO, excluded from Core FFO) (1)	$ 15,499	$ 88,947
Current income tax expense offset by a deferred tax liability	30,521	20,722
All other current income tax expense	15,564	16,511
Current Income Tax Expense per our Statements of Operations	$ 61,584	$ 126,180

(1) In our letter to you dated April 6, 2015 we inadvertently referred to this line item as "Current tax expense recognized related to gains on dispositions of development properties and land (included in NAREIT and Prologis defined FFO, excluded from Core FFO").

2. *We note your response to prior comment 3. It appears that the measure you refer to as FFO is FFO attributable to common stockholders. In future periodic filings, please revise your disclosure to refer to this measure as FFO attributable to common stockholders. Additionally, please revise future periodic filings to clarify, as you have in your response, the nature of the adjustment "reconciling items related to noncontrolling interests."*

In future filings, we will refer to FFO as FFO attributable to common stockholders and we will clarify the nature of the adjustment “reconciling items related to noncontrolling interests” as we have in our response dated April 6, 2015.

* * * * *

In addition, we acknowledge that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact the undersigned at (415) 733-9405 if you have any questions or require additional information.

Sincerely,

/s/ Thomas S. Olinger

Thomas S. Olinger
Chief Financial Officer

PSBUSINESSPARKS.

August 4, 2015

Securities and Exchange Commission
Washington, D.C. 20549
Division of Corporation Finance
Ms. Kim McManus, Staff Attorney

Re: PS Business Parks, Inc.
Form 10-K for the year ended December 31, 2014
Filed February 20, 2015
File No. 001-10709

Dear Ms. McManus:

On behalf of PS Business Parks, Inc. (the "**Company**"), I am responding to comments of the Staff of the Division of Corporation Finance (the "**Staff**") of the Securities and Exchange Commission (the "**Commission**") contained in the Staff's letter dated July 22, 2015 relating to the above-referenced filing.

I have recited the comment of the Staff in bold type below, and have followed the comment with the response of the Company. Capitalized terms used but not defined herein have the same meaning as defined in the above-referenced filing.

Item 2. Properties, page 17
1. We note that leases expiring by the end of the current and next fiscal year represent approximately 25.7% and 22.8% of annualized rental income. We also note disclosure on page 25 indicating that while new rental rates improved over expiring rental rates on an aggregate basis, you experienced declining rental rates in certain regions, including Virginia, Maryland and Orange County. In future filings, to the extent material, please address the relationship between market rents and expiring rents based on the regions in which you have material leases expiring at the end of the current fiscal year. In addition, to the extent material, please disclose if you have a concentration of expiring leases in particular regions.

We will include in our disclosures in future filings, to the extent material, (a) any known trend regarding the relationship of contractual rents on current year lease expirations and current market rents in those same markets and (b) if the Company has a concentration of expiring leases in particular regions.

701 Western Avenue, Glendale, CA 91201
t. 818.244.8080 f. 818.242.0566

Public Storage

March 31, 2015

VIA EDGAR AND FED EX

Mr. Jaime G. John
Branch Chief
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Public Storage
Form 10-K for the fiscal year ended December 31, 2014
Filed on February 25, 2015
File No. 001-33519

Dear Mr. John:

Set forth below is the response of Public Storage to the comments of the Staff that were set forth in your letter dated March 19, 2015, regarding our Form 10-K for the year ended December 31, 2014. The Staff's comments, indicated in bold, are followed by the response on behalf of Public Storage.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Self-Storage Operations Summary, page 29

1. **We note the line item in your table "Total net income" is not consistent with Net income included on your Statements of Income. In future filings, please revise the label for this line item to more accurately reflect the amount presented and provide clarifying disclosure to the extent necessary. Make similar adjustments to presentation in the tables on pages 30 and 38 and elsewhere throughout the filing, if necessary. In your response, tell us how you plan to revise your presentation in the future.**

Response:

In our future Exchange Act periodic reports, we will revise the line item labels on the tables in the following referenced pages of our Form 10-K for the year ended December 31, 2014: (i) "Total net income" on page 29 will be revised to "Operating income," (ii) "Net income" on pages 30 and 38 will each be revised to "Operating income," (iii) "Total ancillary net income" on page 43 will be revised to "Operating income," and (iv) "Self-storage net income" and "Total net income from self-storage" on page 47 will each be revised to "Operating income from self-storage." We will also ensure that the terminology in our future filings is otherwise consistent, where applicable, with our financial statement captions. We will also provide clarifying disclosure, as necessary.

In connection with Public Storage's response to the Staff's comments, Public Storage hereby acknowledges that:

? Public Storage is responsible for the adequacy and accuracy of the disclosure in the filing,
? Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing, and
? Public Storage may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact me or Lily Hughes, our Chief Legal Officer, at 818-244-8080, ext. 1537, if you have additional questions on this matter.

Sincerely,

/s/ John Reyes
Senior Vice President and
Chief Financial Officer

cc: William Demarest

Public Storage

April 28, 2015

VIA EDGAR AND FED EX

Mr. Jaime G. John
Branch Chief
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Public Storage
Form 10-K for the fiscal year ended December 31, 2014
Filed on February 25, 2015
File No. 001-33519

Dear Mr. John:

Set forth below is the response of Public Storage to the comments of the Staff that were set forth in your letter dated April 15, 2015, regarding our Form 10-K for the year ended December 31, 2014. The Staff's comments, indicated in bold, are followed by the response on behalf of Public Storage.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Self-Storage Operations Summary, page 29

1. **Your response to our prior comment one proposes changing the label associated with various line items to "Operating income". We note that these amounts are not consistent with Operating income presented on your Statements of Income. For example, we note that the line item references on Page 29 relates only to self-storage operations. Please clarify how your presentation in the future will address this matter for all instances where amounts presented as net income and operating income are not consistent with the amounts presented on the Statements of Income.**

Response:

Please note that this response replaces our response dated March 31, 2015. It is meant to be responsive to your first letter dated March 19, 2015 as well as your letter dated April 15, 2015.

In our future Exchange Act periodic reports, we will ensure that the terminology in our future filings is consistent, when applicable, with our financial statement captions and that the amounts presented in our tables can be agreed to or reconciled by the reader to the applicable financial statement captions on our Statements of Income. In order to ensure that is the case, among other changes in narrative terminology and line-item labels, we will make the following changes in future filings, referenced to our Form 10-K for the year ended December 31, 2014:

(i) On page 29, the caption "Total net income" on the table will be revised to "Operating income from self-storage," and the revised caption will be footnoted as follows: See "Reconcilation of Depreciation and Amortization Expense and Operating Income" below for a reconciliation of the Operating Income from self-storage herein, to Operating Income on our Statements of Income. See (vii) below for an illustration of the referenced reconciliations.

(ii) Also on page 29, the caption "Total depreciation and amortization expense" will be footnoted as follows: See *"Reconcilation of Depreciation and Amortization Expense and Operating Income" below for a reconciliation of the Depreciation and Amortization expense from self-storage herein, to Depreciation and Amortization expense on our Statements of Income.* See (vii) below for an illustration of the referenced reconciliations.

(iii) Also on page 29, we will add a subtotal of "Operating income from self-storage" for the Same Store Facilities and Non Same Store Facilities, allowing Operating Income on the tables on pages 30 and 38, respectively, to be tied into this table, as they can be for the subtotals already provided for Revenues, Cost of operations, Net operating income, and Depreciation and amortization expense.

(iv) On pages 30 and 38, the current caption "Net income" on these tables will be revised to "Operating income from Same Store Facilities" and "Operating income from Non-Same Store Facilities", respectively.

(v) On page 43, the caption "Total ancillary net income" on the table will be revised to "Operating income from ancillary operations," and a footnote will be added to this caption and the existing caption entitled "commercial depreciation" as follows: *See "Reconcilation of Depreciation and Amortization Expense and Operating Income" below for a reconciliation of the Depreciation and Amortization Expense and Operating Income from ancillary operations herein, to the amounts on our Statements of Income.* See (vii) below for an illustration of the referenced reconciliations. The descriptor "Ancillary net income:" on this table will also be revised, to "Ancillary operating income:."

(vi) On page 47, the descriptor "Self-storage net income:" and the caption "Total net income from self-storage" on the table will be revised to "Self-storage operating income:" and "Operating income from self-storage", respectively.

(vii) Immediately following the section Net Operating Income, which begins on page 46, we will add the following section, which will allow the reader to reconcile from Depreciation and Amortization expense and Operating Income from self-storage and ancillary operations as mentioned in (i), (ii), and (v) above, to the amounts on our Statements of Income.

Reconciliation of Depreciation and Amortization Expense and Operating Income

In the tables above, we present "Depreciation and Amortization Expense" and "Operating Income" for our self-storage and ancillary operations. The table below reconciles from the amounts with respect to Self-Storage and Ancillary Operations to the aggregate amounts presented on our Statements of Income:

	Years ended December 31,		
	2014	2013	2012
	(Amounts in thousands)		
Depreciation and Amortization Expense			
Self-storage operations	$ 434,069	$ 384,623	$ 354,971
Ancillary (commercial) operations	3,045	2,779	2,810
Depreciation and amortization on our Statements of Income	$ 437,114	$ 387,402	$ 357,781
Operating Income			
Operating income from self-storage	$ 1,048,915	$ 941,174	$ 846,253
Operating income from ancillary operations	90,655	88,009	82,566
General and administrative expenses	(71,459)	(66,679)	(56,837)
Operating income on our Statements of Income	$ 1,068,111	$ 962,504	$ 871,982

In connection with Public Storage's response to the Staff's comments, Public Storage hereby acknowledges that:

Public Storage is responsible for the adequacy and accuracy of the disclosure in the filing,
Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing, and
Public Storage may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Please contact me or Lily Hughes, our Chief Legal Officer, at 818-244-8080, ext. 1537, if you have additional questions on this matter.

Sincerely,

/s/ John Reyes
John Reyes
Senior Vice President and Chief Financial Officer
cc: William Demarest

September 10, 2015

BY EDGAR AND OVERNIGHT MAIL

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, NE
Washington, D.C. 20549
Attention: Jaime G. John

RE: QTS Realty Trust, Inc.
Form 10-K for the year ended December 31, 2014
Filed February 23, 2015
File No. 001-36109 ("Form 10-K")

Form 8-K/A
Filed June 5, 2015
File No. 001-36109 ("Form 8-K")

Form 10-Q for the quarterly period ended June 30, 2015
Filed August 7, 2015
File No. 001-36109 ("Form 10-Q")

Dear Ms. John:

This letter sets forth the responses of QTS Realty Trust, Inc. (the "Company") to the comments from the staff (the "Staff") of the Division of Corporation Finance of the United States Securities and Exchange Commission (the "Commission") in a letter dated August 28, 2015 (the "Comment Letter") regarding the above referenced filings.

For ease of review, the Company has set forth below in bold type the numbered comments of the Staff in the Comment Letter, with the Company's responses thereto immediately following each comment.

Form 10-K for the year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 67

1. **We note that over half of your NRSF is currently in the redevelopment pipeline. Please expand your discussion in future filings to disclose the portion of this space, if any, for which leases have already been executed and if your rentable space is typically built out to customer specifications or for general use.**

Response to Comment No. 1:

The Company respectfully submits that in future filings it will expand its disclosures to include the portion of its development pipeline NRSF which relates to space for which customer leases have already been executed. The Company will also disclose in future filings that its development pipeline NRSF is built out both to support general use (colocation) and for executed leases that require significant amounts of space and power, depending on the needs of each facility at that time.

The Company's future filings will include disclosure substantially similar to the following:

"We operate 12 data centers located in eight states, containing an aggregate of approximately 4.7 million gross square feet of space (approximately 94% of which is wholly owned by us), including approximately 2.1 million "basis-of-design" raised floor square feet, which represents the total data center raised floor potential of our existing data center facilities. This represents the maximum amount of space in our existing buildings that could be leased following full build-out, depending on the configuration that we deploy. We build out our data center facilities for both general use (colocation) and for executed leases that require significant amounts of space and power, depending on the needs of each facility at that time. As of December 31, 2014, this space included approximately 927,000 raised floor operating net rentable square feet, or NRSF, plus approximately 1.1 million square feet of additional raised floor in our development pipeline, of which approximately 97,000 NRSF is expected to become operational by December 31, 2015. Of the total 1.1 million NRSF in our development pipeline, approximately 130,000 square feet was related to customer leases which had been executed but not yet commenced."

Item 8. Financial Statement and Supplementary Data

Note 12. Earnings per share of QTS Realty Trust, Inc., page F-28

2. **We note that your basic EPS calculation discloses net income per share *available to common shareholders*. Please label accordingly in future filings. We also note that you have presented diluted EPS on an aggregate basis, inclusive of noncontrolling interests in the partnership. Tell us why you believe it is appropriate to present basic EPS per common shareholder and diluted EPS inclusive of noncontrolling interests. Also disclose the number of potentially dilutive securities, if any, that were not included in the calculation because their effect was antidilutive for the periods presented. Refer to ASC 260-10-50-1.**

Response to Comment No. 2:

In future filings, the Company will modify the current label, "Net income per share – basic," to an expanded label which reads, "Net income per share attributable to common stockholders – basic."

Regarding the presentation of diluted EPS, the Company has presented diluted EPS inclusive of noncontrolling interests, as prescribed by ASC 260-10-55-20(b), which states that "securities of a subsidiary that are convertible into its parent company's common stock shall be considered among the potential common shares of the parent company for the purposes of computing consolidated diluted EPS." The noncontrolling interests are primarily comprised of Class A units of QualityTech, LP, the Company's operating partnership (the "Operating Partnership"), which are redeemable for shares of Class A common stock of the Company ("Common Stock") on a one-for-one basis, which is discussed in Note 8 to the Consolidated Financial Statements of QTS Realty Trust, Inc. and QualityTech, LP for the year ended December 31, 2014 included in the Form 10-K ("2014 Financial Statements"). As such, in accordance with ASC 260-10-55-20(b), the Company has included these units (and their associated net income) in its diluted EPS calculation. The Company believes that including these units in its diluted EPS calculation presents investors and users of its financial statements a complete picture of the total number of shares and units (i.e., potential shares) that are party to the Company's consolidated net income, which is consistent with the way that the Company views this calculation.

The Company respectfully submits that while it has disclosed in Note 12 to its 2014 Financial Statements (Earnings per share of QTS Realty Trust, Inc.) the number and description of each of the types of dilutive securities it included in its diluted EPS calculation, in future filings the Company will disclose this information in a tabular reconciliation format and will disclose the number, if any, of antidilutive securities that it excluded from its diluted EPS calculation in a manner substantially similar to the following:

"Basic income (loss) per share is calculated by dividing the net income (loss) attributable to common shares by the weighted-average number of common shares outstanding during the period. Diluted income (loss) per share adjusts basic income (loss) per share for the effects of potentially dilutive common shares.

The computation of basic and diluted net income per share is as follows (in thousands, except per share data):

	Year Ended December 31, 2014	For the period October 15, 2013 through December 31, 2013
Numerator:		
Net income available to common stockholders - basic	$ 15,072	$ 3,154
Effect of net income attributable to noncontrolling interests	4,031	848
Net income available to common stockholders - diluted	$ 19,103	$ 4,002
Denominator:		
Weighted average shares outstanding - basic	29,055	28,973
Effect of Class A units and Class RS units *	7,770	7,797
Effect of Class O units and options to purchase Class A common stock on an "as if" converted basis *	309	24
Weighted average shares outstanding - diluted	37,134	36,794
Net income per share attributable to common stockholders - basic	$ 0.52	$ 0.11
Net income per share attributable to common stockholders - diluted	$ 0.51	$ 0.11

* The Class A units, Class RS units and Class O units represent limited partnership interests in the Operating Partnership, and are described in more detail in Note 8.

The computation of diluted net income per share for the year ended December 31, 2013 does not include 1,113,169 Class O units with an exercise price of $25.00, as their inclusion would have been antidilutive for that period. No securities were antidilutive for the year ended December 31, 2014, and as such, no securities were excluded from the computation of diluted net income per share for that period."

Note 16. Quarterly Financial Information (unaudited), page F-30

3. **Please tell us why the net income per share attributable to common shares – diluted is equal to the net income per share attributable to common shares – basic. Your disclosure on page F-28 indicates that there is a significant amount of dilutive shares outstanding.**

Response to Comment No. 3:

The Company respectfully submits that these two numbers are presented as being equal solely due to the effect of rounding. As described in the response to Comment 2 above, the vast majority of shares included in diluted shares (approximately 96% for the year ended December 31, 2014) that are not also included in basic shares are represented by Class A units of the Operating Partnership. Because these units are redeemable for shares of Common Stock on a one-for-one basis and because the Company's diluted net income also includes the income attributable to these units, these units have no effect on the EPS calculation (i.e., are neutrally dilutive). The remaining shares included in diluted shares that are not also included in basic shares (i.e., Class O units of the Operating Partnership on an "as if" converted basis and options to purchase Class A common stock on an "as if" converted basis, which totaled 309,378 on an "as if" converted basis for the year ended December 31, 2014), are not significant enough to change the disclosed EPS values, as those values are rounded to the nearest cent in all periods presented in Note 16 to the 2014 Financial Statements.

<u>Form 8-K/A filed June 5, 2015</u>

<u>Exhibit 99.3</u>

4. **We note that your pro forma financial statements include adjustments for the acquisition of the Princeton, NJ facility, the issuance of $300 million of senior unsecured notes, the issuance of $165 million Class A common stock, the acquisition of the Chicago, IL facility and the modification of the unsecured credit facility and the credit facility secured by the Richmond Property resulting in decreased interest rates on both. Please tell us whether these events are related to your Carpathia acquisition. To the extent that these events are not related to your Carpathia acquisition, please tell us why you included these adjustments within the pro forma financial statements in your Form 8-K.**

<u>Response to Comment No. 4</u>:

The Company's acquisition of its Princeton and Chicago facilities, issuance of $300 million of senior unsecured notes, issuance of $165 million Class A common stock and modification of its unsecured and secured credit facilities (the "Events") are not directly related to the Carpathia acquisition. The Company believes, however, that in presenting its pro forma financial statements in accordance with Rule 11-01(a)(1) of Regulation S-X, it is appropriate to include separate adjustments giving effect to the Events. The Company believes these separate adjustments are appropriate due to the materiality of the Events to investors and because each of the Events occurred during the period covered by the pro forma financial statements. Therefore, in accordance with Rule 11-01(a)(8), the Company included these adjustments in its pro forma financial statements, explicitly disclosing each of the Events in the introduction and footnotes to Exhibit 99.3 and including each of these adjustments in a separate column on the pro forma financial statements to distinguish them from the adjustments related to the Carpathia acquisition, allowing investors to explicitly identify the effects of the Carpathia acquisition. The Company believes this presentation provides the most meaningful information to users of its financial statements.

<u>Form 10-Q for the quarterly period ended June 30, 2015</u>

<u>Note 3 – Acquisitions</u>

<u>Carpathia Acquisition, page 19</u>

5. **We note that your allocation on page 20 is based upon a purchase price of $295 million inclusive of $44 million of assumed capital lease liabilities. We further note in your Form 8-K filed on June 2, 2015 that the $326 million purchase price disclosed on page 19 includes the assumption of capital lease liabilities which would appear to result in a $282 million purchase price. Please provide additional details regarding your basis for the $295 million purchase price.**

<u>Response to Comment No. 5</u>:

The Company respectfully submits that the $326 million purchase price disclosed in the Form 8-K and in the first sentence to Note 3 to the Interim Condensed Consolidated Financial Statements of QTS Realty Trust, Inc. and QualityTech, LP for the quarter ended June 30, 2015 included in the Form 10-Q ("Second Quarter Financial Statements") represents the purchase price for Carpathia Hosting, Inc. ("Carpathia") as defined in the related Stock Purchase Agreement. The Stock Purchase Agreement, which was filed as Exhibit 2.1 to the Company's Form 8-K filed on May 12, 2015, calculated the purchase price using Carpathia's historical *book value* of assets acquired and liabilities assumed. As such, the $295 million of net assets acquired was calculated by subtracting the book value of the capital leases of $37.1 million from the $326 million purchase price and adding back the cash acquired of $5.8 million. For clarification purposes, the Company disclosed in Note 3 to the Second Quarter Financial Statements that the $326 million purchase price was *<u>as defined in the purchase and sale agreement</u>*.

The purchase price based on the assessment of the *fair value* of assets acquired and liabilities assumed, as prescribed by GAAP, was approximately $352.5 million, calculated by adding the fair value of capital leases assumed of $43.8 million and the fair value of deferred income tax liability assumed of $19.8 million to the $294.7 million (i.e. $295 million), and subtracting the cash acquired of $5.8 million. In future filings, the Company will explicitly disclose the purchase price based on the assessment of the fair value of assets acquired and liabilities assumed rather than the purchase price as defined in the Stock Purchase Agreement.

6. We note that the pro forma financial information on page 20 includes adjustments for the acquisition of the Princeton, NJ facility, the issuance of $300 million of senior unsecured notes, the issuance of $387 million Class A common stock, the acquisition of the Chicago, IL facility and the modification of the unsecured credit facility and the credit facility secured by the Richmond Property resulting in decreased interest rates on both. Please tell us whether these events are related to your Carpathia acquisition. To the extent that these events are not related to your Carpathia acquisition, please tell us your basis in GAAP for including adjustments within your pro forma financial information.

Response to Comment No. 6:

As stated in the response to Comment No. 4 above, the Events are not directly related to the Carpathia acquisition, with the exception of the issuance of 5,750,000 shares of Class A common stock in June 2015, the net proceeds of which were used to fund a portion of the Carpathia acquisition. The Company included adjustments for each of the Events in the pro forma financial information on page 20 of Form 10-Q for the reason described in the response to Comment No. 4 above and in order to provide a presentation that was consistent with the pro forma presentation in the Form 8-K. In future filings, the Company will disclose pro forma financial information in accordance with GAAP (ASC 805), calculating pro forma adjustments based solely on the combined results of the Company and Carpathia.

* * * * *

The Company acknowledges that (i) it is responsible for the adequacy and accuracy of the disclosure in the filings; (ii) Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filings; and (iii) the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

VIA EDGAR

September 15, 2015

Kristi Marrone, Staff Accountant
Division of Corporation Finance
United States Securities and Exchange Commission
Washington, D.C. 20549

Re: Ramco-Gershenson Properties Trust
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 27, 2015
File No. 1-10093

Dear Ms. Marrone:

We are writing in response to the letter of the Division of Corporation Finance, dated August 31, 2015, addressed to Ramco-Gershenson Properties Trust, a Maryland corporation (the "Company"), in connection with the above-referenced filing. For convenience we have incorporated each of the comments included in your letter in italicized text followed by our response.

Item 6. Selected Financial Data, page 25

Business Objectives, Strategies and Significant Transactions, page 2

1. *Please tell us and disclose in future filings how you define Property NOI, highlighting any differences between Property NOI and Same Property NOI as disclosed on page 37.*
We may have additional comments.

Response:

Property NOI includes all consolidated property income and expenses, including sold and acquired properties, and excluding management and other fee income, depreciation and amortization, acquisition costs, general and administrative expenses and provision for impairment. The difference between Property NOI and Same Property NOI is that Same Property NOI makes non-comparable adjustments related to acquired, development/redevelopment, non-retail and sold properties as well as certain income/expense amounts as described on page 37 of the Form 10-K.

In future filings, we intend to replace Property NOI in the Item 6 disclosure with Operating Income (as presented in accordance with GAAP.)

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Comparison of the Year Ended December 31, 2014 to the Year Ended December 31, 2013 page 28

2. *We note that during 2014 you recorded impairment of $23.3 million to land available for development or sale due to changes to development plans and to estimated fair values. Please expand your disclosure in future filings to discuss how your plans changed and how this specifically impacted the carrying values of the subject properties.*

Response:

In future filings we will discuss how our plans changed and how this specifically impacted the carrying values of the subject properties

Funds From Operations, page 35

3. *Please tell us why you believe it is appropriate to include an adjustment for preferred share dividends only to the extent that they are dilutive when calculating FFO and Operating FFO. In that regard, it appears that the dilutive attribute of the preferred shares may only be relevant for calculating FFO per diluted share and Operating FFO per diluted share.*

Response:

The dilutive attribute of the preferred shares is only relevant for calculating FFO per diluted share and Operating FFO per diluted share. Therefore, in future filings we will exclude such adjustment when calculating FFO and Operating FFO. Instead, any adjustment required to FFO and to Operating FFO when computing such items per diluted share will be described in new footnotes to the table on page 36. In future filings, our presentation of the table will be as follows:

	Years Ended December 31,		
	2014	**2013**	**2012**
	(In thousands, except per share data)		
Net (loss) income available to common shareholders	$ (9,614)	$ 3,747	$ (46)
Adjustments:			
Rental property depreciation and amortization expense	80,826	56,316	39,240
Pro-rata share of real estate depreciation from unconsolidated joint ventures	4,719	3,689	6,584
Gain on sale of depreciable real estate	(10,022)	(2,120)	(336)
Loss on sale of joint venture depreciable real estate [1]	—	6,454	75
Provision for impairment on income-producing properties	4,580	9,342	2,355
Provision for impairment on joint venture income-producing properties [1]	—	—	50
Provision for impairment on equity investments in unconsolidated joint ventures	—	—	386
Deferred gain recognized on real estate	(117)	(5,282)	(845)
Noncontrolling interest in Operating Partnership [2]	(48)	465	353
FFO	$ 70,324	$ 72,611	$ 47,816
Provision for impairment for land available for development or sale	23,285	327	1,387
Loss on extinguishment of debt	860	340	—
Gain on extinguishment of joint venture debt, net of RPT expenses [1]	(106)	—	(178)
Acquisition costs [4]	1,890	1,322	314
Operating FFO	$ 96,253	$ 74,600	$ 49,339
Weighted average common shares	72,118	59,336	44,101
Shares issuable upon conversion of Operating Partnership Units [2]	2,250	2,257	2,509
Dilutive effect of securities	217	392	384
Subtotal	74,585	61,985	46,994
Shares issuable upon conversion of preferred shares [3] [5]	7,019	6,940	—
Weighted average equivalent shares outstanding, diluted	81,604	68,925	46,994
Funds from operations per diluted share [6]	$ 0.94	$ 1.16	$ 1.02
Operating FFO, per diluted share [7]	$ 1.27	$ 1.19	$ 1.05

[1] Amount included in earnings (loss) from unconsolidated joint ventures.

[2] The total noncontrolling interest reflects OP units convertible 1:1 into common shares.

[3] Series D convertible preferred shares were dilutive for FFO for the year ended December 31, 2013 and anti-dilutive for the comparable periods in 2014 and 2012.

[4] Prior periods have been restated to reflect the add back of acquisition costs beginning in 1Q14.

