

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

**HIGHLIGHTS**

**NOTICE:** The SEC Regulations Committee meets periodically with the staff of the SEC to discuss emerging technical accounting and reporting issues relating to SEC rules and regulations. The purpose of the following highlights is to summarize the issues discussed at the meetings. These highlights have not been considered and acted on by senior technical committees of the AICPA, or by the Financial Accounting Standards Board, and do not represent an official position of either organization.

In addition, these highlights are not authoritative positions or interpretations issued by the SEC or its Staff. The highlights were not transcribed by the SEC and have not been considered or acted upon by the SEC or its Staff. Accordingly, these highlights do not constitute an official statement of the views of the Commission or of the Staff of the Commission.

**I. ATTENDANCE**

**A. SEC Regulations Committee**

John Wolfson, Chair  
Chris Holmes, Vice Chair  
Doug Bennett  
Jack Ciesielski  
Michael Cinalli  
Brad Davidson  
Melanie Dolan  
David Follett  
Karin French  
Steve Henning  
Bob Laux  
Jeff Lenz  
Steve Meisel  
Scott Pohlman  
Amy Ripepi  
Kurtis Wolff

**B. Securities and Exchange Commission**

*Office of the Chief Accountant*

Conrad Hewitt, Chief Accountant  
John Albert, Senior Associate Chief Accountant  
Mark Barrysmith, Professional Accounting Fellow  
Robert Burns, Chief Counsel  
Cathy Cole, Associate Chief Accountant

Amy Hargrett, Associate Chief Accountant  
Julie Erhardt, Deputy Chief Accountant  
Josh Forgione, Assistant Chief Accountant  
Jeff Kessman, Assistant Chief Accountant  
Sandie Kim, Professional Accounting Fellow  
Katrina Kimpel, Professional Accounting Fellow  
Jim Kroeker, Deputy Chief Accountant  
Timothy Kviz, Professional Accounting Fellow  
Mark Mahar, Assistant Chief Accountant  
Joseph McGrath, Professional Accounting Fellow  
Jennifer Minke-Girard, Senior Associate Chief Accountant  
Thomas Noland, Academic Fellow  
Zoe-Vonna Palmrose, Deputy Chief Accountant  
David Plumlee, Academic Fellow  
Marlene Plumlee, Academic Fellow  
Nili Shah, Assistant Chief Accountant  
Charlotte Thomas, Research Specialist  
Cheryl Tjon-Hing, Valuation Specialist  
Oscar M. Young, Jr. Associate Chief Accountant  
Joseph Ucuzoglu, Professional Accounting Fellow

*Division of Corporation Finance*

Carol Stacey, Chief Accountant  
Craig Olinger, Deputy Chief Accountant  
Louise Dorsey, Associate Chief Accountant  
Parveen P. Gupta, Academic Fellow  
Stephanie Hunsaker, Associate Chief Accountant  
Todd Hardiman, Associate Chief Accountant  
Joel Levine, Associate Chief Accountant  
Leslie Overton, Associate Chief Accountant  
Michael Stehlik, Business Associate  
Sandra Stokes, Associate Chief Accountant

*Division of Enforcement*

Susan Markel, Chief Accountant

*Division of Investment Management*

Rick Sennett, Chief Accountant  
Toai Cheng, Assistant Chief Accountant

**C. Center for Audit Quality**

Cynthia Fornelli  
Lillian Ceynowa  
Annette Schumacher Barr

## D. Guests

Karen Van Compernelle, D&T  
Nedra Downing, D&T

## II. DIVISION UPDATES

### A. Office of the Chief Accountant (OCA) Update

Conrad Hewitt provided the following update of the activities in the Office of the Chief Accountant:

