# 2025 SEC Annual Reporting Workshop

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# Writing an Effective MD&A

# Agenda

- **Purpose of MD&A**
- **Sections of MD&A**
- **Non-GAAP Financial Measures**
- **Practice Tips**
- **Appendix**
  - **SEC Enforcement Actions**
  - **Sample Comments**

# Purpose of MD&A

# Objective of MD&A

**Objective of MD&A now written into the rule (Item 303(a) of Reg S-K)**

- Provide material information relevant to an assessment of financial condition and results of operations
- Focus on material events and uncertainties known to management that are ***reasonably likely*** to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition
- Provide discussion and analysis of financial statements and other statistical data to enhance a reader's understanding of company's financial condition, cash flows and other changes in financial condition and results of operations

# Items to Consider When Drafting MD&A

- To enable investors to view company from management's perspective
- Discuss most important areas of focus in evaluating financial condition and results of operations as seen ***"through the eyes of management"***
- Provide context within which financial information should be analyzed
- Provide information about the quality of, and potential variability of, a company's earnings and cash, so that investors can ascertain the likelihood that past performance is indicative of future performance
- Discuss market dynamics company currently faces, describe underlying economics of the business, identify most relevant factors affecting business

# Principles-Based Disclosure

- Rooted in materiality
- Provides more flexibility than prescriptive-based rules
- Requires management to evaluate materiality or significance of information in context of overall business and financial condition of company
  - Looks to management to exercise judgment in satisfying objectives of the rules by providing appropriate disclosure when necessary

# Sections of MD&A

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# Reminder: 2020 Amendments to MD&A

- Applies to all companies
- Mostly reflected prior SEC guidance
- Codified MD&A objectives
- Permits companies to compare most recently completed quarter to the immediately preceding quarter, subject to certain conditions
- Eliminated the following tables, but any underlying trends should still be discussed in MD&A:
  - Five-year selected financials table
  - Eight quarters table unless material retrospective changes
  - Contractual obligations table
- Added explicit disclosure requirements for Critical Accounting Estimates
- Eliminated requirement to include separately-captioned Off-Balance Sheet Arrangements section but added new instruction for more principles-based approach to disclosure, if applicable.

# Sections of MD&A

- MD&A Overview
- Results of Operations
- Liquidity and Capital Resources
- Critical Accounting Estimates
- Non-GAAP Financial Measures

# MD&A Overview

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# MD&A Overview

- Start with executive-level overview that gives context for the rest of the MD&A

**Description of Business and Trends Impacting Business**

- Do not simply repeat the Business section of 10-K
- How does the company earn revenue and generate cash
- What are the company's reporting segments, principal lines of business and its products and services and where are its main operations located
- Material opportunities, challenges and risks

**Discussion of Industry and Trends Impacting the Industry**

- What macro-economic or external trends impact the company (*e.g.*, interest rates, economic conditions, tariffs, global conflicts, etc.)
- What industry-specific factors impact the company (*e.g.*, supply shortage)

**Recent Developments**

- Have there been any recent acquisitions/dispositions or other material events

# Known Trends and Uncertainties

- One of the principal objectives of MD&A is to allow readers to "ascertain the likelihood that past performance is indicative of future performance"
- Are there any known trends or uncertainties that have had or that are ***reasonably likely*** to have a material impact on results of operations
    - Reminder: 2020 amendments changed disclosure threshold from "reasonably expects will have" and "will cause" to lower threshold of "reasonably likely"
- Are there any known events that are reasonably likely to cause a material change in the relationship between costs and revenues (*e.g.*, future increases in costs of labor or materials or price increases or inventory adjustments)

# Forward-Looking Statement Safe Harbor

- Because of requirement to discuss known trends and uncertainties in MD&A, it is critical to include the forward-looking statement safe-harbor in the 10-Q and to tailor it appropriately
- Forward-looking statements (identified by use of future tense and words such as expect, anticipate, intend, plan, believe, seek, estimate, aim, should) are protected by the SEC safe harbor rules if they are (i) identified as forward-looking statements and (ii) accompanied by "meaningful cautionary statements" identifying factors that could cause actual results to vary