[5] Series D convertible preferred shares were dilutive for Operating FFO for years ended December 31, 2014 and 2013 and anti-dilutive for the comparable period in 2012

[6] FFO per diluted share calculated for the year ended December 31, 2013 includes the adjustment to FFO of $7.25 million in dividends related to convertible preferred shares

[7] Operating FFO per diluted share calculated for the years ended December 31, 2014 and 2013 include the adjustment to Operating FFO of $7.25 million in dividends related to convertible preferred shares

-

Same Property Operating Income, page 37

4. *We note that the adjustment for "properties excluded from pool" is significant to both operating income (loss) and Same Property NOI, though only twelve of your 68 properties are considered non-same property for purposes of calculating this measure. Please tell us why this adjustment is so large on a relative basis, and disclose in future filings to the extent material.*

Response:

The adjustment for "properties excluded from pool" is large on a relative basis primarily because it reflects six large acquisitions made during the periods being compared.

The significant adjustments for the three and the twelve months ended December 31, 2014 are attributable as follows:

Property Designation	Three Months Ended	Twelve Months Ended
	December 31, 2014	
Acquisitions	$ 7,070	$ 20,872
Dispositions	136	2,061
Development/Redevelopment	1,217	4,614
Non-Retail Properties	453	1,804
	$ 8,876	$ 29,351

In future filings, to the extent material, we will include an explanation for significant adjustments.

5. *Please expand your disclosure in future filings, and tell us supplementally, what is included in "non-comparable income/expense adjustments."*

Response:

As stated in our Form 10-K for the year ended December 31, 2014, in the first paragraph under the heading Same Property Operating Income on page 37, amounts included in “non-comparable income/expense adjustments” for the quarter and year ended December 31, 2014 and 2013 include: straight-line rents, lease termination fee, above/below market rents, and other non-comparable income and expense adjustments. Other non-comparable income and expense adjustments are public improvement fee income and prior-period recovery income adjustments.

In future filings, we will instead include a table footnote describing “non-comparable income/expense adjustments” for the reporting period.

Following is an example of the future table footnote disclosure:

(1) Includes adjustments for items that affect the comparability of the same property NOI results. Such adjustments include: straight-line rents, lease termination fee, above/below market rents, public improvement fee income and prior-period recovery income adjustments.

In connection with the response above, the Company acknowledges that (i) it is responsible for the adequacy and accuracy of the disclosure in the filing, (ii) Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing, and (iii) it may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions with regard to this letter or require additional information, please contact me at (248) 592-6200, or at gandrews@rgpt.com.

Sincerely,

/s/ GREGORY R. ANDREWS
Gregory R. Andrews
Chief Financial Officer and Secretary

REALTY INCOME
The Monthly Dividend Company®

Realty Income Corporation
11995 El Camino Real, San Diego, CA 92130
New York Stock Exchange Symbol "O"

March 13, 2015

VIA EDGAR

Mr. Mark Rakip
Staff Accountant
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Realty Income Corporation**
Form 10-K for the fiscal year ended December 31, 2014
Filed February 18, 2015
File No. 1-13374

Dear Mr. Rakip:

We are writing in response to your comment letter dated March 11, 2015 (the "Comment Letter") provided by the staff (the "Staff") of the Securities and Exchange Commission (the "Commission"). The Comment Letter relates to Realty Income Corporation's (the "Company") Annual Report on Form 10-K for the year ended December 31, 2014 (the "2014 Form 10-K") filed with the Commission on February 18, 2015.

The material in italics below sets forth the Staff's comment, followed by our response.

Financial Statements and Supplementary Data

Allocation of the Purchase Price of Real Estate Acquisitions, page 59

1. *Regarding your below-market lease intangible liabilities, please tell us how you consider any bargain renewal options in determining the amortization period.*

   Response: We do consider bargain renewal options in the determination of the amortization period of below-market lease intangible liabilities. When making this determination we compare the contractual rents for the option period to the expected market rents at the time of exercise. If the contractual rent is sufficiently lower than the expected market rent, such that the exercise of the option appears to be reasonably assured, then the option period is considered to be a bargain renewal option and the option period is included in the lease term used for purposes of amortization.

In future filings, we will add the italicized phrase below to the following paragraph currently included on page 60 of the 2014 Form 10-K:

Capitalized above-market lease values are amortized as a reduction of rental income over the remaining terms of the respective leases. Capitalized below-market lease values are amortized as an increase to rental income over the remaining terms, *including expected below-market renewal option periods*, of the respective leases.

***

In making this response, the Company acknowledges that (i) we are responsible for the adequacy and accuracy of the disclosure in the filing, (ii) the Staff's comments or changes to disclosure in response to the Staff's comments do not foreclose the Commission from taking any action with respect to the filing, and (iii) the Company may not assert the Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions or comments to this letter, please do not hesitate to contact me at (858) 284-5109.

Sincerely,

Realty Income Corporation

/s/ Paul M. Meurer

Paul M. Meurer
Executive Vice President,
Chief Financial Officer and Treasurer

REALTY INCOME
The Monthly Dividend Company®

Realty Income Corporation
11995 El Camino Real, San Diego, CA 92130
New York Stock Exchange Symbol "O"

March 20, 2015

VIA EDGAR

Mr. Mark Rakip
Staff Accountant
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Realty Income Corporation**
Form 10-K for the fiscal year ended December 31, 2014
Filed February 18, 2015
File No. 1-13374

Dear Mr. Rakip:

We are writing in response to your comment letter dated March 17, 2015 (the "Comment Letter") setting forth the additional comment of the staff (the "Staff") of the Securities and Exchange Commission (the "Commission"). The Comment Letter relates to Realty Income Corporation's Annual Report on Form 10-K for the year ended December 31, 2014 filed with the Commission on February 18, 2015.

The material in italics below sets forth the Staff's comment, followed by our response.

Financial Statements and Supplementary Data

Allocation of the Purchase Price of Real Estate Acquisitions, page 59

1. *We note your response to prior comment 1. Please tell us how you define sufficiently lower in determining the difference between the contractual and expected market rents. Also tell us how you determine that the exercise of a bargain renewal option is reasonably assured, including whether you consider historical experience in determining such exercises. Further, quantify for us the number of leases in your portfolio that have bargain renewal options. In your response, tell us the accounting literature relied upon and the basis for your conclusions.*

Response: The following bullet points summarize our internal "Valuation of Newly Acquired Properties" policy as it relates to the above question. As of December 31, 2014, we have 121 leases in our portfolio that have bargain renewal options.

- We refer to Accounting Standards Codification ("ASC") 840-10-20, when evaluating whether a below market option is considered a bargain renewal option. This accounting literature defines a bargain renewal option as:
  - A provision allowing the lessee, at his option, to renew the lease for a rental sufficiently lower than the fair rental of the property at the date the option becomes exercisable that exercise of the option appears, at the inception of the lease, to be reasonably assured.

- We define contractual option rents as being “sufficiently lower” when they are:
  - o 15% below expected market rents and the option exercise date is within 15 years from the date of acquisition,
  - o 20% below expected market rents and the option exercise date is between 15 and 20 years from the date of acquisition, or
  - o 25% below expected market rents and the option exercise date is between 20 and 25 years from the date of acquisition.

  We recognize that options with an exercise date 25 years or more from the date of acquisition or options resulting in an extension of the lease term to a date more than 25 years from the date of acquisition are uncertain by nature, due to market volatility, going concern and other uncertain factors, and therefore do not meet the burden of reasonable assurance.

- In determining whether the exercise of a bargain renewal option is “reasonably assured,” we take into account both the size of the discount to expected market rents as well as the length of time between the acquisition date and the option exercise date. Our policy acknowledges that contractual option rents that are only slightly discounted (i.e. less than 15%) from market do not sufficiently incentivize a tenant to exercise their option, due to factors such as the availability of newer buildings and location optimization. When considering the additional costs and efforts necessary to relocate, in addition to the 15% discount on rents realized when extending the lease, we believe that tenants then become economically compelled to exercise their option. Accordingly, we assume that a minimum 15% discount between contractual option rents and expected market rents is required for the bargain renewal option to be reasonably assured.

- Our policy also acknowledges the fact that the longer the period from inception of the lease to the option exercise date, the more difficult it is to determine whether the exercise of the option is reasonably assured. Accordingly, as more time elapses from the date of acquisition, a larger discount is required between contractual option rents and expected market rents in order to offer reasonable assurance that the tenant will exercise their option.

We do have extensive experience with lease expirations, having resolved over 1,800 lease rollovers in the past 20 years. This experience offers us additional insight as to whether a tenant will likely renew a lease upon expiration. However, our specific experience with bargain renewal option rollover is relatively limited. We believe that the parameters established in our policy, although not directly driven by historical data, are reflective of the insight obtained through our lease rollover history and allow us to objectively apply the accounting literature included in ASC 840 in our determination of bargain renewal options.

***

If you have any questions or comments to this letter, please do not hesitate to contact me at (858) 284-5109.

Sincerely,

Realty Income Corporation

/s/ Paul M. Meurer

Paul M. Meurer
Executive Vice President,
Chief Financial Officer and Treasurer

REALTY INCOME
The Monthly Dividend Company®

Realty Income Corporation
11995 El Camino Real, San Diego, CA 92130
New York Stock Exchange Symbol "O"

April 8, 2015

VIA EDGAR

Mr. Mark Rakip
Staff Accountant
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Realty Income Corporation**
Form 10-K for the fiscal year ended December 31, 2014
Filed February 18, 2015
File No. 1-13374

Dear Mr. Rakip:

We are writing in response to your comment letter dated March 27, 2015 (the "Comment Letter") setting forth the additional comment of the staff (the "Staff") of the Securities and Exchange Commission (the "Commission"). The Comment Letter relates to Realty Income Corporation's Annual Report on Form 10-K for the year ended December 31, 2014 filed with the Commission on February 18, 2015.

The material in italics below sets forth the Staff's comment, followed by our response.

Financial Statements and Supplementary Data

Allocation of the Purchase Price of Real Estate Acquisitions, page 59

1. *We note your response to prior comment 1. Please tell us the basis for your use of discounts between expected market rents and the contractual option rents in assessing your bargain renewal option and how your policy complies with ASC 805-20-25-12. In your response, explain how you concluded that the parameters established in your policy are appropriate given your limited experience with bargain renewal option rollovers. Further, tell us the potential impact to your financial statements if you considered all bargain renewals exercised regardless of discount to expected market rents and duration between acquisition and renewal dates.*

Response:

For each lease we assume through acquisition of a property, we apply ASC 805-20-25-12 to determine whether the terms of the lease are favorable or unfavorable compared with the market terms of a lease for a similar property at the acquisition date. If the terms are favorable, an above-market lease intangible asset is recorded, and if the terms are unfavorable, a below-market lease liability is recorded. ASC 805-20-25-12 does not provide us with further guidance on how to arrive at the fair value of the above- or below-market lease intangible asset or liability, so we refer to ASC 820 and ASC 840 for the appropriate valuation guidance. Our reference to "discounts" in our prior response and as used below is in relation to the difference between our estimates of market rents at the time of the renewal in comparison to the

rate available to the tenant under the renewal option. ASC 820 provides detailed guidance for using management's judgment and other market participant consideration in assessing fair value when quoted prices are not available.

As previously mentioned in our earlier responses, we have extensive experience in acquiring and managing operating properties over multiple business cycles throughout our 46-year history. During these 46 years, we have established in-house acquisition, portfolio management, asset management, credit research, and real estate research expertise. Within our portfolio management department, we have a leasing team that actively negotiates lease renewals with current and new tenants and has access to current market rental rate data in markets across the country where our properties are located. In fact, over the last several years, we have resolved over 1,800 lease rollovers.

Based on our experience with respect to pre-negotiated options to renew, we note that tenants typically make renewal decisions based upon a variety of both quantitative and qualitative factors. Our experience has shown that contractual option rents that are only slightly below market may not sufficiently incentivize a tenant to exercise their option, due to factors such as the availability of newer buildings and location optimization, among others. Accordingly, we believe that a renewal rate that is "sufficiently lower" than market rates is required for the threshold of "reasonably assured" to be met under ASC 840-10-20 (which defines bargain renewal options).

We have relied upon our extensive experience negotiating leases with tenants to both establish our "Valuation of Newly Acquired Properties" policy and to determine the parameters that we outlined in our previous response. We note that the authoritative guidance included in ASC 840-10-20 does not provide quantitative thresholds for us to use in making an assessment of whether rental rates are "sufficiently lower" so that exercise is reasonably assured; accordingly, we are required to apply professional judgment in determining whether this threshold is met. Therefore, based on our experience, our research of other real estate companies, and the methodologies utilized by third-party valuation experts, we believe and respectfully advise the Staff that our definition of "sufficiently lower", as described in our previous response letter, is in-line with how a market participant would consider such options.

Per our valuation policy referenced above, we define bargain renewal options as contractual rents being "sufficiently lower" (per ASC 840-10-20) than the estimated market rents for the property when they meet specific thresholds of between 15% to 25%, depending on the amount of time until the future option exercise date(s). However, we evaluate each real estate lease acquired to determine whether a renewal option is considered a bargain renewal option (i.e., reasonably assured of exercise) based on the facts and circumstances existing at the acquisition date. These factors include, but are not limited to, length of the in-place lease, the contractual ability of the tenant to sublease their space, financial performance of the property, financial performance of the individual tenant, the overall economic climate, and any other known facts or circumstances surrounding the tenant's business operations.

Based on our market knowledge and extensive leasing and re-leasing experience, we have developed our valuation policy in an attempt to reflect what an active market participant would consider as a "bargain" renewal option. Consequently, we have determined that the exercise of a bargain renewal option is "reasonably assured" when the lease renewal rate is at least 15% below expected market rents (we respectfully refer the Staff to our previous response for the various step parameters). Because we have determined that renewal rates that are less than 15% below estimated market rents are not reasonably assured of exercise and do not constitute a bargain renewal, we do not quantify the impact of such renewal options in our valuation models.

In response to your request, we quantified the incremental impact to our financial statements if we assumed that all renewal options would be exercised regardless of discount to expected market rents and duration between acquisition and renewal dates. For this quantification, we evaluated all 211 of our 2014 acquisitions that included the assumption of an in-place lease, which represents approximately 16% of the 1,291 in-place leases in our portfolio as of December 31, 2014. Of this population of 211 in-place leases, there were 87 with renewal options that were below the expected market rent. The following summarizes the overall incremental impact on our consolidated 2014 financial statements, assuming that all of the renewal options for these 87 in-place leases were exercised, regardless of discount to expected market rents and duration between acquisition and renewal dates. The "Projected incremental impact on financial statements" column below represents an extrapolation based on the 2014 impact from including renewal options less than 15% below estimated market rents, which, as described above, is something we do not include in our valuation models:

Impact on financial statement caption	Incremental impact from 2014 in-place lease acquisitions	Projected incremental impact on financial statements
Increase in acquired lease intangible liabilities, net	$22,000,000	$69,900,000
% of total assets as of December 31, 2014	0.20%	0.63%
Decrease to rental revenue [1]	$(800,000)	$(1,400,000)
% of total 2014 revenue	(0.09)%	(0.15)%

[1] When quantifying the income statement impact from the 2014 in-place lease acquisitions, we adjusted the amortization period to properly include all option periods considered to be exercised. The amortization impact of using this extended term outweighed the amortization impact from the incremental increase to acquired lease intangible liabilities, net, and resulted in a decrease to rental revenue on an annualized basis.

Based on the foregoing, we respectfully represent to the Staff that the projected impact from our in-place leases with renewal options that are below the expected market rents regardless of discount to expected market rents and duration between acquisition and renewal dates would not have a material impact on our consolidated 2014 financial statements.

***

If you have any questions or comments to this letter, please do not hesitate to contact me at (858) 284-5109.

Sincerely,

Realty Income Corporation

/s/ Paul M. Meurer

Paul M. Meurer
Executive Vice President,
Chief Financial Officer and Treasurer

One Belvedere Place
Suite 300
Mill Valley, CA 94941

July 22, 2015

VIA EDGAR AND E-MAIL
Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.W.
Washington, D.C. 20549

Attn: Jaime G. John
Branch Chief
Division of Corporation Finance

Re: Redwood Trust, Inc.
Responses to Comments on:
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed on February 25, 2015
Form 10-Q for the Quarterly Period Ended March 31, 2015
Filed May 7, 2015

File No. 1-13759

Dear Mr. John,

On behalf of Redwood Trust, Inc. ("Redwood"), I hereby provide the following response in reply to the Staff's comment letter dated June 24, 2015 (the "Comment Letter") in connection with the above-referenced Annual Report on Form 10-K (the "2014 Form 10-K") and Quarterly Report on Form 10-Q (the "2015 Q1 Form 10-Q"). For your convenience, each of my responses is preceded with an italicized recitation of the comment set forth in the Comment Letter.

Form 10-K for the fiscal year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

1. *Please provide us with additional details regarding your Mortgage Servicing Rights investments (MSRs) including whether you have retained the basic MSR and excess MSR. Additionally, tell us the weighted average yield that you have earned on these assets for all periods presented and whether you have any outstanding servicer advances. Please update your disclosure in future filings accordingly.*

We own MSRs associated with both jumbo and conforming residential mortgage loans, which we refer to as "Jumbo MSRs" and "Conforming MSRs," respectively. Our MSRs are retained from the sale of loans or are purchased on a stand-alone basis, as outlined on page 63 of the 2014 Form 10-K.

Base and excess MSR

We distinguish base (or "basic") and excess MSRs in accordance with IRS specified "safe harbor" levels of servicing fees they consider to be reasonable compensation (or "base" fees) for servicing various loan types. For conforming loans, the IRS considers fees up to 0.25% (of associated loan principal) to be base fees, and for jumbo loans, fees up to 0.375% (of associated loan principal) to be base fees.

Our Jumbo MSRs entitle us to a contractually specified servicing fee, with rates ranging from 0.25% to 0.375%, and are therefore all considered base fees under the IRS safe harbor. As of December 31, 2014 and 2013, the weighted average servicing fee rate on our Jumbo MSRs was 0.25%. Our Conforming MSRs entitle us to a contractually specified servicing fee, with rates ranging from 0.25% to 0.70%. As of December 31, 2014 and 2013, our portfolio of Conforming MSRs had a fair value of $81.3 million and $3.3 million, respectively, and of these amounts MSRs with fair values of approximately $100,000 and $30,000, respectively, had servicing fees in excess of 0.25%.

MSR Yields

Our gross cash yield on MSRs (calculated by dividing the annual gross servicing fees we received, by the weighted average notional balance of loans associated with MSRs we owned during the year) was 0.23%, 0.23%, and 0.18% for the years ended December 31, 2014, 2013 and 2012, respectively.

Servicer Advances

At both December 31, 2014 and December 31, 2013, we had approximately $1.0 million and $800,000, respectively, of servicer advances, primarily related to recoverable escrow advances, presented in “Other assets” on our balance sheet.

In accordance with the comment letter request, in future filings, we will update our disclosures to include the amount of MSRs we own with excess servicing and the amount of servicing advances associated with MSRs as of each balance sheet date presented, as well as the gross cash yield on our MSRs for each period presented in our statements of income.

Item 8. Financial Statements and Supplementary Data

2. *We note your disclosure on page F-36 that the fair value for residential loans is determined based on either an exit price to securitization or the whole loan market. Please tell us how you determine which of these two markets to use for your residential loans and how you have concluded that the market used in your valuation is the principal or most advantageous market.*

We carry our jumbo residential mortgage loans (“jumbo loans”) at fair value, as they have historically represented our loan inventory for our residential mortgage banking activities. Our jumbo loans held-for-sale have typically been held on balance sheet from 30-60 days, until they are sold or securitized. With the reasonably high turnover, quarter-end estimates of fair value for these loans are quickly realized in subsequent quarters.

Since prices or quotes from exchanges or listed markets are not available for jumbo loans, we estimate fair value for these loans using internal models that incorporate various observable and unobservable inputs, including the transactional activity noted above. We have not viewed the various purchasers of jumbo loans (e.g., whole loan investors, resellers, or securitization aggregators) as representative of separate markets, but rather as part of a single “secondary market” for jumbo loans. In fact, many purchasers fall into more than one of these categories and acquire jumbo loans for differing reasons. Similarly, sellers of jumbo loans typically seek bids for jumbo loans from many different types of purchasers, rather than solely from one category of purchasers. We view this single secondary market as the principal market, with various market participants providing varying pricing inputs each quarter. During 2014, the difference in fair value estimates implied by pricing inputs provided by different types of purchasers was minimal.

In considering the Staff's comment, we plan to update our disclosures in future filings to clarify the existence of a single principal market for jumbo loans, as opposed to two distinct markets. The updated language we intend to use is as follows:

> Estimated fair values for residential loans are determined using models that incorporate various observable and unobservable inputs, including pricing information from recent securitizations and whole loan sales. Certain significant inputs in these models are considered unobservable and are therefore Level 3 in nature. Pricing inputs obtained from market securitization activity include indicative spreads to indexed TBA prices for senior RMBS and indexed swap rates for subordinate RMBS, which are adjusted as necessary for current market conditions (Level 3). Pricing inputs obtained from market whole loan transaction activity include indicative spreads to indexed swap rates, adjusted as necessary for current market conditions (Level 3). Other observable inputs include Agency RMBS pricing, indexed swap yields, credit rating agency guidance on expected credit support levels for newly issued RMBS transactions, benchmark interest rates, and prepayment rates. These assets would generally decrease in value based upon an increase in the credit spread, prepayment speed, or credit support assumptions.
>
> Estimated fair values for conforming loans are determined based upon quoted market prices (Level 2). Conforming loans are mortgage loans that conform to Agency guidelines. As necessary, these values are adjusted for servicing value, market conditions and liquidity.

Form 10-Q for the quarterly period ended March 31, 2015

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

3. *We note your disclosure on page 70 that you began to account for commitments to purchase jumbo loans as derivatives as a result of amendments to the agreements governing these commitments. Please provide to us additional details regarding the terms of the referenced amendments, how they qualify your loan purchase commitments to be accounted for as a derivative, and quantify the impact to your financial statements. Also, tell us the accounting guidance upon you which you relied.*

We purchase jumbo residential mortgage loans ("jumbo loans") from various bank and non-bank loan originators, which we refer to as "Sellers." Our purchases of jumbo loans from these Sellers are governed by mortgage loan purchase and sale agreements (or "MLPSAs"). Prior to January 1, 2015, our MLPSAs were drafted such that there was no legally enforceable commitment by us to purchase a jumbo loan that we and the Seller had specified until a purchase price and terms letter ("PPTL") relating to that loan was executed by both parties. Once the PPTL was executed by both parties, a contractual purchase and sale commitment between the parties was established; and, consequently, it was only at the time the PPTL was executed that a commitment to purchase a jumbo loan could be assessed under derivatives accounting guidance. Of note, this commitment does not represent an "Interest Rate Lock Commitment" to a borrower as we do not originate any residential loans ourselves.

Prior to January 1, 2015, we generally entered into PPTLs on the same day we purchased the related jumbo loan – *i.e.*, on the same day we wired the purchase price to the Seller and the Seller conveyed ownership of the loan to us. Under this framework, even if an executed PPTL were to qualify as a derivative, we did not have open PPTLs at any quarter-end (because commitments to purchase jumbo loans were made and fulfilled on the same day) and, therefore, had no jumbo loan purchase commitments to assess as derivatives for financial reporting purposes.

During the latter part of 2014, we executed amendments to the MLPSAs we had in place with Sellers to affect certain new terms relating to purchase and sale commitments. Under the amendments, these new terms became effective on January 1, 2015. In addition, we changed our standard form MLPSA to affect the same new terms in new MLPSAs we entered into with new Sellers on and after January 1, 2015.

As of January 1, 2015, all of our MLPSAs specify that our commitment to purchase a jumbo loan (and the Seller's corresponding commitment to sell us that loan) is established when we deliver a confirmation to the Seller relating to that loan. We now typically deliver a confirmation 30-45 days prior to when we expect to fulfill our commitment to purchase a loan. Because a contractual commitment is established well before a jumbo loan will be purchased, beginning with the quarter ended March 31, 2015, we assessed our open commitments to purchase jumbo loans under derivative accounting guidance to determine if these open commitments qualified as derivatives.

In analyzing these open commitments, we looked to ASC 815-10-15, paragraphs 69-71, which discuss the accounting treatment for "Certain Loan Commitments." In accordance with paragraph 70 (formerly DIG C13), all commitments to purchase or sell mortgage loans must be evaluated under the definition of a derivative. Therefore, we have evaluated open commitments to purchase jumbo loans using the guidance in ASC 815-10-15-83, "Derivatives and Hedging – Definition of Derivative Instrument." In accordance with this guidance, we determined that our current MLPSAs and associated confirmations are contractual commitments and evaluated the following required criteria to assess whether they meet the definition of a derivative:

a. Underlying, notional amount, payment provision requirement

   With respect to our jumbo loans, the related MLPSA and confirmation evidence a purchase and sale obligation (a settlement requirement), specify the principal amount of the loan to be purchased, and specify the purchase price for the loan.

   This satisfies the first criterion under ASC 815-10-15-83's definition of a derivative.

b. Initial net investment requirement

   With respect to our jumbo loans, the related MLPSA and confirmation require no initial net investment.

   This satisfies the second criterion under ASC 815-10-15-83's definition of a derivative.

c. Net settlement requirement

   ASC 815-10-15 paragraphs 99-139 discuss net settlement provisions. We evaluated each of the three means by which the net settlement criterion can be satisfied and determined that our underlying jumbo loans are readily convertible into cash.

   This satisfies the third criterion under ASC 815-10-15-83's definition of a derivative.

Accordingly, as we meet the specified criteria in ASC 815-10-15, we concluded that our current jumbo loan purchase commitments are considered derivatives in accordance with GAAP and we began to account for commitments entered into under our amended MLPSAs as derivatives beginning on January 1, 2015.

At March 31, 2015, we had $5.3 million of derivative assets and $0.8 million of derivative liabilities associated with jumbo loan purchase commitments recorded on our balance sheet. These amounts are included in our disclosures on page 37 of our 2015 Q1 Form 10-Q.

*   *   *

As you have requested, we confirm that:

- Redwood is responsible for the adequacy and accuracy of the disclosure in the above-referenced filings;
- Staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filings; and
- Redwood may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Should you have any further comments or questions about this letter, please contact me by telephone at 415-384-3584, by fax at 415-381-1773, or by email at chris.abate@redwoodtrust.com.

Very truly yours,

Redwood Trust, Inc.

By: /S/ CHRISTOPHER J. ABATE
Christopher J. Abate
Chief Financial Officer

August 24, 2015

VIA EDGAR AND E-MAIL
Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.W.
Washington, D.C. 20549

Attn: Jaime G. John
Branch Chief
Division of Corporation Finance

Re: Redwood Trust, Inc.
Responses to Comments on:
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed on February 25, 2015
Form 10-Q for the Quarterly Period Ended March 31, 2015
Filed on May 7, 2015

File No. 1-13759

Dear Mr. John,

On behalf of Redwood Trust, Inc. ("Redwood"), I hereby provide the following response in reply to the Staff's comment letter dated August 14, 2015 (the "Comment Letter") in connection with the above-referenced Annual Report on Form 10-K (the "2014 Form 10-K"). For your convenience, my response is preceded with an italicized recitation of the comment set forth in the Comment Letter.

