

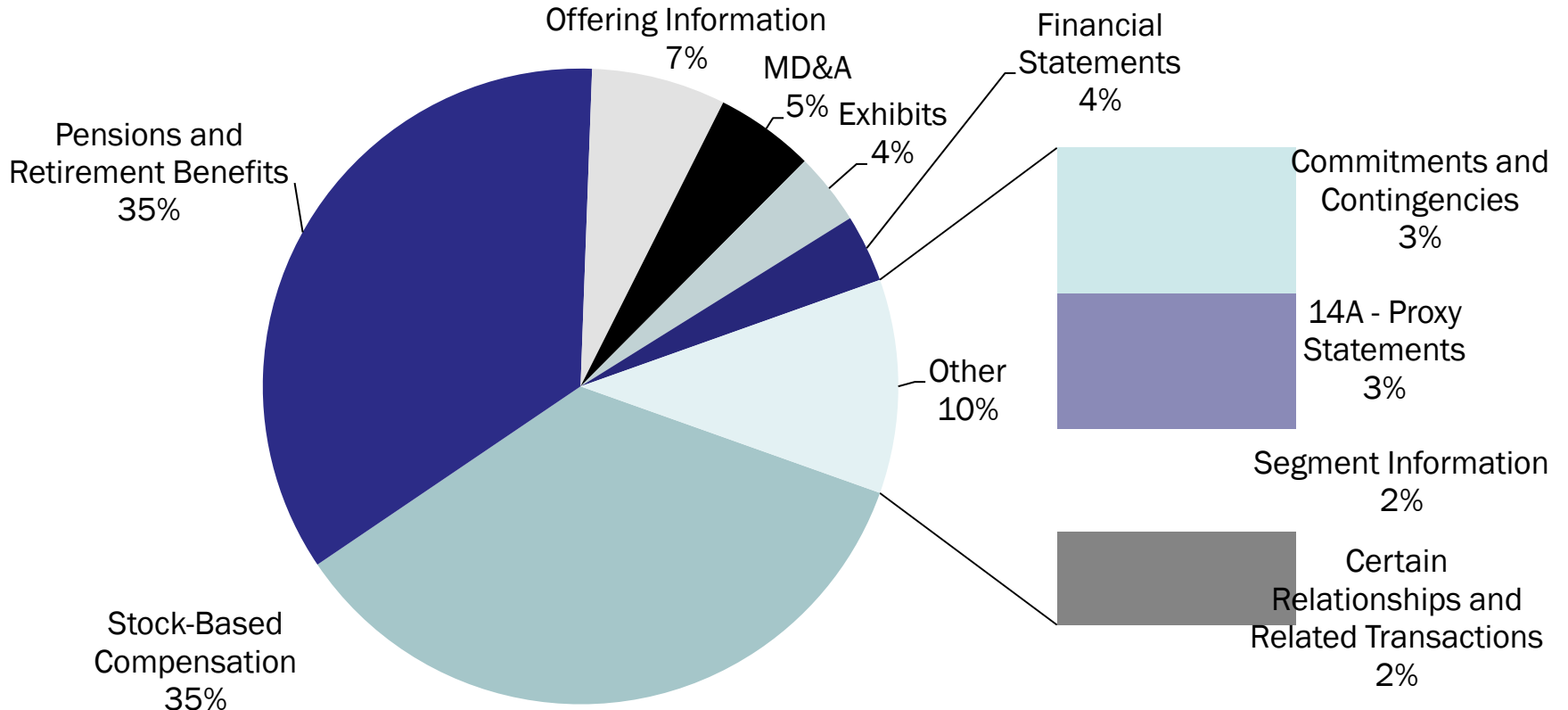
Comment Letter Trends

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SEC Staff Comment Letter Trends

Top Ten Comment Letter Topics



*Information Courtesy of Intelligize.com Search Conducted 9/3/2013

SEC Staff “Hot” Topics

- **Stock Compensation in MD&A**
 - Concerns about disclosures being too lengthy and not used by investors
 - SEC wants disclosure of important assumptions - companies should ask “are we telling our story in the most clear and concise manner?” (Example: If older information not useful to investors, remove in next amendment)

- **Contingency Disclosures**
 - Loss contingency accounting/disclosure very subjective - the SEC interested in specific facts/circumstances; disclosure should be updated in each period - not just carried forward from prior filings
 - Disclosure of reserve? Disclosure of reasonably possible loss in excess of reserve?

SEC Staff “Hot” Topics

■ MD&A

- Focus on materiality when drafting MD&A; eliminate disclosure that is unnecessarily lengthy, confusing, or an obstacle to understanding material information
- SEC looks beyond four corners of annual report in evaluating MD&A; consider discussing material information that is conveyed elsewhere (in earnings releases, analyst calls, etc.)
- Take a fresh look when drafting; what was said in a prior year might not be appropriate in the present year, particularly for purposes of analysis
- Repatriation comments in liquidity section

SEC Staff “Hot” Topics

■ Cyber-Security

- Companies should continue thinking about whether disclosure is adequate; this will be a priority topic for the SEC in reviewing 10-Ks
- SEC does not expect roadmap for future attacks; focus on material risks posed by weaknesses
- Don't forget MD&A disclosure - if potential material effect on business, expect to see disclosure in MD&A
- Materiality is a key here - if SEC reads about attack in press but not in filings, SEC may ask for a materiality analysis

SEC Staff “Hot” Topics

■ Non-GAAP Metrics

- Staff continues to comment on reconciliations on non-GAAP income statement; Issuers encouraged not to exclude marketing expenses in non-GAAP numbers
- Employee benefits non-GAAP measures; SEC wants clear labeling of these items and clear explanation (i.e., what does the adjustment represent?)

■ Key Metrics in Analyzing a Business

- SEC comment: should be clear to investors what the metric means; discuss potential problems with calculating metrics and consider whether risk factor disclosure is necessary
- If there is a prominent discussion of metrics early in document, but no discussion of how it relates to operations, SEC may ask about this (example: does a decline in a metric indicate a decline in operating revenues?); tie these metrics to traditional financial statement information