# Key Performance Indicators

- Key performance indicators, including non-financial performance indicators, that management uses to manage the business must be accompanied by:
  - Disclosure containing a clear definition of each metric and how it is calculated
  - Statement indicating the reasons why the metric provides useful information to investors
  - Statement indicating how management uses the metric in managing or monitoring the performance of the business
- Companies should also consider whether there are estimates and assumptions underlying the metric or its calculation and whether disclosure of such items is necessary for the metric not to be materially misleading

# Key Performance Indicators

- Examples include: same store sales; net customer additions; average revenue per user
- If company changes method of calculation or presentation, company should consider the need to disclose, to the extent material:
  - The differences in the way the metric is calculated or presented compared to prior periods
  - The reasons for such changes
  - The effects of any such change on the amounts or other information being disclosed and on amounts or other information previously reported
  - Such other differences in methodology and results that would reasonably be expected to be relevant to an understanding of the company's performance or prospects

# Results of Operations

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# Requirements for Results of Operations

- Describe material increases and decreases in financial line items from period to period, with analysis of each contributing factor, identified and quantified to the extent necessary to an understanding of such change
  - Reminder: For the quarterly report (10-Q), you may now compare sequential quarters instead of against prior year quarter, as a result of 2020 MD&A amendments
- Where material changes within a line item offset one another, describe the ***underlying reasons (not just causes)*** for these material changes in quantitative and qualitative terms
- If in company's judgment, a discussion of segment information and/or subdivisions (*e.g.*, geographic areas, product lines) is necessary to an understanding of the business, discuss each segment and/or subdivision

# Material Changes in Line Items

- If there are material changes in net sales or revenue, are changes due to price, volume or mix (introduction of new products or services)
- If there are material changes in other line items (*e.g.*, cost of sales, SG&A), discuss each contributing factor if necessary to understand the change
- Are there any unusual or infrequent/non-recurring events or transactions
- While SEC amendments to MD&A eliminated requirement to disclose impact of inflation, is it an underlying reason for material changes in line items?

# Liquidity & Capital Resources

# Requirements for Liquidity & Capital Resources

- Describe sources and uses for liquidity
  - Sources, such as cash on hand, cash from operations, revolving credit facilities, access to capital markets
  - Uses, such as debt service, working capital needs, capital expenditures
- Analyze the company’s short-term (the next 12 months) and long-term (beyond next 12 months) cash requirements
- Discuss material cash requirements from known contractual and other obligations, with type of obligation and relevant time period for related cash requirements
  - 2020 SEC amendments eliminated contractual obligations table, but some issuers still elect to include

# Requirements for Liquidity & Capital Resources

- Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in company's liquidity increasing or decreasing materially and if there is a material deficiency, how the company has or intends to remedy the deficiency (*e.g.*, obtaining new financing)
  - Examples include material pending litigation, inability to access capital markets
- Discuss external debt financings, if any, which would generally include a discussion of restrictive covenants, financial ratios and maintenance covenants, covenant compliance)

# Cash Flows Analysis

- Include analysis of operating, investing and financing cash flows
- Can discuss each period separately rather than changes from period to period
- Describe underlying reasons for and primary drivers of cash flows for applicable periods
- Discuss how those changes may influence future cash flows

# Critical Accounting Estimates

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# Summarizing Critical Accounting Estimates in MD&A

- Defined as “those estimates made in accordance with generally accepted accounting principles that involve a significant level of ***estimation uncertainty*** and have had or are reasonably likely to have a material impact on the company’s financial condition and results of operations”
- Companies should provide qualitative and quantitative information including:
  - Why each critical accounting estimate is subject to uncertainty; and
  - ***To the extent the information is material and reasonably available:***
    - How much each estimate and/or assumption has changed over a relevant period; and
    - The sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation (*e.g.*, impact of one percent increase in allowance for doubtful accounts as a percentage of net revenue)

