

**AICPA SEC Regulations Committee
April 4, 2006 - Joint Meeting with SEC Staff
SEC Offices – Washington DC**

HIGHLIGHTS

NOTICE: The AICPA 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
Jack Ciesielski
Melanie Dolan
Clarence Ebersole
David Follett
Jay Hartig
David Hinshaw
Chris Holmes
Bob Laux
Jeff Lenz
Scott Pohlman

B. Securities and Exchange Commission

Office of the Chief Accountant

John Albert, Senior Associate Chief Accountant
Edmund W. Bailey, Senior Associate Chief Accountant
Tammy Bieber, Senior Advisor to the Chief Accountant
Cathy Cole, Associate Chief Accountant
Greg Cross, Assistant Chief Accountant

Brian Croteau, Associate Chief Accountant
Mike Gaynor, Professional Accounting Fellow
Amy Hargrett, Assistant Chief Accountant
Len Jui, Assistant Chief Accountant
Mike Kigin, Senior Associate Chief Accountant
Timothy Kviz, Professional Accounting Fellow
Cheryl Linthicum, Academic Fellow
Tony Lopez, Associate Chief Accountant
Janet Luallen, Assistant Chief Accountant
Shelly Luisi, Senior Associate Chief Accountant
Joseph McGrath, Professional Accounting Fellow
Jenifer Minke-Girard, Senior Associate Chief Accountant
Brian Roberson, Professional Accounting Fellow
Nancy Salisbury, Senior Associate Chief Accountant
Charlotte Thomas, Research Specialist
Cheryl Tjon-Hing, Valuation Specialist, Associate Chief Accountant
Joseph Ucuzoglu, Professional Accounting Fellow
Teri Yohn, Academic Fellow

Division of Corporation Finance

Carol Stacey, Chief Accountant
Craig Olinger, Deputy Chief Accountant
Louise Dorsey, Associate Chief Accountant
Stephanie Hunsaker, Associate Chief Accountant
Todd Hardiman, Associate Chief Accountant
Joel Levine, Associate Chief Accountant
Andrew McLelland, Academic Fellow
Rachel Mincin, Associate Chief Accountant
Leslie Overton, Associate Chief Accountant
Sandra Stokes, Associate Chief Accountant

Division of Enforcement

Susan Markel, Chief Accountant

Division of Investment Management

Brian Bullard, Chief Accountant
Toai Cheng, Assistant Chief Accountant

C. AICPA Center for Public Company Audit Firms

Annette Schumacher Barr

D. Guests

Karen Van Compernelle, D&T

II. DIVISION UPDATES

A. Office of the Chief Accountant (OCA) Update

Jack Albert and Shelly Luisi noted the following personnel changes in OCA:

- Scott Taub was named Acting Chief Accountant.
- Sandie Kim and Josh Jones will join the staff as Professional Accounting Fellows (PAFs) for two-year terms beginning this June. Outgoing PAFs are Shan Benedict, Jennifer Burns, Mark Northan, Brian Roberson, and Pamela Schlosser. The staff anticipates filling the three remaining PAF positions this summer.
- Tammy Bieber joined the staff as Senior Advisor to the Chief Accountant.
- Andrew Bailey, JJ Matthews and Georgene Polacky have left the Commission.

B. Division of Corporation Finance Update

Carol Stacey provided the following update of activities in the Division of Corporation Finance:

- New Division Director

In March, John White joined the SEC Staff as the Director of the Division of Corporation Finance. Mr. White's three primary areas of interest are: 1) accounting, 2) enforcement issues and 3) staff training.

- Staffing Update

The Division does not have any current job openings at this time. Only a few staff members have left the Commission since September.

- Reviews of Registrant Filings

Staff members are in the process of reviewing 2005 10-K filings with the expectation of meeting internal deadlines (Sarbanes-Oxley mandates that the Division complete reviews of all public companies at least once every three years). Based on initial reviews, the staff continues to issue comments on matters similar to those which have commonly been the subject of comments in the past. The staff is also issuing a number of comments related to hedge accounting and classification issues in the statement of cash flows.

