

In-House Corner: Corp Fin Comments

This feature of our blog is where our in-house readers share tips, anecdotes and thoughts about things that come up in their daily practice. This particular batch of thoughts is about handling comment letters sent by Corp Fin about corporate disclosures [feel free to ping me and share your thoughts – they will be posted anonymously or with attribution, whichever you desire]: 1. "Organize your comment letter response by including the full text of the staff comment then inserting the company's response – followed by the next comment and your response. This creates a response letter that is easy to follow for the SEC Staff, your auditors and executives without having to flip between the Staff comment letter and your response. Think about the intentions of the Staff comment and what the Staff may ask as a follow-up. In some situations, it may be wise to add additional information to close out the comment. Try to determine if the Staff comment can be answered by agreeing to include different/additional disclosure in future 10-Qs or 10-Ks and provide a sample of what the company intends to disclose. Some third parties will publish Staff comments from multiple issuers and identify hot topics. Also, after a period of time, both the Staff comments and the issuer's responses are posted on Edgar with the issuer's other Edgar filings. Sometimes it helps to review these hot topics and comments - and responses from your peer companies - to help identify the purpose of the comment as well as acceptable responses. If you really want a gold star from executives and your board, inform them of the hot topic comments from your peers and identify whether they apply to your company. In some cases, it may be a good idea to discuss these hot topic comments with your disclosure committee or board and tackle the issue in your disclosure before you receive a particular comment from the Staff." – Roland Kelly

2. "If you are replying to an SEC comment and you don't want the information public, make sure you comply with the SEC's rules and FOIA as needed." - Leslie Jones Doe

3. "I actually like comment letters. The comment letter response process is a great way to build affinity between the lawyers, the CFO and the accountants. It's also a good opportunity to engage with Corp Fin and understand what they are looking for in your disclosures." – Barbara Walters Doe

4. "Never fun, but no alternative but to deal with it. Read it. Read it again. Take a hard look at the specific disclosure that Corp Fin commented on. Was this a point about which you and colleagues struggled when writing that disclosure or is this comment a complete surprise? If the former, go back to your notes on that point. You may well have the start of your response to Corp Fin." – Gilligan "The Island" Doe

5. "You will need to manage communications within the company, with your auditor, and with the board about the Staff's comments (the Audit Committee will want to know about the comment letter and company response). Pull together your thoughts on for the response letter and potential responses to ensure that everyone is working off the same page. Be open to feedback and suggestions." – Mad Max Doe

6. "I'm not one whose first reaction is to call outside counsel. But when you receive an SEC comment letter, your outside counsel can be a great source of information and advice. They have a dataset greater than one; they have lots of clients who also are receiving comment letters. They can tell you if they're seeing the same comment going to their other clients – or if you're alone. They also have networks they can tap anonymously for an even broader sample. Outside counsel can sometimes make a call to Corp Fin to ask clarifying questions. All of these data points help you frame your response and future actions." – Beyonce Doe

7. "When I worked on the Staff, writing comments while reviewing a filing was real fun. The kind of fun you

run home to tell your kids about." – Sad Sack Doe

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