# Summarizing Critical Accounting Estimates in MD&A

- Discussion should supplement but not duplicate the description of significant accounting policies in the notes to the financial statements
- Include in discussion:
  - Description of estimates:
    - How estimates are applied and arrived at, *e.g.*, how goodwill is tested, how frequently tested and methodology of testing; what uncertainties are involved in judgment/estimate; which line items would be impacted if actual results vary from estimates
  - Historical experience:
    - Disclose historical accuracy of estimates and assumptions; significant variance in actual results and estimates

# Non-GAAP Financial Measures

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# Definition of Non-GAAP Financial Measure

- A non-GAAP financial measure is a numerical measure of historical or future performance, financial position or cash flows that either:
  - Excludes (or adjusts) amounts included in the most comparable GAAP measure; or
  - Includes (or adjusts) amounts excluded from the most comparable GAAP measure
- Examples of non-GAAP measures include: EBITDA and Adjusted EBITDA; free cash flow; constant currency; ratios where a non-GAAP financial measure is the numerator or denominator (*e.g.*, adjusted earnings per share)

# Requirements for SEC Filings

- Whenever a non-GAAP financial measure is presented in an SEC filing, there should also be the following:
  - Presentation with equal or greater prominence of most directly comparable GAAP measure
  - Reconciliation to the most directly comparable GAAP measure
  - Statement of reasons why management believes the non-GAAP presentation is useful
  - Statement disclosing additional purposes, if any for which management uses the non-GAAP measure

# 2022 Updated SEC Guidance on Non-GAAP Financial Measures

- In December 2022, the SEC updated their CD&Is regarding non-GAAP financial measures.
- The amended CD&Is primarily relate to what the staff considers to be "misleading"
- Presenting a non-GAAP performance measure that "excludes normal, recurring, cash operating expenses necessary to operate a registrant's business" can be misleading
  - "Recurring" can refer to an operating expense that occurs "occasionally, including at irregular intervals"
- Adjustments to a GAAP measure that have the effect of changing the recognition and measurement principles required under GAAP would be considered "individually tailored" and may cause the presentation of the non-GAAP measure to be misleading
  - SEC specifically focuses on revenue recognition adjustments, such as accelerating revenue that is required to be recognized ratably over time under GAAP or presenting a net revenue number when GAAP requires a gross revenue number
- Failing to appropriately label a metric as non-GAAP and clearly describing the adjustments can be misleading.
- Presenting an income statement of non-GAAP measures can be viewed to be a more prominent presentation than comparable GAAP measures

# Practice Tips

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# Disclosure Consistency

- **Beyond the four corners of SEC reports**
  - Earnings release & call
  - Press releases
  - Management statements during investor conferences
  - Analyst reports and news articles
  - Company website, blogs, tweets and other social media outlets
  - ESG reports
- SEC's stated objective is to assess *consistency* of filed and non-filed communications, along with market perceptions of those communications, with view toward determining whether *all required material information* has been disclosed in *SEC-mandated documents*

# Other Practice Tips

- The big picture
- Factual back-up
- Balanced disclosure
- Review prior guidance
- Review disclosure from peer companies and competitors
- SEC comment letters

# More Practice Tips

## Focus on analysis

- Include the "why" and not just the "what"
- Think about aspects of business that are discussed in management meetings
- Present historical changes to provide insight into what may change going forward

## Layering

- Present most significant information from management's perspective first (including executive summaries) with additional supporting detail provided after

## Bullet points or tables instead of lengthy text

- *E.g.*, charts and graphs to disclose changes in key measures (revenues and margins)

## Plain English instead of boilerplate and accounting terminology

# Appendix

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# Enforcement Actions and Liability

- **Examples of Enforcement Actions under the Exchange Act**
  - Release No. 88234, *In the Matter of DIAGEO plc*, February 19, 2020: "Diageo did not disclose [its subsidiaries] overshipments versus demand and the resulting distributor inventory levels; the positive impact those trends had on organic net sales and organic profit growth, and the negative impact they were reasonably likely to have on future sales; and the fact that they caused Diageo's and [its subsidiaries] reported financial information to not be indicative of future operating results or financial condition."
  - Litigation Release No. 21065, June 1, 2009, *SEC v. Charles C. Conaway and John T. McDonald*: "[Parties] failed to disclose the reasons for a massive inventory overbuy in the summer of 2001 and the impact it had on [Kmart's] liquidity."