Form 10-K for the fiscal year ended December 31, 2014

Item 8. Financial Statements and Supplementary Data

Note 5. Fair Value of Financial Instrument, F-29

1. *We note in your response to comment 2 that the difference in fair value estimates implied by pricing inputs obtained from market securitization activity versus from market whole loan transaction activity was minimal. Please clarify whether fair value estimates for your residential loans held-for-investment are based upon pricing inputs for both the securitization market and the whole loan market and if so, confirm that differences between fair value estimates based upon the two markets are minimal as it relates specifically to residential loans held-for-investment. Also, explain to us why you adjust the above pricing inputs and the nature of the adjustments.*

Fair value estimates for our residential loans held-for-investment are currently based only on whole loan pricing inputs. As such, there are not pricing differences between whole loan and securitization pricing inputs for our held-for-investment loans.

In the description of our determination of fair value in our Form 10-Q, we note that pricing inputs are "…adjusted as necessary for current market conditions." In certain cases, whole loan sales that provide comparative pricing inputs do not occur on the last day of the quarter and we must consider how spreads or other pricing inputs may have changed between the time of the most recent comparative sale and quarter-end. In certain cases, we will adjust pricing inputs from the most recent comparative sales to reflect changes in current market conditions that we observe. Generally speaking, adjustments made to pricing inputs for this purpose have been minimal as we have typically had sales that occurred close to quarter-end.

* * *

RETAIL OPPORTUNITY INVESTMENTS CORP.

June 29, 2015

VIA EDGAR & FEDEX

Ms. Jennifer Monick
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Retail Opportunity Investments Corp.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 25, 2015
File No. 1-33749

Retail Opportunity Investments Partnership, LP
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 25, 2015
File No. 333-189057-01

Dear Ms. Monick:

On behalf of Retail Opportunity Investments Corp. and Retail Opportunity Investments Partnership, LP (together, the "Company"), set forth below are the responses of the Company to the comments of the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission"), received by letter dated June 17, 2015 (the "June 17 Letter"), with respect to the Company's Form 10-K for the year ended December 31, 2014 (the "Form 10-K").

For the Staff's convenience, the responses to the Staff's comments are set out in the order in which the comments were set out in the June 17 Letter and are numbered accordingly. The text of the Staff's comments is set forth below in bold followed in each case by the response.

Form 10-K for the Fiscal Year Ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds From Operations, page 35

1. **We note you have recorded a gain on consolidation of joint venture for 2013 and 2012. In future periodic filings, please revise your reconciliation of Net income attributable to ROIC to FFO-basic and FFO-diluted to include an adjustment to exclude such gains.**

In response to the Staff's comment, the Company notes that during the respective periods in 2013 and 2012, the Company obtained control of two joint ventures and, following guidance from Accounting Standards Codification 805, *Business Combinations* ("ASC 805"), recorded gains on the consolidations. The Company also notes that in presenting funds from operations, or FFO, the Company follows the standard definition of FFO as set forth in the "White Paper" published by the National Association of Real Estate Investment Trusts ("NAREIT"), which defines FFO as "net income attributable to common stockholders (determined in accordance with GAAP) excluding gains or losses from debt restructuring, sales of depreciable property, and impairments, plus real estate related depreciation and amortization, and after adjustments for partnerships and unconsolidated joint ventures." The Company does not believe that the gains recorded on consolidation of joint ventures are of the type that under the White Paper should be excluded from net income in arriving at FFO.

Item 8. Financial Statements and Supplementary Data

Notes to Consolidated Financial Statements

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies

Real Estate Investments, page 57

2. **We note your disclosure regarding your accounting policy for acquired intangible assets and liabilities. Specifically, we note your disclosure that the fair values associated with below-market rental renewal options are determined based on the Company's experience and the relevant facts and circumstances that existed at the time of the acquisitions. Please provide us with additional details regarding your evaluation of below-market rental renewal options. Your response should include, but not necessarily be limited to, whether or not you use a threshold in your evaluation. To the extent you use thresholds, please tell us how you concluded that these thresholds are appropriate and tell us the potential impact to your financial statements if you were to conclude that all below market fixed rate renewal options would be exercised.**

In response to the Staff's comment, the Company reviews each lease assumed through a property acquisition to determine whether the terms of the lease are favorable or unfavorable compared with market terms of a lease for a similar property. This review includes an evaluation of each lease acquired to determine whether renewal options, if any, are considered bargain renewal options, primarily based on comparing the contractual rents for the option period with the expected market rents at the time of option exercise. For this exercise, the Company uses a threshold of 5%. If a tenant's contractual rent is greater than 5% below expected market rent at the time of option exercise, our historical experience would indicate that it is probable that the tenant will choose to exercise their option and retain their space, thus avoiding business interruption and other costs associated with relocating their business. The Company believes, based on historical experience, that contractual option rents that are more than 5% below expected market rents provide sufficient reasonable assurance that the option will be exercised. The Company believes that contractual rents less than 5% below market may not be sufficiently below market to compel a tenant to exercise its option to extend.

In response to your request regarding the potential impact to the Company's financial statements, if the Company were to conclude that all below market fixed rate renewal options were to be exercised, the Company evaluated its 2014 acquisitions as a representative data set. During 2014 the Company acquired eight shopping centers. Of the 184 leases that were assumed, 35 were determined to have below market rental renewal options. Of these 35 leases, 30 were determined to have contractual option rents greater than 5% below expected market rents. Accordingly, the Company recorded intangible lease liabilities for these renewal options in the amount of $25,519,254. Five leases with below market rental renewal options were determined to have contractual rents that were less than 5% below expected market rents. The potential impact to the Company's financial statements of these five leases would be as follows:

Increase in acquired lease intangible liabilities, net	$	264,605
Total Liabilities as of December 31, 2014	$	888,914,167
% of Total Liabilities as of December 31, 2014		0.0003%
Increase to 2014 revenue due to amortization	$	423
Total Revenue for the year ending December 31, 2014	$	155,863,511
% of Total Revenue for the year ending December 31, 2014		inconsequential

Based on the foregoing, the Company believes that the potential impact, if it were to conclude that all below market fixed rate renewal options would be exercised, would not have a material impact on its consolidated financial statements for the year ending December 31, 2014.

Form 8-K filed April 29, 2015

Exhibit 99.1 Earnings Release, dated April 29, 2015

3. **We note that you present same-center cash net operating income (NOI) in your earnings releases. It appears that same-center cash NOI is a non-GAAP measure. Please revise future earnings releases to include all of the disclosures required by Item 10(e)(1)(i) of Regulation S-K for this measure. In your response, please provide an example of your proposed disclosure.**

In response to the Staff's comment, in future earnings releases, the Company will include all of the disclosures required by Item 10(e)(1)(i) of Regulation S-K. In addition, the following will be added to earnings releases using the quarter ending March 31, 2015 below as an example:

ACCOUNTING AND OTHER DISCLOSURES

The Company uses cash net operating income ("NOI") internally to evaluate and compare the operating performance of the Company's properties. The Company believes cash NOI provides useful information to investors regarding the Company's financial condition and results of operations because it reflects only those cash income and expense items that are incurred at the property level, and when compared across periods, can be used to determine trends in earnings of the Company's properties as this measure is not affected by non-cash revenue and expense recognition items, the cost of the Company's funding, the impact of depreciation and amortization expenses, gains or losses from the acquisition and sale of operating real estate assets, general and administrative expenses or other gains and losses that relate to the Company's ownership of properties. The Company believes the exclusion of these items from operating income is useful because the resulting measure captures the actual revenue generated and actual expenses incurred in operating the Company's properties as well as trends in occupancy rates, rental rates and operating costs.

Cash NOI is a measure of the operating performance of the Company's properties but does not measure the Company's performance as a whole and is therefore not a substitute for net income or operating income as computed in accordance with GAAP. The Company defines cash NOI as operating revenues (base rent and recoveries from tenants), less property and related expenses (property operating expenses and property taxes), adjusted for non-cash revenue and operating expense items such as straight-line rent and amortization of lease intangibles, debt-related expenses, and other adjustments. Cash NOI also excludes general and administrative expenses, depreciation and amortization, acquisition transaction costs, other expense, interest expense, gains and losses from property acquisitions and dispositions, extraordinary items, tenant improvements and leasing commissions. Other REITs may use different methodologies for calculating cash NOI, and accordingly, the Company's cash NOI may not be comparable to other REITs.

In this release, the Company has provided cash NOI information on a same-center basis. Same-center properties, which totaled 53 of the Company's 64 properties as of March 31, 2015, represent all operating properties owned by the Company during the entirety of both periods presented and consolidated into the Company's financial statements during such periods.

RECONCILIATION OF SAME-CENTER CASH NOI
TO OPERATING INCOME

(In thousands)

	Three months ended	
	3/31/2015	**3/31/2014**
Same-center cash NOI	$ 23,289	$ 22,401
Other adjustments [1]	(214)	875
Same-center cash NOI before adjustments	23,075	23,276
Non same-center cash NOI	6,987	750
Cash NOI	30,062	24,026
Straight-line rent adjustment	1,275	632
Amortization of above and below-market lease intangibles, net	2,330	1,997
Non-cash property operating expenses	(202)	(155)
Depreciation and amortization	(17,634)	(13,364)
General and administrative expenses	(2,641)	(2,561)
Acquisition transaction costs	(171)	(218)
Other expense	(149)	(217)
Operating Income	$ 12,870	$ 10,140

(1) Includes adjustments for items that affect the comparability of the same-center results. Such adjustments include: changes in estimates for common area maintenance costs and real estate taxes related to a prior period, lease termination fees, or other similar items that affect comparability.

Same-center cash NOI is a non-GAAP financial measure. The Company believes that same-center cash NOI is a widely used and appropriate supplemental measure of operating performance for REIT's and that it may provide a relevant basis for comparison among REITs. See also "Accounting and Other Disclosures" above.

4. **In addition to above, please tell us whether you consider same-center cash NOI a key performance indicator. To the extent you consider this measure to be a key performance indicator, please confirm that you will include this measure and the related Item 10(e) disclosures within your future periodic filings.**

In response to the Staff's comment, the Company advises the Staff that it considers same-center cash NOI to be a key performance indicator. In future periodic filings the Company will include this measure and the related disclosures required by Item 10(e) of Regulation S-K. The following will be added to future periodic filings using the quarter ending March 31, 2015 below as an example:

Cash Net Operating Income ("NOI")

Cash NOI is a non-GAAP financial measure of the Company's performance. The most directly comparable GAAP financial measure is operating income. The Company defines cash NOI as operating revenues (base rent and recoveries from tenants), less property and related expenses (property operating expenses and property taxes), adjusted for non-cash revenue and operating expense items such as straight-line rent and amortization of lease intangibles, debt-related expenses, and other adjustments. Cash NOI also excludes general and administrative expenses, depreciation and amortization, acquisition transaction costs, other expense, interest expense, gains and losses from property acquisitions and dispositions, extraordinary items, tenant improvements and leasing commissions. Other REITs may use different methodologies for calculating cash NOI, and accordingly, the Company's cash NOI may not be comparable to other REITs.

Cash NOI is used by management internally to evaluate and compare the operating performance of the Company's properties. The Company believes cash NOI provides useful information to investors regarding the Company's financial condition and results of operations because it reflects only those cash income and expense items that are incurred at the property level, and when compared across periods, can be used to determine trends in earnings of the Company's properties as this measure is not affected by non-cash revenue and expense recognition items, the cost of the Company's funding, the impact of depreciation and amortization expenses, gains or losses from the acquisition and sale of operating real estate assets, general and administrative expenses or other gains and losses that relate to the Company's ownership of properties. The Company believes the exclusion of these items from operating income is useful because the resulting measure captures the actual revenue generated and actual expenses incurred in operating the Company's properties as well as trends in occupancy rates, rental rates and operating costs.

Cash NOI is a measure of the operating performance of the Company's properties but does not measure the Company's performance as a whole and is therefore not a substitute for net income or operating income as computed in accordance with GAAP.

Same-Center Cash NOI

The following comparison for the three months ended March 31, 2015 compared to the three months ended March 31, 2014, makes reference to the effect of the same-center properties. Same-center properties, which totaled 53 of the Company's 64 properties as of March 31, 2015, represent all operating properties owned by the Company during the entirety of both periods presented and consolidated into the Company's financial statements during such periods.

The table below provides a reconciliation of same-center cash NOI to consolidated operating income for the three months ended March 31, 2015 and 2014 (in thousands).

	Three months ended	
	3/31/2015	**3/31/2014**
Same-center cash NOI	$ 23,289	$ 22,401
Other adjustments [1]	(214)	875
Same-center cash NOI before adjustments	23,075	23,276
Non same-center cash NOI	6,987	750
Cash NOI	30,062	24,026
Straight-line rent adjustment	1,275	632
Amortization of above and below-market lease intangibles, net	2,330	1,997
Non-cash property operating expenses	(202)	(155)
Depreciation and amortization	(17,634)	(13,364)
General and administrative expenses	(2,641)	(2,561)
Acquisition transaction costs	(171)	(218)
Other expense	(149)	(217)
Operating income	$ 12,870	$ 10,140

(1) Includes adjustments for items that affect the comparability of the same-center results. Such adjustments include: changes in estimates for common area maintenance costs and real estate taxes related to a prior period, lease termination fees, or other similar items that affect comparability.

During the three months ended March 31, 2015, the Company generated same-center cash NOI of approximately $23.3 million compared to same-center cash NOI of approximately $22.4 million generated during the three months ended March 31, 2014, representing a 4.0% increase.

In regards to the Form 10-K, the Company acknowledges that:

- the company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

RETAIL OPPORTUNITY INVESTMENTS CORP.

July 9, 2015

VIA EDGAR & FEDEX

Ms. Jennifer Monick
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Retail Opportunity Investments Corp.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 25, 2015
File No. 1-33749

Retail Opportunity Investments Partnership, LP
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 25, 2015
File No. 333-189057-01

Dear Ms. Monick:

On behalf of Retail Opportunity Investments Corp. and Retail Opportunity Investments Partnership, LP (together, the "Company"), further to a telephonic discussion on July 7, 2015 between the Company and the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") regarding the Staff's letter dated June 17, 2015 (the "June 17 Letter") with respect to the Company's Form 10-K for the year ended December 31, 2014 (the "Form 10-K"), set forth below is a supplemental response of the Company to the Staff's first comment set forth in the June 17 Letter.

For the Staff's convenience, the original comment set forth in the June 17 Letter is reproduced in bold below and is followed by the Company's supplemental response.

Form 10-K for the Fiscal Year Ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds From Operations, page 35

1. **We note you have recorded a gain on consolidation of joint venture for 2013 and 2012. In future periodic filings, please revise your reconciliation of Net income attributable to ROIC to FFO-basic and FFO-diluted to include an adjustment to exclude such gains.**

   As a supplemental response to the Staff's comment, and in response to the telephonic conversation with the Staff on July 7, 2015, in the Company's Annual Report on Form 10-K for the year ending December 31, 2015, the Company will present the reconciliation of Net income attributable to ROIC to FFO-basic and FFO-diluted, for the year ended December 31, 2013, consistent with that which has been previously reported in periodic filings.

The Company currently does not have any unconsolidated joint ventures and does not anticipate recording any gains on consolidation of joint ventures in the future. Should opportunities arise that would result in recording of such gains, the Company will include an adjustment for such gains in the reconciliation of Net income to FFO and will also expand the definition the Company uses in determining FFO to read as follows:

The Company follows the standard definition of FFO as set forth in the "White Paper" published by the National Association of Real Estate Investment Trusts ("NAREIT"), which defines FFO as "net income attributable to common stockholders (determined in accordance with GAAP) excluding gains or losses from debt restructuring, sales of depreciable property, and impairments, plus real estate related depreciation and amortization, and after adjustments for partnerships and unconsolidated joint ventures." In addition, the Company also adjusts FFO to exclude gains recorded on the consolidation of joint ventures.

In regards to the Form 10-K, the Company acknowledges that:

- the company is responsible for the adequacy and accuracy of the disclosure in the filing;

- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and

- the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

We hope the foregoing has been responsive to the Staff's comment. If you have any questions, please do not hesitate to contact the undersigned at (858) 255-4925 (telephone) or Jay Bernstein or Jacob Farquharson of Clifford Chance US LLP, counsel to the Company, at (212) 878-8527 (telephone) or (212) 878-3302 (telephone).

We thank the Staff in advance for its assistance.

Very truly yours,

/s/ Michael B. Haines
Michael B. Haines
Chief Financial Officer

cc:

Isaac Esquivel
Stuart A. Tanz
Jay L. Bernstein, Esq.
Jacob Farquharson, Esq.

May 22, 2015

By EDGAR

United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0410

Attention: Mr. Wilson K. Lee, Senior Staff Accountant

RE: Retail Properties of America, Inc. ("RPAI", "we" or the "Company")
Form 10-K for the year ended December 31, 2014
Filed on February 18, 2015
File No. 001-35481

Dear Mr. Lee:

This letter responds to the letter from the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") dated May 14, 2015 (the "Comment Letter"), providing a comment relating to the Company's Form 10-K for the fiscal year ended December 31, 2014. In order to facilitate the Staff's review of this letter, we have restated your numbered comment which required a response below and have included the Company's response underneath the comment.

Form 10-K for the year ended December 31, 2014

Funds From Operations, pages 30-31

1. **In arriving at Funds from operations, you start with Net income attributable to common shareholders. As a result, it appears Funds from operations is actually Funds from operations attributable to just common stockholders instead of all equity shareholders. In future periodic filings please re-title "Funds from operations" to the more appropriate "Funds from operations attributable to common shareholders".**

Response:

In future periodic filings, we will re-title "Funds from operations" to "Funds from operations attributable to common shareholders."

As requested in the Comment Letter, the Company hereby acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Retail Properties of America, Inc.
T: 855.247.RPAI
www.rpai.com
2021 Spring Road, Suite 200
Oak Brook, IL 60523

RLJ LODGING TRUST
3 Bethesda Metro Center, Suite 1000
Bethesda, MD 20814

May 18, 2015

BY EDGAR AND OVERNIGHT MAIL

Ms. Jennifer Monick
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: RLJ Lodging Trust
Form 10-K for the year ended December 31, 2014
Filed February 26, 2015
File No. 001-35169

Dear Ms. Monick:

This letter is submitted by RLJ Lodging Trust (the "**Company**") in response to comments from the staff of the Division of Corporation Finance (the "**Staff**") of the Securities and Exchange Commission (the "**Commission**") in a letter dated May 11, 2015 (the "**Comment Letter**") with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 filed with the Commission on February 26, 2015 (the "**Form 10-K**").

For your convenience, the Staff's numbered comments set forth in the Comment Letter have been reproduced in italics herein with responses immediately following each comment. Unless otherwise indicated, page references in the reproductions of the Staff's comments refer to the Form 10-K. Defined terms used herein but not otherwise defined herein have the meanings given to them in the Form 10-K.

Notes to Consolidated Financial Statements

Note 9. Commitments and Contingencies, page F-23

Data Breach, page F-25

1. *Please tell us and revise future periodic filings to clarify if you expect any amounts you may be required to pay to be material to the financial statements as a whole, as opposed to only your results of operations.*

Response to Comment No. 1

The Company currently believes that any amounts that the Company may ultimately be required to pay as a result of this incident will not have a material impact on its financial position, results of operations or cash flows. In future filings, the Company will revise the disclosure to provide an assessment of the impact on the Company's results of operations as well as the impact on the Company's financial position and cash flows.

The Company also acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filings;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filings; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

18500 Von Karman Avenue
Suite 550
Irvine, CA 92612

September 29, 2015

VIA EDGAR

Ms. Jaime G. John
Accounting Branch Chief, Office of Real Estate and Commodities
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: ***Sabra Health Care REIT, Inc.***
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 19, 2015
File No. 1-34950

Dear Ms. John:

This letter sets forth the response of Sabra Health Care REIT, Inc. ("Sabra," the "Company" "we" or "our") to the comments of the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") contained in your letter dated September 22, 2015 (the "Comment Letter"), regarding the above-referenced Form 10-K for the year ended December 31, 2014 (the "2014 Form 10-K"). For the convenience of the Staff, each of the Staff's comments is restated in italics prior to the response to such comment.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds from Operations and Adjusted Funds from Operations, page 37

1. *We note that your FFO and AFFO calculations exclude preferred stock dividends and thus appear to represent FFO and AFFO attributable to common shareowners. In future periodic filings, please revise to clearly label your non-GAAP measure as "FFO attributable to common stockholders". Also make a similar revision to properly label AFFO.*

Response: In our future periodic filings, we will revise to clearly label our non-GAAP measures as "FFO attributable to common stockholders" and "AFFO attributable to common stockholders."

Item 8. Financial Statements and Supplementary Data

General

1. *Please tell us the consideration you gave to the financial statement disclosure requirements regarding your dependence on significant customers Genesis Healthcare, Inc. and Holiday AL Holdings LP; refer to paragraph 42 of ASC 280-10-50.*

Response: We note that paragraph 42 of ASC 280-10-50 provides that "[a] public entity shall provide information about the extent of its reliance on its major customers," which is defined as a single external customer that amounts to 10% or more of a public entity's revenues.

In several locations in the 2014 Form 10-K, we disclosed information regarding our dependence on Genesis Healthcare, Inc. ("Genesis") and Holiday AL Holdings LP ("Holiday"). For example, (1) in the section captioned "Business-Significant Credit Concentrations" on page 8 of the 2014 Form 10-K, we noted that Genesis and Holiday are the relationships that represent more than 10% of our annualized revenues as of December 31, 2014 and provided the number of investments, percentage of total investments, gross, and percentage of annualized revenues represented by each of Genesis and Holiday; (2) in the section captioned "Risk Factors-Risks Related to Tenant Concentration" on pages 12-13 of the 2014 Form 10-K, we included a separate risk factor regarding our dependence on each of Genesis and Holiday; and (3) in the section captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations-Concentration of Credit Risk" on pages 41-42 of the 2014 Form 10-K, we disclosed again the percentage of annualized revenues represented by Genesis and Holiday and noted that the obligations under the master leases with both such tenants are guaranteed by their respective parent entities.

In Note 4, "Real Estate Properties Held for Investment-Operating Leases" in the Notes to Consolidated Financial Statements on pages F-15 to F-16 in the 2014 Form 10-K, we also included disclosure regarding our efforts to monitor the creditworthiness of our tenants. In our future periodic filings, consistent with the disclosures described above, we will expand the disclosure in Note 4 to provide the information required by paragraph 42 of ASC 280-10-50 with respect to our tenants that represent more than 10% of our total revenues, including Genesis and Holiday if applicable. For example, we would include the following disclosure in Note 4 (to the extent applicable and updated for 2015 information): "As of December 31, 2014, our two largest tenants, Genesis and Holiday, represented 36.2% and 17.8%, respectively, of our annualized revenues. Other than these two tenants, none of our tenants individually represented 10% or more of our annualized revenues as of December 31, 2014."

****

As requested in the Comment Letter, Sabra acknowledges that:

- Sabra is responsible for the adequacy and accuracy of the disclosure in the filing;

SAUL CENTERS, INC.

7501 Wisconsin Avenue, Suite 1500E, Bethesda, Maryland 20814
(301) 986-6200

August 12, 2015

By EDGAR

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Attention: Daniel L. Gordon

Re: Saul Centers, Inc.
Form 10-K for the year ended December 31, 2014
Filed March 6, 2015
File No. 001-12254

Ladies and Gentlemen:

This letter sets forth the response of Saul Centers, Inc., a Maryland corporation (the "Company"), to your letter dated July 31, 2015, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2014.

The Company hereby confirms that, in future filings after the date of this response letter, the Company will use the label "FFO available to common stockholders and non-controlling interests" instead of "FFO available to common shareholders."

As requested by the Staff, we are providing the following acknowledgements:

- the Company is responsible for the adequacy and accuracy of the disclosure in its filings with the Commission;

- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and

- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Thank you for your courtesy.

Very truly yours,
/s/ Scott V. Schneider
Scott V. Schneider
Senior Vice President and Chief Financial Officer

cc: Justin J. Bintrim
Christine Nicolaides Kearns

May 5, 2015

VIA EDGAR

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attn: Daniel L. Gordon
Senior Assistant Chief Accountant

Re: SL Green Realty Corp.
Form 10-K for the year ended December 31, 2014
Filed February 24, 2015
File No. 001-13199

SL Green Operating Partnership, L.P.
Form 10-K for the year ended December 31, 2014
Filed February 24, 2015
File No. 33-167793-02

Dear Mr. Gordon:

Set forth below are responses to the comments of the staff (the "Staff") of the Securities and Exchange Commission (the "SEC") contained in your letter, dated May 1, 2015 (the "Comment Letter"), relating to the Annual Report on Form 10-K for the year ended December 31, 2014 filed by SL Green Realty Corp. (the "Company") and SL Green Operating Partnership, L.P. (the "Partnership") on February 24, 2015 (the "Form 10-K"). The headings and numbered paragraphs of this letter correspond to the headings and numbered paragraphs contained in the Comment Letter, and to facilitate your review, we have reproduced the text of the Staff's comments in italics below in the first paragraph of each response.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 41

Funds From Operations, page 63

1. *We note that you have calculated FFO based upon net income attributable to SL Green common stockholders and non-controlling interests. In future filings, please revise the label of this non-GAAP measure to indicate that it is attributable to SL Green common stockholders and non-controlling interests.*

The Company and the Partnership advise the Staff that in future filings it will label FFO to indicate that this is attributable to SL Green common stockholders and non-controlling interests.

Consolidated Statements of Equity, page 75

2. *Please include reconciliations for equity interests classified outside of permanent equity as required by ASC 810-10-50-1A in the consolidated statements of equity, or in a note thereto. In that regard, we note that you have provided a rollforward of the noncontrolling interests in the operating partnership in Note 11 but no such rollforward has been included for the preferred units.*

420 Lexington Avenue • New York, NY 10170 • (212) 594-2700 • Fax (212) 216-1790

The Company and the Partnership advise the Staff that the Company and the Partnership propose to revise the disclosure regarding reconciliations for equity interests classified outside of permanent equity in a note to the consolidated financial statements in the following manner in future filings:

Below is the rollforward analysis of the activity relating to the preferred units in the Operating Partnership as of December 31, 2014 and December 31, 2013 (in thousands):

	December 31, 2014	December 31, 2013
Balance at beginning of period	$ 49,550	$ 49,500
Issuance of preferred units	23,565	—
Redemption of preferred units	(2,000)	—
Balance at end of period	$ 71,115	$ 49,550

Note 3. Property Acquisitions, page 100

2014 Acquisitions, page 100

3. *Please disclose the acquisition-date fair value of your equity interest in 388-390 Greenwich Street immediately before the acquisition date and the valuation technique(s) used to measure fair value. Refer to ASC 805-10-50-1(g).*

The Company and the Partnership advise the Staff that the Company and the Partnership believe that it has met the disclosure requirements of ASC 805-10-50-2(g) in the Notes to the Financial Statements as follows:

1. The acquisition-date fair value of the equity interest in the acquiree held by the acquirer immediately before the acquisition date:

Refer to the calculation below. This information is also included in Note 3 to the Financial Statements.