- Staffing Update
  - Mark Barrysmith, Ashley Carpenter and Katrina Kimpel have joined OCA as Professional Accounting Fellows and will serve two-year terms. Robert Malhotra, Muneera Carr, Liza McAndrew Moberg and Jeffrey Ellis will also join the staff this summer as Professional Accounting Fellows. Tom Nolan, Marlene Plumlee and David Plumlee are serving as Academic Fellows.
  - Jim Kroeker has joined the staff as the new Deputy Chief Accountant for Accounting.
  - Four new Assistant Chief Accountants have joined the staff: Nilima Shah, Oscar Young, Josh Forgione and Jon Duersch.
- Update of OCA Projects
  - *Internal Control Guidance.* The SEC received many comment letters on its proposed interpretive guidance on management's report on internal control over financial reporting. The staff is working hard to finalize an interpretive release, which the SEC might issue in May or early June. The staff is also working with the PCAOB staff to finalize the replacement of AS 5 in the same timeframe.
  - *XBRL.* The staff is overseeing a project to develop XBRL taxonomies, including those relating to financial statement note disclosures.
  - *IFRS and International Convergence.* The staff continues to implement the steps outlined in its IFRS Roadmap. *[Note: Subsequent to the meeting, the SEC issued a [press release](#) announcing the Commission's next steps relating to International Financial Reporting Standards.]*
  - *Complexity.* The SEC plans to co-sponsor, along with the FASB and PCAOB, an advisory committee, similar to the SEC's Advisory Committee on Smaller Public Companies, to develop recommendations to reduce complexity in accounting and financial reporting. The advisory committee is in the early formation stage.
  - *Materiality.* OCA staff members are working with the Division of Corporation Finance to develop guidance on (a) interim period materiality assessments, and (b) qualitative assessments applicable to quantitatively large errors. The SEC staff understands that a private

sector task force has been formed to help address those practice issues, and the SEC staff is looking forward to their input.

- *Independence.* The staff continues to address practice issues relating to independence issues. The staff continues to study potential improvements to the current structure and regime for auditor independence.
- *SFAS No. 159.* The staff continues to monitor implementation issues relating to this Standard. [Note: Subsequent to the meeting, the Center for Audit Quality issued an E-Alert entitled [FAS 159 Early Adoption Date Approaching – Factors to Consider](#) which provides additional clarification on the adoption of FAS 159.]

## **B. Division of Corporation Finance Update**

Carol Stacey provided the following Division of Corporation Finance update:

- Steven Jacobs has been named an Associate Chief Accountant in the Division.
- Due to attrition, the Division currently has open positions for accountants, which it hopes to fill in the coming months.
- For the time being, the Division's Professional Accounting Fellow program remains inactive.

## **C. Enforcement Update**

Susan Markel provided the following update of activities in the Division of Enforcement:

- Staffing Update

The Enforcement Division will be posting a position for an additional staff member this summer following an internal promotion.

- Recent Enforcement Cases and Investigations

*Stock Option Investigations.* There are currently over 100 active investigations on stock option related matters. Enforcement staff members work actively with OCA staff in assessing the nature of the restatement (e.g., intentional backdating, administrative errors).

*Other issues.* The staff is working on a variety of other issues. In addition to stock options, a number of current investigations involve revenue recognition and earnings management issues.

## **D. Division of Investment Management (IM) Update**

Rick Sennett was announced as the new Chief Accountant in the Division of Investment Management. Mr. Sennett stated that IM has 2 open positions in

its Professional Accounting Fellow program. They are looking for candidates from public accounting or the mutual fund industry.

### **III. STATUS UPDATE OF PROJECTS/ISSUES**

#### **A. Compilation of SEC Regulations Committee Meeting Highlights**

In September 2005, the Committee provided the SEC staff with a copy of the draft compilation that incorporates joint meeting discussion documents from the 1994 to 2005 highlights. The draft compilation, which is organized by rule/regulation, contains numerous superseded discussion documents. This summer the Committee plans to reorganize the compilation to include only the issues, background and conclusion sections, together with links to the original meeting highlights. Superseded items would be maintained in a separate archived section. The SEC staff agreed with this approach.

