THE CENTER FOR PUBLIC COMPANY AUDIT FIRMS
SEC Regulations Committee
April 5, 2005 - 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.

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I. ATTENDANCE

A. SEC Regulations Committee

Jay Hartig, Chair
Gerard Brinkman
Jack Ciesielski
Greg Clifton
Melanie Dolan
Clarence Ebersole
David Follett
Karin French
Steve Henning
Dave Hinshaw
Chris Holmes
Jeff Lenz
Scott Pohlman
Amy Ripepi
John Wolfson

B. Securities and Exchange Commission

Office of the Chief Accountant

Don Nicolaisen, Chief Accountant
Andrew D. Bailey, Deputy Chief Accountant
Jack Albert, Senior Associate Chief Accountant
Cathy Cole, Associate Chief Accountant
Russell Hodge, Professional Accounting Fellow

John James, Professional Accounting Fellow
Chad Kokenge, Professional Accounting Fellow
Tony Lopez, Associate Chief Accountant
Jeff Naumann, Enabling Technologies Expert
Jane Poulin, Associate Chief Accountant
Brian Roberson, Professional Accounting Fellow
Pam Schlosser, Professional Accounting Fellow
Cheryl Tjon-Hing, Valuation Expert

Division of Corporation Finance

Carol Stacey, Chief Accountant
Craig Olinger, Deputy Chief Accountant
Louise Dorsey, Associate Chief Accountant
Stephanie Hunsaker, Assistant Chief Accountant
Todd Hardiman, Associate Chief Accountant
Joel Levine, 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

C. AICPA Center for Public Company Audit Firms

Lillian Ceynowa
Annette Schumacher Barr

D. Guests

Bob Guido, PwC

II. OPENING REMARKS

Don Nicolaisen opened the meeting by summarizing the following priorities currently being addressed by the staff:

A. SFAS No. 123 / SAB 107

- A critical aspect of SAB 107 is disclosure (i.e., MD&A and footnote disclosure including changes in fair value methodologies, assumptions and financial statement impact). These disclosures could be important to investors for a long period of time, depending upon a registrant's method of adoption and the remaining vesting periods of its existing share-based awards.

- It is critically important that registrants implement the provisions of FAS 123-R correctly and that the disclosures are complete, accurate and transparent enough to provide readers with a full understanding of the impact of implementation.

- In a follow-up question from the Committee, Mr. Nicolaisen noted that a delay of the SFAS No. 123R adoption date of July 1, 2005 for public companies (other than small business issuers) remains a possibility but noted that such delay would be a Commission action and not a Staff action. Note: On April 14, 2005, the SEC approved a new rule that for public companies delays the effective date of FASB Statement No. 123 (revised 2004), *Share-Based Payment* (FAS 123-R). Under the SEC's rule, FAS 123(R) is now effective for public companies (other than small business issuers) for **annual**, rather than interim, periods that begin after June 15, 2005.

B. Sarbanes-Oxley 404

- On April 13, 2005, the SEC will sponsor a Roundtable on Implementation of Internal Control Reporting Provisions. At this roundtable, the SEC will hear from a broad variety of parties including preparers, auditors, users and investors regarding their experiences with PCAOB Audit Standard No. 2 and Section 404 in the first year of implementation. The SEC expects this forum to be a great opportunity for market participants to work together and share insights in an effort to improve the quality of financial reporting.

- Mr. Nicolaisen noted that he agrees with SEC Chairman, William Donaldson, PCAOB Chairman, William McDonough and Division of Corporation Finance Director, Allen Beller in the belief that the wording in Section 404 is adequate. What the staff hopes to ultimately accomplish as a result of the roundtable is the issuance of additional implementation guidance for complying with Section 404 requirements in year two. With respect to timing, Mr. Nicolaisen stated that additional guidance should be expected within 30-45 days after the roundtable.

C. Complexity of Financial Reporting

- Mr. Nicolaisen stated that the reduction in the complexity of financial reporting is a high priority for the staff. He noted that he believes a significant contributing factor to the existing complexity is rules-based accounting standards.

D. Release of Off-Balance Sheet Arrangements Study

- Mr. Nicolaisen noted that the staff has completed the study and analysis of off-balance sheet arrangements that was mandated by Sarbanes-Oxley and expects to issue its report by the end of April 2005. He reiterated his belief that the complexity and misuse surrounding off-balance sheet arrangements stem from rules-based accounting standards (derivatives, leases, etc.).

E. XBRL Reporting

- The SEC wants XBRL to be a successful method of reporting financial information. The key to this success is the definitions that are inherent in the taxonomies. These definitions will become more robust and finite over time.