# Enforcement Actions and Liability (cont.)

- **Other examples of Enforcement Actions under the Exchange Act (cont.)**
  - Release No. 90060, September 30, 2020, *In the Matter of HP Inc.*: "HP failed to disclose the known trend of increased quarter-end discounting leading to margin erosion and an increase in channel inventory, and the unfavorable impact that the trend would have on HP's sales and income from continuing operations, causing HP's reported results to not necessarily be indicative of its future operating results."
  - Release No. 91741, May 3, 2021, *In the Matter of Under Armour, Inc.*: "As a result of Under Armour's failure to disclose the impact of its pull forward practice on revenue growth, Under Armour's public statements were materially misleading. In particular, throughout the [applicable period], Under Armour made positive statements regarding its revenue growth rate and the factors contributing to the revenue growth rate, without disclosing the significant impact on revenue from its use of pull forwards."

# Enforcement Actions and Liability (cont.)

- **Other examples of Enforcement Actions under the Exchange Act (cont.)**
  - Release No. 86971, September 16, 2019, *In the Matter of Marvel Technology Group, Ltd.:* "Marvell used pull-ins to mask declining sales and markets, a trend, event, or uncertainty that was known to Marvell and was reasonably likely to have material effects on the registrant's financial condition or results of operations. Contrary to the requirements of Regulation S-K, Marvell failed to disclose the material impact of this known trend, event, or uncertainty on current and future revenues within its required MD&A sections…."
  - Release No. 80947, June 15, 2017, *In the Matter of Eric W. Kirchner and Richard G. Rodick*: "…..UTi's Form 10-Q, which was signed and certified by both then-Chief Executive Officer Eric W. Kirchner and then Chief Financial Officer Richard G. Rodick, did not include adequate information in the Management's Discussion & Analysis ("MD&A") section to allow investors and others to meaningfully assess UTi's financial condition and results of operations, particularly as to UTi's future prospects."

# Enforcement Actions and Liability (cont.)

- **Other examples of Enforcement Actions under the Exchange Act (cont.)**
  - Release No. 90565, December 4, 2020, *In the Matter of The Cheesecake Factory Incorporated*: "In mid-March 2020, Cheesecake Factory faced an unprecedented challenge to its business arising from the impact of the COVID-19 pandemic. In that context, the company issued several disclosures regarding the effect of, and its response to, the pandemic….certain of those disclosures failed to adequately inform investors of the extent of COVID-19's impact on the company's operations and financial condition in the period of late-March through mid-April 2020, when the company obtained additional financing."

# Enforcement Actions and Liability (cont.)

- **Other examples of Enforcement Actions under the Exchange Act (cont.)**
  - Release No. 51565, *In the Matter of The Coca-Cola Company*, April 18, 2005: "MD&A requires companies to provide investors with the truth behind the numbers. Coca-Cola misled investors by failing to disclose end of period practices that impacted the company's likely future operating results."
  - Release No. 4035, August 5, 1998, *In the Matter of Sony Corporation and Sumio Sano*: "Sony failed to disclose the extent to which net losses attributable to a subsidiary (Sony Pictures) were reflected in the bottom line. Sony reported the favorable box office and sales figures … but failed to discuss a 'known' [unfavorable] trend."

