

# 45th Annual Meonske Professional Development Conference at Kent State University

## Regulations and You

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# Division of Enforcement

- Whistleblower
- FCPA
- Individuals vs corporations
- Remedies other than penalties
- Select cases
  - Internal control over financial reporting - continued material weaknesses
  - Internal controls and other errors
  - Non GAAP – prominence
  - Digital assets
  - Cybersecurity
  - Not revising forecasted information
  - Negative publicity – impact to the company

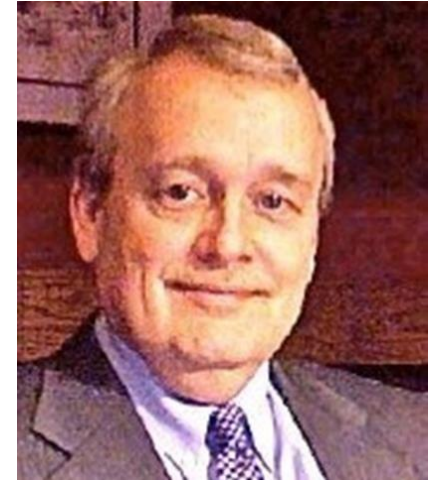
# What do these three individuals have in common?



**Brian Block**



**Ed DiMaria**



**Michael Kipp**

# Division of Corporation Finance

- Processing - IPOs and new registrants
- Rule 3-13 of Regulation S-X
- Financial reporting manual
- Risk factors
- Rules
  - Concept releases
  - Proposals
  - Adopted rules
  - Possible future proposals
- Disclosure effectiveness
- Comments

# Risk factors

- Rule
  - [A] discussion of the most significant factors that make the offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply to any issuer or any offering.
- Practice
- Suggestions
- Emerging issues
  - Brexit
  - LIBOR
  - Cybersecurity

# Frequency of reporting

- On August 17, President Trump made a statement indicating that, based on discussions with business leaders, he had asked the SEC to consider changing the quarterly reporting requirements for public companies to a “six month system”
- In response, on the same day, Chairman Jay Clayton issued a statement indicating that the President had touched on a key consideration for companies and investors, and that the SEC’s Division of Corporation Finance continues to study reporting requirements, including the frequency of reporting
- On December 18, 2018, the SEC issued a Request for Comment on the nature and content of quarterly reports and earnings releases in the near future

# Expanded smaller reporting company definition

- Under the amended definition, a registrant must meet one of the following tests to be an SRC:
  - Public float of less than \$250 million as of the last business day of the second fiscal quarter (previously \$75 million), or
  - No public float or public float of less than \$700 million **and** annual revenues of less than \$100 million in the most recently completed fiscal year (previously only applied to companies with no public float and a threshold of \$50 million in revenue)
- Effective September 2018
- Definition of an accelerated filer remains unchanged – possible proposal



# Guarantors and Collateralizations

- Guarantors are considered issuers of securities
- Existing reporting requirements
  - Guarantors
  - Collateralizations
- Challenges with the existing requirements
- Continued reporting even after registration has been suspended.

# Guarantors and Collateralizations – Proposal

- Concepts
- Level of detail
- 100% owned
- Timing of disclosure
- Location of disclosure
- Periods to present
- Method of excluding non obligated subsidiaries
- Disclosure of other material information
- Recent acquisitions
- Continuous reporting obligation

# Disclosure update and Simplification

- The amendments eliminate:
  - Redundant and duplicative requirements;
  - Overlapping requirements;
  - Outdated requirements; and
  - Superseded requirements
- Eliminate ratio of earnings to fixed charges
- The amendments add a requirement to include an analysis of changes in stockholders' equity for the current and comparative quarter and year-to-date interim periods
- Certain overlapping items were referred to the FASB to evaluate whether such incremental SEC required disclosures should be incorporated into GAAP
- Demonstration version – Reg. Text

# Amendments to Regulation S-K

- MD&A – exclusion of discussion of the 3rd year
- MD&A – increased flexibility in presenting information
- Facilitate the process for confidential treatment
- Certain disclosures are only required if material
- Prohibition of incorporating or cross referencing information outside of the financial statements to be included as part of the financial statements unless required by rules or accounting standards