C. Enforcement Update

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

- Recent Organizational and Staff Changes

The Enforcement Division has approximately 100 accounting staff across the country, including 34 at the Washington D.C. Headquarters. There have been no significant staffing changes since September and no new job openings have been posted.

- Recent Enforcement Cases and Investigations

Financial fraud is still a priority for the Division of Enforcement. Out of 639 enforcement cases that were brought in the last fiscal year, 180 (or 28%) related to financial fraud. The Division also continues to take an increasing number of referrals from the Division of Corporation Finance.

- Material Weaknesses/Reports under Section 404 of the Sarbanes-Oxley Act of 2002

Although the Division of Enforcement does not have an overall policy regarding the evaluation of material weaknesses, or filings that are delinquent due to the exclusion of required reports on internal control over financial reporting, the Division staff will not hesitate to investigate cases related to internal control over financial reporting that are referred to them.

D. Investment Management (IM) Update

Brian Bullard provided the following update of activities in the Division of Investment Management:

- Recent Organizational and Staff Changes

Susan Wyderko was named the Division's new Acting Director in January. The Division's PAF has left the SEC and returned to private practice; it is unlikely that this position will be filled.

- Compliance with 404 by Private Insurance Companies

Mr. Bullard stated there has been no decision regarding whether nonpublic insurance companies with insurance products that require filings with the SEC must comply with the provisions of Section 404 of the Sarbanes-Oxley Act.

III. STATUS UPDATE OF PROJECTS/ISSUES

A. Materiality

This project deals with the use of the “iron curtain” and “rollover” methods of quantifying errors. The staff reported that work on this project continues. There has been no change in the staff’s thinking or approach since the last meeting with the Committee in September or the views expressed in a December 2005 speech (available at <http://www.sec.gov/news/speech/spch120505bkr.htm>).

B. XBRL

The staff noted that Chairman Cox is very enthusiastic about this initiative. In January, the SEC announced that the staff will offer expedited reviews of registration statements and annual reports to companies that volunteer for a test group as part of the SEC’s interactive data initiative. Companies that participate in the voluntary program’s new test group will furnish financial data contained in their periodic and investment company reports in XBRL format for at least one year and provide feedback on their experiences, including the costs and benefits associated with reporting in the interactive data format. Well-known seasoned issuers that participate in this test group will also receive expedited reviews of their annual reports. The staff is also preparing to host a series of roundtable discussions to review the experiences from the first year of the pilot XBRL voluntary filing program, and to use those lessons learned to develop new ways and better tools to provide users with better information. The staff emphasized that the program is still open and available to interested companies. Companies interested in participating in the test group should contact Jeffrey Naumann in the Office of the Chief Accountant (naumannj@sec.gov) or Brigitte Lippmann in the Division of Corporation Finance (lippmannb@sec.gov) for more information.

C. Advisory Committee on Smaller Public Companies

The staff discussed the Exposure Draft of the Final Report of Advisory Committee on Smaller Public Companies, noting that the comment period ended April 3. The Committee stated that the AICPA has commented on this exposure draft.

Note: Subsequent to the meeting, the AICPA issued its comment letter on this exposure draft. The letter can be obtained at http://www.aicpa.org/cpcf/download/FILE_265_23_AICPA_FINAL.pdf

D. Compilation of SEC Regulations Committee Meeting Highlights

In September, the Committee provided the 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. The Staff was asked to consider what should be done with the superseded information contained in the document (whether it should be deleted, highlighted or moved to a separate section of the compilation)

E. Update of Staff Training Manual

The staff is making progress on updating the Staff Training Manual and is currently considering whether the document should be made publicly available as interpretive guidance.

F. Dissemination of Staff Positions/Views

The Committee asked the staff about available means of communication the staff might employ to disseminate its views and positions. The Committee referred specifically to recent staff guidance regarding the treatment of discontinued operations in the statement of cash flows that was communicated through the AICPA, noting that registrants would benefit if such guidance were also posted to the SEC's website.

