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*44<sup>th</sup> Annual Meonske  
Professional Development  
Conference at Kent  
State University*

Regulations and You

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# *Division of enforcement*

- Whistleblower
- Retail Strategy Task Force
- Cyber Unit
- FCPA
- Select cases
  - Internal control over financial reporting
  - Revenues; Expenses
  - Contingencies
  - Auditor matters
  - Income taxes
  - Segments
  - Non-GAAP

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## ***Important countries***

Afghanistan, Algeria, Andorra, Angola, Armenia, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brunei, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, the Central African Republic, Chad, Mainland China, Comoros, Congo (Kinshasa), Congo (Brazzaville), Djibouti, Equatorial, Guinea, Eritrea, Ethiopia, Gabon, Guinea, Guinea-Bissau, Indonesia, Ivory Coast, Kazakhstan, Kosovo, Kuwait, Laos, Lebanon, Libya, Macedonia, Madagascar, Maldives, Mali, Marshall Islands, Mauritania, Micronesia, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Niger, Oman, Qatar, Russia, Rwanda, Samoa, São Tomé & Príncipe, Saudi Arabia, Senegal, Serbia, Somalia, Sudan, Syria, Togo, Tunisia, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vatican, Vietnam and Yemen.

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# *Division of corporation finance*

- Dodd-Frank reform
- Executive compensation – CEO Pay Ratio & Clawbacks
- Processing - IPOs and new registrants
- Rule 3-13 of Regulation S-X
- Financial reporting manual
- SAB 74
- Revenue recognition
- Cybersecurity
- Disclosure effectiveness project

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# *Revenue recognition*

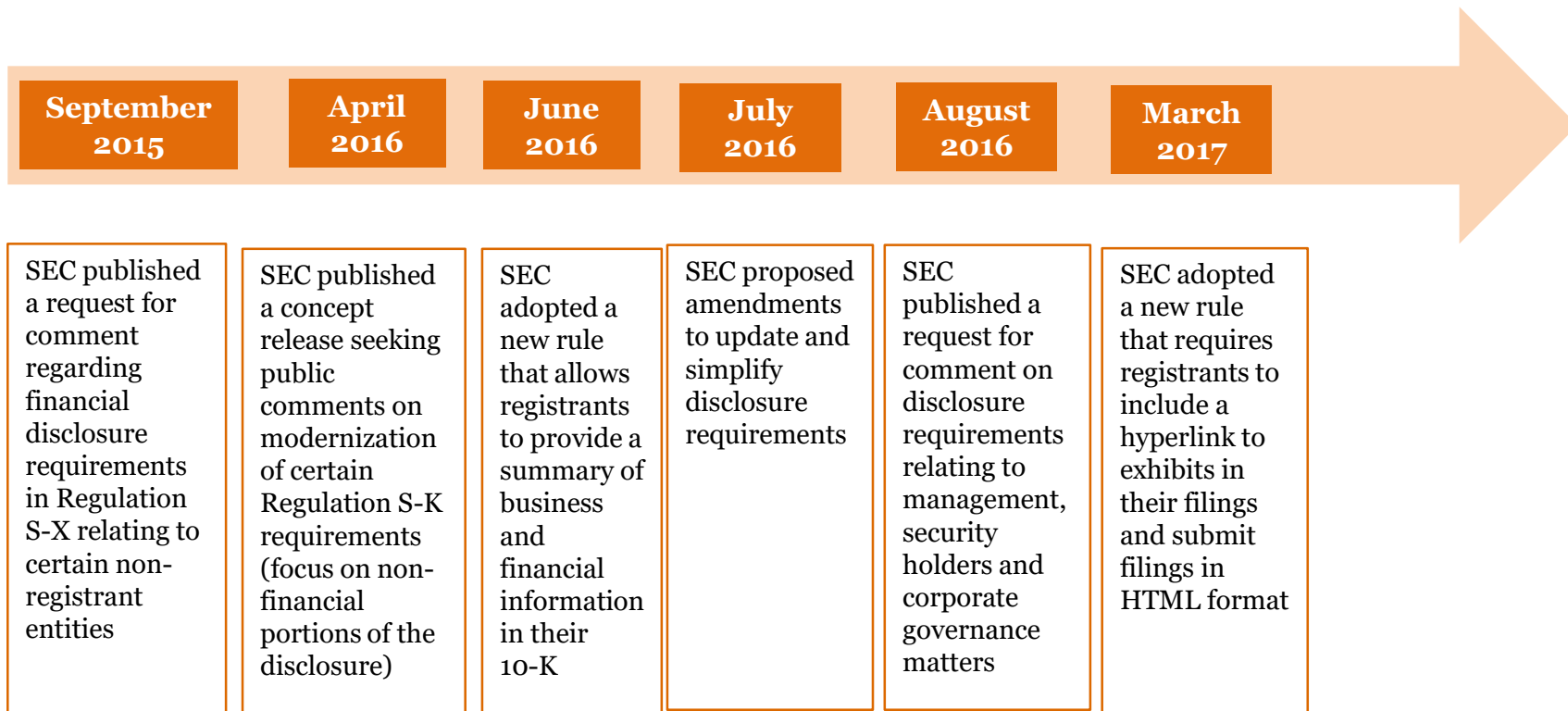
- ASC 606 disclosures in each quarter
- Selected financial data
- 3-05 and 3-09 financial statements
- Pro forma information
- Item 11(b) of Form S-3 – restatement for a change in accounting policy
- Staff's comments on the expected comment letter process
- Comment letters to date
- Companies considering IPOs in 2018 – non EGC

