

The Art of Responding to Corp Fin Comments: What Not to Do

It's important to know what to do when dealing with SEC Staff comments on your filings. But it's just as important to know what not to do! Here are some pro tips to consider:

1. **Don't Rush the Process** - The comment letter will typically state that you have you 10 business days to respond to the comments. However, don't hesitate to ask the SEC Staff for additional time to respond if you need it.
2. **Don't Write Something in Response That You Don't Want the World to Know** - All responses to comment letters will eventually be made public. Poorly drafted responses, insufficient answers, and protracted exchanges with the SEC Staff on issues can lead to additional comments and reflect poorly on the company. It is almost always better to take the time to craft well thought-out responses rather than rush the process and respond with incomplete answers you would rather investors, employees and other stakeholders not see.
3. **Don't Forget That Promise to Make "Futures" Disclosure When You Make Subsequent Filings** - The Staff may ask for - or you may voluntarily provide - sample future disclosure as part of your responses to comments. Responses will also often include commitments to disclose particular information in the future. This can be a hard thing to manage, particularly if the key interface with the Staff in the process leaves the company. That's why it's important - prior to submitting your responses - you make sure your full SEC disclosure team is comfortable with any sample future disclosure and commitments. It can be embarrassing - and frustrating for the SEC Staff - to receive a future comment asking that you comply with your previous promise made in a prior comment response letter. It may be prudent to add your future disclosure commitments to a checklist or other disclosure control used in your 10-K and 10-Q filing process so they don't get lost over time or as part of turnover in your own key staffers.
4. **Don't Go Over a Staffer's Head if Your Instinct is Telling You Not to (And Vice Versa)** - Carefully consider when to appeal above the initial Staff reviewer's head. If no resolution can be achieved with respect to a particular comment - or if the company wants to press a policy argument - it may be necessary to move up the ladder of the SEC Staff reviewer hierarchy. Both the lawyers and the accountants that issued the comment letter have a tree of superiors to whom you can make an appeal. If a resolution can't be achieved in that first call or two, explain professionally to the initial reviewer that you would like to speak with the next level up the SEC food chain and ask if they would help to facilitate such conversation. If there is a policy argument or complicated issue, the initial Staff reviewer may well bring in their superiors on their own volition.

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