



LEGAL ALERT

June 4, 2010

The SEC Comment Letter Process And Your Response

The Sarbanes-Oxley Act charged the Securities & Exchange Commission (the "SEC") to review every public company's filings at least once every three years. In the past, many companies did not receive any comment letters, but the lack of SEC comment letters did not mean their filings were not reviewed.

Nevertheless, it seems the SEC has increasingly been sending comment letters to public companies. If management has never received a comment letter, it can seem like a daunting task. However, with proper planning, the process can be addressed timely and efficiently without unreasonable burden or distraction to your management and advisors. The following tips will help you better effectively navigate the comment letter process.

Call SEC Counsel. Upon receipt of an SEC comment letter, you should immediately contact us, your SEC counsel, to help guide you through the comment process. SEC counsel will also help advise management and its other advisors on a realistic but responsive timeline to respond to the comment letter.

Assemble Your Team. After your initial contact with SEC counsel, you should schedule a conference call including management, the auditors and SEC counsel. The purpose of the call is to establish the general strategy and timetable to respond to the letter, clarify and address any questions, and assign a responsible party to tackle each comment.

Meeting the Response Deadline. Although, SEC comment letters state that responses must be made within 10 business days from receipt of the letter, often the number or complexity of the comments require more time. The SEC encourages companies to contact the SEC staff if more time is needed. Usually, the staff will simply ask that a letter be submitted indicating the date by which the company will respond.

Responding in Sufficient Detail. When responding to a comment, avoid giving a terse or adversarial answer as to why a particular accounting treatment is proper even if you are correct. If the SEC staff finds the explanation insufficient, the staff will likely have additional follow up comments. Take time to give a comprehensive

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discussion of supporting authoritative accounting literature upon which the company is relying.

Communicate. If you need clarification on what the staffers are asking or looking for in a particular comment, pick up the phone. Although the SEC staff tries to keep comments as short as possible, sometimes it is difficult to succinctly explain a concept in full. A clear and concise telephone conversation can clarify what the SEC staff is seeking.

Confidential Information. If you must disclose confidential information in order to address a comment, you can request confidential treatment of that information. Although you will be able to file a redacted version of your comment letter response on Edgar, you will still be required to furnish the SEC staff a complete response.

At Bybel Rutledge, our attorneys are experienced in guiding our clients through the SEC comment letter process and the successful resolution of disclosure issues. If you have any questions, please contact either Nicholas Bybel, Jr. or Erik Gerhard at 717-731-1700 or by email at:

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