

**SEC Regulations Committee**  
**April 9, 2008 - Joint Meeting with SEC Staff**  
**SEC Offices – Washington DC**

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**Document C – Amended as of June 9, 2008**

**Topic: Pro Forma MD&As**

**Issue:** In some situations a registrant may include in its MD&A a supplemental discussion of pro forma operating results. This discussion document addresses (a) the periods for which a registrant may present a pro forma MD&A and (b) the pro forma income statements registrants should present in filings that contain a pro forma MD&A.

**Background:** In his speech at the 2007 AICPA National Conference on Current SEC and PCAOB Developments, Steven Jacobs of the SEC staff discussed the presentation of pro forma MD&As, i.e., supplemental discussions based on pro forma operating results.

He discussed the periods for which it would be appropriate to present a pro forma MD&A, stating:

A discussion based upon pro forma financial statements should only be prepared for the fiscal year preceding the date of the transaction and subsequent interim period. However, we would not object to a pro forma for the comparative interim period if appropriate to facilitate the comparison. It would be acceptable to then carry this supplemental discussion to subsequent periodic reports in which it may still be relevant. Once the effects of the transaction are reported in historical financial statements for a full year, then the MD&A should be based upon the historical financial statements only from that point forward.

He also discussed the need to present pro forma income statements when a pro forma MD&A is presented, stating:

Disclosure should be provided to explain how the pro forma presentation was derived, why management believes the presentation to be useful, and any potential risks associated with using such a presentation. Typically the presentation of a complete set of pro forma financial statements (in other words, one that reflects the adjustments) will be necessary in order to facilitate an understanding of the basis of the information being discussed unless those same statements are already included in the filing.

Rule 11-02(c)(2)(i) of Regulation S-X states:

Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the most recent fiscal year end to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed

statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

The Staff Training Manual states (Topic THREE.II.C.1):

Pro forma presentation should be based on the latest fiscal year and interim period included in the filing, unless the transaction is already reflected in those historical statements for 12 months. Unless the pro forma information gives effect to one of the two items below, a pro forma income statement should not be presented for more than one complete fiscal year. In addition to the required latest fiscal year and interim period, the staff will not object to a registrant providing a pro forma income statement for the corresponding prior interim period.

The Staff Training Manual also states (Topic THREE.II.C.2.b):

The staff generally objects to retroactive pro forma presentation of transactions for periods other than the latest year and interim period except in the circumstances described here. In some cases, retroactive presentations of revenues and costs of revenues may be meaningful for discussion of trends in MD&A, but more comprehensive presentations (through operating income, for example) can be misleading because they cannot meaningfully or accurately depict what operating results would have been had the transaction occurred at the earlier date.

Paragraphs 67-68 of FASB Statement 141R, *Business Combinations*, require disclosures that are consistent with the objectives of MD&A, i.e., to “enable[ ] users of [ ] financial statements to evaluate the nature and financial effect of a business combination.” Specifically, paragraph 68.r requires an acquirer to disclose pro forma income statement information for the year of the acquisition and the prior year. In addition, paragraph 73 states, “If the specific disclosures required by this Statement and other GAAP do not meet the objectives set out in paragraphs 67 and 71, the acquirer shall disclose whatever additional information is necessary to meet those objectives.”

**Question 1:** For what periods may a registrant present a pro forma MD&A?

**Discussion:** Consider the example of a registrant with a calendar year end that consummated a very large business combination (or other event that significantly affects the comparability of its financial statements, such as a succession or applying push down or fresh start accounting) on June 30, 2007.

**A) 2007 Form 10-K:**

We understand that in the 2007 Form 10-K, it would be acceptable to provide a supplemental discussion comparing the pro forma results for 2007 to the pro forma results for 2006. We also understand that a discussion of 2005 pro forma revenues and costs of revenues would be acceptable if it is necessary to provide a meaningful discussion of trends.

If necessary to evaluate the nature and financial effect of a business combination, the Committee believes it should also be acceptable to provide a more comprehensive discussion of 2005 pro forma income statement amounts.

Would the SEC staff object to providing a more comprehensive discussion of 2005 pro forma income statement amounts in the 2007 Form 10-K?

**SEC Staff Response:**

The staff believes that in determining the pro forma amounts, the company would normally follow the guidance of Article 11 of Regulation S-X.

In addition, if the company wants to present pro forma information for purposes of discussion in the MD&A, the staff believes that sufficient information should be disclosed to allow a reader to understand the differences between the historical and pro forma amounts for the periods presented. This may be done in a format consistent with Article 11 of Regulation S-X. Other formats may also be appropriate depending on the particular facts and circumstances.

For the reasons that Article 11 of Regulation S-X prohibits disclosing pro forma information for 2005, the staff would expect companies to not provide pro forma information in the MD&A for 2005 in more detail than revenues and costs of revenues. If a company believes in its unique situation that the presentation in a greater level of detail is necessary to understand the implications of the transaction, the company is encouraged to discuss the issue with the staff prior to filing.

The staff noted that such analysis should supplement, but not replace an analysis of the historical financial statements included in the filing. The staff also noted that it was not clear that the supplemental MD&A proposed would provide meaningful incremental information in all cases where a change in basis has occurred, such as in the case of fresh start accounting. Therefore, a determination as to whether a discussion of the historical financial statements should be supplemented by a discussion based on Article 11 pro forma information should take into consideration all of the facts and circumstances surrounding the transaction, the nature of the pro forma adjustments to be made and the overall meaningfulness of any such supplemental pro forma discussion.

**B) 2008 Form 10-K:**

We understand that it would be acceptable to repeat the supplemental comparison of the 2007 and 2006 pro forma results in the 2008 Form 10-K. It is not clear to us whether the SEC staff believes it would be acceptable to provide a supplemental comparison of those same 2007 pro forma results to the 2008 historical results. We believe the additional supplemental analysis may be beneficial to investors and should be permitted.

Would the SEC staff object to providing a supplemental comparison of those same 2007 pro forma results to the 2008 historical results in the 2008 Form 10-K?

**SEC Staff Response:**

No, the SEC staff would not object to providing a supplemental comparison of 2008 historical results to 2007 pro forma results.

The discussion ascribed a view to the staff that 2006 and 2007 pro forma income statements **should** be presented in the 2007 10-K. The staff clarified their view that narrative and/or quantitative pro forma information should be presented to the extent necessary to facilitate an understanding of the pro forma analysis presented.