



CAQ Alert #2009-53 – May 26, 2009

DEAR CENTER MEMBERS

TIME SENSITIVE ISSUES FROM CAQ SEC REGULATIONS COMMITTEE MEETING WITH SEC STAFF

Filing Registration Statements after Adoption of Statement 160, FSP APB 14-1 and FSP EITF 03-6-1

The [Securities and Exchange Commission](#) (SEC or the Commission) staff has recently shared with the CAQ SEC Regulations Committee (Committee) its views regarding how the first quarter adoption of [FASB Statement No. 160](#), *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB 51* (Statement 160), [FASB Staff Position \(FSP\) APB 14-1](#), *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*, and [FSP EITF 03-6-1](#), *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, should be considered when filing a registration statement on Form S-3 that incorporates the most recent annual report on Form 10-K in addition to financial statements for an interim period that includes the date of adoption. [Item 11\(b\) of Form S-3](#) requires the inclusion of restated financial statements when there has been a change in accounting principles that requires a material retroactive restatement of financial statements.

Because each of these new pronouncements requires retrospective application in financial statements for earlier periods, questions have arisen regarding the financial statement requirements in a company's SEC registration statements that may become effective following the filing of a company's first Form 10-Q reflecting their adoption.

Statement 160

Statement 160 changes the way noncontrolling interests (previously referred to as minority interests) are presented throughout the financial statements. Statement 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Although the application of Statement 160's measurement and recognition criteria are to be implemented prospectively, paragraph 5 of the Statement provides that the *presentation and disclosure* requirements be applied retrospectively for all financial periods presented. The SEC

staff has indicated that once a company has adopted Statement 160 and has filed interim financial statements for a period that includes the date of adoption, Item 11(b) of Form S-3 would require a registrant to recast its prior period annual financial statements that are incorporated by reference into a registration statement to reflect a material retrospective application of Statement 160.

FSP EITF 03-6-1

FSP EITF 03-6-1 provides that unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of Earnings per Share (EPS) pursuant to the two-class method described in paragraphs 60 and 61 of [FASB Statement 128](#), *Earnings per Share*. This FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those years. As adopted, FSP EITF 03-6-1 requires that all prior-period EPS data presented be adjusted retrospectively (including interim financial statements, summaries of earnings, and selected financial data) to conform to the provisions of the FSP. With respect to registration statements after the registrant has filed interim financial statements for a period that includes the date of adoption of the FSP, the SEC staff will allow a registrant to follow the guidance that was outlined in the Committee meeting highlights of [September 13, 2004](#) with respect to the issuance of EITF 03-6. Under this accommodation, a registration statement is not necessarily required to include or incorporate by reference revised financial statements reflecting the adoption of FSP EITF 03-6-1. Instead, if the registrant and its registered independent public accounting firm conclude that the financial statements being incorporated by reference do not require revision as a result of the application of FSP EITF 03-6-1, and the independent auditor consents to the use of its report without such revision, the registrant may disclose EPS revised for FSP EITF 03-6-1 in the selected financial data included in the registration statement, or in a Form 10-Q or Form 8-K incorporated by reference. Under the accommodation, the SEC staff expects full, robust disclosure regarding the implications of FSP EITF 03-6-1.

FSP APB 14-1

FSP APB 14-1 addresses the accounting for convertible debt instruments that, by their terms, may be settled in cash or other assets upon conversion, including partial cash settlement. The FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. As adopted, FSP APB 14-1 requires retrospective application to all periods presented for instruments within its scope that were outstanding during any of the periods that will be presented in the annual financial statements for the period of adoption. The SEC staff has indicated that once a company has adopted FSP APB 14-1 and has filed interim financial statements for a period that includes the date of adoption, Item 11(b) of Form S-3 would require a registrant to recast its prior period annual financial statements that are incorporated by reference into a registration statement to reflect a material retrospective application of FSP APB 14-1.

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CAQ Summary of Accounting Pronouncements Effective in 2009,
May 5, 2009

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