# Enforcement Actions and Liability (cont.)

- Indiana Public Retirement System v. SAIC, Inc. (2d Cir. 2016) (*Leidos*)
  - Held that companies could face *expansive liability* under Section 10(b) of the Exchange Act and Rule 10b-5 under the Exchange Act for omitting trends and uncertainties required under Item 303.
  - Supreme Court granted certiorari, but in October 2017, the case was removed because the company and investors settled the dispute.
  - The ruling puts significant pressure on this analysis, lest companies expose themselves to *private actions* under Rule 10b-5 and would *increase costs* while arguably replacing meaningful disclosure aimed at allowing management to focus the disclosure on matters that are most important to the company.

# Sample SEC Comments: Non-GAAP Measures

- You disclose non-GAAP measures without presenting the comparable GAAP measures with equal or greater prominence. Please ensure any discussion regarding non-GAAP measures is preceded by an equal or more prominent discussion of the comparable GAAP measure.
- Please include a reconciliation of core earnings that begins with the most directly comparable GAAP measure. Your revised reconciliation should provide disaggregated disclosure of all the adjustments necessary to arrive at core earnings from the most directly comparable GAAP measure.
- We refer to your presentation of Gross Sales throughout your filing and note it is not a measure recognized under GAAP. Please help us understand:
    - What Gross Sales represents. For example, tell us if this amount represents the amount invoiced to your customers, the full retail price of your products or some other value
    - How you considered Item 10(e) of Regulation S-K and Regulation G
    - How you analyze trends in Gross Sales, aside from the changes based on overall selling price versus changes in units shipped
    - How Gross Sales is useful to investors given that gross sales may not be realized in the form of cash receipts due to Sales Allowances

# Sample SEC Comments: Non-GAAP Measures (cont.)

- Your current disclosure discusses management's use, but not how the presentation of the measure is useful to investors. Please revise your disclosure to include a discussion of investor's use of these measures. Excluding amortization of acquired intangible assets may result in non-GAAP measures that are based on individually tailored accounting principles. Please tell us how you considered Question 100.04 of the non-GAAP C&DIs and why you believe these measures are useful to investors.
- We note your disclosure of adjusted diluted earnings per share excludes the provision for credit losses, a normal and recurring charge for your business. Please revise future filings to refrain from disclosing performance measures that exclude the provision for credit losses. See 100.01 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.
- Please modify your presentation to reconcile your non-GAAP measures to the most directly comparable GAAP measure. For example, your measure "four wall retail gross margin" should be reconciled to GAAP gross profit, and "four wall retail EBITDA" should be reconciled to net loss. Refer to Item 10(e)(1)(i) of Regulation S-K and Question 103.02 of the "Non-GAAP Financial Measures" Compliance & Disclosure Interpretations.

# Sample SEC Comments: Key Performance Indicators

- We note in your earnings calls that you discuss net revenue per client and inventory turnover. If these metrics are used by management to manage the business, and promote an understanding of the company's operating performance, they should be identified as key performance indicators and discussed pursuant to Instruction 1 of paragraph 303(a) or Regulation S-K and Section III.B.1 of SEC Release No. 33-8350. Please tell us your consideration of disclosing these metrics, or other key performance indicators used.
- You state that the volume of customers with annual recurring revenue has been increasing by a certain number over the past three fiscal years. Please tell us how this information provides investors with information regarding the growth of your company for each period presented. To add context to this information, please disclose your actual customer count for each period presented as well as the percentage of revenue generated from the customers with annual recurring revenue.

# Sample SEC Comments: Trends and Uncertainties

- We note your disclosures regarding the tariff on imports that could adversely affect your costs, supply or have other material adverse impacts on your business. When considering the requirements of Item 303(a)(3)(ii) of Regulation S-K, please tell us how you concluded you did not need to describe trends or uncertainties related to these tariffs that have had or that you reasonably expect will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations, or any material changes in the relationship between costs and revenues.
- On your earnings call, you indicated that you currently anticipate the subsequent quarter revenue to be down as much as 50% with a significant portion of your global business having been closed since early April. Revise your future periodic filings to disclose known trends and uncertainties related to COVID-19. For example, disclose how you expect COVID-19 to impact your future operating results and near- and long-term financial condition and how that compares to the current period. See Item 303 of Regulation S-K, SEC Release No. 33-8350, and CF Disclosure Guidance Topic No. 9.

