

**SEC Regulations Committee
April 3, 2009 - 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

Chris Holmes, Chair
Melanie Dolan, Vice Chair
Doug Bennett
Leonard Brams
Michael Cinalli
Brad Davidson
Christine Davine
Karin French
Len Gatti
Jeff Lenz
Steve Meisel
Scott Pohlman
Amy Ripepi
Tom Weirich
Kurtis Wolff
John Wolfson

B. Securities and Exchange Commission

Office of Interactive Disclosure

Joel Levine, Assistant Director

Division of Corporation Finance

Wayne Carnall, Chief Accountant

Craig Olinger, Deputy Chief Accountant
Mark Kronforst, Deputy Chief Accountant
Stephanie Hunsaker, Associate Chief Accountant
Steven Jacobs, Associate Chief Accountant
Leslie Overton, Associate Chief Accountant
Michael Stehlik, Staff Accountant
Greg Burton, Academic Fellow
Mark Green, Senior Special Counsel

C. Center for Audit Quality

Annette Schumacher Barr

D. Guests

Mark Barton, E&Y
John May, PwC
Dennis Muse, Reznick Group

II. DIVISION OF CORPORATION FINANCE UPDATE

A. Personnel Update

Mr. Carnall acknowledged Joel Levine's 16 years of exemplary service to the Division of Corporation Finance. Joel is now serving as Assistant Director in the Office of Interactive Disclosure. Mr. Levine's former position as Associate Chief Accountant in the Division will be filled internally.

Mr. Carnall also described recent organizational changes in the Division's Chief Accountant's Office. In addition to the Division's existing Operations Group led by Craig Olinger, a Policy Group has been formed that will:

- Facilitate sharing of information and resolution of issues among Division accounting staff
- Coordinate the updating and publication of the Financial Reporting Manual (FRM)
- Create and issue guidance (primarily internal but also external) on financial reporting and disclosure matters
- Organize and develop accounting training sessions

The Policy Group will consist of a Deputy Chief Accountant (Mark Kronforst), an Associate Chief Accountant (to be appointed), a Staff Accountant (Mike Stehlik) and an Academic Fellow (Greg Burton).

B. Protocol

Mr. Carnall started the meeting with a number of reminders regarding protocol for meetings and communication between the staff and the Committee:

- Joint Meeting Agendas are developed by the Committee, not the staff.
- Discussion Documents provide the background for an issue, but do not provide any recommendations from the Committee.
- The staff may periodically reach out to Committee members seeking input on various emerging issues. This outreach is meant to solicit input from Committee members as individuals, not from the Committee as a whole.

III. CURRENT FINANCIAL REPORTING MATTERS

A. Goodwill

It was noted that a number of registrants recorded significant write-downs of goodwill during 2008. Mr. Carnall asked about specific procedures auditors are taking regarding these write-downs.

B. Risks and Uncertainties

The staff continues to issue comments to registrants regarding compliance with the disclosures required by AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*.

C. MD&A Disclosures

Committee members observed that many companies improved the quality of their MD&A disclosures relating to liquidity and capital resources, and they commended the staff for its emphasis on these MD&A disclosures at the 2008 AICPA National Conference on Current SEC and PCAOB Developments.

D. Benefit Plan Curtailments

The staff recognizes that with many registrants experiencing headcount reductions, there likely will be an increased number of defined benefit plan curtailments. The staff will look closely at the accounting for and disclosure of such plan curtailments.

E. First Quarter Reporting Deadline

Committee members asked whether the SEC might be considering an extension of the first quarter Form 10-Q deadline for registrants wishing to early adopt the recently adopted FASB Staff Positions (FSPs) on fair value measurements, disclosures and other-than-temporary impairment. Even though calendar year-end companies may elect to adopt the FSPs for the first quarter, they are not required to do so until the second quarter. The staff indicated that they were not aware of any current Commission plans to extend filing deadlines.

F. Materiality

The staff noted that materiality analyses that are submitted to the staff are oftentimes focused primarily on the bullet points presented in [SAB 99](#). Companies should include in their materiality assessments a complete analysis justifying their conclusions (i.e., why a particular item is not material to the company based on specific facts and circumstances). The staff expects that materiality analyses would include a discussion of how the error affects key performance indicators. Mr. Carnall noted that differences in qualitative factors may lead companies with errors of equal quantitative magnitude to justifiably reach different materiality conclusions.

G. Responding to Staff Comments

Mr. Carnall reminded the Committee that the review process is more efficient and effective when companies provide a comprehensive and complete response to the staff's initial inquiry. Mr. Carnall indicated that he has been involved in several issues in which, upon a request for reconsideration by his office, the company provided a more complete response than they had in previous submissions.

