SEC Regulations Committee
September 27, 2016 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

HIGHLIGHTS

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These highlights were prepared by a representative of CAQ who attended the meeting and do not purport to be a transcript of the matters discussed. The views attributed to the SEC staff are informal views of one or more of the staff members present, do not constitute an official statement of the views of the Commission or of the staff of the Commission and should not be relied upon as authoritative.

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I. ATTENDANCE

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
Christine Davine, Vice-Chair	***Division of Corporation Finance (Division)***	Rohit Elhance, Grant Thornton
Timothy Brown	Mark Kronforst, Chief Accountant	Jennifer George, DHG
Janie Copeland	Craig Olinger, Deputy Chief Accountant	Karen Keelty, PwC
Jason Cuomo	Nili Shah, Deputy Chief Accountant	Phillip Posey, Deloitte
Brad Davidson	Tricia Armelin, Associate Chief Accountant	Oksana Thimko, PwC
Rich Davisson	Patrick Gilmore, Associate Chief Accountant	Brian Cassidy, CAQ Observer
Melanie Dolan	Todd Hardiman, Associate Chief Accountant (by phone)	Annette Schumacher Barr, CAQ Observer
Fred Frank	Eiko Yaoita Pyles, CF-OCA Rotator	
Steven Jacobs	Jarrett Torno, CF-OCA Rotator	
Jeff Lenz	Kevin Vaughn, Associate Chief Accountant	
	Office of the Chief Accountant	
	Sean May, Professional Accounting Fellow	

II. PERSONNEL AND COMMITTEE UPDATE

The staff noted that Rob Shapiro is ending his term as rotational fellow in the Division's Office of the Chief Accountant (CF-OCA Rotators). The new CF-OCA Rotators are Jarrett Torno and Eiko Yaoita Pyles.

The Committee observed that Jeff Lenz will be rotating off the Committee after 14 years of dedicated Committee service.

[Note: Subsequent to the meeting, Kevin Vaughn was promoted to Senior Associate Chief Accountant in the Commission's Office of the Chief Accountant.]

III. REQUESTS FOR INTERPRETIVE GUIDANCE

The Committee and the staff shared observations with respect to interpretive requests submitted by registrants and their counsel relating to reporting matters. The staff observed that some filing preclearance letters do not reflect the staff's widely-known views on certain reporting matters and this can make resolution of matters less efficient. The staff is exploring ways to help registrants improve submission quality.

IV. DISCLOSURE EFFECTIVENESS INITIATIVE

The Committee and the staff discussed the progress of the Commission's Disclosure Effectiveness Initiative. The staff noted that they are interested in receiving feedback from the public in the comment letter process. The Committee noted that the CAQ will submit its comment letter on the Commission's Disclosure Update and Simplification Proposal on October 3.

[Note: On October 3, the CAQ issued its comment letter on the Disclosure Update and Simplification Proposal.]

V. CURRENT FINANCIAL REPORTING MATTERS

A. Non-GAAP Financial Measures

The Committee and the staff discussed the continued focus on non-GAAP financial measures and compliance with existing rules and regulations in this area.

- Prominence of non-GAAP financial measures

  The staff reiterated that they would object to the presentation of a full non-GAAP income statement under Item 10(e) of Regulation S-K.

- Nature and type of adjustments

  The Committee indicated that there is still some uncertainty around aspects of the recently issued Compliance and Disclosure Interpretations (C&DIs). For instance, judgment is necessary to define normal, recurring, cash operating expenses. Recently, the staff have been actively commenting on adjustments relating to restructuring charges, acquisitions/purchase accounting items and legal settlements. The staff noted that they are seeking to better understand registrant-specific facts and circumstances (e.g., what types of items are being included in those broad groupings) in order to evaluate the appropriateness of adjustments. The staff also pointed out that they are continuing to evaluate the appropriateness of certain adjustments related to derivatives and pensions. Adjustments related to stock-based compensation have not been the focus of efforts to date.

- Liquidity versus performance measures

  The staff emphasized that they continue to focus on and object to per share measures that are presented as performance measures but appear to be consistent with liquidity measures.

- Individually tailored accounting principles

  The Committee and the staff discussed the concept of pro rata consolidation. The staff highlighted that it is likely not appropriate to "consolidate" equity method investees or joint ventures in non-GAAP “financial statements” as this may be considered an individually tailored accounting principle.

  [Note: At the National Association of Real Estate Investment Trusts (NAREIT) Senior Financial Officer Workshop on September 27, a Division staff member communicated this position.]

  The staff also indicated that comment letters on non-GAAP measures may be separate and distinct from a routine comment letter relating to the review of periodic filings. Therefore, registrants that have received comment letters on their non-GAAP measures may separately receive comments on their Form 10-K or other filings. Similarly, registrants that have received comments on their Form 10-K may separately receive comments on their non-GAAP measures.

B. SAB Topic 13 update

The staff is considering the impact of the new revenue recognition standard on various rules, regulations, and staff positions, including SAB Topic 13.

C. Extinguishment of registered guaranteed debt after period end but before the filing date

The Committee and the staff discussed whether a registrant may omit the condensed consolidating financial information required by Rule 3-10 of Regulation S-X (Rule 3-10) if registered guaranteed debt for which condensed consolidating financial information has historically been presented is extinguished after period end but before the Form 10-K/10-Q is filed. The staff indicated that a registrant is required to provide condensed consolidating information to comply with Rule 3-10 for as long as the guaranteed securities remain outstanding. Registrants seeking relief from this requirement may submit a letter with their specific facts and circumstances to CF-OCA.

D. Preparing pro forma financial statements when fiscal year ends differ by more than 93 days

The Committee and staff discussed the financial reporting requirements under Rule 11-02(c)(3) of Regulation S-X, which states that if the most recent fiscal year end of any other entity involved in the transaction differs from the registrant's most recent fiscal year end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the registrant's most recent fiscal year end, if practicable, to prepare pro forma condensed statements of income. Specifically, the Committee and staff discussed whether a registrant may prepare Article 11 pro forma financial statements reflecting a business acquisition when the year ends of the registrant and the acquired company differ by more than 93 days solely because one or more of the companies uses a 52-53 week fiscal year end. The staff indicated that they have observed this fact pattern with limited frequency and suggested that they likely would not comment if a company did not adjust the periods.

E. Transition Questions Related to the New Leasing Standard

The FASB issued ASU 2016-2 (Leases, Topic 842), on February 25, 2016. The amendments contained in ASU 2016-2 are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years for public business entities. The transition guidance requires a modified retrospective approach.

Entities will apply the new standard to leases within the scope of ASC 842 that exist, or are entered into after, the beginning of the earliest comparative period presented in the financial statements (the date of initial application). The modified retrospective approach does not require any transition accounting for leases that expired before the date of initial application.

Given the importance of the “date of initial application” when determining which leases are “within scope” for purposes of applying the new leasing standard’s transition guidance, the Committee asked the staff how to apply that guidance in financial statements issued prior to the end of the year in which the standard is adopted.

The staff indicated that they are considering the question and how to communicate their views.