($ in thousands)	388-390 Greenwich
Net purchase price (100%)	$ 1,585,000
Less amount paid to partner	(208,614)
Less debt assumed	(1,162,379)
Fair value of retained equity interest	214,007
SL Green equity interest	(148,025)
Purchase price fair value adjustment	$ 65,982

The remaining purchase price fair value adjustment balance of $5.5 million relates to the acceleration of a deferred leasing commission from the joint venture to the Company.

2. The amount of any gain or loss as a result of remeasuring to fair value the equity interest in the acquiree held by the acquirer immediately before the business combination (refer to paragraph 805-10-25-10) and the line item in the income statement in which that gain or loss is recognized:

Refer to the footnotes to the table in Note 3 to the Financial Statements for the gain recognized in connection with this transaction. The purchase price fair value adjustment is also discussed as a separate line item on the income statement.

3. The valuation technique(s) used to measure the acquisition-date fair value of the equity interest in the acquiree held by the acquirer immediately before the business combination:

The fair value of this property was determined to be the agreed upon purchase price.

4. Information that enables users of the acquirer's financial statements to assess the inputs used to develop the fair value measurement of the equity interest in the acquiree held by the acquirer immediately before the business combination:

The fair value of this property was determined to be the agreed upon purchase price.

* * *

In accordance with your request, the Company and the Partnership hereby acknowledge that:

- the Company and the Partnership are responsible for the adequacy and accuracy of the disclosure in the Form 10-K;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the SEC from taking any action with respect to the Form 10-K; and
- the Company and the Partnership may not assert Staff comments as a defense in any proceeding initiated by the SEC or any person under the federal securities laws of the United States.

* * *

If you have any questions with respect to the foregoing, please contact me at (212)-216-1714 or Andrew Levine, Esq., our Chief Legal

April 8, 2015

VIA EDGAR

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Daniel L. Gordon, Senior Assistant Chief Accountant

Re: **Starwood Property Trust, Inc.**
Form 10-K
Filed February 25, 2015
File No. 001-34436

Ladies and Gentlemen:

Starwood Property Trust, Inc. ("Starwood") hereby responds to the comments of the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "SEC") contained in your letter dated March 25, 2015 (the "Comment Letter") regarding Starwood's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "2014 Form 10-K"). For the convenience of the Staff, we have set forth below the comments contained in the Comment Letter followed by Starwood's response to each comment.

Form 10-K for the fiscal year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 57

COMMENT:

1. *In future filings please disclose the weighted average yield on your assets and the weighted average borrowing costs, including related hedging costs.*

STARWOOD RESPONSE:

Beginning with our Form 10-Q filing for the quarter ended March 31, 2015, we will disclose the weighted average yield on our investment portfolio and our weighted average borrowing costs inclusive of related hedging costs.

Non-GAAP Financial Measures, page 65

COMMENT:

2. *Please reconcile the number of diluted weighted average shares used in Core Earnings per share to the number of diluted weighted average shares used in your GAAP EPS measures.*

STARWOOD RESPONSE:

In our 2014 Form 10-K, we disclosed the following in an effort to reconcile the number of diluted weighted average shares used in our earnings per share ("EPS") calculation as determined pursuant to generally accepted accounting principles ("GAAP") to the shares used in our Core EPS calculation:

> "In assessing the appropriate weighted average diluted share count to apply to Core Earnings for purposes of determining Core earnings per share ("EPS"), management considered the following attributes of our current GAAP diluted share methodology: (i) our participating securities were determined to be anti-dilutive and were thus excluded from the denominator of the EPS calculation; and (ii) the portion of the Convertible Notes that are "in-the-money" (referred to as the "conversion spread value"), representing the value that would be delivered to investors in shares upon an assumed conversion, is included in the denominator. Because compensation expense related to participating securities is added back for Core Earnings purposes pursuant to the definition above, there is no dilution to Core Earnings resulting from the associated expense recognition. As a result, our GAAP EPS methodology was adjusted to include (instead of exclude) participating securities. Further, conversion of the Convertible Notes is an event that is contingent upon numerous factors, none of

which are in our control, and is an event that may or may not occur. Consistent with the treatment of other unrealized adjustments to Core Earnings, our GAAP EPS methodology was adjusted to exclude (instead of include) the conversion spread value in determining Core EPS until a conversion actually occurs. For the year ended December 31, 2014, 3.4 million shares, representing the conversion spread value, were excluded from Core EPS."

Beginning with our Form 10-Q filing for the quarter ended March 31, 2015, in addition to the written reconciliation disclosed above, we will disclose a tabular reconciliation of diluted weighted average shares used in our calculation of Core Earnings per share to diluted weighted average shares used to calculate diluted GAAP earnings per share. A pro forma of this reconciliation for the year ended December 31, 2014 is as follows:

GAAP Diluted Weighted Average Shares	218,781
Add: Participating Securities	2,650
Less: Conversion Spread Value	(3,432)
Core Diluted Weighted Average Shares	217,999

Consolidated Balance Sheets, page 91

COMMENT:

3. *We note that you separately present the assets and liabilities held by variable interest entities on your balance sheet. In future filings, please recast your balance sheet to present the consolidated totals for each line item required by Rule 5-02 of Regulation S-X. Please note that you may state parenthetically after each line item the amount that relates to consolidated VIEs, or you may include a table following the consolidated balance sheets to present assets and liabilities of consolidated VIEs that have been included in the preceding balance sheet.*

STARWOOD RESPONSE:

We respectfully note to the Staff that, since the consolidation rules were contemplated, LNR Property LLC ("LNR"), our wholly-owned subsidiary that we acquired on April 19, 2013, and related parties have engaged in numerous discussions, both written and oral, with the Financial Accounting Standards Board ("FASB") and the SEC on this topic, with such discussions directed towards the seemingly unintended financial statement consequences of these standards on a unique business such as ours. In that regard, we are providing, under separate cover and with a request for confidential treatment, correspondence with the SEC's Office of the Chief Accountant of the Division of Corporation Finance describing the facts and circumstances surrounding our financial statement presentation of VIEs. We also note that, as a result of these discussions, we assisted the FASB in understanding the nature of commercial mortgage-backed securities ("CMBS") trusts and the impact of consolidation of these vehicles in order to arrive at the ultimate conclusions outlined in Accounting Standards Update ("ASU") 2014-13, "Measuring the Financial Assets and the Financial Liabilities of a Consolidated Collateralized Financing Entity."

In order to fully understand the presentation of our consolidated variable interest entities ("VIEs"), it is important to understand the nature of these vehicles and the careful consideration we have dedicated to determining the most appropriate presentation of the consolidation of these vehicles. Since our acquisition of LNR on April 19, 2013, Starwood owns one of the nation's largest commercial mortgage special servicers, which comprised approximately 44% of our 2014 net income on a GAAP basis. LNR services nearly one third of the nation's CMBS trusts, and is the only commercial mortgage special servicer whose financial results are included in a public filing. The nature of LNR's business is vastly different from the more typical residential mortgage servicers and other structures for which we believe the consolidation literature was intended and structured.

In the normal course of business, LNR, comprising our real estate investing and servicing ("REIS") segment, invests in investment grade, unrated and non-investment grade portions of various issues of CMBS. The securities are issued by special purpose trusts, which are structured as pass through entities. A significant portion of LNR's CMBS holdings are in the

lowest tranche of the issued debt of these CMBS trusts. This tranche is typically referred to as the "controlling class", which carries the right to name the special servicer of the trust.

In structuring these trusts, a third party (normally a financial institution) originates loans and then securitizes those loans into a special purpose vehicle. Once securitized into a CMBS trust structure, the loans do not trade. At that point, the loans become part of a closed system, with the special purpose structure effectively transforming the loans into a mathematical waterfall of liability cash flows. After securitization, the sole purpose of the loans is to provide cash flows to the bondholders of the structure. While the loans are restricted from being traded, the liabilities trade regularly, with observable market prices readily available. At inception, a CMBS trust consists only of commercial real estate loans as its assets and debt to bondholders as its liabilities. Over time, some of those loans default and are foreclosed upon, creating a second asset category of foreclosed real estate ("REO") within the trust prior to the asset being liquidated.

The CMBS trusts in which LNR invests are generally considered VIEs under ASC 810. The VIE is deliberately structured as passive whereby a pool of commercial real estate loans is selected for transfer into the VIE and then held constant over its life. No reinvestment is permitted and the entities are not actively managed. As a result, individual loans are not permitted to be sold from the trust or traded in the marketplace. These assets are restricted and can only be used to fulfill the obligations of the trust. The fair value of this type of loan is very different from a loan

which would trade freely outside of such a structure.

Due to the difficulties in valuing loans within this type of structure, the guidance outlined in ASU 2014-13 permits an entity to use the financial liabilities of the VIE to value the overall pool of assets of a VIE. This guidance indicates that the financial assets and financial liabilities of a consolidated collateralized financing entity ("CFE", which is used synonymously with VIE for purposes of this letter) should be measured using the "more observable of the fair value of the financial assets and the fair value of the financial liabilities." In the case of our VIEs, the financial liabilities of a CMBS trust are more observable, and we thus apply this approach in consolidating these vehicles.

Other than loans, the only other potential assets of a CMBS trust are REO. In the context of CMBS trusts consolidated pursuant to ASC 810, an REO asset only appears on a reporting entity's balance sheet in one of two instances: (1) the new consolidation of a CMBS trust structure; and (2) the foreclosure of a loan in an already consolidated CMBS trust structure. When an asset becomes REO, it is due to nonperformance of the loan, which is already at fair value due to the election of the fair value option. The valuation of REO assets at fair value occurs quite often under the current ASC 810 model. As a result, the carrying value of an REO asset is generally fair value under existing GAAP. In addition, once an asset becomes REO, its disposition time is relatively short, and deconsolidation of the trust could occur during that time if we are terminated as special servicer of the trust. As a result, distinguishing an asset between a loan and an REO does not provide any incremental value in this context.

In addition, REO assets generally represent a very small percentage of the overall asset pool of a CMBS trust, and for our portfolio, are 4% of our VIE assets. In a new issue CMBS trust, REO is

zero. This is supported by the Basis of Conclusions section of ASU 2014-13, paragraph BC18, which states, in part, "… respondents to the proposed Update indicated that the value of any nonfinancial assets held by a collateralized financing entity is generally insignificant and nonfinancial assets are held temporarily." Consistent with Rule 5-02 of Regulation S-X, any balance sheet line item which does not exceed 5% of an entity's assets need not be separately presented.

In addition, ASC 810-10-45-25 requires that a reporting entity present each of the following separately on the face of the statement of financial position:

> "a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE
>
> b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary."

In its deliberations of ASC 810, the FASB considered, but rejected, a single-line-item display of assets and liabilities that meet the separate presentation criteria. In order to avoid potential inconsistency and comparability issues in a reporting entity's consolidated financial statements, the FASB decided to require separate presentation of elements of consolidated variable interest entities as described in the excerpt above. While some could interpret this requirement to mean that each consolidated VIE's assets and liabilities that qualify for disclosure must be separately presented, certain of the large accounting firms have issued guidance stating their understanding that this requirement means that the same or similar assets of all consolidated VIEs that meet this separate presentation criterion could be presented in the aggregate on the relevant balance sheet line item. This guidance states, in part:

> "The VIE model does not provide guidance on how assets and liabilities that meet the separate presentation criteria should be presented in the primary beneficiary's balance sheet. We believe that a reporting entity has presentation alternatives provided the assets and liabilities that meet the separate presentation criteria are separately presented on the face of the balance sheet. For example, a reporting entity that is the primary beneficiary of a VIE could present each asset element that meets the separate presentation criteria as one line item and parenthetically disclose the amount of the asset in a VIE. Alternatively, the reporting entity could present an asset element in two separate line items, one line item for the asset in a VIE that meet the separate presentation criteria and another line item for the reporting entity's corresponding asset. There may be other acceptable alternatives."

While on a dollars basis, REO assets are insignificant to VIE assets and to our consolidated assets overall, our VIE asset pool currently contains approximately 500 REO properties. As a result, determining fair value for each of these 500 properties on a quarterly basis would be an extremely time consuming effort. More importantly, it would result in no incremental utility to the users of our financial statements, and ultimately, would be less accurate than our current methodology, particularly since the assets of the VIE can only be used to settle the obligations of the VIE. This approach is consistent with the disclosure objectives of ASC 810, as published in ASC 810-10-50-10:

> "A reporting entity shall determine, in light of the facts and circumstances, how much detail it shall provide to satisfy the requirements of the Variable Interest Entities Subsections. A reporting entity shall also determine how it aggregates information to display its overall involvements with VIEs with different risk characteristics. The reporting entity must strike a balance between obscuring important information as a result of too much aggregation and overburdening financial statements with excessive detail that may not assist financial statement users to understand the reporting entity's financial position. For example, a reporting entity shall not obscure important information by including it with a large amount of insignificant detail."

Because CMBS trust financial liabilities are more observable, the methodology prescribed by ASU 2014-13 effectively results in a derived number for VIE assets as a pool. This makes sense because, in the case of a CMBS trust, all of the assets as a pool are used to satisfy the liabilities of the

trust. This methodology is ultimately designed to arrive at the critical conclusion for investors, which is for the consolidated net income (loss) of a reporting entity to only reflect amounts that reflect changes in its own economic interests in the consolidated trust. Any segregation of the assets beyond the total pool would result in balances that are not meaningful because (i) a bondholder could not access those assets individually; and (ii) determining a precise value for these assets would be nearly impossible. Said another way, as two lines in our balance sheet, the numbers would be estimates and allocations of a total liability number, whereas in total, they agree to a market value that is observable.

As one of the nation's largest special servicers, servicing nearly one third of the nation's CMBS trusts, our entire business is predicated on owning the controlling class. As a result, consolidation of CMBS structures is commonplace; we regularly consolidate and deconsolidate CMBS trusts due to ordinary course transactions such as purchases and sales of CMBS and special servicer appointments. As a public company, we are concerned about creating any confusion for users beyond that which already exists as a result of consolidating these vehicles.

Based on the above, we arrived at our current presentation of including all of the assets of a VIE in a single line on our balance sheet. We believe this presentation is consistent with Rule 5-02 of Regulation S-X based on the insignificance of the REO balance generally, with the requirements of ASC 810-10-45-25, with certain public accounting firms' published interpretive guidance, with the above-referenced correspondence with the SEC, which we are providing to the Staff under separate cover and with a request for confidential treatment, and with the overall objective of financial reporting to provide meaningful information to investors. The liabilities of our VIEs consist solely of debt to bondholders of the CMBS trust, and are thus properly classified as a single line item in accordance with Rule 5-02 of Regulation S-X.

Consolidated Statements of Operations, page 92

COMMENT:

4. *We note your separate presentation of income of consolidated VIE's, net related to the assets and liabilities of your consolidated VIEs. Please tell us your basis for this*

presentation and specifically address how it complies with the requirements of Rule 5-03 of Regulation S-X which requires consolidated totals for each line item.

STARWOOD RESPONSE:

Similar to our response to Comment 3, we respectfully note to the Staff that the basis for our income statement presentation was determined after careful consideration of the impact of CMBS trust consolidation to our financial statements and which presentation would be most meaningful to the users of our financial statements. As noted in our response to Comment 3, the critical conclusion that is contained in ASU 2014-13 is that a reporting entity's consolidated net income (loss) should only reflect the reporting entity's own economic interests in the consolidated VIE. In the context of consolidated CMBS trusts, LNR's economic interest is its ownership of a CMBS security.

Because we elect the fair value option for initial and subsequent recognition of our consolidated VIE assets and liabilities, and because the fair value of the VIE assets equals the fair value of the liabilities pursuant to ASU 2014-13, the only change to VIE assets each period is the change in fair value of the liabilities. As a result, the two primary line items which would appear in our income statement on a gross basis would be the inflated change in fair value of VIE assets and the change in fair value of VIE liabilities, both of which would appear within the "other income" section of our consolidated statement of operations, consistent with Rule 5-03 of Regulation S-X. Before consolidation, these two numbers are the same because total VIE assets equal total VIE liabilities under ASU 2014-13. The numbers individually total in the billions, but net to zero. However, in consolidation, we would eliminate the portion of the change in fair value of VIE liabilities that pertains to our beneficial interest in the CMBS trust (i.e., the CMBS security asset we hold, which is reflected as debt on the VIE's balance sheet). The resulting net number is the portion that pertains to our economic interest in the consolidated VIE.

Additionally, as discussed above, we elected the fair value option for both our VIE assets and liabilities in the trust; therefore, interest income and interest expense presentation as separate line items are no longer relevant on a standalone basis. These amounts are effectively included in the total fair value changes period to period, but obviated because of the overlay of the fair value option. ASC 825-10 does not include guidance on geography for items measured at fair value under the fair value option. Rather, it implies that the presentation of such items is a policy election. Since adoption of ASC 810, our elected policy has been to present these items through the same line item on our statement of operations. Certain of the large accounting firms have published interpretive guidance supporting this. In discussing the segregation of interest income from other changes in fair value, one such publication states, "We encourage reporting entities to use the single line presentation because splitting the change in fair value creates an amount in a line item that is just a residual difference. In either case, reporting entities should select a policy for income statement presentation that is appropriate for their facts and circumstances, disclose the policy in the footnotes, and follow it consistently." In our case, the difference between the change in fair value of VIE assets and the change in fair value of VIE liabilities is simply the residual difference attributable to our beneficial interest in the VIE.

Similar to our response to Comment 3, we respectfully submit that we do not see any added benefit to providing the users of our financial statements with two inflated line items in our statement of operations, neither of which individually pertains to our beneficial interest in the VIE. In fact, we would view this presentation as somewhat distortive because our beneficial interest in the VIE would be eliminated and hidden in the residual difference between the change in fair value of assets and the change in fair value of liabilities. Consistent with the underlying purpose of ASU 2014-13, the consolidation of VIEs should result in a reporting entity only reflecting its own economic interest in the VIE. We believe that

netting the changes in fair value of liabilities against the changes in fair value of assets on a consolidated basis accomplishes this objective. However, we will include in future filings additional disclosure in Footnote 2, *Summary of Significant Account Policies*, related to our financial statement presentation of consolidated VIEs.

COMMENT:

5. *We note that a majority of your revenue is derived from interest on leveraged investments. Please tell us why interest expense has been presented as a component of costs and expenses, rather than as part of net interest margin. In this regard, a "net interest income" presentation is generally appropriate for companies with interest expense related to financing its investments earnings interest income. Please see ASC 942-10-S99-4 for reference.*

STARWOOD RESPONSE:

As discussed in our response to Comment 3, on April 19, 2013, Starwood and its affiliates acquired LNR, a diversified real estate operating business which houses one of the nation's largest special servicers. Prior to the LNR acquisition, Starwood applied the "net interest income" presentation prescribed by ASC 942-10-S99-4. Because our operations at that time consisted principally of originating and acquiring commercial mortgage loans, the industry-specific accounting and reporting guidance for depository and lending financial institutions that is outlined in ASC 942 was appropriate. This was the same presentation followed by our competitors who were strictly mortgage real estate investment trusts ("REITs").

However, with the acquisition of LNR and our growing single-family residential real estate rental portfolio, our business became much more diversified, as did our operating results. As a result, we reevaluated the presentation of our statement of operations. In connection with that evaluation, we determined that the more general income statement presentation outlined in Rule 5-03 of Regulation S-X was more appropriate. We disclosed this change in presentation in our Form 10-Q for the quarter ended June 30, 2013, our Form 10-Q for the quarter ended September 30, 2013, and our Form 10-K for the year ended December 31, 2013.

The LNR acquisition set Starwood apart from its competitors, establishing it as a diversified commercial real estate finance operating business, which now includes not only a traditional commercial mortgage lending business, but also a special servicing operation, a conduit loan origination platform, a CMBS investment portfolio, a growing portfolio of real estate equity

investments and, until its spin-off in early 2014, a billion-dollar single-family residential real estate rental portfolio.

We respectfully note to the Staff that we believe the diverse nature of Starwood's operations justifies our use of the general income statement presentation outlined in Rule 5-03 versus the "net interest income" presentation in ASC 942-10-S99-4, which is intended for depository and lending financial institutions, such as traditional mortgage REITs. Referencing our segment disclosure, during the year ended December 31, 2014, only 56% of our net income on a GAAP basis came from our commercial mortgage lending business (i.e., our Lending Segment, as defined in our 2014 Form 10-K), while the remainder was sourced from our other operating businesses described above. For the latter 44%, we do not believe a "net interest income" presentation would be appropriate.

In addition, because we use corporate level debt to fund business acquisitions (i.e., LNR), investments other than loans, as well as construction and similar loans which cannot be leveraged with traditional repurchase financing, the interest expense associated with this debt would not be appropriate for a "net interest income" presentation. We believe a hybrid of "net interest income" presentation and the more traditional presentation which we currently provide for operating businesses would only further confuse our investors and the users of our financial statements. However, we do believe that net interest income disclosure for just our Lending Segment would be useful to investors. As a result, we will include this as a supplemental disclosure in future filings, beginning with our Form 10-Q filing for the quarter ended March 31, 2015.

* * * * *

Starwood hereby acknowledges that:

- Starwood is responsible for the adequacy and accuracy of the disclosures it has made in its filings, including the 2014 Form 10-K;

- Staff comments or changes to disclosure in response to Staff comments do not foreclose the SEC from taking any action with respect to Starwood's filings; and

- Starwood may not assert Staff comments as a defense in any proceeding initiated by the SEC or any person under the federal securities laws of the United States.

We acknowledge and appreciate that the discussion of VIEs, as outlined above and in various communications with the FASB and the SEC, is complex. As a result, we would welcome a discussion with you on this topic to assist you in better understanding the nature of these vehicles and the resulting impact to our consolidated financial statements. In the meantime, if you should need any further information, please contact Rina Paniry, Chief Financial Officer, by phone at 305-695-5470 or by email at rpaniry@starwood.com.

June 3, 2015

VIA EDGAR

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Daniel L. Gordon, Senior Assistant Chief Accountant

Re: **Starwood Property Trust, Inc.**
Form 10-K
Filed February 25, 2015
File No. 001-34436

Ladies and Gentlemen:

Starwood Property Trust, Inc. ("Starwood") hereby responds to the comments of the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "SEC") contained in your letter dated May 19, 2015 (the "Comment Letter") regarding Starwood's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "2014 Form 10-K"). For the convenience of the Staff, we have set forth below the comments contained in the Comment Letter followed by Starwood's response to each comment.

Form 10-K for the fiscal year ended December 31, 2014

Consolidated Balance Sheets, page 91

COMMENT:

1. *We have reviewed your responses to comments 3 and 4. We are considering your responses and we may have further comments.*

STARWOOD RESPONSE:

We acknowledge and appreciate that the discussion of our variable interest entities (VIEs) is complex. As a result, we would welcome a discussion with you on this topic to assist you in better understanding the nature of these vehicles and the resulting impact to our consolidated

financial statements. In the meantime, if you should need any further information, please do not hesitate to contact us.

Consolidated Statements of Operations, page 92

COMMENT:

2. *We note your response to comment 4. Please confirm to us the nature of the $212,506 and $116,377 recorded as income of consolidated VIEs, net in 2014 and 2013, respectively. If this represents the change in fair value of your economic interest in consolidated VIEs, please consider using a more descriptive label in future filings.*

STARWOOD RESPONSE:

Amounts recorded as "income of consolidated VIEs, net" relate to the change in fair value of our economic interests in the VIEs which we consolidate. In future filings, we will use a more descriptive label for this line item.

Form 10-Q for the quarter ended March 31, 2015

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 50

COMMENT:

3. *We note your response to comment 1. As previously requested, please disclose the weighted average yield on your investment assets, or tell us where this disclosure has been provided. Please also include a discussion of any trends in the weighted average yield on assets and weighted average borrowing costs for those assets.*

STARWOOD RESPONSE:

We have disclosed the weighted average yields on each of our investment assets within the table on page 62 of our Form 10-Q for the quarter ended March 31, 2015 under the column heading "Unlevered Return on Asset." Beginning with our Form 10-Q filing for the quarter ended June 30, 2015, we will include a discussion of any established trends in our weighted average yield on assets and weighted average borrowing costs for those assets.

* * * * *

June 22, 2015

VIA EDGAR

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Daniel L. Gordon, Senior Assistant Chief Accountant

Re: **Starwood Property Trust, Inc.**
Form 10-K
Filed February 25, 2015
File No. 001-34436

Ladies and Gentlemen:

Starwood Property Trust, Inc. ("Starwood") hereby responds to the comments of the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "SEC") contained in your letter dated June 9, 2015 (the "Comment Letter") regarding Starwood's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "2014 Form 10-K"). For the convenience of the Staff, we have set forth below the comments contained in the Comment Letter followed by Starwood's response to each comment.

Form 10-K for the fiscal year ended December 31, 2014

Consolidated Balance Sheets, page 91

COMMENT:

1. *We have reviewed your response to comment 3. We continue to believe that your balance sheet is not in compliance with Rule 5-02 of Regulation S-X. Please recast your balance sheet to present the consolidated totals for each line item required by Rule 5-02. Please note that you may state parenthetically after each line item the amount that relates to consolidated VIEs, or you may include a table following the consolidated balance sheets to present assets and liabilities of consolidated VIEs that have been included in the preceding balance sheet.*

STARWOOD RESPONSE:

We believe that Starwood is dissimilar to all other companies in the mortgage real estate investment trust ("MREIT") space. The reason for this is the acquisition by Starwood of LNR Property LLC ("LNR") on April 19, 2013, which appended a special servicer that invests in subordinate commercial mortgage backed securities ("CMBS") to a traditional MREIT, setting Starwood in a class by itself with no single competitor containing a comparative business model. At that point, Starwood began trading, and continues to trade, vastly different from its competitors.

Prior to the acquisition of LNR, Starwood was not meaningfully impacted by the amendments to Accounting Standards Codification ("ASC") 810, Consolidation, included in Accounting Standards Update ("ASU") 2009-17, and as a result, its financial statements looked very similar to traditional MREITs. However, LNR's financial statements were significantly impacted by these amendments due to its dual role as special servicer and investor in subordinate securities for the same trusts, which led to the consolidation of over 100 CMBS trusts. The nature of LNR's business is vastly different from the more typical residential mortgage servicers and other structures for which we believe the consolidation literature was intended and structured. These other structures are what we believe other MREITs are investing in.