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# *Cybersecurity – Financial reporting release*

- Consistent with 2011 staff guidance
- Disclosure controls and procedures
- Insider trading
- Areas of disclosure
  - Risk factors
  - Description of business
  - MD&A
  - Legal proceedings
  - Financial statements
  - Board risk oversight

# Disclosure effectiveness



***Both the S-X and S-K releases intend to identify ways to improve effectiveness of disclosures and the presentation and delivery of material information as well as reduce duplication.***



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# *Reasons for not responding to an SEC Proposal*

1. Too busy – not enough time
2. Our lawyer expresses our views
3. Do not believe it will have impact on the final rule
4. Concern about possible criticism if we express our views
5. Drafted the letter, but the dog ate it

# *Commenting on SEC Proposals*



<https://www.financialexecutives.org/Research/Publications/2016/Do-Public-Comment-Letters-on-Proposed-SEC-Regulati.aspx>

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## ***Disclosure effectiveness five simple suggestions***

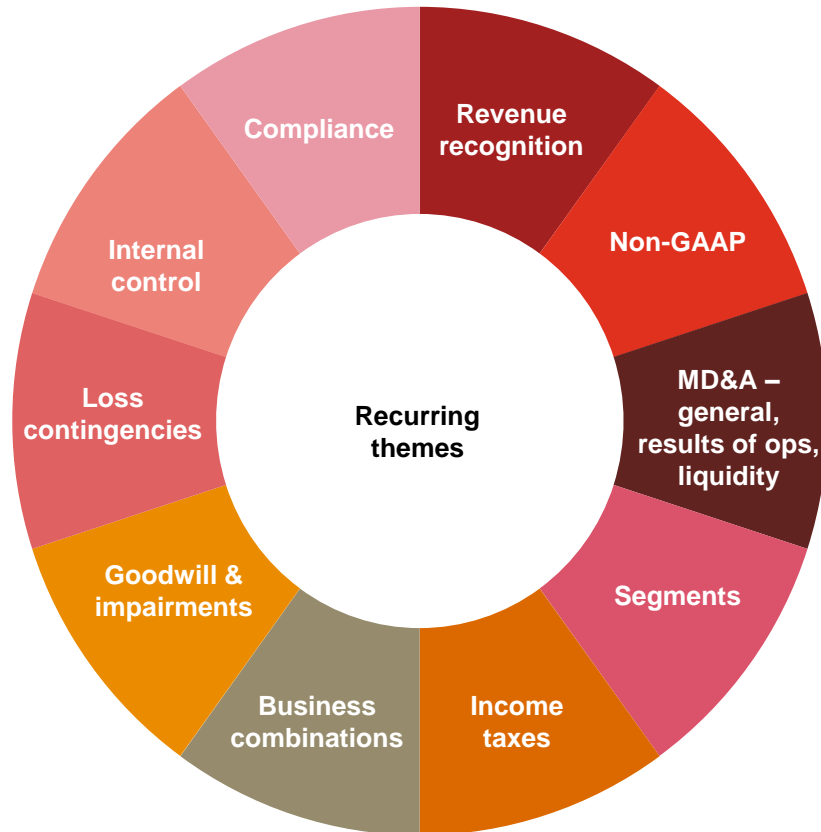
1. Use cross references when appropriate – eliminate unnecessary redundant information
2. Draft related topics to be complementary – not redundant
3. Eliminate risk factors that are not company or industry specific and enhance the disclosure of the important risks
4. Use charts and tables
5. Eliminate accounting policies that are not applicable and explain the policies in Plain English – eliminate references to standards and summaries of the standard