#### **B. Division of Corporation Finance Preliminary Review of Filings**

The staff found a number of public companies, predominantly smaller companies, which had used the SAB 108 transition to correct immaterial prior year errors, without disclosing the nature of each error corrected. Also, the SEC staff found a number of public companies, predominantly larger companies, which had used the SAB 108 transition to correct stock option accounting issues, where it is unclear that the errors were immaterial to prior years based on qualitative considerations. The staff expects to issue comment letters to those companies. Otherwise, the staff noted no new trends thus far in reviews of 2006 annual reports.

The staff is wrapping up its review of 2005 Form 20-Fs by IFRS filers, and noted that it has issued numerous comments on presentation and disclosure. The most frequent comment areas have been the clarity of the assertion of compliance with IFRS, income statement presentation, cash flow presentation, consolidation/equity method, revenue recognition, and impairments. Where an issuer's accounting policies are unclear, the staff has requested support for the accounting applied as well as better disclosure.

#### **C. Update of the *Staff Training Manual***

The SEC staff is making steady progress on finalizing an update of its *Staff Training Manual* and has completed drafting most sections. An expected completion date has not been set. The new format will facilitate periodic updating of new materials.

#### **D. Alerts to be Issued by the Division of Corporation Finance or Office of the Chief Accountant**

The staff has previously indicated that it might issue alerts or letters containing general guidance and identifying additional factors registrants

should consider in evaluating filings. At the meeting, both OCA and Division of Corporation Finance staff stated that no alerts are planned at this time.

#### **E. Current Accounting and Disclosures Issues**

The Division of Corporation Finance published an update of its [\*Current Accounting and Disclosures Issues\*](#) in November 2006 and plans to issue another update in May. The staff noted that the current update contains an error involving segment reporting (i.e., the proper aggregation of a segment that is not considered a reportable segment). This error will be corrected in the May update.

#### **F. Status Update on Committee Documents Provided to the Staff**

1. *Rule 3-10, 3-16 Task Force Discussion Documents*. Two Committee [discussion documents addressing the application of Rule 3-10 and Rule 3-16](#) of Regulation S-X were discussed at the meeting, and subsequently approved by the staff and posted to the Center for Audit Quality website. A third document (addressing the application of Rules 3-10 and 3-16 of Regulation S-X to automatic shelf registration statements) was sent to the staff and is currently being considered.
2. *Financial Statements of Credit Enhancers and Related Accountants' Consents in Filings by Asset-Backed Issuers*. A discussion document addressing the application of Regulation AB was sent to the SEC staff on July 31, 2006. The SEC staff approved the Committee's recommendations on the first of the two questions posed in the document (see Appendix B to the [September 26, 2006 Joint Meeting Highlights](#)). The staff indicated that they are currently reviewing the document's second issue (addressing whether a credit enhancer's quarterly financial statements are required to be filed on Form 10-D) and suggested that registrants with live fact patterns in this area should discuss the issue with the staff.

#### **G. SEC Response to the Committee's Comment on the Executive Compensation Final Rule**

The staff is currently considering comment letters received on the Commission's Interim Final Rule on Executive Compensation Disclosure. The staff indicated it would likely update its Q&A to address the implementation issue raised by the Committee so that new public companies that adopted Statement No. 123(R) on the modified prospective method would not have to make any new computations in order to comply with the executive compensation disclosure requirements.

#### **H. New Issuances/Releases**

A list of final rules and notices of proposed rulemakings that were issued since the September 26, 2006 Joint Meeting with the SEC Staff is included at Appendix A.

#### IV. CURRENT PRACTICE ISSUES

The following emerging practice issues were addressed at the meeting and discussion documents have been posted to the Center for Audit Quality website at the URL indicated.