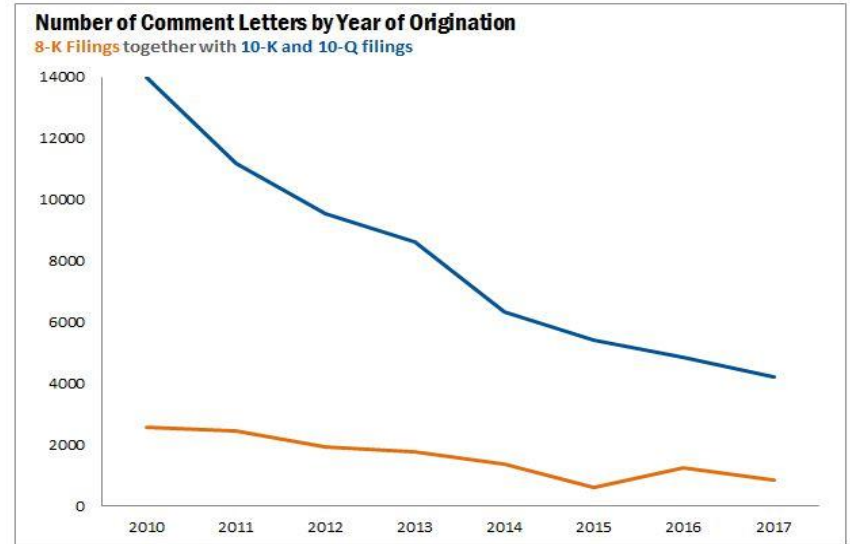
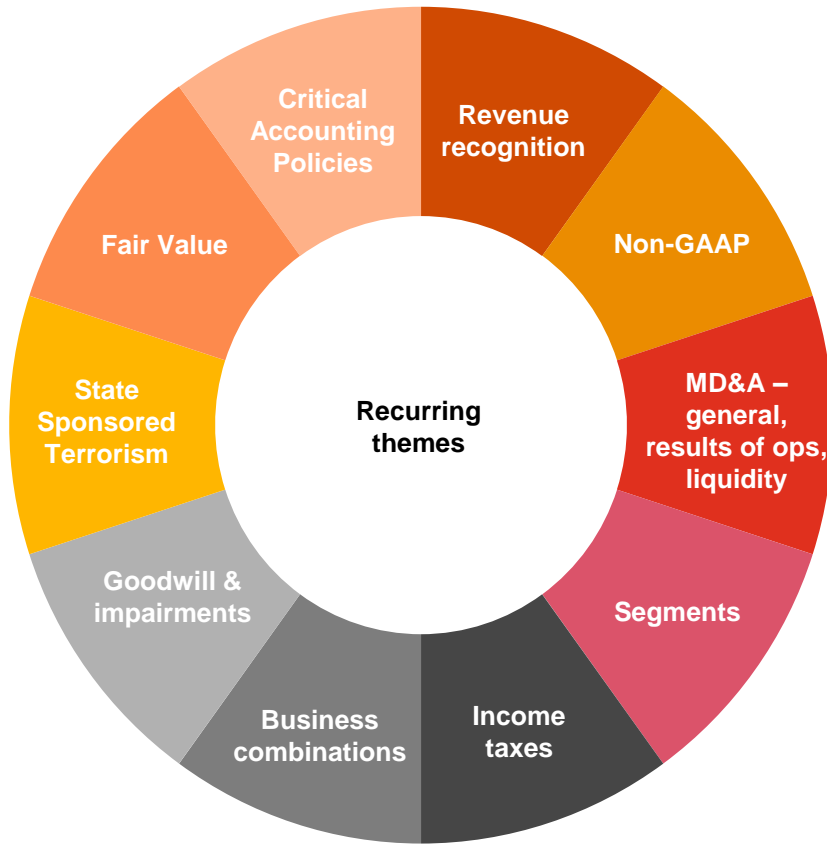
# Commenting on SEC Proposals

“Some companies may not comment because they fear their views may be criticized or viewed negatively by other market participants, and the cost of such possible criticism exceeds the benefit of responding.”