H. Notification of Late Filing on Form 12b-25

Mr. Carnall observed that notifications of non-timely filings on Form 12b-25 are sometimes not sufficiently clear to support why the registrant was not able to file the subject report by the original due date. Such notifications must be complete, accurate, and clearly address the reason the form cannot be filed on time. Additionally, the Form should include such other information that is necessary in order to prevent the disclosures from being misleading (including possible discussion of internal control issues that may have led to the inability to file the periodic report on time). Mr. Carnall noted that the use of Form 12b-25 should not result in a delay in notifying the market of material information. Further, he noted that:

- inaccurate or misleading disclosures in Form 12b-25 filings could lead to actions by the Division of Enforcement.

- a deficient Form 12b-25 filing could lead to a registrant losing its S-3 eligibility.
- the company (not the auditor) is responsible for these notifications.

I. Going Concern Disclosures

The staff will be looking at going concern disclosures to assess whether they are 1) complete (comply fully with applicable professional standards) and 2) consistent with MD&A discussions of liquidity and capital resources. Mr. Carnall noted that the staff will generally not question an auditor's judgment on whether the auditor's report should or should not include a going concern paragraph but will ask questions about the consistency of the conclusion with the disclosure. The staff's primary concern relates to the adequacy and consistency of disclosures.

J. Statement 141(R) and Statement 160

Mr. Carnall noted that the SEC plans to issue technical amendments to Regulation S-X for conformity with FASB Statement 141(R), *Business Combinations* (Statement 141(R)) and FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (Statement 160).

[Note: Subsequent to the meeting, the Commission adopted technical amendments to its rules, forms schedules and codification of Financial Reporting Polices to reflect changes that were necessary as a result of the issuance of SFAS 141(R) and SFAS 160. The release can be found at: <http://www.sec.gov/rules/final/2009/33-9026.pdf>]

IV. IMPLEMENTATION AND INTERPRETATION OF RECENT SEC RELEASES

A. Section 404 Issues and Observations

▪ Section 404(a)

The staff has noted that numerous non-accelerated filers have not fully complied with the requirements of Section 404(a). The staff will focus on this issue as it reviews filings by non-accelerated filers.

▪ Reverse Mergers

Steven Jacobs stated that the staff frequently receives questions involving the application of Section 404 in a reverse merger between

an operating company and either a special purpose acquisition company (SPAC) or a shell company. He noted that the staff is working on a [Compliance and Disclosure Interpretation](#) (C&DI) that will address this situation. The C&DI will take an approach that is similar to the analysis that is provided in “FAQ 3” of the SEC Staff's frequently asked questions document relating to management's report on internal control over financial reporting and will allow management to exclude the legally acquired business (i.e., the accounting acquirer) from management's report on internal control over financial reporting in the year the business was acquired. However, the registrant still would be required to disclose any material change to its internal control over financial reporting due to the acquisition. The C&DI will not apply to reverse mergers involving two operating companies, for which registrants are encouraged to discuss their specific facts and circumstances with the staff.

Subsequent to the meeting, the C&DI was issued. See Section 215. Items 308 and 308T – Internal Control over Financial Reporting. The C&DI can be found at <http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#215.02>

B. XBRL

Mr. Levine noted that the [interactive data final rules](#) were posted in January and become effective April 13, 2009 (except §232.406T, which is effective from April 13, 2009 until October 31, 2014). He recommended that registrants and their auditors take time to read the final rule as it is very comprehensive. A thorough reading of the adopting release will answer many questions and often eliminate the need to contact the staff.

Mr. Levine stressed the importance of accounting and IT personnel working collaboratively in the implementation process as both disciplines are necessary to fully understand and implement the requirements.

Mr. Levine recommended that registrants with technical EDGAR or IT support questions contact Filer Support at (202) 551-8900. Questions regarding XBRL should be sent via email to Ask-OID@sec.gov

Subsequent to the meeting, the SEC staff issued a number of C&DIs on Interactive Disclosure – see <http://www.sec.gov/divisions/corpfin/guidance/interactivedatainterp.htm>

C. Oil and Gas Reporting Requirements

Mr. Carnall noted that the FASB has recently taken on a project to amend FASB Statement No. 19, *Financial Accounting and Reporting by Oil and*

Gas Producing Companies (as amended by Statement 69), to conform to the SEC's recently issued final rule *Modernization of the Oil and Gas Reporting Requirements*. Mr. Carnall hopes the FASB will complete this project on a timely basis. The improved disclosures required by the final rule, which is effective for fiscal years ending on or after December 31, 2009, will be beneficial to investors. He does not believe that the effective date will be delayed.

V. NEW OR PENDING ACCOUNTING STANDARDS AND PRONOUNCEMENTS

A. FAS 160 and FSP EITF 03-6-1 Implementation

The Committee asked the staff how the views in Document F from the June 2006 Joint Meeting (financial reporting following a retrospective accounting revision) apply to the adoption of FAS 160. Mr. Carnall noted that once a company has adopted FASB Statement No. 160 *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB 51* (SFAS 160) that Item 11(b) of Form S-3 would require a registrant to recast its prior period annual financial statements that are incorporated by reference into a registration statement to reflect the retrospective application of SFAS 160. Consistent with other reporting issues, companies can consider materiality in this assessment. The conclusion about the need to recast financial statements would be the same regardless of the Form used or if the financial statements are included versus incorporated by reference. There have been limited situations in the past in which the staff has not required a company to file recasted financial statements upon adopting guidance that requires retroactive application. However, those situations have been primarily limited to EPS presentations and pro forma disclosures and are not comparable to the changes required by SFAS 160.

