

SEC Regulations Committee
April 17, 2007 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

Discussion Document G

Topic: Balance Sheet Updating Requirements Relating to the Non-Public General Partner of a Public Limited Partnership

Issue: When is a public limited partnership required to provide an updated balance sheet for its non-public general partner (in connection with a transactional filing)?

Background: The Division of Corporation Finance Accounting Disclosure Rules and Practices Training Manual requires the inclusion of an audited annual balance sheet for the general partner (whether public or non-public) in transactional filings of a limited partnership. The Training Manual indicates that the audited balance sheet should be as of the end of the most recent fiscal year.

The guidance also indicates that if there has been a fundamental change in the general partner's financial condition such balance sheet should be updated. In any event, the balance sheet of a non-public general partner should be no more than six months old. The updated balance sheet may be included on an unaudited basis.

Question 1: If the transactional filing is made within 90 days of the non-public general partner's year end, is the general partner required to update their audited balance for their most recently completed fiscal year?

View A: No. Since the general partner is a non-public entity, the general partner is not required to include an audited balance sheet as of their most recently completed fiscal year. The general partner would not be required to provide an audited balance sheet unless the transaction filing is made more than 90 days after general partner's the fiscal year end (in accordance with Rule 3-01(i)(1)(iii) of Regulation S-X).

View B: It depends. The general partner should look to the limited partnership-registrant's eligibility under Rule 3-01(c) of Regulation S-X to determine whether the general partner's balance sheet needs to be updated. If the registrant would be required to update its financial statements under Rule 3-01(c), then the general partner must update their balance sheet if the filing is made more than 45 days after the general partner's year end.

View C: No. As long as the general partner's balance sheet is no more than 6 months old, the general partner is not required to provide an updated balance sheet (audited or unaudited). Accordingly, the transaction filing could be completed using the unaudited balance sheet of the general partner for September 30, October 31 or November 30.

Committee Recommendation: The Committee supports View C. The Committee believes the general partner's balance sheet would not need to be updated to include an audited balance sheet for the most recently completed fiscal year as long as the balance sheet could be updated based on unaudited periods for the preceding fiscal year.

SEC Staff Response: The staff supports View C. The staff also notes that for continuous or shelf offerings, the balance sheet of the general partner should be updated as required by Section 10(a)(3) of the Securities Act and whenever the registrant files a post-effective amendment in accordance with Item 512(a)(1) of Regulation S-K.

Question 2: How should registrants apply the requirement that the balance sheet of the non-public general partner be no more than 6 months old? That is, if a public limited partnership

is preparing a transactional filing to be filed on July 2, 2007, is the registrant required to include the general partner's balance sheet for an interim period in addition to the audited general partner's balance sheet as of 12/31/06?

View A: The general partner's balance sheet would not need to be updated until the December 31, 2006 balance sheet is more than 6 months and 45 days old (i.e., a calendar year-end non-public general partner's audited balance sheet would not need to be updated past December 31, 2006 unless the transaction filing were made after August 14, 2007).

View B: Since 6 months have passed as of June 30, 2007, the general partner's balance sheet must be updated on an unaudited basis.

Committee Recommendation: The Committee supports View B.

SEC Staff Response: The staff supports View B.

Question 3: Is the general partner's balance sheet required to be updated in connection with a draw-down off an existing shelf?

View A: In connection with a draw-down off an existing shelf registration, the limited partnership may revise the prospectus to reflect the terms of the offering and any other changes in a prospectus supplement, except that the limited partnership is required to file a post-effective amendment if there has been a fundamental change in a general partner's financial condition and include its updated balance sheet reflecting such change. Otherwise, the balance sheet does not need to be updated.

View B: Since there may be situations in which investors may be influenced by the general partner's balance sheet, the general partner's balance sheet should be updated to be no more than six months old (i.e., consistent with a new registration statement).

Committee Recommendation: The Committee supports View A. The Committee believes the general partner's balance sheet should only be required to be updated (in connection with a prospectus supplement) when there has been a fundamental change.

SEC Staff Response: The staff supports View A and notes that a public limited partnership should file a post effective amendment to its shelf registration statement to update the prospectus as required by Section 10(a)(3) of the Securities Act.