**Wayne Carnall**

Interview: Do Public Comment letters on Proposed SEC Regulations Matter -  
Financial Executives Research Foundation.

# SEC comment letter themes



# Non GAAP compliance – Suggestions

- Read the SEC Staff interpretations – C&DIs.
- Clearly explain why the information is useful to investors – what does the metric convey that GAAP does not
- Avoid the pitfalls –
  - Semantics
  - Prominence
  - Individually tailored accounting principles
  - Performance vs liquidity
- Determining adjustments
  - Identification
  - Controls
- Role of the disclosure committee and audit committee

# PCAOB Leadership

## Board members

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**William D. Duhnke III**  
Chairman

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**Kathleen M. Hamm**



**J. Robert Brown Jr.**



**James G. Kaiser**



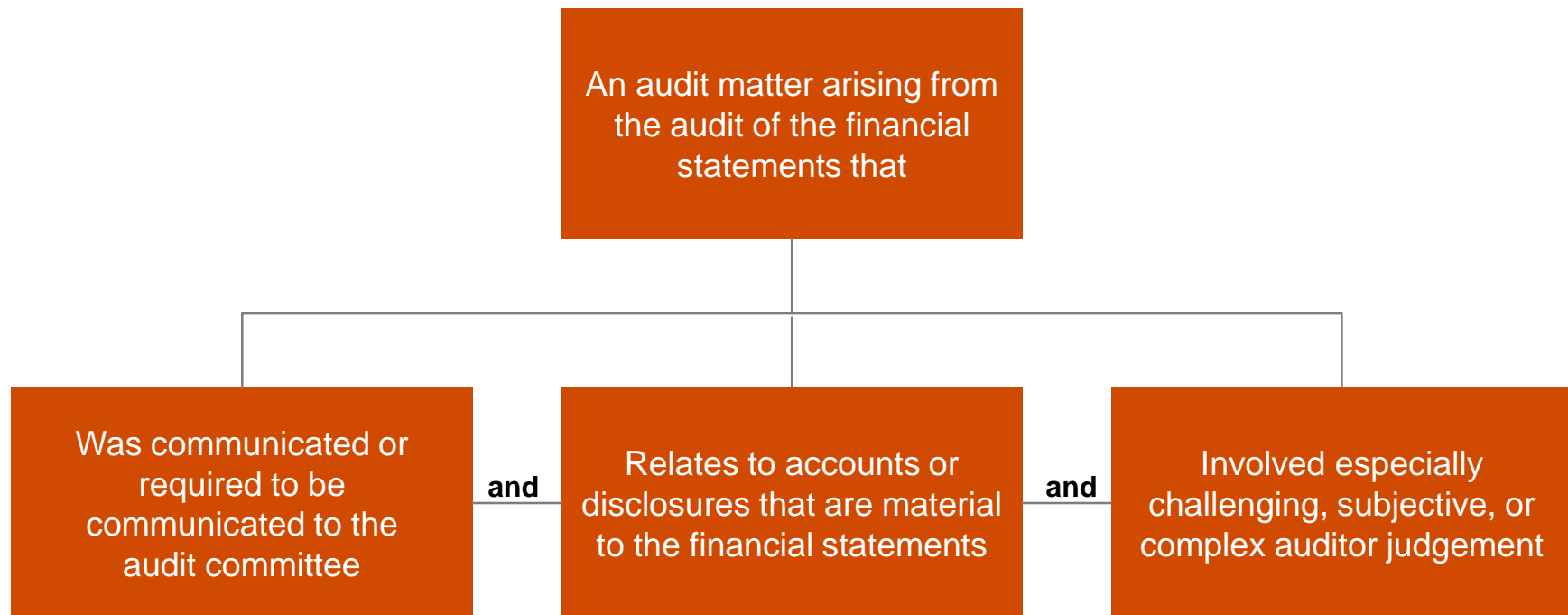
**Duane M. DesParte**

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# Auditor reporting – Communication of critical audit matters

## Definition of a CAM



# Thank you

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