However, Starwood now consolidates over 100 CMBS trusts due solely to LNR's dual role as CMBS investor and special servicer, a role that is not shared by any other public filer, let alone any filer in the MREIT space. It is important to note that the legacy Starwood business has no impact to the consolidation of these structures. In the normal course of business, LNR, comprising our real estate investing and servicing ("REIS") segment, invests in investment grade, unrated and non-investment grade portions of various issues of CMBS. A significant portion of LNR's CMBS holdings are in the lowest tranche of the issued debt of these CMBS trusts. This tranche is typically referred to as the "controlling class", which carries the right to name the special servicer of the trust. LNR's investment in the controlling class and its role as special servicer together trigger consolidation of these trusts.

In order to understand our presentation for these trusts, it is important to understand the nature of the vehicles themselves. In structuring these trusts, a third party (normally a financial institution) originates loans and then securitizes those loans into a special purpose vehicle. Once securitized into a CMBS trust structure, the loans do not trade. At that point, the loans become part of a closed system, with the special purpose structure effectively transforming the loans into a mathematical waterfall of liability cash flows. After securitization, the sole purpose of the loans is to provide cash flows to the bondholders of the structure. LNR is typically a bondholder at the most subordinate level within these structures. While the loans are restricted from being traded, the liabilities trade regularly, with observable market prices readily available.

At inception, a CMBS trust consists only of performing commercial real estate loans as its assets and debt to bondholders as its liabilities. Over time, some of those loans default, becoming nonperforming loans which LNR services, and relatively infrequently, nonperforming loans are foreclosed upon, creating a second asset category of foreclosed real estate ("REO") within the trust prior to the asset being liquidated.

The VIE is deliberately structured as passive whereby a pool of commercial real estate loans is selected for transfer into the VIE and then held constant over its life. No reinvestment is permitted and the entities are not actively managed. As a result, individual loans are not permitted to be sold from the trust or traded in the marketplace. These assets are restricted and can only be used to fulfill the obligations of the trust. The fair value of this type of loan is very different from a loan which would trade freely outside of such a structure.

Due to the difficulties in valuing loans within this type of structure, the guidance outlined in Accounting Standards Update ("ASU") 2014-13, "Measuring the Financial Assets and the Financial Liabilities of a Consolidated Collateralized Financing Entity," permits an entity to use the financial liabilities of the VIE to value the overall pool of assets of a VIE. This guidance indicates that the financial assets and financial liabilities of a consolidated collateralized financing entity ("CFE", which is used synonymously with VIE for purposes of this letter) should be measured using the "more observable of the fair value of the financial assets and the fair value of the financial liabilities." In the case of our VIEs, the financial liabilities of a CMBS trust are more observable, and we thus apply this approach in consolidating these vehicles.

This approach results in the fair value of the assets of the VIE equaling the liabilities of the VIE. Because VIE assets in total equal VIE liabilities in total, distinguishing an asset between a loan and an REO does not provide any incremental value and would result in assigning a residual number to either loans or REO. Further, distinguishing between loans and REO would be arbitrary given the VIE liabilities are measured by looking into securitization markets, while the unit of account for the loans and REO would be the individual asset level. The difficulties of reliably fair valuing the assets inside a CMBS structure was detailed in our comment letter to the FASB dated October 15, 2013. Relevant portions of that letter are repeated herein.

Upon our initial adoption of the provisions of ASU 2009-17, we attempted to implement the standard using a very similar methodology to what you are requesting. In doing so, we encountered numerous difficulties and significant limitations, some of which we found impossible to overcome. We spent significant resources, both in time and cost, in the over twelve months in which we attempted to implement the standard pursuant to this approach. We consulted with the most experienced experts in this space, and ultimately concluded that the results were unreliable measurements that could not be validated by management.

The reason the assets of a CMBS trust are difficult to value, particularly for a special servicer, are multifold. A special servicer has no visibility into the performing loans of a CMBS trust. The industry delinquency rate for U.S. issued conduit CMBS has averaged less than 10% historically. This is the only portion of the assets for which the special servicer has detailed knowledge. As such, in order to determine the value of the remaining 90% of the trust's assets that are performing, we engaged a nationally recognized third party pricing service. The results proved to be inconsistent and were formulated by a proprietary, statistical regression created by the third party pricing service that Starwood management had no ability to verify or observe.

The determination of fair value for the loans securitized by a securitization trust contains inherent limitations and is subject to significant judgment. As noted above, these loans are maintained in a static CMBS trust and are unable to be sold if the loans are performing. As such, there is no active market related to these assets. In order to properly fair value this pool of

commercial real estate loans, certain factors related to the loans and the underlying real estate collateral must be considered. Certain of these factors are objective and observable such as loan vintage, loan interest rate, market interest rate, loan to value ratio at origination, debt service coverage ratio, payment history, collateral type and collateral location.

These are the factors which were utilized by the pricing service in valuing the loans. However, we have no visibility into the details behind the pricing service's calculation of each loan's fair value. The pricing service collects a standardized set of information which they believe to be predictive of a loan's selling price. Through a multiple regression analysis based on actual loan trade data, the pricing service determines a set of statistically relevant variables that affect an asset's price and estimates its corresponding coefficients. Fair value is estimated by applying these coefficients to an existing loan's relevant variables. This formula is inherently very subjective, and due to its proprietary nature, is invisible to management of the entity that has to report these values in its financial statements.

In addition to factors that may be deemed objective, other more subjective factors are often unobservable and unavailable, including borrower intent with respect to the asset, whether the asset is a "trophy" asset, the special servicer of the asset, the experience, expertise and sophistication of the property owner/manager, and the structure of the loan itself. In addition to these factors, other factors inherent in a securitization structure should ideally be considered, including diversification of the assets, credit enhancement, liquidity of the debt and desired yield of investors.

However, these factors are not considered in pricing an individual loan. Rather, pricing is based on inputs which are not necessarily all inclusive, with the determination of price made by a third party pricing service who may not have access to all relevant data related to the loan. While the pricing service maintains comparable data for both nonperforming loans inside the CMBS trust and values for the underlying collateral, the exact asset is not traded and the assets which do trade may not necessarily be deemed similar to the asset being priced. The evaluation of price is based on the perception of one market participant and lacks transparency in terms of the specific computation behind the regression analysis which ultimately determines the price. Many of the inputs discussed above are not able to be derived (or individually inferred) from transparent, market-based data.

The area where we as special servicer have some visibility is on the REO assets. However, on a dollars basis, the REO assets are insignificant to VIE assets, representing only 4% of such assets. From a practical standpoint, our VIE asset pool currently contains approximately 500 REO properties, and determining a fair value for each of these 500 properties on a quarterly basis would be an extremely time consuming effort because it would involve tracking each of these 500 real estate assets during a relatively short holding period. More importantly, it would not result in the most accurate information. Under ASU 2014-13, we would still have to fair value the liabilities for each VIE and subtract this number to arrive at a residual for the loan pool. Given the relatively small balance of REO and the short period until liquidation of this real estate, we do not believe this exercise would result in any incremental utility to the users of our financial statements, and ultimately, would be less accurate than our current methodology. It would force us to present a line item on our balance sheet for the loan pool that is simply a residual difference as opposed to a number that is meaningful and correct on a stand-alone basis.

Management would have to assert that each of the two line items for REO and loans is correct, knowing that VIE assets can only be correct in total.

Because CMBS trust financial liabilities are more observable, the methodology prescribed by ASU 2014-13 effectively results in a derived number for VIE assets as a pool. This makes sense because, in the case of a CMBS trust, all of the assets as a pool are used to satisfy the liabilities of the trust. This methodology is ultimately designed to arrive at the critical conclusion for investors, which is for the consolidated net income (loss) of a reporting entity to only reflect amounts that reflect changes in its own economic interests in the consolidated trust. Any segregation of the assets beyond the total pool would result in balances that are not meaningful because (i) a bondholder could not access those assets individually; and (ii) determining a precise value for these assets would be nearly impossible. Said another way, as two lines in our balance sheet, the numbers would be allocations of a total liability number, one of which is a residual difference, whereas in total, they agree to a market value that is observable.

Based on the above, we arrived at our current presentation of including all of the assets of a VIE in a single line on our balance sheet. We continue to believe this presentation is consistent with Rule 5-02 of Regulation S-X and results in the most accurate and reliable measure of assets, with the overall objective of financial reporting to provide meaningful information to investors. We suggest including as a supplemental disclosure in future filings, added disclosure to our footnotes describing the components of VIE assets and the reasons for which the presentation is more appropriate and correct as a single line item.

* * * * *

August 13, 2015

VIA EDGAR

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Daniel L. Gordon, Senior Assistant Chief Accountant

Re: **Starwood Property Trust, Inc.**
Form 10-K
Filed February 25, 2015
File No. 001-34436

Ladies and Gentlemen:

Starwood Property Trust, Inc. ("Starwood") hereby responds to the comments of the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "SEC") contained in your letter dated July 30, 2015 (the "Comment Letter") regarding Starwood's Annual Report on Form 10-K for the fiscal year ended December 31, 2014 (the "2014 Form 10-K"). For the convenience of the Staff, we have set forth below the comment contained in the Comment Letter followed by Starwood's response.

Form 10-K for the fiscal year ended December 31, 2014

Consolidated Balance Sheets, page 91

COMMENT:

1. *We note your response to comment 1. In future filings please provide clear and robust footnote disclosure describing the components of VIE assets and liabilities recorded on your balance sheet, including the approximate relative values of each type of VIE asset. Please also include a discussion of the reasons why you believe the presentation of these assets as a single line item is more appropriate. Please provide us with your proposed disclosure in your response.*

STARWOOD RESPONSE:

Within the summary of significant accounting policies section of our Form 10-Q for the three months ended June 30, 2015, we included supplemental disclosure describing the components of VIE assets and the reasons why the presentation is more appropriate as a single line item. We propose enhancing this disclosure to incorporate the additional items you have requested.

The proposed disclosure in its entirety is as follows:

> "We separately present the assets and liabilities of our consolidated VIEs as individual line items on our consolidated balance sheets. The liabilities of our consolidated VIEs consist solely of obligations to the bondholders of the related CMBS trusts, and are thus presented as a single line item entitled "VIE liabilities." The assets of our consolidated VIEs consist principally of loans, but at times, also include foreclosed loans which have been temporarily converted into real estate owned ("REO"). These assets in the aggregate are likewise presented as a single line item entitled "VIE assets."
>
> Loans comprise the vast majority of our VIE assets and are carried at fair value due to the election of the fair value option. When an asset becomes REO, it is due to nonperformance of the loan. Because the loan is already at fair value, the carrying value of an REO asset is also initially at fair value. Furthermore, when we consolidate a CMBS trust, any existing REO would be consolidated at fair value. Once an asset becomes REO, its disposition time is relatively short. As a result, the carrying value of an REO generally approximates fair value under existing GAAP.
>
> In addition to sharing a similar measurement method as the loans in a CMBS trust, the VIE assets as a whole can only be used to settle the obligations of the consolidated VIE. The assets of our VIEs are not individually accessible by the bondholders, which creates inherent limitations from a valuation perspective. Also creating limitations from a valuation perspective is our role as special servicer, which provides us very limited visibility, if any, into the performing loans of a CMBS trust.
>
> REO assets generally represent a very small percentage of the overall asset pool of a CMBS trust. In a new issue CMBS trust, REO is zero. We estimate that REO assets constitute approximately 4% of our consolidated VIE assets, with the remaining 96% representing loans. However, it is important to note that the fair value of our VIE assets is determined by reference to our VIE liabilities as permitted under ASU 2014-13. In other words, our VIE liabilities are more reliably measurable than the VIE assets, resulting in our current measurement methodology which utilizes this value to determine the fair value of our VIE assets as a whole. As a result, these percentages are not necessarily indicative of the relative fair values of each of these asset categories if the assets were to be valued individually.
>
> Due to our accounting policy election under ASU 2014-13, separately presenting two different asset categories would result in an arbitrary assignment of value to each, with

one asset category representing a residual amount, as opposed to its fair value. However, as a pool, the fair value of the assets in total is equal to the fair value of the liabilities.

For these reasons, the assets of our VIEs are presented in the aggregate."

* * * * *

Starwood hereby acknowledges that:

- Starwood is responsible for the adequacy and accuracy of the disclosures it has made in its filings, including the 2014 Form 10-K;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the SEC from taking any action with respect to Starwood's filings; and
- Starwood may not assert Staff comments as a defense in any proceeding initiated by the SEC or any person under the federal securities laws of the United States.

We appreciate your time and attention to this complex matter. If you would like to discuss the above proposed disclosure or any matters related to our VIEs, please let us know. We would gladly accommodate an in-person or telephonic discussion at your convenience. In the meantime, should you need any further information, please contact Rina Paniry, Chief Financial Officer, by phone at 305-695-5470 or by email at rpaniry@starwood.com.

Very truly yours,

/s/ RINA PANIRY

Rina Paniry
Chief Financial Officer

July 24, 2015

VIA EDGAR AND OVERNIGHT COURIER

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attention: Ms. Jennifer Monick, Staff Accountant
Mr. Isaac Esquivel, Staff Accountant

Re: Starwood Waypoint Residential Trust Form
10-K for the fiscal year ended December 31, 2014
Filed March 6, 2015
File No. 1-36163

Form 8-K
Filed May 12, 2015
File No. 1-36163

Form 8-K/A
Filed May 14, 2014
File No. 1-36163

Dear Ms. Monick:

Starwood Waypoint Residential Trust (the "Company") hereby responds to the comments of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") contained in your letter dated July 10, 2015 (the "Comment Letter"), regarding the Company's Form 10-K for the fiscal year ended December 31, 2014 (the "2014 Form 10-K"), the Company's Form 8-K, filed with the Commission on May 12, 2015, and the Company's Form 8-K/A, filed with the Commission on May 14, 2014. For the convenience of the Staff, the Company has set forth below the comments contained in the Comment Letter followed by the Company's response to each comment.

Form 10-K for the year ended December 31, 2014

General

COMMENT:

1. We note you purchased $958 million of real estate during 2014. We further note you have provided Rule 3-14 financial statements in a Form 8-K/A for your purchase of 707 homes from Waypoint Fund XI, LLC. Please tell us if the additional real estate acquisitions during 2014 are significant to require Rule 3-14 financial statements and related pro forma financial information.

RESPONSE: Other than the acquisition of 707 homes from Waypoint Fund XI, LLC (the "Waypoint Fund Acquisition"), the Company had no acquisitions of real estate during 2014 that met the financial requirements of Rule 3-14. Other than the Waypoint Fund Acquisition, the Company only purchased approximately 177 homes in 2014 (totaling $21.1 million in gross purchase price, which represented 2.1% of the Company's total consolidated assets as of its last audited balance sheet) with leasing histories of more than three months. These acquisitions were not significant to require Rule 3-14 financial statements and related pro forma financial information. Other than Waypoint Fund Acquisition and the 177 homes mentioned above, the remaining real estate acquisitions in 2014 had leasing histories of less than three months and thus were not subject to the Rule 3-14 financial statement requirements pursuant to Section 2330.10 of the Staff's Financial Reporting Manual.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

COMMENT:

2. Please tell us the amount of personnel costs you have capitalized to real estate and deferred leasing costs. To the extent material, in future periodic filings, please also separately quantify and disclose the costs capitalized to real estate and deferred leasing costs for all periods presented and discuss fluctuations in capitalized personnel costs for all periods presented within your MD&A. To the extent you do not believe these amounts are material, please tell us how you made that determination.

RESPONSE: As noted on page 72 of the Company's 2014 Form 10-K, the Company capitalizes costs associated with the successful acquisition and stabilization of homes, including certain personnel costs associated with the time spent by such personnel in connection with the planning and execution of all capital improvement activities at the property level. The Company also defers successful leasing costs and amortizes them over the life of the relevant lease. During the year ended December 31, 2014, the Company capitalized $12.8 million of personnel costs to real estate and $8.3 million of personnel costs to deferred leasing costs (other assets).

In the case of personnel costs capitalized to real estate, the $12.8 million the Company capitalized during the year ended December 31, 2014 represents approximately 0.65% of total investments in real estate, net as reported in the Company's 2014 Form 10-K. As a result, the Company does not view this amount to be material. The $8.3 million of personnel costs capitalized to deferred leasing costs (other assets) during the year ended December 31, 2014 represents approximately 46% of total deferred leasing costs (other assets) as reported in the Company's 2014 Form 10-K; however, the Company does not view the amount to be a material percentage of total assets, as it represented 0.28% of total assets as reported in the Company's 2014 Form 10-K.

In addition, the Company does not believe that information concerning capitalized personnel costs is material. The Company has not provided and investors have not inquired about these costs during the Company's past earnings calls or in other communications with investors, which the Company believes demonstrates that analysts and investors do not find information about such costs to be material. To the Company's knowledge, the other public single-family home companies do not disclose this information, which the Company believes also demonstrates that information about such costs is not material. Further, if the Company disclosed this information, the Company believes such disclosure would put the Company at a competitive disadvantage to the other public single-family home companies.

As a result, the Company respectfully submits that capitalized personnel costs are not material information that is required to be included in the Company's future Securities Exchange Act of 1934, as amended (the "Exchange Act"), periodic reports.

Our Portfolio, page 62

COMMENT:

3. In future periodic filings, please disclose the weighted average year of purchase in your tabular portfolio disclosure on page 62.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports.

COMMENT:

4. We note the table that provides a summary of your leasing as of December 31, 2014 on page 63. In future periodic filings, please also include the weighted average original lease term and the weighted average remaining length of leases in your tabular disclosure.

RESPONSE: The Company advises the Staff that it does not currently track and report portfolio data in the manner requested. Therefore, modifications will need to be made to the Company's record keeping systems, which will take some time to implement. As a result, the Company will revise the disclosure as requested in future Exchange Act periodic reports beginning with its periodic report for the three months ended September 30, 2015.

Results of Operations

Property Operating and Maintenance, page 78

COMMENT:

5. Please revise future filings to provide a discussion reflecting property operating expenses as a percentage of revenues for all periods presented. Please explain any significant variances among these percentages.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Liquidity and Capital Resources, page 81

COMMENT:

6. We note that you paid dividends of $5.5 million and had net cash used in operating activities of $81.1 million during the year ended December 31, 2014. In future periodic filings, please discuss the source(s) of these distributions within your Management's Discussion and Analysis of Financial Condition and Results of Operations, as this disparity raises concerns about the sustainability of distributions into the future. Please provide an example of your proposed disclosure.

RESPONSE: The Company's dividend distributions are not directly impacted by net cash used in operating activities. As a real estate investment trust ("REIT"), the Company is required, among other things, to distribute at least 90% of its annual REIT taxable income to its shareholders. In normal course, the Company alerts the public to differences between U.S. generally accepted accounting principle ("GAAP") and taxable calculations, as illustrated in the "Risk Factors" section of the Company's 2014 Form 10-K, which includes the following:

> "We intend to make distributions to our shareholders to comply with the REIT requirements of the Code. From time to time, we may generate taxable income greater than our income for financial reporting purposes prepared in accordance with GAAP, or differences in timing between the recognition of taxable income and the actual receipt of cash may occur."

In response to the Staff's comment regarding the source(s) of distributions to the Company's shareholders, in future Exchange Act periodic reports, the Company will include the following disclosure in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section:

"***Distributions to Shareholders***

We seek to generate income for distribution to our shareholders, typically by earning a spread between the yield on our stabilized portfolio of single-family rental homes and the cost of our borrowings. Our REIT taxable income, which serves as the basis for distributions to our shareholders, is generated primarily from this spread. The negative net cash flows from operating activities reported in our consolidated statements of cash flows primarily relate to development period expenses. However, cash flows related to our stabilized portfolio of single-family rental homes are positive and sufficient to support distributions to our shareholders."

Master Repurchase Agreement, page 82

COMMENT:

7. With respect to your repurchase agreements, please quantify the average quarterly balance for all quarterly periods for which you have repurchase agreements. In addition, quantify the period end balance for each of those quarters and the maximum balance at any month-end. Explain the causes and business reasons for significant variances among these amounts. This information should be provided in future periodic filings for any repurchase agreement activity in the past three years, as applicable.

RESPONSE: The table below represents the weighted-average quarterly balance, maximum month-end balance and quarter-end balance of the Company's master repurchase agreement with Deutsche Bank AG, Cayman Islands Branch as of each quarter end since the execution of such repurchase agreement on February 5, 2014. The table represents all repurchase agreement activity since the Company was spun-off as a separate public company. The smaller balances included in the table for the quarter ended March 31, 2014 reflect the fact that the repurchase agreement was not in place for that entire quarter, and changes in the balances included in the table for subsequent quarters reflects normal course variances in the level of acquisition activity financed with the repurchase agreement in the applicable quarter. The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Quarter Ended	Weighted-Average Quarterly Balance ($000s)	Maximum Month-End Balance ($000s)	Quarter-End Balance ($000s)
March 31, 2014	$ 31,140	$ 140,129	$ 140,129
June 30, 2014	$ 198,291	$ 251,599	$ 251,599
September 30, 2014	$ 351,023	$ 448,320	$ 448,320
December 31, 2014	$ 453,897	$ 454,249	$ 454,249
March 31, 2015	$ 438,371	$ 434,858	$ 422,972

Asset-Backed Securitization Transaction, page 83

COMMENT:

8. In future filings, please provide a summary of the portfolio of the 4,081 homes in your securitization transaction. The information provided should be similar to the information you have provided in your table on page 62.

RESPONSE: The following table summarizes certain information with respect to homes in the Company's securitization (the "Securitization Properties") transaction as of March 31, 2015:

Markets	Number of Homes	Percent Leased	Average Acquisition Cost per Home	Average Investment Per Home(1)	Average Home Size (square feet)	Weighted Average Age (years)	Average Monthly Rent Per Leased Home (2)
Atlanta	826	97%	$ 103,182	$ 130,288	1,882	22	$ 1,188
South Florida	646	100%	$ 133,342	$ 167,975	1,591	45	$ 1,591
Houston	602	98%	$ 128,567	$ 146,499	2,085	30	$ 1,510
Tampa	420	100%	$ 107,767	$ 133,675	1,510	41	$ 1,295
Dallas	444	97%	$ 128,555	$ 149,396	2,041	22	$ 1,495
Denver	126	96%	$ 173,457	$ 211,073	1,439	30	$ 1,723
Chicago	249	98%	$ 120,428	$ 146,259	1,526	39	$ 1,646
Orlando	183	100%	$ 121,371	$ 142,204	1,640	38	$ 1,289
Southern California	251	96%	$ 241,836	$ 252,228	1,622	35	$ 1,784
Northern California	166	95%	$ 218,784	$ 235,427	1,497	44	$ 1,756
Phoenix	182	97%	$ 142,453	$ 160,496	1,537	38	$ 1,187
Total / Average	**4,095**	**98%**	**$ 133,847**	**$ 158,104**	**1,752**	**33**	**$ 1,451**

(1) Includes acquisition costs and actual and estimated upfront renovation costs.
(2) Represents average monthly contractual cash rent.

Because the characteristics of the Securitization Properties other than occupancy are substantially similar to the Company's portfolio of properties (see for comparison the March 31, 2015 property information disclosed in the table on page 38 of the Company's Form 10-Q for the three months ended March 31, 2015 filed on May 13, 2015), the Company respectfully submits that additional property level information for the Securitization Properties is not material information that is required to be included in the Company's future Exchange Act periodic filings.

Cash Flows, page 84

COMMENT:

9. We note that you incur significant capital expenditures to renovate and maintain your homes. In future periodic filings, please disclose the amount of capital expenditures related to renovations on new acquisitions, redevelopments of stabilized properties, and other capital expenditures for the periods presented.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Aggregate Contractual Obligations, page 85

COMMENT:

10. It does not appear that you have included interest payments in your contractual obligations table. Please confirm, that you will disclose the amount of interest related to your debt in future filings. Please refer to footnote 46 in our Release 33-8350.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Consolidated Balance Sheets, page 90

COMMENT:

11. Please revise future period filings to disaggregate your repurchase agreement from your senior SFR facility, or advise. Please refer to Rule 5-02 of Regulation S-X. Please also disaggregate the related cash flow activity on your Consolidated Statements of Cash Flows.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Consolidated Statements of Operations, page 91

COMMENT:

12. We note you have classified gains on loan conversions, net, as realized gains. Please tell us if you sold the related real estate or if you continue to own the real estate. To the extent you continue to own the real estate, please tell us how you were able to determine that these gains are realized. Within your response, please reference the authoritative accounting literature management relied upon.

RESPONSE: As described below, the Company believes that loan conversions are nonmonetary exchange transactions and that the earnings process on the applicable loans have culminated, as the Company no longer has an ongoing transaction with the borrowers/customers and, instead, now has an investment in real property.

Realized gains on loan conversions, net as used in the Company's consolidated statements of operations represents non-performing loans ("NPLs") that were converted into real estate owned ("REO"). Generally, the Company purchases these NPLs at prices significantly below their unpaid principal balances. For the majority of the Company's NPLs, at the time of acquisition, the Company does not expect to receive the contractually required payments due under the terms of the NPLs. Upon acquisition, each NPL is reviewed to determine whether the NPL qualifies to be accounted for under Financial Accounting Standards Board Accounting Standards Codification Topic ("ASC") 310-30, *Receivables - Loans and Debt Securities Acquired with Deteriorated Credit Quality*, ("ASC 310-30") formerly SOP 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*. As part of this assessment, the Company determines whether there is evidence of credit deterioration since the origination of the loan and whether it is probable that the Company will be unable to collect all of the contractually required payments.

Upon a foreclosure, the "asset" (i.e., the NPL) effectively converts from a financial instrument to real property (i.e., REO), and the Company records the newly received REO asset at its fair value as of the date the Company obtains title to the REO and removes the recorded investment in the NPL from the Company's balance sheet. While there is no explicit guidance in GAAP to account for REO obtained in full satisfaction of a loan when the value received is in excess of the recorded investment, the Company considered paragraph 75 of the *Basis for Conclusions of FAS 15* ("FAS 15"), which states, in part:

> "The Board concluded that a troubled debt restructuring that involves transfer of resources or obligations requires accounting for the resources or obligations transferred whether that restructuring involves an exchange transaction or a nonreciprocal transfer."

Both kinds of transfers are accounted for in the existing accounting framework on essentially the same basis (exchange price received or paid or fair value received or given). The foreclosure transactions that the Company undertakes involve the "transfer of resources or obligations" even though the transaction is technically not within the scope of a troubled debt restructure ("TDR"). The Company does not believe the board conclusions expressed in paragraph 75 of FAS 15 is predicated on the fact that the transfer involves a TDR and, therefore, believes that such conclusion supports that the foreclosure should also be accounted for as a non-monetary transaction. As such, the Company believes that, when the NPL is fully settled through a foreclosure and the fair value of the REO exceeds the recorded investment in the NPL, it is appropriate to apply the guidance for nonmonetary asset transactions under ASC 845, *Nonmonetary Transactions* ("ASC 845"). Pursuant to ASC 845, the difference between the fair value of the REO at the time of foreclosure and the recorded investment of the NPL should be recorded as a realized gain in the Company's income statement. The realization of the above described transaction results in the Company owning REO at fair value with a permanent basis adjustment from the Company's initial investment in the related NPL and represents ownership in a separate and distinct asset, and, therefore, the gain/loss from the exchange is a realization event as prescribed by GAAP.

