

SEC Comment Letter Trends: Smaller & Midsize Public Companies

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Our examination of 2021–2023 SEC comment letter trends among smaller and midsize public companies.

SEC Comment Letter Trends: 2021 Through 2023

The number of SEC comment letters received by smaller and midsize public companies for 2023 has increased more than two-and-a-half times compared to 2021. This is significantly greater than the comparable 3% decline for larger companies for the same years. Smaller and midsize public companies typically face different challenges than larger companies. **FORVIS** has investigated underlying comment letter trends and SEC focus areas to help CFOs and CAOs of these companies anticipate and respond to the financial reporting risks inherent with being a publicly traded company.

Changes in Smaller & Midsize Public Company SEC Comment Letters Between 2021 & 2023



Our Methodology

For our analysis, we have defined smaller and midsize public companies as those with a market capitalization of less than \$700 million. For SEC reporting purposes, those entities are typically classified as accelerated filers, non-accelerated filers, smaller reporting companies, and emerging growth companies.

Our comment letter trend information has been derived from our analysis of data obtained from Audit Analytics. The Audit Analytics data was filtered as follows:

- Registrants with market capitalization of less than \$700 million¹ (#footnote1)
- Letter type "UPLOAD"
- Referencing filings on Form 10-K, 10-K/A, 10-Q, and 10-Q/A² (#footnote2)
- Excluding the "closing letter" issued by the SEC communicating that a review is complete
- Letters issued during the 12 months ended October 31 of each respective year

Then the resulting comment letters were grouped using Audit Analytics' taxonomy for the statistics presented.

SEC Review Process

The SEC's Division of Corporation Finance and its staff hold the responsibility to review and provide feedback for filings made under the *Securities Act of 1933* and *Securities Exchange Act of 1934*. The *Sarbanes-Oxley Act of 2002*, Section 408, requires the SEC staff to review a registrant's filings at least once every three years. However, the nature and depth of the review is not specified in the law.

The SEC staff uses a risk-based approach to select periodic filings of registrants with the largest market capitalization for review more frequently. However, in the last two years, there has been a general increase in the volume of comment letters issued to smaller and midsize public filers, as evidenced by the trends noted above.

In its filing reviews, the SEC staff concentrates on critical disclosures that appear to conflict with SEC rules or applicable accounting standards and on disclosures that appear to be materially deficient in explanation or clarity. The SEC generally views the comment letter process as a dialogue with a registrant whereby the company will typically respond to any comments in a letter to the SEC staff and, based on the outcome of that process, amend its filing(s) if appropriate.

The SEC generally requests a response to their comments within 10 business days; however, more time may be requested if needed to respond sufficiently to the matters raised. A registrant's robust explanation or analysis of an issue often resolves a comment. If a company does not understand a comment or the SEC staff's purpose in issuing it, the SEC staff encourages a company to seek clarification from the examiner or staff member who approved the comment before responding. The names and phone numbers of the SEC staff members involved in that review are included in each comment letter. Depending on the nature of the issue and the registrant's response, the SEC staff may issue additional comments following its review of the response and any related amendments. Resolved comment letters are made public on the SEC's EDGAR system no sooner than 20 business days after the SEC has completed its review.

Frequent Comment Areas

Top SEC Comment Letter Topics for Smaller & Midsize Public Companies

Specific Area	2023			2022			2021	
	Rank	Count	Percent	Rank	Count	Percent	Rank	Count
Risk Factors	1	150	37%	2	129	31%	9(T)	10
Management Discussion & Analysis	2	99	24%	1	142	34%	1	59
Non-GAAP Measures	3	75	18%	3	94	23%	2	42
Acquisitions, Mergers, & Business Combinations	4	55	13%	4	60	14%	9(T)	10
Internal Control (404) Over Financial Reporting	5	49	12%	5	55	13%	4	21
Revenue Recognition	6	37	9%	8	34	8%	6	15

The table above presents important data to analyze regarding the upcoming filing season. This information shows the increased focus the SEC has placed on smaller and midsize issuers reviewed over the last two years. In addition, it shows that the primary areas of focus for comments have been those that relate not only to technical accounting and disclosure issues, but also those that require qualitative disclosure to readers either in a Form 10-K or a Form 10-Q. We have analyzed specific

considerations related to these comment letter topics to identify common pitfalls for registrants and have presented example comment letters issued this past year.

Collectively, these top six areas are present in 78% of all comment letters received by smaller and midsize public companies in 2023. Many of these areas of focus have been frequent areas of comment for several years as exhibited above, and we expect the SEC staff to continue to focus on these topics in the future.

SEC Disclosure Issues

SEC Comments on Risk Factors 

SEC Comments on Management Discussion
& Analysis (MD&A) 

SEC Comments on Non-GAAP Measures 

SEC Comments on Internal Control (404)
Over Financial Reporting Issues 

Accounting Rule Issues

In recent years, the landscape of technical accounting has seen significant changes from the FASB, which has driven an increase in disclosure requirements to ensure users of the financial statements have the information they need. There has been

significant focus on acquisitions, mergers, and business combinations, as well as a continued focus on revenue recognition standards and required disclosures. These two technical areas are leading drivers for comments related to accounting rule and disclosure-type issues.



Industry Focus: Banking & Financial Services

Looking ahead, certain public companies were required to adopt ASU 2016-13, *Financial Instruments – Credit Losses* (ASC 326) (CECL) during 2023. This standard, which changes the timing of recognition of credit losses and requires numerous expanded disclosures, significantly impacts companies in the [banking and financial services industries \(/industries/financial-services\)](/industries/financial-services) . SEC comment letters issued to accelerated filers and larger accelerated filers who adopted CECL in prior years have focused on the accounting changes and adequacy of disclosures required by ASC 2016-13. Similar SEC focus is anticipated for companies disclosing the impact of adoption for the first time in their 2023 Form 10-K filings. For further guidance related to the impact of this standard, see the [FORVIS CECL resources page \(/services/assurance/cecl\)](/services/assurance/cecl) .

SEC Comments on Business Combination
Accounting



SEC Comments on ASC 606, Revenue From
Contracts With Customers



How FORVIS Can Help Smaller & Midsize Public Companies

Although not all-inclusive, the SEC comment letter topics herein most often affect smaller and midsize registrants. Such registrants should consider consulting with accounting advisors and legal counsel to help enable continued compliance.

FORVIS works with hundreds of public companies as both [auditor \(/services/assurance\)](#) and [accounting and financial reporting advisor \(/services/consulting/cfo-business-advisory\)](#) . Our professionals have significant experience helping public companies navigate financial reporting challenges and resolve SEC comment letters. Connect with us today to learn more.

1 ([Footnote 1](#)) \$700 million for “larger companies.”

2 ([Footnote 2](#)) Comment letters on registration statements (Forms S-1, S-3, S-4, et cetera) were not included in our analysis.

3 ([Footnote 3](#)) Comments come from EDGAR at <https://www.sec.gov/edgar/searchedgar/companysearch> (<https://www.sec.gov/edgar/searchedgar/companysearch>) .

4 ([Footnote 4](#)) required for newly public companies in the first 10-K filed after the initial public registration statement is declared effective [Regulation S-K, Item 308, Instruction 1].

5 ([Footnote 5](#)) <https://www.sec.gov/files/rules/interp/2007/33-8810.pdf> (<https://www.sec.gov/files/rules/interp/2007/33-8810.pdf>) .