- Mr. Nicolaisen believes the application of XBRL will result in more clarity in disclosures and better research capabilities for users. This will better enable investors to use financial reporting in a more efficient, cost effective manner. Mr. Nicolaisen also stated that the application of XBRL ties closely with Sarbanes-Oxley 404, adding that the reporting of data will be faster, better and less susceptible to manipulation. For these reasons, he is very enthusiastic about its implementation.

F. Small Business Initiative

- The objectives of the Advisory Committee on Smaller Public Companies are to examine the impact of the Sarbanes-Oxley Act for smaller public companies and to identify recommendations that will increase the quality of financial information and reduce redundancies and unproductive costs. Mr. Nicolaisen added that he hopes standard setters will pay heed to this process and be part of the solution.

G. Independence

- Andy Bailey and his staff continue to address a variety of auditor independence issues.

H. International

- Mr. Nicolaisen noted that 2005 will be the first year for mandatory reporting under IFRS by European and Australian public companies. He noted that the Staff plans to spend a significant amount of time studying IFRS reporting and analyzing compliance, including a close examination of the reconciliation to US GAAP. Mr. Nicolaisen commented that this examination may eventually lead to the elimination of such reconciliation requirements.

Mr. Nicolaisen closed his remarks by thanking the Committee for its support of the accounting profession and its work in the improvement of the quality of financial reporting**.**

III. DIVISION UPDATES

A. OCA Update

- Recent Organizational and Staff Changes

  Jack Albert stated that the following new personnel have been hired since the September 13, 2004 joint meeting:

  Cheryl Tjon-Hing, Valuation Expert
  Charlotte Thomas, Research Specialist
  Mark Barton, Research Specialist
  Julie Erhardt, Deputy Chief Accountant
  Amy Hargrett, Assistant Chief Accountant
  Jeff Naumann, Enabling Technologies Expert
  Blaine Roundy, Paralegal

B. Division of Corporation Finance Update

- Recent Organizational and Staff Changes
    - Carol Stacey stated that the division has re-introduced its branch chief model to generally add 3 accounting branch chiefs per industry group. This will result in approximately 35 accounting branch chiefs.
    - The Division also noted that it is close to reaching its current ceiling, however, it expects several retirements in 2005.
- Timetable for posting Staff comment letters and related company responses to the SEC website
    - The Staff commented that timing remains unknown. The Staff is currently conducting a labor-intensive process to ensure a clean cut-off for posting comments and registrant responses related to new filings made after August 1, 2004 as well as ensuring only redacted versions of the response letters subject to confidential treatment requests are posted.
    - The Staff may initially post a subset of its comment letters and responses – for example comments and responses to Item 4 Form 8-K's filed after August 1, 2004.
    - The Staff noted that posting comment letters and responses to the website will not result in any significant change to the comment letter process or substance of the comments. The only significant change was the insertion of Tandy language, which was previously communicated.
    - The practice of the Staff issuing verbal comments will not change but such comments will likely be followed-up by written correspondence. This process is important because reviews will not be considered completed until all verbal and written comments and registrant responses are Edgarized.

C. Enforcement Update

- Susan Markel stated that there are four personnel slots that remain unfilled in the Division of Enforcement (one supervisory and 3 staff positions). Current staff includes 100 personnel total; 38 in Washington DC.
- The staff is busy working on risk-based investigations as well as the numerous referral cases received from the Division of Corporation Finance and the internet.
- Ms. Markel communicated the Enforcement Division's initial transition to electronic files. In the future, the staff will ask for electronic workpapers in its investigations. Having electronic files is beneficial for numerous reasons, one of which is disaster recovery.

D. Investment Management (IM) Update

- Brian Bullard stated that Division of IM Director Paul Roye left the Commission in February and Mike Eisenberg is serving as Interim Director. An active search for a new permanent director is ongoing.

- On March 8, 2005, the Division of IM issued letters to the AICPA, the American Council of Life Insurers, the National Association for Variable Annuities and the PCAOB regarding auditing standards for financial statements of insurance company depositors of variable insurance products. Mr. Bullard noted that the letters represent temporary guidance and that the staff continues to focus on a permanent solution with the hopes of providing additional guidance in the spring or early summer.

IV. New Issuances/Releases

A. 404 Deferral for Non-Accelerated Filers

The Staff commented that rumors of a permanent elimination of 404 reporting for non-accelerated filers are false. Further, if an entity becomes an accelerated filer in the interim period before the deferred effective date for non-accelerated filers, it must follow accelerated filer rules.

B. SAB 107

On March 29, the SEC issued SAB 107 which summarizes the views of the staff regarding the interaction between Statement of Financial Accounting Standards Statement No. 123 (revised 2004), Share-Based Payment and certain Securities and Exchange Commission rules and regulations and provides the staff's views regarding the valuation of share-based payment arrangements for public companies. (See Mr. Nicolaisen's opening remarks in Section II above for further discussion of SAB 107.)