In summary, when the Company purchases a NPL, the counterparty to the NPL is the underlying borrower, and, as discussed in FAS 15 and above, a foreclosure represents an exchange transaction. The future profitability of operating or selling the REO does not relate to the settlement/extinguishment with the borrower. As a result of the nonmonetary exchange transaction, the Company believes the earnings process on the NPL has culminated, as the Company no longer has an ongoing transaction with the borrower/customer and now has an investment in real property.

This conclusion is consistent with Section 5A, Other Real Estate Owned, of the September 2013 version of the Bank Accounting Advisory Series of the Office of the Comptroller of the Currency (the "OCC Guide"). Although not authoritative, the OCC Guide indicates that upon foreclosure, a bank should record the property acquired at its fair value less costs to sell with a resulting gain for the excess over the carrying value.

COMMENT:

13. We note that you characterize realized gain on loan conversions, net as revenue. Please tell us how you determined this gain meets the definition of revenue pursuant to paragraph 78 of CON 6.

RESPONSE: When determining the appropriate characterization of realized gains on loan conversions, net in the Company's consolidated statements of operations, the Company considered the nature of the Company's ongoing core operations and whether the conversions resulted in enhancements of assets, as defined within paragraph 78 of Statement of Financial Accounting Concepts No. 6 ("CON 6"). The realization on loan conversions represents the creation of value for the Company's shareholders through conversion of a NPL into REO that will generate rental income or is monetized through a sale process. The value creation reflects expected cash inflows that will result from the Company's ongoing major operations. To further evaluate the Company's classification, the Company considered paragraphs 82 and 83 of CON 6 and determined that an NPL conversion does not meet the criteria to be considered a below the line "gain," as the NPL conversion is not "incidental" or "peripheral." Rather, NPL conversions are the realization and execution of the Company's strategy and an important element of the Company's core business.

As described in the Company's 2014 Form 10-K, the core business strategy of the Company's Prime Asset Fund VI, LLC ("Prime") joint venture is to acquire NPLs and (1) convert the loans into REO that can then either be contributed to the Company's rental portfolio or sold or (2) modify and resell NPLs at higher prices if circumstances warrant (the "NPL Strategies"). The Company's core strategy is not, however, to be a long term holder of NPLs once they start to re-perform post modification, and, as such, the Company markets for sale or otherwise disposes (typically within 12 months) of loans once they are re-performing. The Company believes that both of the NPL Strategies create value for the Company's shareholders and are essential to the Company's core business. In addition, the Company believes the NPL conversion process provides a means to significantly grow its real estate portfolio, and the Company considers such conversions to be a significant business strategy.

Notes to Consolidated Financial Statements

Note 2. Basis of Presentation and Significant Accounting Policies

Investments in Real Estate, page 98

COMMENT:

14. We note that the fair value of your Real Estate is primarily determined using BPOs. We note your disclosure on page 103 regarding the nature of the brokers activities used to value the real estate. Please revise your disclosures to (1) Describe the process you undertake to validate the BPOs received; (2) Confirm the BPOs you receive provide you with sufficient detail such that you are able to assess whether the pricing methodology complies with ASC 820; and (3) Discuss any adjustments you make to brokers' valuation of real estate. Please provide us an example of your proposed disclosure.

RESPONSE: The Company will revise the disclosure as requested in future Exchange Act periodic reports. An example of the Company's proposed disclosure is as follows:

> "In order to validate the broker price opinions ("BPOs") received and used in our assessment of fair value of real estate, we perform an internal review to determine if an acceptable valuation approach was used to estimate fair value in compliance with guidance provided by ASC 820, *Fair Value Measurements*. Additionally, we undertake an internal review to assess the relevance and appropriateness of comparable transactions that have been used by the broker in its BPO and any adjustments to comparable transactions made by the broker in reaching its value opinion. As a further review, we order an independent valuation of the property from a third-party automated valuation model ("AVM") service provider and compare the AVM value to the BPO value. In cases where the AVM and BPO values differ beyond a tolerated threshold, an internal evaluation is performed by a licensed appraiser using the market approach, and the value from the internal evaluation is used as our estimated fair value."

COMMENT:

15. Please provide the following for all periods presented:

    a. Please tell us the gross realized gains and gross realized losses on sales of investments in real estate. Further, please compare the net proceeds for the real estate sold to the value assigned to the real estate based on the BPO. Please provide an explanation for any significant variances between the net proceeds and the fair value assigned.

    b. We note you have recorded impairment on real estate. Please clarify for us the change in circumstances that resulted in impairment from the initial fair value assessment.

We may have further comment.

RESPONSE:

a. The gross realized gains on sales of investments in real estate for the years ended 2014 and 2013 and the period from May 23, 2012 (inception) through December 31, 2012 were $3.4 million, $2.2 million and $0.9 million, respectively. The gross realized losses on sales of investments in real estate for years ended 2014 and 2013 and the period from May 23, 2012 (inception) through December 31, 2012 were $3.6 million, $1.0 million and $0.3 million, respectively.

The Company's experience is that the net proceeds for the real estate sold is generally in line with the BPO values of the real estate. However, the Company occasionally encounters differences between net sales proceeds and the fair value assigned due to a number of factors, including bulk sale discounts, changes in market conditions between the date of initial valuation and date of disposition, differences in the actual condition of the home and the perceived value of the home based on the BPO at the conversion date and the impact of broker commissions and other transaction related expenses.

b. Impairments on real estate mainly represent assets originally purchased as part of NPL pools that were subsequently converted to REO. When an NPL is converted to REO, the REO is recorded on the Company's balance sheet at the fair value as of the date the Company takes title to the REO. As part of the standard process of measuring fair value on NPLs, the Company relies in part on BPOs, which incorporate certain assumptions about the internal quality of the underlying home that cannot be fully verified due to the lack of access to the interior of the underlying home. Occasionally, after taking title to the REO, the Company will gain information about the REO that was not evident at the time of the REO conversion and that results in a downward adjustment in estimated fair value and the recognition of an impairment loss. Further, when the Company lists the REO for sale, the REO meets the criteria as held-for-sale under GAAP, and, also in accordance with GAAP, all held-for-sale assets are recorded at the lower of net sales value or carrying value. Due to the fact that REO is initially booked at gross fair value but impairment is tested using fair value net of estimated transaction costs, this can sometimes lead to the recording of impairment on assets held-for-sale.

Non-Performing Loans, page 99

COMMENT:

16. For NPLs for which you have not elected the fair value option, please tell us if these loans gave rise to an accretable yield and nonaccretable difference. Within your response, please refer to ASC 310-30.

RESPONSE: In evaluating the Company's NPL portfolio, the Company considered ASC 310-30 as it relates to NPLs in which the Company did not elect the fair value option. One of the Company's NPL Strategies is to modify and resell NPLs at higher prices if circumstances warrant; however, the Company's holding period for such NPLs is short. When a borrower demonstrates the intent and ability to make principal and interest payments, an NPL may be modified, first on a trial basis, and later on a permanent basis after a period of successful performance, which results in a so-called "re-performing loan." However, such re-performing loans are characterized by high re-default rates and sporadic pay performance. As a result, until an NPL has been permanently modified and the borrower shows a consistent payment history of 12 months or more, the Company does not have the ability to reasonably project the timing and amount of future cash flows to be collected as prescribed in ASC 310-30. For the small percentage of NPLs within the Company's portfolio that will ultimately become re-performing loans, the Company's strategy is to quickly dispose of such loans (typically within 12 months), and, as a result, the Company will not recognize the vast majority of any accretable yield on such loans. Therefore, the Company believes that the accretable yield is both quantitatively and qualitatively immaterial to the users of the financial statements.

Schedule IV, page 130

COMMENT:

17. We note your disclosure that the carrying value of your loans approximates the aggregate cost for federal income tax purposes. We further note that you have elected the fair value option on certain NPLs. Please confirm for us that you continue to believe that the carrying value of your loans approximates that aggregate cost for federal income tax purposes or revise future periodic filings.

RESPONSE: It is no longer the Company's belief that the carrying value of the Company's loans approximates their aggregate cost for federal income tax purposes. In the Company's future Exchange Act periodic reports, the Company will revise its disclosure accordingly.

Form 8-K filed on May 12, 2015

Exhibit 99.1 Press Release, dated May 12, 2015

Estimated NAV, page 8

COMMENT:

18. We note your non-GAAP disclosure related to your estimated NAV measure. Please explain to us and disclose in future filings the methodologies used to determine the fair value of the investments in real estate and non-performing loans, including a qualitative and quantitative description of the material assumptions and estimates used in the analysis.

RESPONSE: The fair value of investments in real estate is determined using a progressive method that incorporates three value sources: automated valuation model values ("AVMs"), BPOs and internal desktop evaluations. AVM values, which are value estimates provided by service providers based on their proprietary mathematical modeling platforms that utilize historical sales and public records data of comparable homes and are adjusted based on characteristics specific to the relevant home being valued, are ordered for each home, and the AVMs the Company receives are accompanied with a confidence index which provides a measure for the perceived reliability of the AVM value. When a home's AVM confidence index falls below a specified score, the Company will order a BPO, which is a value estimate provided by a local broker based on comparable sales data and adjusted based on characteristics specific to the relevant home being valued. If for some reason a current BPO is not available, an internal evaluation is performed by a licensed appraiser using the market approach as defined by the Appraisal Institute to estimate the fair value.

The fair value of investments in NPLs is determined using the net present values of the BPOs of the underlying homes discounted at the then current market discount rate. The net present values of the BPOs of the underlying homes are determined using estimates of the length of time to foreclose or convert the relevant homes, with such estimates made on a state-by-state basis pursuant to market data received from service providers as adjusted from time to time based on the Company's experience.

The Company will revise the disclosure as requested in future Exchange Act periodic reports.

Form 8-K/A filed May 14, 2014

COMMENT:

19. We note you have provided Rule 3-14 financial statement for the period from March 3, 2013 to December 31, 2013. Please tell us if there is a leasing history for these properties for the period from January 1, 2013 to March 2, 2013. To the extent these properties were leased during that time, please tell us how you complied with Rule 3-14 of Regulation S-X.

RESPONSE: For the Waypoint Fund Acquisition, the Company provided Rule 3-14 financial statements for the period from March 5, 2013 to December 31, 2013, because Waypoint Fund XI, LLC, the entity from which the Company acquired the properties, began operations on March 5, 2013. Prior to March 5, 2013, Waypoint Fund XI, LLC did not own the properties, and the properties were not leased.

September 14, 2015

VIA EDGAR

Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attention: Ms. Jennifer Monick, Staff Accountant
Mr. Isaac Esquivel, Staff Accountant

Re: Starwood Waypoint Residential Trust Form
10-K for the fiscal year ended December 31, 2014
Filed March 6, 2015
File No. 1-36163

Dear Ms. Monick:

Starwood Waypoint Residential Trust (the "Company") hereby responds to the comments of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") contained in your letter dated August 31, 2015 (the "Comment Letter"), regarding the Company's Form 10-K for the fiscal year ended December 31, 2014 and the Company's Form 8-K, filed with the Commission on May 12, 2015. For the convenience of the Staff, the Company has set forth below the comments contained in the Comment Letter followed by the Company's response to each comment.

Form 10-K for the year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

COMMENT:

1. We note your response to prior comment two and the amount of personnel costs you have capitalized. It appears that these amounts are material to your financial statements taken as a whole and the amounts capitalized need to be disclosed. In future periodic filings, please separately quantify and disclose the costs capitalized to real estate and deferred leasing costs for all periods presented and discuss fluctuations in capitalized personnel costs for all periods presented within your MD&A or advise.

RESPONSE: The Company will revise the disclosure as requested in future Securities Exchange Act of 1934, as amended, periodic reports.

Investments in Real Estate, page 98

COMMENT:

2. We note your response to prior comment 14. In cases where the AVM and BPO values differ beyond a tolerated threshold, please define what is considered a tolerated threshold. Additionally, please tell us how often the AVM and BPO values differ beyond the tolerated threshold.

RESPONSE: The automated valuation models ("AVMs") the Company receives from its third-party AVM service provider (the "AVM Provider") include a corresponding confidence score. An AVM confidence score of 72 from the AVM Provider equates to a statistical error margin of roughly 5%, which the Appraisal Institute has determined is within the acceptable margin of error for an appraisal. Therefore, the Company accepts AVMs with a confidence score equal to or above 72 and discards those with a score below 72, as well as AVMs that appear to have abnormal values (e.g., a significant increase or decrease from the previous AVM value and/or purchase price of the home), and the Company replaces discarded AVMs with a current broker price opinion ("BPO"). Historically, approximately 90% of the AVMs provided to the Company have had a confidence score equal to or greater than 72.

In instances where the Company receives BPOs with valuation dates within 90 days of an available AVM (e.g., where a BPO is required for financing purposes and the Company already has AVMs on file for that particular home), the two are compared, and, historically, the variance in such cases has been approximately 2.5%. In instances where the variance between an AVM value and a BPO value is 10% (which the Appraisal Institute has determined is within the acceptable margin of error for valuations of the same property by different appraisers) or higher, a licensed staff appraiser of the Company performs an internal evaluation to determine the final value estimate. Historically, where current AVMs and BPOs have been compared, the variance between the two has differed beyond the 10% tolerated threshold in approximately 4% of the cases.

Form 8-K filed on May 12, 2015

Exhibit 99.1 Press Release, dated May 12, 2015

Estimated NAV, page 8

COMMENT:

3. We note your response to prior comment 18. Please address the following:

   a. Please tell us the differences between the processes used to arrive at a valuation using a BPO as compared to an AVM.

   b. Please tell us who provides the confidence index and how that confidence index is determined.

c. Please tell us what the “specified score” that the confidence index must fall below to require the Company to order a BPO. Additionally, please tell us how often the confidence index falls below the specified score.

d. Please tell us if you compare the AVMs to BPOs received when you initially converted the NPLs into real estate. To the extent that you do perform such a comparison, please provide us with detail about this process; your response should include, but not be limited to, any additional procedures that you perform as the length of time increases between the date of the BPO and the date of the AVM value. To the extent that you do not perform such a comparison, please tell us how you determined the valuations provided by the AVMs are reasonable.

e. Please tell us if you adjust the AVMs for the physical condition of the property. In your response, please tell us if a property manager, or similar, provides any additional information that is considered in assessing the need to adjust the AVM values.

RESPONSE:

a. An AVM for a home is a valuation generated from approximately 20 individual sub-valuation models, including (i) a number of hedonic or multiple regression models, (ii) an appraisal emulation model and (iii) a time adjustment model, and, after evaluating comparable sales, the AVM value for such home is adjusted by the AVM Provider as if such home was in “after repair” condition. Because not all of the Company’s homes are in “after repair” condition, in order to arrive at a valuation using an AVM, the Company (i) for a non-stabilized home, deducts the average remaining estimated capital expense of the Company’s non-stabilized homes from the AVM value or (ii) for a stabilized home, deducts the average cost to repair the Company’s stabilized homes from the AVM value.

   A BPO is an opinion of value given by a licensed real estate broker that inspects the exterior of the subject home in person and performs a form report valuation using the sales comparison approach. The sales comparison approach is a real estate appraisal method that compares the subject home to other homes with similar characteristics that have been sold recently. The BPOs received provide an “as-repaired” value and an “as-is” value. When using a BPO to arrive at a valuation, the Company utilizes the “as-is” value, and, as such, deductions for estimated capital expense or average cost to repair, as applicable, are not required.

b. The AVM confidence score is prepared by the AVM Provider and is a statistically based measurement of how similar or dissimilar the results of the approximately 20 individual sub-valuation models mentioned in the first paragraph of Response 3(a) above are to each other. The AVM confidence score is based on the covariance of the individual sub-valuation models.

c. An AVM confidence score of 72 from the AVM Provider equates to a statistical error margin of roughly 5%, which the Appraisal Institute has determined is within the acceptable margin of error for an appraisal. Therefore, the Company accepts AVMs with a confidence score equal to or above 72. Historically, approximately 90% of the AVM's provided to the Company have had a confidence score equal to or greater than 72. See Response 2 above.

d. Upon initial conversion of non-performing loans ("NPLs") into real estate ("REO"), the Company relies exclusively on BPOs to assess fair value. AVMs are used for subsequent measurements of REO fair value in periods after initial conversion and for the ongoing assessment of fair value of the Company's real estate portfolio. The Company does, however, periodically test for variances between AVMs and BPOs. In particular, in instances where the Company receives BPOs with valuation dates within 90 days of an available AVM (e.g., where a BPO is required for financing purposes and the Company already has AVMs on file for that particular home), the two are compared, and, historically, the variance in such cases has been approximately 2.5%. In instances where the variance between an AVM valve and a BPO value is 10% (which the Appraisal Institute has determined is within the acceptable margin of error for valuations of the same property by different appraisers) or higher, a licensed staff appraiser of the Company performs an internal evaluation to determine the final value estimate. See Response 2 above.

e. The AVM value for a home is adjusted by the AVM Provider as if such home was in "after repair" condition. Because not all of the Company's homes are in "after repair" condition, in order to arrive at a valuation using an AVM, the Company (i) for a non-stabilized home, deducts the average remaining estimated capital expense of the Company's non-stabilized homes from the AVM value or (ii) for a stabilized home, deducts the average cost to repair the Company's stabilized homes from the AVM value. See Response 3(a) above. In general, the Company has not relied on specific feedback from property managers, or similar persons, for the purpose of ongoing real estate valuation.

The Company acknowledges that:

- The Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- The Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

May 18, 2015

VIA EDGAR & OVERNIGHT DELIVERY

U.S. Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Attention: Jennifer Monick, Staff Accountant

Re: Strategic Hotels & Resorts, Inc.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 24, 2015
File No. 001-32223

Dear Ms. Monick:

In connection with the Staff's comment letter dated May 14, 2015 regarding Strategic Hotels & Resorts, Inc.'s (the "Company") annual report on Form 10-K for the fiscal year ended December 31, 2014 (the "10-K") filed with the Securities and Exchange Commission (the "Commission") on February 24, 2015, I hereby submit the Company's response. The Staff's comments are reproduced in their entirety below, and the responses thereto are set forth in bold after each comment.

Form 10-K for the Fiscal Year Ended December 31, 2014 filed February 24, 2015

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

FFO, FFO-Fully Diluted, and Comparable FFO, page 53

1. We note that you reconcile Funds from Operations (FFO) from Net income (loss) attributable to SHR common shareholders. Based upon your reconciliation, it appears that FFO represents FFO attributable to common shareholders. Please revise your presentation in future filings to clearly label FFO as FFO attributable to common shareholders. Also make similar revisions to your future earnings releases filed on Form 8-K, as appropriate.

Response:

We advise the Staff that we will revise our presentation in future filings, including future earnings releases filed on Form 8-K, to clearly label FFO as 'FFO attributable to SHR common shareholders' or as 'FFO attributable to common shareholders,' as appropriate.

2. Please tell us the nature of the line item 'Adjustment from consolidated affiliates' in your FFO reconciliation. Additionally, please tell us how this adjustment is consistent with NAREIT defined FFO.

Response:

We advise the Staff that the line item 'Adjustment from consolidated affiliates' in our FFO reconciliation represents the portion of depreciation and amortization and gains or losses on the sale of assets that is attributable to the noncontrolling interests in affiliates that are consolidated but not wholly owned by us. The line items labeled 'Depreciation and amortization' and '(Gain) loss on sale of assets' in the FFO reconciliation include amounts attributable to both us and the noncontrolling interests in our consolidated affiliates. We make this adjustment to reflect only our portion of depreciation and amortization and gains or losses on the sale of assets related to our consolidated affiliates. Our FFO represents FFO attributable to common shareholders; therefore, we believe that reflecting only our portion of these items is appropriate and is consistent with the NAREIT definition of FFO.

We further advise the Staff that the 'Noncontrolling interests adjustments' line item in the FFO reconciliation represents the portion of depreciation and amortization attributable to the redeemable noncontrolling interests in our operating partnership.

We will revise our presentation in future filings, including future earnings releases filed on Form 8-K, to clearly distinguish adjustments related to redeemable noncontrolling interests in our operating partnership from adjustments related to noncontrolling interests in our consolidated affiliates.

Item 8. Financial Statements and Supplemental Data

2. Summary of Significant Accounting Policies

Intangible Assets, page 67

3. We note that you have recorded an intangible asset not subject to amortization in connection with the acquisition of the Hotel del Coronado. Please tell us more about the trade name and the factors you considered in determining that is has an indefinite life. In this regard, please tell us how you determined there are no legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of the trade name. See ASC 350-30-35-1 through -5.

Response:

We advise the Staff that the intangible asset not subject to amortization is the trade name, Hotel del Coronado. The hotel is an iconic beachfront resort located in Coronado, California that has garnered a strong reputation since it opened in 1888 under the Hotel del Coronado name. This trade name clearly adds value to the property. As noted in ASC 350-30-35-4, if no legal, regulatory, contractual, competitive, economic, or other factors limit the useful life of an intangible asset to the reporting entity, the useful life of the asset shall be considered to be indefinite. ASC 350-30-35-4 further states that the useful life of an intangible asset is indefinite if that life extends beyond the foreseeable horizon – that is, there is no foreseeable limit on the period of time over which it is expected to contribute to the cash flows of the reporting entity. We advise the Staff that we have not identified, after performing due diligence procedures customary with the acquisition of new properties, any legal, regulatory or contractual limitations related to the trade name, Hotel del Coronado. There are few comparable hotels with a similar history and unique reputation as the Hotel del Coronado, which limits any significant competitive factors. The Hotel del Coronado has endured many economic cycles throughout its history, which we believe is a strong indicator that there are no foreseeable economic factors that would limit the useful life of the name. The Hotel del Coronado name has been in existence for over 100 years and will continue to be used at the resort for the foreseeable future. Based on these factors, we have concluded that there is no foreseeable limit on the period of time over which the trade name is expected to contribute to our cash flows and have concluded that it has an indefinite life.

* * *

12600 Hill Country Boulevard
Suite R-100
Austin, Texas 78738
512-538-2300

August 14, 2015

VIA EDGAR

United States Securities and Exchange Commission
Division of Corporate Finance
100 F. Street, N.E.
Washington, D.C. 20549
Attention: Mr. Daniel Gordon

RE: Summit Hotel Properties, Inc.
Form 10-K for the Year Ended December 31, 2014
Filed March 2, 2015
File No. 1-9044

Dear Mr. Gordon:

This letter is being submitted in response to the comment letter of the staff of the Division of Corporate Finance (the "Staff") of the United States Securities and Exchange Commission (the "SEC") regarding the above-referenced Annual Report on Form 10-K filed by Summit Hotel Properties, Inc. (the "Company").

For the Staff's convenience, the Staff's comment appears below in italics with the Company's response to the comment set out immediately below it.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds From Operations, page 35

1. We note that your reconciliation of FFO excludes the impact of preferred dividends. Therefore it appears your FFO measure represents FFO attributable to common shareholders and OP unitholders. Please revise your presentation in future filings to clearly label such measure.

RESPONSE: For future SEC filings beginning with the Company's Quarterly Report on Form 10-Q for the quarter ending September 30, 2015, the Company will clearly indicate that its FFO is applicable to common shareholders and OP unitholders and that its reconciliation of FFO begins with the Company's GAAP net income or loss applicable to common shareholders and OP unitholders.

The Company hereby acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in its filings;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the Company's filings;
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

This response has been shared with our Audit Committee and they concur with the Company's response.

If you have any questions or comments regarding our response above, please do not hesitate to call the undersigned at 512-538-2303.

Very truly yours,

/s/ Greg A. Dowell
Greg A. Dowell
Executive Vice President and Chief Financial Officer

Cc: Daniel P. Hansen, Chief Executive Officer
Christopher R. Eng, General Counsel and Chief Risk Officer
David Freed, Hunton & Williams, LLP

June 23, 2015

Daniel L. Gordon **VIA EDGAR**
Senior Assistant Chief Accountant
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Sun Communities, Inc.
Form 10-K for the year ended December 31, 2014
Filed March 2, 2015
File No. 1-12616

Dear Mr. Gordon:

This letter contains our response to the comment from the Staff of the Commission contained in your letter dated June 11, 2015. For convenience of reference, the comments contained in your letter are reprinted below in italics and are followed by our corresponding response.

1. *In future filings, please revise your disclosure on page 54 to identify the line items "Funds from Operations" and "FFO excluding certain items" as "Funds from operations attributable to Sun Communities, Inc. common stockholders" and "FFO excluding certain items attributable to Sun Communities, Inc. common stockholders".*

Company Response:

The Company respectfully requests the Commission's consideration of the following description of "Funds from operations" and "FFO excluding certain items":

"Funds from operations attributable to Sun Communities, Inc. common stockholders and dilutive convertible securities [(1)]"

"FFO attributable to Sun Communities, Inc. common stockholders and dilutive convertible securitiesexcluding certain items [(1)]"

The footnote ascribed to these line items will read as follows:

[(1)] The effect of certain anti-dilutive convertible securities is excluded from these items.

We will also change the description of "FFO per Share - fully diluted" and "FFO per Share excluding certain items - fully diluted" to:

FFO attributable to Sun Communities, Inc. common stockholders and dilutive convertible securities per Share - fully diluted

FFO attributable to Sun Communities, Inc. common stockholders and dilutive convertible securities per Share excluding certain items - fully diluted

As you requested in the original letter, the Company acknowledges that: it is responsible for the adequacy and accuracy of the disclosure in the filing; staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

TANGER FACTORY OUTLET CENTERS, INC.
TANGER PROPERTIES LIMITED PARTNERSHIP
3200 Northline Avenue, Suite 360
Greensboro, NC 27408

June 5, 2015

Mr. Daniel Gordon
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Tanger Factory Outlet Centers, Inc.
Form 10-K
Filed February 24, 2015
Form 8-K
Filed February 10, 2015
File No. 001-11986

Tanger Properties Limited Partnership
Form 10-K
Filed February 24, 2015
File No. 333-3526-01

Dear Mr. Gordon:

Tanger Factory Outlet Centers, Inc. and Tanger Properties Limited Partnership (collectively, the "Company") are responding to the comments of the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") set forth in your letter dated May 22, 2015.

For your convenience, the Staff's comments are set forth below in bold, followed by the Company's response to each comment.

Form 10-K filed February 24, 2015

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

1. We note your disclosure of commitments related to construction and development activity as of December 31, 2014. Please reconcile the disclosed amounts to your table on page 48 which shows projected total net cost of Foxwoods, Grand Rapids and Southaven of $270.9 million and costs incurred to date of $93.1 million. Based upon this table, it appears that you are expecting to incur approximately $177.8 million in development costs for those three centers alone.

