

SEC Regulations Committee
July 8, 2008 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

Discussion Document H

Topic: Article 11 pro forma information transitioning to Statement 141R

Question 1:

Should Article 11 pro forma financial information prepared during the remainder of 2008 for an acquisition that will close in 2009 reflect (a) Statement 141R accounting to be applied upon consummation or (b) Statement 141 accounting that is applicable at the time the proformas are filed?

View A

Pro forma financial information should present the expected impact of a transaction or event on a registrant's financial statements. Pro forma financial information included in a proxy or registration statement filed in 2008 for a business combination to be completed after the beginning of the first annual reporting period beginning on or after December 15, 2008 (i.e., January 1, 2009 for a calendar year-end company) should reflect application of Statement 141R because that is the standard that will be used to account for the acquisition in the registrant's financial statements. To ensure investors understand how the pro formas have been prepared, the notes to the pro forma financial statements should include disclosures of the accounting model used. This presentation is most useful to investors.

View B

Pro forma financial information included in a proxy or registration statement filed in 2008 for a business combination to be completed after the beginning of the first annual reporting period beginning on or after December 15, 2008 should reflect the standard applicable to business combinations (Statement 141) at the time the proformas are filed and should not reflect application of Statement 141R because that standard is not yet in effect and early adoption is not permitted. SAB 74 disclosure supplemental to the Article 11 pro forma information is the appropriate manner to disclose the impact of the adoption of Statement 141R on the financial statements.

Question 2:

After the adoption of Statement 141R in 2009, what pro forma presentation would be appropriate for an acquisition?

Response:

The following updates the guidance related to the transition for Statements 141 and 142 that was provided by the staff at the October 2001 meeting -

Combinations completed before the first annual period beginning on or after December 15, 2008 – Registrants should not retroactively apply the new accounting standards to combinations completed before January 1, 2009 (for calendar year registrants). Therefore, pro forma financial statements reflecting such combinations should present their effects in accordance with FAS 141 and 142.

Combinations completed after the beginning of the first annual reporting period beginning on or after December 15, 2008 – The historical financial statements for the period in which the business combination is consummated will reflect these combinations in accordance with Statements 141R and 142. Because paragraph 68 of Statement 141R includes a requirement for pro forma presentation for the comparable prior annual reporting period, the pro forma financial statements for all periods presented should reflect the accounting that will be applied. Therefore, the pro forma financial statements should also reflect these combinations in accordance with Statements 141R and 142.

Example 1:

A business combination is consummated on June 1, 2009 and an automatic registration statement is filed on June 15, 2009. Under Article 11, the most recent fiscal year's financial statements for a calendar year registrant would be the year ended December 31, 2008 and the most recent interim period would be the quarter ended March 31, 2009. The pro forma income statements for the year ended December 31, 2008 and the quarters ended March 31, 2008 and 2009 will reflect application of Statement 141R, which should be disclosed.

Example 2:

A business combination is consummated on February 1, 2009 and an automatic registration statement is filed February 10, 2009. Under Article 11, the most recent fiscal year's financial statements for a calendar year registrant would be the year ended December 31, 2007. The pro forma income statement for the year ended December 31, 2007 will reflect application of Statement 141R, which should be disclosed.

SEC Staff Response: The staff supports View A for Question 1 and does not object to the response to Question 2.