# Sample SEC Comments: Trends and Uncertainties (cont.)

- Discuss any known trends and uncertainties that you reasonably expect to materially impact your operating results, such as your declines in consumer revenue, so that investors can better assess the extent to which past results are indicative of future results.
- Please revise your disclosure in your MD&A to describe with greater specificity and quantify the impact of COVID-19 on your operations, as well as update your disclosure regarding known trends and uncertainties that have had or likely will have a material impact on your business and results of operations as a result of COVID-19. In this regard, we note the content of Note 16, Subsequent Events, on page F-35. Please refer to CF Disclosure Guidance: Topic No. 9 for further guidance.
- Please expand your discussion of your results of operations to describe any known trends or uncertainties that have had or that the company's management reasonably expects will have a material impact on revenues or loss from operations. For example, in light of your dependence on your two largest customers, please discuss and analyze all known trends and uncertainties resulting from your dependence on these customers for substantially all of your revenues. If applicable, discuss to what extent management intends to rely upon these two customers for future revenue growth.

# Sample SEC Comments: Results of Operations

- Where a material change is attributed to two or more factors, including any offsetting factors, the contribution of each identified factor should be described in quantified terms. For example, you disclose revenue growth is primarily attributable to contributions from new service centers, increased sales of advisory services, service fee increase and acquisitions, but do not quantify these factors. Please consider quantifying the factors in tabular form with the remaining written narrative focused on analyzing the reasons for such changes. In addition, please avoid vague terms such as "primarily" or "partially offset." Refer to Item 303(a)(3)(iii) of Regulation S-K and Section III.D of SEC Release No. 33-6835.
- In regard to your profit and gross profit margin, you disclose the changes were due to lower revenue and continued growth. Please provide greater details regarding the factors contributing to these changes. Please include separate discussions on a consolidated and segment basis the changes in your cost of revenues. To the extent that materially offsetting amounts do not result in net material period-over-period changes, please separately disclose, quantify and discuss the impacts on a gross basis. Please refer to Item 303(a)(3) of Regulation S-K and Section III.F.1 of SEC Release 33-6835.
- Please tell us the extent to which each change in revenue for product sales was due to volume versus price. Please explain your consideration of disclosing this information in your filing.

# Sample SEC Comments: Results of Operations (cont.)

- You attribute the increase in revenue, in part, to the increase in the number of direct sold and programmatic impressions on your owned and operated properties. Please tell us what impact impressions from other third-party platforms had on revenue and to the extent material, revise to include a quantified discussion of such impact. If you continue to refer to only the increase in impressions on your owned and operated properties, revise to disclose the percentage change in Time Spent on your owned and operated properties for a balanced comparison.
- Your disclose on page 41 that the decrease in the effective tax rate in fiscal 2020 was primarily driven by income tax benefits associated with stock-based compensation. However, foreign tax rate differentials, contribution and margin-based taxes and Other items also had a material impact on your effective tax rate for 2020 based on your disclosures in Note 16. Please discuss and analyze changes in your effective tax rate and any material items that are not expected to recur. Please refer to Item 303 of Regulation S-K.

# Sample SEC Comments: Liquidity and Capital Resources

- Please quantify and more fully disclose and discuss your short and long term liquidity requirements and priorities, including potential changes in your priorities based on the impact of changes in the amount of cash available to the post-merger company due to the amount of cash redemptions by shareholders.
- We note from disclosures provided elsewhere in the document you expect to make additional capital expenditures and incur substantial costs as you prepare to launch sales of your product, and that your capital expenditures will continue to be significant in the foreseeable future as you expand your business. In this regard, please revise your liquidity and capital resources section to discuss any material commitments for capital expenditures, the general purpose of any commitments and how these commitments will be funded and material trends in your capital resources, including expected changes in the mix and their relative costs. Refer to Item 303(a)(2) of Regulation S-K.
- Please revise here to disclose the maturity date for each of the loans and debentures outstanding as of each period end. Also, revise MD&A to include a discussion regarding the impact of all outstanding debt on your liquidity and capital resources and address how you intend to repay such debt, particularly amounts that are currently past their maturity. Refer to Item 303(a) of Regulation S-K.