Response:

The purpose of our table on page 48 is to provide information regarding the estimated total net costs associated with our consolidated development projects. The $177.8 million represents an estimate of the projected total net costs remaining to complete the construction and leasing of the outlet centers. The projected total net cost of Foxwoods, Grand Rapids and Southaven includes projected expenditures for land, building, permits, professional services such as engineering and architects fees, tenant allowances, capitalized interest, and other miscellaneous costs. Many of these expenditures listed above are not, or will not, be subject to contracts which are legal binding agreements; thus, as of December 31, 2014, we had entered into legally binding agreements committing us to pay only a portion of these total net costs.

As a result, the disclosure on page 48 differs from our disclosure of commitments on page 52, which is intended to disclose only commitments related to construction and development activity that are enforceable and legally binding, as required under Item 303(a)(5) of Regulation S-K. At December 31, 2014, our legally binding contractual commitments included $54.6 million related to construction contracts and $25.7 million related to tenant improvement allowances associated with executed lease agreements for which the tenant improvements had not been constructed.

Notes to Consolidated Financial Statements

Note 6. Investments in Unconsolidated Real Estate Joint Ventures, page F-28

2. Please provide to us additional details regarding your Savannah joint venture. In this regard, we note that your ownership interest is only 50% yet your equity contribution was significantly higher than that of your joint venture partner.

Response:

Our ownership interest is stated in terms of our legal interest, which is generally based on our voting rights and/or our portion of the proceeds to be received upon a liquidation event after all partner contributions and required returns on those contributions have been paid. Please refer to footnote 1 to the table on page F-28 of our Notes to Consolidated Financial Statements where we state that we expect our economic interest in the joint venture to be greater than our legal interest due to the capital contribution and distribution provisions in the joint venture agreement. Further, please refer to our disclosure on Page F-30 of our Notes to Consolidated Financial Statements under the caption "Savannah, Georgia", where we state that contributions we make in excess of our partner's equity contributions earn a preferred rate of return of 8% from the date the contributions are made until the outlet center's grand opening date, and then 10% annually thereafter.

3. We note your disclosure on page 53 that indicates your joint venture agreements contain provisions by which a partner can force the other partners to either buy or sell their investment in the joint venture. Please describe to us the terms of these put and call options as they relate to each of the individual joint ventures.

Response:

Our joint ventures are generally subject to buy-sell provisions which are customary for joint venture agreements in the real estate industry. Either partner may initiate these provisions (subject to any applicable lock up period), which could result in either the sale of our interest or the use of available cash or additional borrowings to acquire the other party's interest. Under these provisions, one partner sets a price for the property, then the other partner has the option to either (1) purchase their partner's interest based on that price or (2) sell its interest to the other partner based on that price. Since the partner other than the partner who triggers the provision has the option to be the buyer or seller, we don't consider this arrangement to be a mandatory redeemable obligation. In future filings, we will expand our disclosure to include the discussion above.

Form 8-K filed February 10, 2015

Exhibit 99.2

Pro Rata Balance Sheet as of December 31, 2015, page 15

4. We note the Pro Rata Balance Sheet and Pro Rata Statement of Operations included on pages 15 and 16. As the pro rata information appears to include non-GAAP measures, please revise your presentation in future filings to include the disclosures required by Regulation G and Item 10(e)(1)(i) of Regulation S-K including identifying the Pro Rata Balance Sheet and Pro Rata Statement of Operations as non-GAAP. Provide us with a draft of the disclosure you intend to include.

Response:

We will revise our presentation in future filings to clearly identify the Pro Rata Balance Sheet and Pro Rata Statement of Operations as non-GAAP within the headings and columns of each statement. We will also provide an introduction that will provide explanatory and cautionary language similar to the example below:

"The following pro rata information is not, and is not intended to be, a presentation in accordance with GAAP. The pro rata balance sheet and income statement data reflect our proportionate economic ownership of each asset in our portfolio that we do not wholly own. These assets may be found in the table above entitled, "Unconsolidated Joint Venture Information." The amounts shown in the column labeled "Consolidated" were derived from the Company's consolidated financial statements as filed with the SEC on Form 10-Q or 10-K, as applicable. The amounts in the columns labeled "Prorata" were derived on a property-by-property basis by applying to each financial statement line item the ownership percentage interest used to arrive at our share of net income during the period when applying the equity method of accounting. A similar calculation was performed for the amounts in the columns labeled "Noncontrolling interests" and "Company."

We provide pro rata balance sheet and income statement information because we believe it assists investors and analysts in estimating our economic interest in our unconsolidated joint ventures when read in conjunction with the Company's reported results under GAAP. The presentation of pro rata financial statements has limitations as an analytical tool. Some of these limitations include:

- The amounts shown on the individual line items were derived by applying our overall ownership interest percentage determined when applying the equity method of accounting and do not necessarily represent our actual claim to the individual assets and liabilities; and
- Other companies in our industry may calculate their pro rata interest differently than we do, limiting the usefulness as a comparative measure.

Because of these limitations, the pro rata balance sheet and income statement should not be considered in isolation or as a substitute for our financial statements as reported under GAAP, We compensate for these limitations by relying primarily on our GAAP results and using the pro rata balance sheet and income statement only supplementally."

5. Further, this presentation may attach undue prominence to the non-GAAP information and may give investors the impression that the non-GAAP information represents a comprehensive basis of accounting. Please tell us the consideration you gave to Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

Response:

We respectfully acknowledge the Staff's comment. We note that Exhibit 99.2, which contained the pro rata balance sheet and income statement as well as other supplemental operating and financial data, was furnished pursuant to Item 7.01 of the Current Report on Form 8-K filed on February 10, 2015 (the "Form 8-K"). The Company believes that Item 7.01 is appropriate because it considers the information contained in Exhibit 99.2 to be supplemental to its reported GAAP financial results and key non-GAAP financial measures (Funds from Operations and Adjusted Funds from Operations) for the year ended December 31, 2014, which were furnished in Exhibit 99.1 pursuant to Item 2.02 of the Form 8-K.

As a result, we respectfully believe that Regulation G, and not Item 10(e)(1)(i) of Regulation S-K, applies to Exhibit 99.2 and the pro rata balance sheet and income statement contained therein. We note that unlike Item 10(e)(1)(i) of Regulation S-K, Regulation G does not contain the "equal or greater prominence" requirement when presenting the most directly comparable GAAP measure, and therefore we believe that Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures does not apply to the pro rata balance sheet and income statement contained in Exhibit 99.2, and that the Company's presentation of the pro rata balance sheet and income statement, as modified by the proposed additional disclosure contained in our response to Comment 4 above, is appropriate.

TANGER FACTORY OUTLET CENTERS, INC.
TANGER PROPERTIES LIMITED PARTNERSHIP
3200 Northline Avenue, Suite 360
Greensboro, NC 27408

July 16, 2015

Ms. Jaime G. John
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Tanger Factory Outlet Centers, Inc.
Form 10-K
Filed February 24, 2015
Form 8-K
Filed February 10, 2015
File No. 001-11986

Tanger Properties Limited Partnership
Form 10-K
Filed February 24, 2015
File No. 333-3526-01

Dear Ms. Jaime G. John:

Tanger Factory Outlet Centers, Inc. and Tanger Properties Limited Partnership (collectively, the "Company") are responding to the comment of the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") set forth in your letter dated June 30, 2015.

For your convenience, the Staff's comment is set forth below in bold, followed by the Company's response.

Form 8-K filed February 10, 2015

Exhibit 99.2

Pro Rata Balance Sheet as of December 31, 2014, page 15

1. **We note your response to comment 4 and the proposed revisions. In the introductory paragraph to your Pro Rata Balance Sheet and Pro Rata Statement of Operations please also include language indicating that you do not control, nor do you have any legal claim to the revenues and expenses of the unconsolidated joint ventures. Additionally, expand your disclosure to provide details regarding your ownership and claims to the operations of the joint ventures.**

   Response:

   The introductory paragraph provided in our original response to comment 4 has been restated below in its entirety to incorporate the staff comment above.

   "The following pro rata information is not, and is not intended to be, a presentation in accordance with GAAP. The pro rata balance sheet and income statement data reflect our proportionate economic ownership of each asset in our portfolio that we do not wholly own. These assets may be found in the table above entitled, "Unconsolidated Joint Venture Information." The amounts shown in the column labeled "Consolidated" were prepared on a basis consistent with the Company's consolidated financial statements as filed with the SEC on the most recent Form 10-Q or 10-K, as applicable. The amounts in the columns labeled "Pro rata" were derived on a property-by-property basis by applying to each financial statement line item the ownership percentage interest used to arrive at our

share of net income during the period when applying the equity method of accounting. A similar calculation was performed for the amounts in the columns labeled “Noncontrolling interests” and “Company.”

We do not control the unconsolidated joint ventures and the presentations of the assets and liabilities and revenues and expenses do not represent our legal claim to such items. The operating agreements of the unconsolidated joint ventures generally provide that partners may receive cash distributions (1) quarterly, to the extent there is available cash from operations, (2) upon a capital event, such as a refinancing or sale or (3) upon liquidation of the venture. The amount of cash each partner receives is based upon specific provisions of each operating agreement and vary depending on factors including the amount of capital contributed by each partner and whether any contributions are entitled to priority distributions. Upon liquidation of the joint venture and after all liabilities, priority distributions and initial equity contributions have been repaid, the partners generally would be entitled to any residual cash remaining based on the legal ownership percentage shown in the table above entitled “Unconsolidated Joint Venture Information”.

We provide pro rata balance sheet and income statement information because we believe it assists investors and analysts in estimating our economic interest in our unconsolidated joint ventures when read in conjunction with the Company’s reported results under GAAP. The presentation of pro rata financial statements has limitations as an analytical tool. Some of these limitations include:

- The amounts shown on the individual line items were derived by applying our overall economic ownership interest percentage determined when applying the equity method of accounting and do not necessarily represent our legal claim to the assets and liabilities, or the revenues and expenses; and

- Other companies in our industry may calculate their pro rata interest differently than we do, limiting the usefulness as a comparative measure.

Because of these limitations, the pro rata balance sheet and income statement should not be considered in isolation or as a substitute for our financial statements as reported under GAAP, We compensate for these limitations by relying primarily on our GAAP results and using the pro rata balance sheet and income statement only supplementally.”

Taubman Centers, Inc.
200 East Long Lake Road
Suite 300
Bloomfield Hills, Michigan
48304-2324

T 248.258.6800
www.taubman.com

Taubman

Via EDGAR

May 11, 2015

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Ms. Jaime G. John

Re: Taubman Centers, Inc.
Form 10-K for the Fiscal Year Ended December 31, 2014
Filed February 24, 2015
File No. 001-11530

Dear Ms. John:

We refer to your letter dated April 22, 2015, in which you provided comments on behalf of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") to Taubman Centers, Inc. ("we" or the "Company") with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 filed on February 24, 2015 (the "2014 Form 10-K"). This letter responds to the Staff's comments as indicated below. For convenience of reference, each Staff comment contained in your April 22, 2015 comment letter is reprinted below in bold italics, numbered to correspond with the paragraph numbers assigned in your letter, and is followed by the corresponding response of the Company.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Reconciliation of Net Income Attributable to Taubman Centers, Inc. Common Shareowners to Funds from Operations and Adjusted Funds from Operations, page 53

1. We note that you reconcile Funds from Operations (FFO) from Net income attributable to TCO common shareowners - Basic. Based upon your reconciliation, it appears that the $280.5 million FFO represents FFO attributable to common shareowners, partnership unitholders and participating securities holders. Similarly, it appears that the $200.4 million FFO attributable to TCO represents FFO attributable to TCO common shareowners and participating securities holders. Please advise and revise your presentation in future filings to clearly label each measure. Also make adjustments to earnings releases filed on Form 8-K, as appropriate.

Response

We advise that in reconciling the Company's FFO from Net income attributable to TCO common shareowners, the Company first arrives at a measure of the Operating Partnership (TRG)'s FFO, which is the $280.5 million referenced by the Staff in its comment. This measure is attributable to partnership unitholders and participating securities holders of TRG.

As the controlling general partner of TRG, the majority of the FFO attributable to TRG's partnership unitholders ultimately flows through to the Company's common shareowners. Therefore, after arriving at TRG's FFO as described above, we calculate the FFO attributable to TCO's common shareholders, which is the $200.4 million referenced in the Staff's comment.

The Company takes the approach of first reconciling to TRG's FFO, as the Company conducts all of its operations through its only significant asset, its consolidated subsidiary TRG. This approach is consistent with the guidance provided by the National Association of Real Estate Investment Trusts ("NAREIT"), the real estate industry trade group that originally defined FFO. NAREIT reminded its members through its Financial Reporting Alert dated October 1, 2003 that "FFO…represents FFO applicable to all equity shares - not just FFO attributable to common shareholders." This Alert ultimately confirmed our strategy for this reconciliation, with the FFO of TRG and that allocable to the Company also previously having been the subject of correspondence with the Staff in April 2006.

We agree with the Staff that the captioning in the reconciliation could be enhanced to accurately distinguish and label the two measures of FFO referred to in the Staff's comment. In future filings, the Company will revise the caption of TRG's FFO (currently captioned simply as "Funds from Operations") to "Funds from Operations attributable to partnership unitholders and participating securities of TRG". Similarly, in future filings, the Company will caption the measure of TCO's FFO as "Funds from Operations attributable to TCO's common shareowners". These revised captions will also be used in earnings releases filed on Form 8-K.

Item 8. Financial Statements and Supplementary Data

Note 5 - Investments in Unconsolidated Joint Ventures, page F-22

> ***2. We note your disclosure of combined financial information for your unconsolidated joint ventures. Given the changes in ownership of your unconsolidated joint ventures during 2014, please tell us what consideration you gave to the requirement to file separate financial statements for significant equity method investments pursuant to Rule 3-09 of Regulation S-X.***

Response

The Company considered the requirements to file separate financial statements for significant equity method investments pursuant to Rule 3-09 of Regulation S-X, performing the required income and the investment tests set forth in Regulation S-X 1-02(w) using 20 percent thresholds. Pursuant to these tests, none of the Company's equity method investees qualified as significant and therefore no separate financial statements were filed.

The Company's significance tests considered the changes in our unconsolidated joint ventures during 2014, most notably the disposition of Arizona Mills in January 2014, the sale of a partial ownership interest, including certain governance rights, in International Plaza resulting in its recognition under the equity method starting in January 2014, and the start of operations of University Town Center in October 2014. The Company's income-based significance tests reflected the operations of these particular investees for the portions of the year during which the investments were accounted for using the equity method, consistent with guidelines in the Staff's Financial Reporting Manual. As additional information about the Company's significance tests, note that the unconsolidated joint ventures for which the ownership changed during 2014 would not qualify as significant even if the income-based tests included the entire annual period.

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions or comments regarding the foregoing, or have additional comments or questions, please contact the undersigned at (248) 258-7610, or email lpayne@taubman.com, cc: rhogrebe@taubman.com.

Very truly yours,

/s/ Lisa A. Payne___________________________
Lisa A. Payne
Vice Chairman and Chief Financial Officer

cc:
Mr. Isaac Esquivel
Mr. Donald J. Kunz, Esq., Honigman Miller Schwartz and Cohn LLP
Mr. Michael S. Ben, Esq., Honigman Miller Schwartz and Cohn LLP

May 18, 2015

VIA EDGAR AND FEDERAL EXPRESS

Sonia Gupta Barros
Assistant Director
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Ventas, Inc.
Form 10-K for the fiscal year ended December 31, 2014
Filed February 13, 2015
File No. 1-10989

Dear Ms. Barros:

Set forth below are the responses of Ventas, Inc., a Delaware corporation (together with its subsidiaries, the "Company"), to the comments of the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") contained in the letter dated May 5, 2015 from you to Debra A. Cafaro, the Company's Chairman and Chief Executive Officer, with respect to the above-referenced filing.

For the convenience of the Staff, we have set forth below each of the Staff's comments in italics, immediately followed by our response thereto.

Form 10-K for the Year Ended December 31, 2014

Funds from Operations and Normalized Funds from Operations, page 61

1. *We note that you reconcile Funds from Operations (FFO) from Net income attributable to common stockholders and it appears FFO represents FFO attributable to common stockholders. In future filings please revise the label of this non-GAAP measure to indicate that it is FFO attributable to common shareholders or tell us why this is not necessary.*

   As requested, the Company will use the labels "FFO attributable to common stockholders" and "Normalized FFO attributable to common stockholders" and continue to reconcile such non-GAAP measures to net income attributable to common stockholders in its future Exchange Act periodic reports.

Triple-Net Lease Expirations, page 69

2. *We note your disclosure that you re-leased to Kindred, transitioned to new operators or sold 107 of the 108 licensed healthcare assets whose lease terms with Kindred were scheduled to expire on September 30, 2014. Please tell us in your response whether you incurred any material leasing costs with respect to the renewal or transition of these expired leases. In future Exchange Act periodic reports, to the extent material, please provide disclosure on the amount of leases signed with new tenants in the reporting period and the costs of such leasing.*

   The Company incurred aggregate leasing costs of $4.5 million in connection with the re-leasing to Kindred Healthcare, Inc. ("Kindred"), transition to new operators or sale of the 107 licensed healthcare assets whose lease terms with Kindred were scheduled to expire on September 30, 2014. These costs were deferred on our consolidated

balance sheets and are being amortized over the respective lives of the new leases. These costs represented less than 0.025% of the Company's total assets as of December 31, 2014 and were, therefore, immaterial to the Company's financial condition. As requested, the Company will, to the extent material, provide disclosure on the amount of leases signed with new tenants and the costs incurred by the Company in connection with such leasing in its future Exchange Act periodic reports.

Definitive Proxy Statement on Schedule 14A

Transactions with Related Persons, page 17

3. *We note the disclosure of the aggregate annual rent Sutter Health paid in 2014. Please tell us how you determined that the company should disclose only the aggregate annual rent rather than the aggregate amount of lease payments based on Instruction 3(a) to Item 404(a) of Regulation S-K.*

   The Company determined that its ownership of two medical office buildings ("MOBs") that are 100% leased to Sutter Health, for whom Robert D. Reed served as Senior Vice President and Chief Financial Officer during 2014, did not constitute a transaction with a related person that was required to be disclosed in accordance with Item 404 of Regulation S-K. In particular, Mr. Reed did not have a material direct or indirect interest in the transaction, as the aggregate amount of all rent payments due to the Company from Sutter Health on or after January 1, 2014 was $63.5 million, or less than 0.7% of Sutter Health's annual revenues (Sutter Health reported $10.2 billion of operating revenues in 2014). However, the Company disclosed the lease transactions in its Definitive Proxy Statement because the transactions had been approved by the Company's Audit Committee pursuant to the Company's written Policy on Transactions with Related Persons.

We hope that the foregoing has been responsive to the Staff's comments. The Company hereby acknowledges that:

- it is responsible for the adequacy and accuracy of the disclosure in the above-referenced filing;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

Should any member of the Staff have any questions or comments or wish to discuss further the foregoing responses to your May 5, 2015 letter, please call me at (312) 660-3725.

Very truly yours,

/s/ Robert F. Probst

Robert F. Probst
Executive Vice President and Chief Financial Officer

cc: Debra A. Cafaro, Chairman and Chief Executive Officer of Ventas, Inc.
T. Richard Riney, Executive Vice President, Chief Administrative Officer and General Counsel of Ventas, Inc.

American Realty Capital Properties, Inc.
2325 East Camelback Road
Suite 1100
Phoenix, AZ 85016

May 21, 2015

VIA EDGAR

Mr. Kevin Woody
Branch Chief
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

RE: American Realty Capital Properties, Inc.
Form 10-K for the year ended December 31, 2014
Filed on March 30, 2015
File No. 001-35263

American Realty Capital Properties, Inc.
Form 10-K/A for the year ended December 31, 2014
Filed on April 30, 2015
File No. 001-35263

ARC Properties Operating Partnership, L.P.
Form 10-K for the year ended December 31, 2014
Filed on March 30, 2015
File No. 333-197780

ARC Properties Operating Partnership, L.P.
Form 10-K/A for the year ended December 31, 2014
Filed on April 30, 2015
File No. 333-197780

Dear Mr. Woody:

We are writing in response to your letter dated May 11, 2015, setting forth the comments of the staff of the Division of Corporation Finance (the "Staff") on the above mentioned filings for American Realty Capital Properties, Inc. and ARC Properties Operating Partnership, L.P. (together, the "Company"). We have considered the Staff's comments and our responses are set forth below. To facilitate the Staff's review, we have keyed our responses to the headings and numbered comments used in the Staff's comment letter, which we have reproduced in bold print.

Form 10-K for the year ended December 31, 2015

Item 1. Business

Primary Investment Focus, page 8

1. **We note your disclosure indicating that your business strategy includes receiving the majority of your revenue from "investment grade and creditworthy tenants," as well as your explanation of the term "creditworthy tenant" on page 4. In future Exchange Act periodic reports, please also include a discussion of how management monitors the tenant credit quality of its current portfolio.**

Response: In future Exchange Act periodic reports, the Company will include the following additional disclosure:

We consistently monitor the credit quality of our portfolio by seeking to lease space and/or acquire properties leased to creditworthy tenants that meet our underwriting and operating guidelines and we actively monitor tenant creditworthiness following the initiation of a lease. When we assess tenant credit quality, we: (i) review relevant financial information, including financial ratios, net worth, revenue, cash flows, leverage and liquidity; (ii) evaluate the depth and experience of the tenant's management team; and (iii) assess the strength/growth of the tenant's industry. On an on-going basis, we evaluate the need for an allowance for doubtful accounts arising from estimated losses that could result from the tenant's inability to make required current rent payments and an allowance against accrued rental income for future potential losses that we deem to be unrecoverable over the term of an applicable lease. The factors considered in determining the credit risk of our tenants include, but are not limited to: payment history; credit status and change in status (credit ratings for public companies are used as a primary metric); change in tenant space needs (i.e., expansion/downsize); tenant financial performance; economic conditions in a specific geographic region; and industry specific credit considerations. The credit risk of our portfolio is mitigated by the high quality of our existing tenant base, reviews of prospective tenants' risk profiles prior to lease execution and consistent monitoring of our portfolio to identify potential problem tenants.

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Securities Authorized for Issuance Under Equity Compensation Plans, page 46

2. **We were unable to locate all of the disclosures required by Item 201(d) of Regulation S-K. In future Exchange Act periodic reports, please include tabular equity compensation plan information, or advise. Refer to Item 201(d) of Regulation S-K.**

Response: The Company included the tabular equity compensation plan information required by Item 201(d) of Regulation S-K on page 34 of the Form 10-K/A for the year ended December 31, 2014, which was filed with the U.S. Securities and Exchange Commission (the "SEC") on April 30, 2015. The Company will continue to provide the information required by Item 201(d) of Regulation S-K in its future Exchange Act periodic reports.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 47

3. **We note your disclosure on page 13 that, following the announcement that certain of your financial statements could no longer be relied upon, various broker-dealers and clearing firms participating in offerings of Cole Capital's managed REITs suspended sales activity. In future Exchange Act periodic reports, please revise your disclosure in MD&A to more fully describe (i) the impact of such decline in revenue generated by Cole Capital, (ii) the general and administrative expenses associated with Cole Capital's capital raising activity and (iii) any known trends or uncertainties that have had or you reasonably expect will have a material impact on Cole Capital's revenues.**

Response: The Company added additional disclosure on the suspension of certain selling agreements on page 60 of its Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, which was filed with the SEC on May 7, 2015. In response to the Staff's comment, the Company will add similar additional disclosure on such suspensions in future Exchange Act periodic reports to the extent such disclosure is still relevant to the Company.

Funds from Operations and Adjusted Funds from Operations, page 63

4. **We note you have labeled certain items as one time when presenting Company AFFO. Given the nature of these adjustments, it is not clear why they are one time. Please clarify and/or revise to remove the reference to one time from your disclosure in future filings. Reference is made to Question 102.03 of the Division´s Compliance and Disclosure Interpretations for Non-GAAP Financial Measures.**

Response: The Company was using the term "one time" to describe the nature of the adjustments as they related to a specific transaction and not as those adjustments pertained to the Company. In future Exchange Act periodic reports, the Company will revise its disclosure with respect to its adjustments to clarify the nature of such adjustments and replace the reference to one time with "non-routine."

5. We note your adjustment related to the deferred tax benefit to arrive at AFFO. Please provide further clarification as to why management believes this adjustment is appropriate.

Response: The Company's management uses AFFO to evaluate the Company's operating performance, and AFFO also allows for a comparison of the Company's operating performance with other REITs that utilize an equivalent measure. In order to determine the best practice regarding AFFO in the Company's industry, the Company assessed the methodology used by other companies within its peer group that utilize taxable REIT subsidiaries. After reviewing these peers' AFFO calculations, the Company believes that the most appropriate and prevalent practice is to adjust for the deferred portion of the tax provision/benefit. The Company believes that it is appropriate to adjust for the deferred portion of the tax provision/benefit so that only the current portion of the tax provision/benefit, which generally approximates the tax payable/receivable, respectively, attributable to the period, impacts the Company's AFFO.

Liquidity and Capital Resources

Availability of Funds from Credit Facilities, page 66

6. **We note that your credit facilities contain financial covenants. To the extent you have material sources of liquidity, such as a credit facility, that include financial covenants that may restrict future financing flexibility, please include a more detailed discussion of these covenants in future Exchange Act periodic reports.**

Response: In future Exchange Act periodic reports, to the extent the Company has material sources of liquidity that include financial covenants that may restrict future financing flexibility, the Company will include more detailed discussion of these covenants and note whether the Company is in compliance with such covenants.

Related Party Transactions and Agreements, page 69

7. **You state on page 70 that the audit committee investigation identified certain payments made by the company to the former manager and its affiliates that were not sufficiently documented or that otherwise warrant scrutiny. In future Exchange Act periodic reports, please revise to more fully describe and quantify these certain payments to the extent material and clarify whether you intend to seek recovery for such payments.**

Response: The Company is continuing to evaluate whether it has a right to seek recovery for any of these payments and, if so, its alternatives for seeking recovery. The Company has not concluded that recovery of any such payments is reasonably possible. The Company believes that further disclosure about these payments at this time may mislead investors about the

likelihood of recovery of such payments. The Company will make additional disclosure in future periodic reports at such time, if any, as it concludes that recovery of any material amount of such payments is reasonably possible.

Contractual Obligations, page 68

8. **In future filings, please include a footnote to the table that describes the significant assumptions used to determine the interest payments presented.**

Response: In future Exchange Act periodic reports, the Company will include a footnote to the Contractual Obligations table that describes the significant assumptions used to determine the interest payments presented.