With respect to the application of FSP EITF 03-6 for prior periods in registration statements after it has been adopted, Mr. Carnall noted that a registrant can follow the guidance that was outlined in the SEC Regulations Committee meeting highlights of September 13, 2004 with respect to the issuance of EITF 03-6. Under this accommodation, a registration statement or proxy statement is not necessarily required to include or incorporate by reference revised financial statements reflecting the adoption of FSP EITF 03-6-1. Instead, if the registrant and its registered independent public accounting firm conclude that the financial statements being incorporated by reference do not require revision as a result of the application of FSP EITF 03-6-1, and the independent auditor consents to the use of its report without such revision, the registrant may instead disclose EPS revised for FSP EITF 03-6-1 in selected financial data included in the registration statement or proxy statement, or in a Form

10-Q or Form 8-K incorporated by reference. Under the accommodation, the SEC staff still expects full, robust disclosure regarding the implications of FSP EITF 03-6-1.

VI. SEC STAFF AND OTHER INITIATIVES

A. Financial Reporting Manual

Mr. Carnall noted that the staff posted the first periodic update of the [Financial Reporting Manual](#) (the Manual) on April 2. The significant changes resulted from updates to reflect the SEC final rule on [Foreign Issuer Reporting Enhancements](#). The update also addresses various other technical corrections and clarifications to the edition originally published in December 2008. In most cases, the updated sections reflect a March 31, 2009 date. Committee members commended the staff for the timely updates and noted that the Manual serves as a valuable resource tool for both auditors and registrants and others. Mr. Carnall recognized the efforts of Mike Stehlik in making sure the updates were finalized on a timely basis.

B. Form S-8 Reporting Requirements

Mr. Carnall indicated that the staff expects to issue a C&DI to address updating requirements when there is a change in accounting, discontinued operations, change in segments, etc. and the company files a registration statement on Form S-8. This interpretation also will be incorporated into a future update to the Financial Reporting Manual. He expects the interpretation to conclude that, while Form S-8 has the same concepts as Form S-3 regarding the need to describe material changes, Form S-8 does not contain a requirement similar to paragraph b of Item 11 of Form S-3 regarding restated financial statements. Instead, it is the responsibility of the registrant and its counsel to determine if there has been a material change that is required to be disclosed in a Form S-8. Likewise, it is the responsibility of the auditor to determine if they will issue a consent to the use of their report if there has been a change that is reflected in a Form 10-Q but the annual financial statements have not been retroactively restated.

VII. CURRENT PRACTICE ISSUES

A. Significance Testing for the Disposition of an Equity Interest that Results in Loss of Control following Adoption of FAS 141R and FAS 160

The Committee asked the staff for clarification on how to calculate significance for a partial disposition under S-X Rule 1-02(w) following the adoption of FAS 141R and FAS 160.

For compliance with Item 2.01 of Form 8-K and Article 11 of Regulation S-X for the partial disposition of a previously consolidated business, the staff indicated that, because the asset and income tests in S-X Rule 1-02(w) use amounts reflected in the most recent annual consolidated financial statements of the registrant and the disposed entity prior to the date of the disposition (i.e., historical financial statements), those tests are not affected by the adoption of Statement 160.

With respect to the investment test, the staff indicated that for the partial disposition of a previously consolidated business (i.e., a transaction that results in the loss of control of a subsidiary), the numerator should be the proceeds received for the portion of the investment disposed, or its carrying value as of the end of the most recently completed fiscal year if greater. Further, the investment test for such a partial disposition would consider neither the fair value of the interest retained, nor any associated gain or loss recognized under Statement 160 upon a loss of control.

B. Treatment of transaction costs and contingent consideration in the S-X significance tests for the purchase of an investment accounted for under the equity method (Rule 3-05)

In April 2008 the staff addressed the treatment of transaction costs and contingent consideration in measuring the significance of the purchase of a business that will be accounted for under Statement 141(R). Subsequently, EITF Issue No. 08-6, "Equity Method Investment Accounting," addressed, among other things, the accounting for transaction costs and contingent consideration in the purchase of an investment accounted for under the equity method. EITF Issue No. 08-6 concluded that transaction costs should be included in the cost of an equity method investment, but that contingent consideration should be excluded, unless required to be recognized by specific authoritative under other accounting literature or the conditions set forth in EITF 08-6.

The staff indicated that the numerator of the investment test of significance for the purchase of an equity method investment should include transaction costs, consistent with the accounting under EITF Issue No. 08-6. The staff further indicated that the numerator should also include contingent consideration (on a gross basis) if the likelihood of payment is more than remote, which would be consistent with its view prior to the effective date of Statement 141(R) regarding the treatment of

contingent consideration in determining the significance of a purchase business combination.