The staff replied that it has vehicles to communicate positions on time sensitive issues but that it needs ample lead time to address and resolve the issue and obtain internal approvals before a position is communicated. As such, the staff recommended that emerging issues be brought to the staff's attention as soon as they are identified.

G. Impact of FAS 154 on the calculation of various thresholds in prior years for S-X 3-05, S-X 3-09, S-X 3-10, S-X 3-16

The staff confirmed that applying FAS 154 will not change its position regarding the calculation of prior year significance thresholds for S-X Rules 3-05, 3-09, 3-10, and 3-16. Staff comments made in recent public forums were intended to remind issuers of the need to consider this but were not intended to imply that there has been any change in staff position.

H. 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions

Nancy Salisbury reported that the SEC's Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions will take place on May 10, 2006. She noted that the staff would like to hear about "scalability issues" (i.e., the impact of 404 implementation on small, medium and large entities) for accelerated filers, but that the roundtable would not specifically address non-accelerated filers. The roundtable will also focus on issues arising both in the 404 assessment and the AS 2 audit in order to determine if there are aspects of each which need to be addressed. More information on the roundtable can be obtained from the SEC website at <http://www.sec.gov/spotlight/soxcomp.htm>

I. Form 8-K Requirements for Form 11-K Filers

For an employee benefit plan required to file Form 11-K, the SEC staff previously has expected a change in the plan's auditors to be reported on Form 8-K. However, not all employee benefit plans file financial statements on Form 11-K, as provided for in Exchange Act Rule 15d-21:

Separate annual and other reports need not be filed pursuant to section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan: Provided,

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10-K and Form 10-KSB or U5S ; and

(2) Such issuer furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11-K with respect to the plan.

The SEC staff has agreed that, in all circumstances (i.e. regardless of whether the employee benefit plan's financial statements are filed as an amendment to the sponsor's Form 10-K or separately on Form 11-K), an employee stock purchase, savings or similar plan that changes auditors is not required to file Form 8-K or otherwise report the change in auditors

The Committee observed that, under Section 1000.08(m) – *Notification of the Commission of Resignations and Dismissals from Audit Engagements for Commission Registrants*, of the PCAOB Interim Quality Control Standards, an independent registered public accounting firm is required to report the termination of the auditor-client relationship for any SEC registrant, which is defined to include employee benefit plans that file Form 11-K. The SEC staff agreed to discuss its position on Form 8-K reporting by employee benefit plans with the PCAOB staff. In the meantime, public accounting firms should continue to provide "five-day" letters to comply with PCAOB requirements for a change in auditor of a plan that files on Form 11-K. An employee benefit plan whose financial statements are filed as an amendment to the sponsor's Form 10-K does not meet the definition of an "SEC Engagement"; thus, such employee benefit plans fall outside the scope of Section 1000.08(m).

J. Income or Loss Applicable To Common Stock

At a previous meeting the SEC Staff requested the Committee's observations on SAB Topic 6.B. At this meeting, the following observations were provided to the Staff:

1. The SEC staff should consider rescinding SAB Topic 6.B, which predates FAS 128. The disclosure requirements of FAS 128 have addressed the concerns expressed by the SEC in ASR No. 280. Paragraph 40 of FAS

128 requires disclosure in the notes to the financial statements in all cases, which encompasses the disclosure required under SAB Topic 6.B.

Paragraph 40 of FAS 128 states (in part, footnotes omitted):

For each period for which an income statement is presented, an entity shall disclose the following:

- a. A reconciliation of the numerators and the denominators of the basic and diluted per-share computations for income from continuing operations. The reconciliation shall include the individual income and share amount effects of all securities that affect earnings per share. Illustration 2 in Appendix C provides an example of that disclosure.*
- b. The effect that has been given to preferred dividends in arriving at income available to common stockholders in computing basic EPS.*

Accordingly, the Committee questions whether there is ever a circumstance in which the SEC staff should require disclosure on the face of the income statement of the numerator of the EPS computation.