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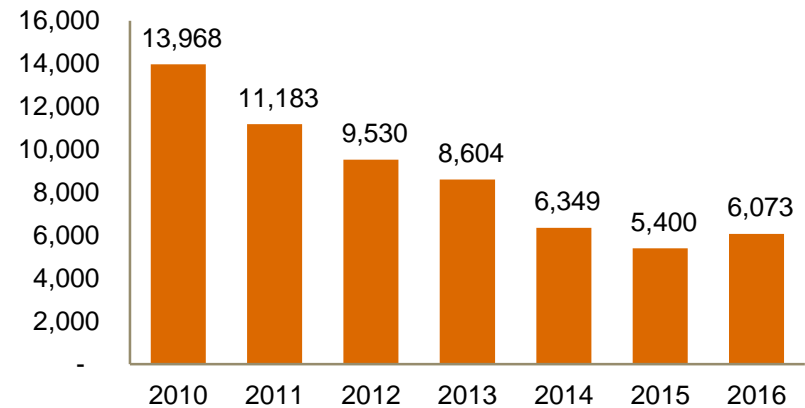
## *What does the staff look for during its review?*

- Compliance with GAAP
- Compliance with regulatory requirements
- Consistency within the document
- Consistency with other public information

# SEC Comment letter themes



Number of 10-K and 10-Q SEC comment letters by year of origination



2017 Comment letter trends

2017 Rank	Topic	2016 Rank
1	Non-GAAP	5
2	Compliance	3
3	MD & A	1
4	Revenue Recognition	2
5	Business Combination/Impairment	4

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# ***Compliance and disclosure interpretations***

## ***Non-GAAP – An update***

- 100.01 – Excluding normal recurring cash operating expenses
- 100.02 – Inconsistency between periods
- 100.03 – Excluding charges but not excluding gains
- 100.04 – Individually tailored recognition and measurement methods
- 102.03 – Describing a charge or gain as non-recurring, infrequent or unusual
- 102.05 – Liquidity measures presented per share
- 102.07 – Free cash flow
- 102.10 – Prominence
- 102.11 – Taxes
- 103.02 – EBIT or EBITDA performance measures most directly comparable GAAP measure

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## ***MD&A – Tips for drafting***

- Read Financial Reporting Releases 36 and 72 – codified in Financial Reporting Policy 501
- Present an executive summary
- Continuously ask and answer the question – **Why?**
- Quantify the factors that result in the change – do not just list
- Describe future implications to the business of impairments
- Use graphs and charts
- Liquidity – do not repeat cash flow statement
- Critical accounting estimates
  - Don't repeat information
  - Provide more analytical vs mechanical information
  - Provide impairment foreshadowing

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# ***Want to clear comment letters quickly?***

## ***Ten tips***

1. Do Not Rush in responding
2. Get input from your accountants and lawyers
3. Evaluate timing implications
4. Call the SEC Staff if you do not understand the question
5. Draft the response considering it will become public
6. DO NOT CUT and PASTE responses from other letters
7. Respond completely to the question
8. Provide technical support for the accounting/disclosure
9. Request the involvement of others on the SEC Staff when appropriate
10. What not to do on phone calls or e-mail communications



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# ***PCAOB***

- Form AP – Auditor Reporting of Certain Audit Participants
- Auditor’s reporting model
  - Auditor responsibility - fraud
  - Independence
  - Auditor tenure
  - Critical audit matters