- A. **Application of Rules 3-09 and 4-08(g) of Regulation S-X to Investments Accounted for Using the Fair Value Option under Statement of Financial Accounting Standards No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities.” that Otherwise Would be Accounted for Under the Equity Method under APB 18, “The Equity Method of Accounting for Investments in Common Stock.”** *[The discussion document related to this issue was finalized with the staff at the October 11, 2007 Joint Meeting. See [http://www.thecaq.org/resources/secregs/pdfs/discussdocs/October11\\_2007\\_DiscussionDocument\\_F.pdf](http://www.thecaq.org/resources/secregs/pdfs/discussdocs/October11_2007_DiscussionDocument_F.pdf) for the final discussion document]*
- B. **Application of FAS 158 in Connection with an Initial Public Equity Offering**
- C. **Applying SAB Topic 1.B.3. When the Dividend to be Paid Exceeds Both the Last Twelve Months Earnings and the Proceeds from the Equity Offering**
- D. **Financial Statement Requirements in an IPO When a Merger of Entities Under Common Control Occurs at the Closing Date**
- E. **Disclosure of FIN 48 Liabilities in the Contractual Obligations Table**
- F. **Determining the Amount of Interest on FIN 48 Liabilities to be Included in Fixed Charges for Purposes of Calculating the Ratio of Earnings to Fixed Charges**
- G. **Balance Sheet Updating Requirements Relating to the Non-Public General Partner of a Public Limited Partnership**
- H. **Timeliness of Executive Compensation Disclosures in the Form S-4 Registration Statement of a Well-Known Seasoned Issuer**
- I. **Grant Date Fair Value of Equity Award with Performance Conditions in Grants of Plan-Based Awards Table (Item 402(d)(2)(viii) of Regulation S-K)**
- J. **Application of Item 308T of Regulations S-K and S-B to a Non-Accelerated Filer That Early Adopts Internal Control Reporting by Management**
- K. **Determining Accelerated Filer Status for a Company that was Recently Spun-off from an SEC Registrant-Parent (Update to Discussion Document C from the June 2004 Joint Meeting)**

## **Appendix A -- New Issuances and Releases**

### ***Final rules that have been issued since our last meeting (in reverse chronological order):***

Termination Of A Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) Or 15(d) of the Securities Exchange Act of 1934

Technical Amendment to Regulation S-T

Regulation NMS Compliance Date Extension

Internet Availability of Proxy Materials

Correcting Amendment: Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products

Executive Compensation Disclosure (Interim Final Rules)

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies

Delegation of Authority to Chief Administrative Law Judge

Electronic Filing of Transfer Agent Forms

Amendments to the Tender Offer Best-Price Rules

Definition of Eligible Portfolio Company under the Investment Company Act of 1940

Mutual Fund Redemption Fees

### ***Notices of Proposed Rulemakings that were issued since our last meeting:***

Amendments to Regulation SHO

Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act

Amendments to Financial Responsibility Rules for Broker-Dealers

Proposed Rule Changes of Self-Regulatory Organizations

Extension of Interactive Data Voluntary Reporting Program on the Edgar System to Include Mutual Fund Risk/Return Summary Information

Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations



Universal Internet Availability of Proxy Materials

Investment Company Governance [Correction]

Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles;  
Accredited Investors in Certain Private Investment Vehicles

Termination of a Foreign Private Issuer's Registration of a Class of Securities  
Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the  
Securities Exchange Act of 1934

Management's Report on Internal Control Over Financial Reporting (Corrected to  
Conform to the Federal Register Version)

Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of  
1934 and Related Rules

Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for  
Banks

Investment Company Governance

Amendments to Regulation SHO and Rule 10a-1

Short Selling in Connection With A Public Offering

Proposed Amendments to Municipal Securities Disclosure

Covered Securities Pursuant to Section 18 of the Securities Act of 1933

Definition of Eligible Portfolio Company under the Investment Company Act of  
1940

Amendments to Rule 15c3-1 and Rule 17a-11 Applicable to Broker-Dealers also  
Registered as Futures Commission Merchants