# Sample SEC Comments: Liquidity and Capital Resources (cont.)

- We note that you recently entered into a series agreement with your lenders to extend a significant portion of your near-term debt maturities and to stabilize collateral requirements for your existing surety bond portfolio. Separately, you recently indicated on the earnings call that you may be at risk of breaching a key financial covenant. Please disclose whether you are in compliance with all financial covenants and address the actual or reasonably likely effects of compliance or noncompliance with the financial covenants on your financial condition and liquidity. Refer to section IV.C. of SEC Interpretive Release No. 33-8350.
- We note that you raised capital in financing transactions and had significant negative cash flows from operations for both the fiscal years presented end. Please expand your Liquidity and Capital Resources section to identify any material liquidity deficiencies. Address any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in liquidity increasing or decreasing in any material way. Your discussion should analyze your ability to meet your liquidity needs both on a long-term and short-term basis. Also, tell us how you considered the going concern guidance in ASC 205-40. Provide us with your proposed future disclosure.

# Sample SEC Comments: Critical Accounting Estimates

- We note your disclosure which refers the reader to the Notes to the Consolidated Financial Statements for information regarding the recognition of revenue. Please revise future critical accounting estimates disclosures to provide insight into the judgments that are made in your revenue recognition process. The accounting estimate disclosures are designed to supplement the description of accounting policies in the notes to the financial statements and provide greater insight into the quality and variability of information regarding financial condition and operating performance. Typical disclosures discuss the types of assumptions underlying the most significant and subjective estimates, provide a sensitivity analysis of those assumptions to deviations of actual results, and disclose the circumstances that have resulted in revised assumptions in the past. As an example, we note that significant judgment is used in determining total contract cost for revenue that is recorded over time using the cost-to-cost method.
- The disclosures of your critical accounting policies and estimates appear to be more descriptive of the accounting policies utilized, rather than any specific uncertainties underlying your estimates. Please revise your disclosures to address the material implications of the uncertainties that are associated with the methods, assumptions and estimates underlying your critical accounting estimates. For example, but not limited to your disclosure related to asset impairments, you state that recoverability of assets to be held and used is measured by comparing the carrying amount of an asset or asset group to future undiscounted cash flows expected to be generated by the asset or asset group. Such estimates are based on certain assumptions, which are subject to uncertainty and may materially differ from actual results. Revise to provide additional information describing the methods through which the information underlying these key assumptions is determined. Your expanded disclosure throughout the Critical Accounting Policies and Estimates section should address the risk related to using different assumptions and analyze their sensitivity to change based on outcomes that are deemed reasonably likely to occur. For additional guidance, refer to Section V of SEC Release No. 33-8350.

# Sample SEC Comments: Plain English

- We note your response to our prior comment three. You state that food cost as a percentage of sales benefitted from reducing food waste by adhering more closely to standard recipes. You state that in future filings you will explain references to "leveraging our theoretical food cost system" this way. Because your investors' understanding of your results is aided by plain English disclosures that avoid jargon, we encourage you to avoid including and then explaining jargon and instead simply provide the plain English explanation of what occurred. Please revise as appropriate.
- To make it more understandable to the average reader, please consider describing in lay terms what you mean by "…we leveraged our buying and occupancy costs of sales growth" when discussing the changes in gross profit. If you are trying to convey the fact that sales growth minimizes buying and occupancy expense growth, indicate so in plain English.
- Your discussion of consolidated results here as well as your discussion of results on a segmented basis beginning on page 31 is dense, and could potentially benefit from tabular disclosure of the items currently discussed in narrative form. Please consider revising your presentation of changes in each major income statement caption to tabular format accompanied by footnote explanation as necessary for clarity.