2. If the SEC staff decides to retain and revise SAB Topic 6.B, given that FAS 128 requires a reconciliation in the notes to the financial statements of net income to the numerator of the EPS computation, the Committee recommends that the additional disclosure under SAB Topic 6.B should not be required based on judgmental qualitative or trend considerations. Instead, the Committee recommends that the SEC staff provide a quantitative bright-line test as to when the disclosure would be required on the face of the income statement.

The existing footnote 2 to SAB Topic 6.B. Footnote 2 currently reads:

The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

If SAB Topic 6.B is retained and revised, the Committee recommends that the SEC staff include language which would be consistent with the quantitative threshold established under existing footnote 2, e.g.,: “for all periods presented if the amount in any period presented differs from net income or loss by ten percent or more.”

The staff indicated that it appreciated the input from the Committee and was discussing the SAB internally.

IV. CURRENT PRACTICE ISSUES

The following emerging practice issues were addressed at the meeting and have been finalized in discussion documents that have been posted at the URL indicated.

A. Form S-8 Reporting Requirements for Effects of Subsequent Events on Financial Statements

(To be finalized by staff – see below.)

B. Determining when a large accelerated filer must file the financial statements of a 50 percent or less owned person under Regulation S-X Rule 3-09(b)(1)

The final discussion document can be obtained at:

http://cpcf.aicpa.org/NR/rdonlyres/9EE66A80-5F2E-4941-98B9-B88C6EF42BDA/0/Accelerated_Filing_Deadline_Discussion_Document.pdf

C. Application of SEC Staff Guidance on Discontinued Operations Cash Flows To Non-Calendar Year End Companies

The final discussion document can be obtained at:

http://cpcf.aicpa.org/NR/rdonlyres/5D9B9E9B-B941-480B-AF20-0A0554B0C682/0/Discontinued_Operations_Discussion_Document.pdf

Discussion Document A

Topic: Form S-8 Reporting Requirements for Effects of Subsequent Events on Financial Statements

Background: Appendix C of the SEC Staff Training Manual indicates that certain events that occur after the end of a fiscal year require retroactive restatement of (or revisions to) the prior financial statements if they are reissued. Appendix C also indicates that the updating requirements specified in Item 11(b) of Form S-3 are applicable to any registration statement except Form S-8.

At the April 2004 joint meeting of the staff and the Committee, we discussed whether a registrant is required to incorporate by reference or include restated financial statements that reflect the impact of an event such as a discontinued operation, a change in reportable segments, or adoption of a new accounting standard in a new or amended registration statement on Form S-8. The minutes of that meeting indicate that “Form S-8 is not required to be updated to reflect the impact of material events (i.e. discontinued operations, change in reportable segments) that occur after the end of a fiscal year which require retroactive restatement of the prior financial statements.”

Section II.L.4 (page 48) of the December 1, 2005 edition of Current Accounting and Disclosure Issues in the Division of Corporation Finance, addresses a similar issue in the context of changes in segments and provides the following guidance:

“If annual financial statements are required in a registration statement (including Form S-8) or proxy statement that includes subsequent periods managed on the basis of the new organizational structure, the annual audited financial statements should include a revised segment footnote that reflects the new reportable segments.”

The minutes from the April 2004 meeting state that a Form S-8 is not required to be *updated* with restated financial statements that reflect the impact of an event such as a discontinued operation, a change in reportable segments, or adoption of a new accounting standard. The minutes do not specifically reference whether or not financial statements included or incorporated by reference in a new or amended registration statement must be updated. The guidance in the December 2005 Current Accounting and Disclosure Issues document appears to be addressing situations, in which a *new* Form S-8 is being filed.

Issue/Question:

The Committee is seeking to clarify whether the staff believes that financial statements incorporated by reference in a new or amended registration statement on Form S-8 need to be updated to reflect discontinued operations, a change in reportable segments or an accounting change that requires retrospective application.

View A: The financial statements incorporated by reference in a new or amended registration statement on Form S-8 are not required to be updated to reflect the impact of

material events (i.e. discontinued operations, change in reportable segments, changes treated retrospectively pursuant to FAS 154) that occur after the end of a fiscal year which require retroactive restatement of the prior financial statements.