[Remainder of this page left intentionally blank]

American Realty Capital Properties, Inc.
2325 East Camelback Road
Suite 1100
Phoenix, AZ 85016

July 10, 2015

VIA EDGAR

Ms. Jennifer Gowetski
Special Counsel
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

RE: American Realty Capital Properties, Inc.
Form 10-K for the year ended December 31, 2014
Filed on March 30, 2015
File No. 001-35263

American Realty Capital Properties, Inc.
Form 10-K/A for the year ended December 31, 2014
Filed on April 30, 2015
File No. 001-35263

ARC Properties Operating Partnership, L.P.
Form 10-K for the year ended December 31, 2014
Filed on March 30, 2015
File No. 333-197780

ARC Properties Operating Partnership, L.P.
Form 10-K/A for the year ended December 31, 2014
Filed on April 30, 2015
File No. 333-197780

Dear Ms. Gowetski:

We are writing in response to your letter dated June 5, 2015, setting forth the additional comments of the staff of the Division of Corporation Finance (the “Staff”) on the above mentioned filings for American Realty Capital Properties, Inc. and ARC Properties Operating Partnership, L.P. (together, the “Company”). We have considered the Staff’s comments and our responses are set forth below. To facilitate the Staff’s review, we have keyed our responses to the headings and numbered comments used in the Staff’s comment letter, which we have reproduced in bold print.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, page 47

1. **We note your response to comment 3 of our letter. Additionally, we note the disclosure on page 60 of your Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 that "[d]ue to the Restatement, selling agreements for the Managed REITs in their offering stages were suspended. Accordingly, our Cole Capital results of operations for the three months ended March 31, 2015, compared to the three months ended March 1, 2014, reflect decreases in most categories." In future Exchange Act periodic reports, please revise your disclosure to more specifically describe and quantify the effect of this suspension on (i) the revenue generated by Cole Capital, (ii) the general and administrative expenses associated with Cole Capital's capital raising activity and (iii) any known trends or uncertainties that have had or you reasonably expect will have a material impact on Cole Capital's revenues.**

Response: In future Exchange Act periodic reports, the Company will add disclosure to more specifically describe and quantify the effect of the suspension on (i) the revenue generated by Cole Capital, (ii) the general and administrative expenses associated with Cole Capital's capital raising activity and (iii) any known trends or uncertainties that have had or we reasonably expect will have a material impact on Cole Capital's revenues, to the extent such disclosure is still relevant to the Company.

Liquidity and Capital Resources

Availability of Funds from Credit Facilities, page 66

2. **We note your response to comment 7 of our letter. In future Exchange Act periodic reports, to the extent material, we continue to believe that you should revise your disclosure to more fully describe and quantify these certain payments made by the company to the former manager and its affiliates that were not sufficiently documented or that otherwise warrant scrutiny and clarify that you have not concluded that the recovery of such payments is reasonably possible. Please revise accordingly or advise.**

Response: As the Company's counsel advised you by telephone, we are still evaluating whether it would be appropriate to expand on our existing disclosure concerning potential claims arising from past transactions with the Former Manager and its affiliates. If we determine that additional disclosure is appropriate, we will advise you in advance of our upcoming quarterly filing.

[Remainder of this page left intentionally blank]

August 5, 2015

VIA EDGAR

Mr. Tom Kluck
Legal Branch Chief
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Washington Real Estate Investment Trust
Form 10-K for the year ended December 31, 2014 filed March 2, 2015
File No. 001-06622

Dear Mr. Kluck:

This letter is in response to your comment letter received on August 3, 2015. We have set forth below your comment in italics, followed by our response.

Form 10-K for the year ended December 31, 2014

Part I, Page 4

Our Portfolio, Page 5

1. *We note your lease expiration table at the top of page 6. In future Exchange Act periodic reports, please provide this disclosure for 10 years and provide separate disclosure for your retail and office properties or advise.*

Response:

In future Form 10-K filings, we will disclose lease expirations for 10 years separately for our office and retail properties.

* * *

Pursuant to your request, in connection with responding to this comment, Washington Real Estate Investment Trust acknowledges that:

- the company is responsible for the adequacy and the accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

WEINGARTEN REALTY

2600 Citadel Plaza Drive
Suite 125
Houston, Texas 77008
800.688.8865
www.weingarten.com

May 27, 2015

VIA EDGAR

Ms. Jennifer Monick
Senior Staff Accountant
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Weingarten Realty Investors
Form 10-K for the Year Ended December 31, 2014
Filed February 19, 2015
File No. 001-09876

Dear Ms. Monick:

Weingarten Realty Investors (the "Company", "we", "us", or "our") is submitting this letter in response to the Staff's comment letter, dated May 20, 2015, with respect to the Company's Annual Report on Form 10-K for the year ended December 31, 2014.

Set forth below are the Company's responses. For the convenience of the Staff, the Company has repeated each of the Staff's comments followed by the Company's responses.

Form 10-K for the year ended December 31, 2014

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Funds from Operations, page 38

1. We note that your calculation of FFO starts with Net income attributable to common shareholders and as such, it appears that the resulting amount of FFO represents FFO attributable to common shareholders rather than FFO for the entire company. In future filings please re-label "Funds from operations" to "Funds from operations attributable to common shareholders".

Weingarten Realty is the trade name of Weingarten Realty Investors (the "trust") which is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust

Response:

In response to the Staff's comment, we will, in future fillings, use the label "Funds from operations attributable to common shareholders".

Item 8. Financial Statements and Supplementary Data

Consolidated Statements of Equity, page 47

2. We note that you recorded $144 million in Disposition of noncontrolling interests. Please provide to us additional details regarding this transaction. In addition, please disclose the nature of this adjustment within future periodic filings.

Response:

This transaction relates to the dissolution, which is disclosed on page 78 of our 10-K in Note 20 Related Parties, of a consolidated joint venture with Hines Retail REIT ("Hines"), of which we owned a 30% interest. (For additional information on this consolidated joint venture, please refer to our 10-K Note 22 Variable Interest Entities.) The joint venture owned 13 properties and upon dissolution, five were distributed to us, accounted for under ASC 810 and eight were distributed to Hines, accounted for under ASC 360. Upon the distribution of the eight properties, we reduced our remaining noncontrolling interests associated with the joint venture in the amount of $144 million.

The current disclosure in our 10-K, Note 20 regarding this transaction is as follows:

In 2014, we completed the dissolution of our consolidated real estate joint venture with Hines Retail REIT ("Hines"), in which we owned a 30% interest. At December 31, 2013, this joint venture held a portfolio of 13 properties located in Texas, Tennessee, Georgia, Florida and North Carolina with $172.9 million in total assets and $11.1 million of debt, net, which was assumed by Hines. This transaction was completed through the distribution of five properties to us, resulting in an increase to our equity of $11.0 million, and eight properties to Hines. The eight properties distributed to Hines were classified as held for sale at December 31, 2013, and we realized a $23.3 million gain in discontinued operations associated with this transaction.

We will, in future filings, update our Related Party Note to include the following disclosure:

"In 2014, we completed the dissolution of our consolidated real estate joint venture with Hines Retail REIT ("Hines"), in which we owned a 30% interest. At December 31, 2013, this joint venture held a portfolio of 13 properties located in Texas, Tennessee, Georgia, Florida and North Carolina with $172.9 million in total assets and $11.1 million of debt, net, which was assumed by Hines. This transaction was completed through the distribution of five properties to us and eight properties to Hines, resulting in an increase to our equity and a decrease to noncontrolling interests of $11.0 million.

Additionally, upon the distribution of the eight properties to Hines, we realized a $23.3 million gain in discontinued operations and a decrease in noncontrolling interest of $144.3 million associated with this transaction."

The Company acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the filing;
- staff comments or changes to disclosure in response to staff comments do not foreclose the Commission from taking any action with respect to the filing; and
- the Company may not assert staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions, please do not hesitate to contact me at 713-866-6054 should you require any additional information.

Sincerely,

/s/ Stephen C. Richter

Stephen C. Richter
Executive Vice President
and Chief Financial Officer

PO BOX 9777
Federal Way, WA 98063-9777

Tel 253-924-7071
Fax 253-924-7624

April 24, 2015

Ms. Erin E. Martin
Senior Counsel
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Comment Letter Dated April 21, 2015
Regarding Weyerhaeuser Company
Form 10-K
Filed February 13, 2015
File No. 001-04825

Dear Ms. Martin:

We received your correspondence dated April 21, 2015 in which you commented on Weyerhaeuser Company's annual report on Form 10-K for the year ended December 31, 2014. We set forth below first the comments of the Staff of the U.S. Securities and Exchange Commission (the "Staff") in italics and follow with our responses.

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A), page 33

1. *We note your use of adjusted EBITDA in your earnings release. Please tell us if you consider this measure to be a key performance indicator. To the extent this measure is considered to be a key performance measure, in future filings please include the measure as well as the required disclosure in accordance with Item 10(e) of Regulation S-K within your Management's Discussion and Analysis. Please include an example of any future disclosure in your response.*

Response: The Company considers this measure to be a key performance indicator and, accordingly, we will include this measure and the required disclosure in accordance with Item 10(e) of Regulation S-K in our future filing. An example of our future disclosure is as follows:

PERFORMANCE MEASURES

We use Adjusted Earnings before Interest, Taxes, Depreciation, Depletion and Amortization (Adjusted EBITDA) as a key performance measure to evaluate the performance of the consolidated company and our business segments. This measure should not be considered in isolation from and is not intended to represent an alternative to our results reported in accordance with U.S. generally accepted accounting principles (U.S. GAAP). However, we believe Adjusted EBITDA provides meaningful supplemental information about our operating performance, better facilitates period to period comparisons, and is widely used by analysts, lenders, rating agencies and other interested parties.

Our definition of Adjusted EBITDA may be different from similarly titled measures reported by other companies. Adjusted EBITDA, as we define it, is operating income from continuing operations adjusted for depreciation, depletion, amortization, pension and postretirement costs not allocated to business segments (primarily interest cost, expected return on plan assets, amortization of actuarial loss and amortization of prior service cost/credit), special items and discontinued operations.

ADJUSTED EBITDA BY SEGMENT

DOLLAR AMOUNTS IN MILLIONS	2014
Adjusted EBITDA by Segment:	
Timberlands	$ 820
Wood Products	446
Cellulose Fibers	447
	1,713
Unallocated Items	(79)
Total	**$ 1,634**

We reconcile Adjusted EBITDA to net earnings for the consolidated company and to operating income for the business segments, as those are the most directly comparable U.S. GAAP measures for each.

The table below reconciles Adjusted EBITDA to net income by segment during the year ended 2014:

DOLLAR AMOUNTS IN MILLIONS	Timberlands	Wood Products	Cellulose Fibers	Unallocated Items	**Total**
Adjusted EBITDA by Segment:					
Net earnings					$ 1,826
Earnings from discontinued operations, net of income taxes					(998)
Interest expense, net of capitalized interest					344
Income taxes					185
Net contribution to earnings	**$ 613**	**$ 327**	**$ 291**	**$ 126**	**1,357**
Interest income and other	—	—	1	(38)	(37)
Operating income	**613**	**327**	**292**	**88**	**1,320**
Depreciation, depletion and amortization	207	119	155	12	493
Non-operating pension and postretirement credits	—	—	—	(45)	(45)
Special items[1]	—	—	—	(134)	(134)
Adjusted EBITDA	**$ 820**	**$ 446**	**$ 447**	**$ (79)**	**$ 1,634**

(1) Special items include: a $151 million pretax gain related to a previously announced postretirement plan amendment, $39 million in restructuring and closure charges related to our selling, general and administrative cost reduction initiative and a $22 million pretax gain on the sale of a landfill in Washington State.

Economic and Market Conditions Affecting Our Operations, page 33

2. *We note your disclosure regarding the impact of the U.S. housing market, demand in China and Japan and the strength of the U.S. dollar on your operations in 2014. In future filings please expand your disclosure to describe how management expects such economic and market conditions will effect continuing operations in the next year or advise. Refer to Item 303(a)(3)(ii) of Regulation S-K for guidance.*

Response: The Company will include in its future filings disclosure that describes how management expects such economic and market conditions to affect continuing operations in the next year.

WP GLIMCHER

June 19, 2015

<u>**VIA HARD COPY AND EDGAR**</u>

Ms. Jennifer Monick
Staff Accountant
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Washington Prime Group Inc.
Form 10-K for the Year Ended December 31, 2014
Filed February 26, 2015
Form 10-Q for the Period Ended March 31, 2015
Filed May 7, 2015
Form 8-K/A
Filed March 17, 2015
File No. 001-36252

Dear Ms. Monick:

WP Glimcher Inc. (the "Company") is transmitting for filing the Company's responses to the comments of the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") contained in your letter dated June 8, 2015 related to the filings listed above.

For convenience, each comment contained in your June 8, 2015 letter is reprinted below in italics, followed by the Company's response.

<u>Form 10-K for the Year Ended December 31, 2014</u>

<u>Note 3. Summary of Significant Accounting Policies</u>

<u>Intangibles, page F-18</u>

1. With respect to your below market lease intangibles, please tell us how you considered any fixed rate renewal options in your estimate of the remaining term of the underlying leases and your basis for your determination. Your response should address, but not necessarily be limited to, whether or not you use a threshold in your evaluation. To the extent you use thresholds, please tell us how you concluded that these thresholds are appropriate and tell us the potential impact to your financial statements, including the impact from the acquisition of Glimcher, if you were to conclude that all below market fixed rate renewal options would be exercised.

COMPANY RESPONSE:

For each lease assumed through the acquisition of a property, the Company applies Accounting Standards Codification ("ASC") 805-20-25-12 to determine whether the terms of the lease are favorable or unfavorable compared with the market terms of a lease for a similar property at the acquisition date. If the terms are favorable, an above market lease intangible asset is recorded, and if the terms are unfavorable, a below market lease liability is recorded. Because ASC 805-20-25-12 does not provide further guidance on how to arrive at the fair value of the above or below market lease intangible asset or liability, the Company refers to ASC 820 and ASC 840 for the appropriate valuation guidance. ASC 820 provides detailed guidance for using management's judgment and other market participant consideration in assessing fair value when quoted prices are not available.

With respect to leases that are deemed to be below market, the Company considers fixed rate renewal options in its calculation of the fair value of resulting below market lease intangible liabilities and their remaining terms. Based on the Company's experience, tenants typically make renewal decisions based upon a variety of both quantitative and qualitative factors.

Per the Company's experience, contractual option rents that are only slightly below market may not sufficiently incentivize a tenant to exercise their option, due to factors such as the availability of newer buildings and location optimization, among others. Accordingly, the Company believes that a renewal option must qualify as a "bargain renewal option" (as defined below) with a renewal rate that is "sufficiently lower" than market rates in order for exercise to be "reasonably assured." ASC 840-10-20 defines a bargain renewal option as "a provision allowing the lessee, at his option, to renew the lease for a rental sufficiently lower than the fair rental of the property at the date the option becomes exercisable that exercise of the option appears, at the inception of the lease, to be reasonably assured." The authoritative guidance included in ASC 840-10-20 does not provide quantitative thresholds to use in making an assessment of whether rental rates are "sufficiently lower" so that exercise is reasonably assured. Therefore, the Company is required to apply professional judgment in determining whether this "reasonably assured" test is met.

The Company has developed its policy (included in its "Purchase Accounting Allocation" policy) in an attempt to reflect what an active market participant would consider a "bargain renewal option." Based on the Company's market knowledge and extensive leasing and re-leasing experience, its research of policies of other real estate companies, and the methodologies utilized by third-party valuation experts, the Company has determined that generally an option should be considered "sufficiently lower" if it is at least 10% below projected market rates, depending on the amount of time until future option exercise date(s). Generally, the further into the future the option exercise date, the less likely the tenant is to exercise the renewal option and the higher the threshold to be applied. The Company believes that this methodology is in-line with how a market participant would consider such an option, and therefore the 10% quantitative threshold represents a starting point for the Company's analysis.

In addition, the Company evaluates each real estate lease acquired from a qualitative perspective to determine whether a renewal option is considered a bargain renewal option (i.e., reasonably assured of exercise) based on the facts and circumstances existing at the acquisition date. These factors include, but are not limited to, length of the in-place lease, the contractual ability of the tenant to sublease their space, financial performance of the property, financial performance of the individual tenant, the overall economic climate, and any other known facts or circumstances surrounding the tenant's business operations.

In summary, based on the factors described above, the Company has determined that generally the exercise of a bargain renewal option is "reasonably assured" when the lease renewal rate is at least 10% below expected market rents (as discussed above) and certain qualitative factors are met. The Company has determined that, in general, renewal rates that are less than 10% below estimated market rents are not reasonably assured of exercise and do not constitute a bargain renewal, and therefore, the Company generally does not quantify the impact of such renewal options in its valuation models. Similarly, the Company has determined that, in general, renewal rates that are more than 10% below estimated market rents are reasonably assured of exercise, absent qualitative factors that would suggest otherwise, and therefore, the Company records the impact of such an option as a below market lease liability. For all below market leases with fixed option renewals (regardless of threshold), the Company also analyzes all of the qualitative factors discussed above in determining whether the recording of an intangible below market lease liability related to such an option is appropriate.

In response to your comment, the Company has quantified the potential impact to its financial statements if it concluded that all below market fixed rate renewal options would be exercised, without considering the "reasonably assured" test described above. For this quantification as of December 31, 2014, the Company evaluated its 2014 acquisitions that included the assumption of in-place leases, which represent approximately 76% of the below market lease liability balance recorded in the Company's consolidated financial statements at that date. Because essentially all of the extension options on below market leases were deemed bargain renewal options (i.e., in excess of the 10% threshold described above, taking into consideration qualitative factors), the Company included all of the extension options when valuing the below market lease liabilities and determining the amortization periods for the 2014 acquisitions. Therefore, there would be no material impact to below market lease liabilities and rental revenue, based on the analysis of 2014 acquisitions and extrapolation to the remaining prior year leases as of and for the year ended December 31, 2014.

The Glimcher purchase price allocation, including our evaluation of the fair value of acquired leases, is preliminary as of March 31, 2015, and the Company continues to analyze the various assumptions and estimates utilized in the analysis of the fair value of acquired leases. The following analysis considers the Company's current best estimate of the below market lease liability as compared to the potential liability balance if all below market renewal options were to be valued as part of that liability. For the quantification of the potential impact to the financial statements as of March 31, 2015, the Company evaluated its 2014 acquisitions (zero impact as noted above) and its first quarter 2015 acquisitions including its acquisition of 23 properties in the merger with Glimcher on January 15, 2015. Because some extension options on below market leases were not deemed bargain renewal options (i.e., below the 10% threshold described above, taking into consideration qualitative factors), the Company excluded them when valuing the below market lease liabilities and determining the amortization periods for the first quarter 2015 acquisitions. After including all such extension options, there would be an increase to below market lease liabilities of approximately $7.8 million, with a corresponding increase to other real estate assets, as of March 31, 2015. There would be no resulting material change to rental revenue (due to longer amortization periods) or depreciation expense for the three months ended March 31, 2015. There would also be no resulting material annual change to rental revenue (due to longer amortization periods) or depreciation expense. Therefore, if the Company assumed that all below market fixed rate renewal options would be exercised, the impact of this assumption would not be material to the financial statements. Moreover, the Company believes the methodology it has used in its historical financial statements to value and amortize its below market lease liabilities (including consideration of whether the exercise of the related extension options is "reasonably assured") is proper for the reasons presented above.

Form 10-Q for the Period Ended March 31, 2015

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Non-GAAP Financial Measures, page 41

2. In future filings, please revise your reconciliation to identify the line item "FFO allocable to shareholders" as "FFO allocable to common shareholders." This comment also applies to your presentation in future earnings releases such as the release furnished as an exhibit to your Form 8-K filed May 7, 2015.

COMPANY RESPONSE:

In future filings, the Company will label the line item "FFO allocable to common shareholders" to more accurately describe the item.

3. We note your adjustment for NOI from Glimcher properties prior to the Merger. Please revise future periodic filings to quantitatively and qualitatively disclose how you arrived at that adjustment. Your revision should include, but not necessarily be limited to, how you derived the related revenues and expenses, how you derived any adjustments to historical revenues and expenses, and your basis for any such adjustments. Please provide us with an example of your proposed disclosure.

COMPANY RESPONSE:

In future filings, the Company will more thoroughly describe the adjustment to NOI reflected by the line item "Add: NOI from Glimcher properties prior to the Merger," disclosing quantitatively and qualitatively how it arrived at the adjustment. The adjustment consists of the historical revenues and expenses from the 23 properties acquired in the Merger with no adjustments to the historical amounts. This adjustment is deemed necessary in order to provide comparability in the NOI calculations across all periods presented. An example of the Company's proposed disclosure, to be included in a footnote to the NOI table (renumbering other footnotes as needed), is as follows:

"(2) Represents an adjustment to add the historical NOI amounts from the 23 properties acquired in the Merger for periods prior to the January 15, 2015 Merger date. This adjustment is included to provide comparability across all periods presented."

Form 8-K/A Filed March 17, 2015

4. We note you have accounted for the JV transaction in the pro forma financial information using the equity method of accounting. We further note that you will retain a 51% ownership interest in the joint venture, you will retain management and leasing responsibilities, and that major decisions require mutual consent of the joint venture partners. Please tell us how you determined it was not necessary to consolidate this entity. Your response should include, but not necessary be limited to, how you resolve disagreements involving major decisions.

COMPANY RESPONSE:

As disclosed in Note 2 to the audited financial statements in its Form 10-K for the year ended December 31, 2014 filed with the Commission on February 26, 2015, the Company's financial statements "reflect the consolidation of properties that are wholly owned or properties in which we own less than a 100% interest but that we control." Per Note 2, "we also consolidate a variable interest entity, or VIE, when we are determined to be the primary beneficiary."

In determining whether or not to consolidate the JV Properties (as defined in the above referenced Form 8-K/A), the Company first tested to determine if the JV Properties would qualify as VIE's. In reviewing this, the Company tested to determine whether the equity at risk was sufficient upon its sale on June 1, 2015 (the "Sale Date") of the 49% economic interest in the JV Properties to O'Connor Mall Partners, L.P ("O'Connor"). The Company notes the following items:

A. As of the Sale Date, the JV Properties had total equity (fair value) of approximately $884.0 million which was in excess of 50% of the book value of the assets, and book value materially approximates fair value since the assets had been recorded at fair value in connection with the Glimcher acquisition on January 15, 2015.

B. The loans encumbering the JV Properties owned by the JV are non-recourse and do not require guarantees of financial performance.

Based upon the factors above and other considerations, the Company determined that the JV's equity is sufficient to permit the entity to finance its activities without additional subordinated financial support.

With respect to ASC 810-10-15-14b and 14c, there are no provisions in the governing documents that would cause the equity holders as a group to lack any of the characteristics of a controlling financial interest. That is, the equity holders as a group make all of the decisions and are exposed to all of the risks and rewards of ownership based upon the economic interest within the JV. Accordingly, the Company determined that the JV is not a VIE.

The Company then tested to determine which, if any, member effectively controlled the JV. As described below, ASC 810 -25-1 discusses when it is appropriate to consolidate an entity:

"Consolidation is appropriate if a reporting entity has a controlling financial interest in another entity and a specific scope exception does not apply (see Section 810-10-15). The usual condition for a controlling financial interest is ownership of a majority voting interest, but in some circumstances control does not rest with the majority owner."

The Company, as disclosed in Note 2 to the audited financial statements referenced above, determines that "control of a property is demonstrated by, among other factors, our ability to refinance debt and sell the property without the consent of any other member or owner and the inability of any other member or owner to replace us." The following decision items, which include the Company's major criteria for determining control, are viewed as major decisions within the JV ("Major Decisions"):

- The approval of debt refinancing related to the properties.
- The approval of the sale of property.
- The approval of the removal or replacement of a member.
- The approval of the operating budgets, including general leasing parameters.
- The approval of the capital expenditure budget.
- The approval of the property marketing plans.
- The approval of major leases or other leases outside of the general parameters.

All of these Major Decisions require the unanimous consent of both the Company and the O'Connor member.

Also as noted, the Company, through one of its subsidiaries, is responsible for the operational management and leasing of the JV Properties through separate agreements. However, in its capacity as manager, the Company is strictly executing upon the strategic direction and operating parameters previously approved by the JV members unanimously. Under the terms of the JV and related property management agreements, the property manager is not permitted to operate (e.g., allow the properties to incur operating or capital expenditures, enter into leasing arrangements, etc.) the properties outside of the terms of the previously approved budgets, marketing plans and leasing parameters, without obtaining the consent of each of the JV members.

The agreements that govern the JV (the "JV Agreements") also provide a course of resolution for disagreements over Major Decisions, which requires both JV members, within set time frames, of a disagreement of a Major Decision, to negotiate in good faith. It further provides for escalating levels of management negotiations and extended timelines to negotiate in good faith. In the event no decision can be reached on certain operational Major Decisions, the JV Agreements provide for continued operation of the property or properties in accordance with the previous year's budgets. This feature of the JV Agreements strongly encourages the JV members to negotiate and mutually resolve their disagreements over such Major Decisions, because continued operation under the previous year's budget does not allow the property manager to adapt the operations of the properties to current market conditions, and thus provides an unsustainable approach to operating the properties in a manner that would allow the JV Properties to achieve their long-term strategic direction and maximize economic results. For non-operational Major Decisions, in the event an agreement cannot be reached, no action will be taken on a proposed Major Decision.

Therefore, since decisions over all of the criteria that the Company considers when determining whether financial control exists require unanimous consent with significant input from all JV members, the Company has concluded that joint control exists over the JV properties, precluding consolidation by the Company. The Company concluded, given its significant influence over the operations of the JV properties, that the equity method of accounting was the appropriate model to use within the pro forma financial information.

Additionally, the Company acknowledges the following:

- the Company is responsible for the adequacy and accuracy of the disclosures in the filing;

- Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and

- the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

If you have any questions or comments regarding the foregoing, or have additional questions or comments, please contact the undersigned at 614-887-5610.

Sincerely,

/s/ Mark E. Yale
Mark E. Yale
Executive Vice President and
Chief Financial Officer

cc: William Demarest

U.S. Securities and Exchange Commission

Securities Act of 1933
Rule 144

March 14, 2016

Response of the Office of International Corporate Finance
Division of Corporation Finance

Re: Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated
Incoming letter dated March 11, 2016

Based on the specific facts and representations in your letter, and without necessarily agreeing with your analysis, the Division's views are as follows. Capitalized terms have the same meanings as defined in your letter.

For purposes of Rule 144(d)(1) under the Securities Act of 1933, the holding period for the shares of REIT Common Stock issued in the transactions described in your letter commenced upon the acquisition of the OP Units. In reaching this conclusion, we note in particular your representations that the Unit Holders paid the full purchase price for the OP Units at the time they were acquired from the OP; an OP Unit is the economic equivalent of a share of REIT Common Stock, representing the same right to the same proportional interest in the same underlying pool of assets; the exchange of REIT Common Stock for OP Units is entirely at the discretion of the REIT; and no additional consideration is paid by the Unit Holders for the shares of REIT Common Stock.

Because this position is based upon the representations made in your letter, any different facts or conditions might require the Division to reach a different conclusion.

Sincerely,

David Fredrickson
Chief Counsel and Associate Director

Incoming Letter:

The Incoming Letter is in Acrobat format.

http://www.sec.gov/divisions/corpfin/cf-noaction/2016/bankofamerica-merrilllynch-pfs-031416-144.htm

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