View B: The financial statements incorporated by reference in a new or amended registration statement on Form S-8 are required to be updated to reflect the impact of certain material events (i.e., discontinued operations, change in reportable segments, changes treated retrospectively pursuant to FAS 154) that occur after the end of a fiscal year which require retroactive restatement of the prior financial statements.

Committee Recommendation: The Committee supports View A. The Committee’s understanding has been that incorporating by reference information that meets the 1934 Act filing requirements is sufficient for offerings on Form S-8 whether “new”, “amended” or simply “effective”. The Committee believes this view is consistent with the guidance in the April 2004 joint meeting minutes and the guidance in the SEC Staff Training Manual, although the Committee acknowledges that this view would appear to be inconsistent with the revised guidance contained in the December 2005 updated Current Accounting and Disclosure Issues document.

Follow-on question: If the staff believes that financial statements incorporated by reference in a new or amended registration statement on Form S-8 need to be updated to reflect the effects of discontinued operations, changes in segments and accounting changes that require retrospective application, does the staff also believe that other updating requirements that apply to other registration statement forms also apply to a new or amended Form S-8? For instance, must a new or amended registration statement on Form S-8 consider the updating requirements relating to:

- financial statements of businesses or real estate operations acquired or to be acquired required (S-X Rules 3-05 and 3-14)
- pro forma financial statements required by Article 11 of Regulation S-X
- separate financial statements of an equity method investee that is a foreign business that would otherwise be permitted up to six months after year-end to provide audited financial statements

View A: Updating requirements that are not specifically applicable to the registrant’s financial statements do not need to be considered in connection with a new or amended registration statement on Form S-8. General Instruction G (2) to Form S-8, Updating, does not include requirements similar to those for Form S-3 Item 11 (b), Material Changes, regarding the need to update for changes such as pro forma information pursuant to Article 11 of Regulation S-X or financial statements required under S-X Rule 3-05.

View B: The financial statement updating requirements of Regulation S-X apply to Form S-8 in the same way that they apply to other registration statement forms. Accordingly, updated financial statements of business or real estate operations acquired or to be acquired, pro forma financial statements required by Article 11 of Regulation S-X and equity method investees must be provided in a new or amended registration statement on

Form S-8 if they would be required in a new or amended registration statement on Form S-3.

Committee Recommendation: The Committee supports View A. The Committee does not believe that updating requirements (beyond those required by the 1934 Act) should be applicable to a new or amended registration statement on Form S-8.

The staff reminded the Committee that General Instruction G (2) to Form S-8 addresses updating requirements after effectiveness. It states, in part, the following:

Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8-K (§249.308) pursuant to Item 5 thereof (or, if the registrant is a foreign private issuer, on Form 6-K (§249.306)).

Staff Response: The staff indicated it would give this issue further thought and asked the Committee for some actual examples to illustrate the issue.

Note: *Subsequent to the meeting, the Committee identified the following examples for consideration by the staff:*

Example 1: Registrant A has a calendar year-end. It disposes of a component of itself in Q1 2006 and reports the component as a discontinued operation in the March 31, 2006 Form 10-Q. After filing that Form 10-Q, Registrant A desires to file a new Form S-8. Does Registrant A need to re-file audited financial statements for 2003-2005, reflecting the operation discontinued in 2006 as a discontinued operation, before it can file the Form S-8?

Example 2: Registrant B has a calendar year-end. It made a significant (25%) acquisition in January 2006 and filed a Form 8-K reporting the acquisition at that time. The target also has a calendar year-end. The Form 8-K included target audited financial statements for the year ended December 31, 2004 and unaudited target financial statements for the nine months ended September 30, 2004 and 2005. The Form 8-K also included a pro forma balance sheet as of September 30, 2005 and pro forma income statements for the year 2004 and the nine months ended September 30, 2005. In June 2006, Registrant B desires to file a new Form S-8. Does Registrant B need to file audited target 2005 financial statements and pro forma income statements for the year ended December 31, 2005 and the quarter ended March 31, 2006 before it can file the Form S-8?