V. Status Update of Projects/Issues

A. Status of Project to Study and Update Materiality and Unadjusted Difference Guidance

This project focuses on the assessment of misstatements and will address the use of the iron curtain and the rollover method. Mr. Hodge commented that the staff is working hard on this project but the timetable for issuing guidance is still unknown. He added that the staff continues to encourage feedback on the issue.

B. Complying with SAB Topic 6.B

Cathy Cole acknowledged the input received from the Committee and stated that the staff will continue to consider issuing a change to SAB Topic 6.B in light of the issuance of EITF 03-06 (Discussion Document B from the September 13, 2004 meeting). The Staff further commented that any additional insight or comments would be appreciated.

C. Status and Timeline of the Securities Offering Reform Proposal

Carol Stacey referred to a meeting held on March 21, 2005 with representatives of the Committee and the Division of Corporation Finance to discuss the proposal. The meeting is described on the SEC's website at

http://www.sec.gov/rules/proposed/s73804/aicpamemo032105.pdf

She added that it is uncertain at this time when the proposals will be finalized.

D. Status of Proposed Rule – Use of Form S-8 and Form 8-K by Shell Companies

The staff noted that the timing for finalizing this rule is uncertain.

E. Rule 14a-3 Rulemaking

A staff FAQ mentioned possible rulemaking to require the inclusion of management's report on internal control over financial reporting in the annual report to shareholders. The Staff commented that there is no activity yet on a rulemaking proposal in this area but the issue may be further discussed at the April 13, 2005, 404 roundtable.

F. Compilation of SEC Regulations Committee Meeting Highlights

The Committee will update the draft compilation to incorporate the 2004 joint meetings and will forward a draft to the Staff for review and comment.

G. Status of Reference Material Updates (Staff Training Manual, Outlines)

- Both domestic and international outlines have been updated. They are posted to the SEC website at

  http://www.sec.gov/divisions/corpfin/acctdis030405.htm

  and

  http://www.sec.gov/divisions/corpfin/internatl/cfirdissues1104.htm

- Timing of the updated Staff Training Manual is uncertain.

H. Proposed Rule - IFRS First Time Adopters

The Staff commented that this proposal will be finalized in the very near term. Note: On April 12, 2005, the final rule was issued that adopts the amendments to Form 20-F to provide a onetime accommodation relating to financial statements prepared under International Financial Reporting Standards ("IFRS") for foreign private issuers registered with the SEC. This accommodation applies to foreign private issuers that adopt IFRS prior to or for the first financial year starting on or after January 1, 2007.

VI. Other Matters

A. Voluntary XBRL Program

The Staff noted that monitoring of the results will be performed in two facets: 1) internal assessment of the technology and 2) external feedback from the market (i.e. users, including analysts, investors, preparers, auditors, software companies, other regulators). The timetable depends on filings that come in and the related market reaction. Meetings with user groups have not yet been scheduled.

B. Status Update on PCAOB Reporting Chart

- This chart addresses the types of reports that should refer to PCAOB standards and what firms are required to be registered.

- The Staff commented that the chart is currently being reviewed by the PCAOB staff and that finalization is expected in the near term. The Staff further commented that changes were being made to the chart to eliminate several of the transition scenarios that are no longer applicable. In addition, some aspects of the chart may change in the future as the SEC and PCAOB continue their discussions, particularly those scenarios under S-X 3-09.

C. Staff View on Applicability of 404 Reporting to Special Reports Following IPOs

- This issue relates to Discussion Document F from the September 13, 2004 meeting and Staff Training Manual – Topic 1.III.C(4).

- The Staff is still considering this issue and the timetable for resolution is not certain. The Staff commented that this issue is complicated by variations of Special Reports filed by registrants (i.e. some registrants include certifications, Item 9A disclosures, etc.). The Staff also commented that its initial view was that 404 reporting would be required by simply following the instructions of the form, since this report is filed on a Form 10-K. The Staff encouraged additional thoughts and feedback from the Committee regarding this issue.

D. Staff Observations about Item 4.02(a) and (b) Form 8-Ks

- The Staff commented that it will focus in 2005 on Item 4.02 disclosures compared to the ultimate disclosure that is included in a footnote to the financial statements in the restated filing.

- The Staff also commented on Form 12b-25 disclosures, noting that those disclosures need to inform the user of all relevant information.

- The Staff's initial view was that Item 4.02(b) 8-K's were not being more closely scrutinized than Item 4.02(a) 8-Ks.

- In a follow-up question by the Committee, the Staff commented that in a situation whereby a registrant files a Item 4.02 8-K but then subsequently concludes that its previously issued financial statements are not required to be restated, the registrant should file an amendment to that previously filed Form 8-K to reinstate the reliance on the previously issued financial statements.

VII. Current Practice Issues

Discussion Document A:

Topic: Clarification regarding Pro forma income statements prepared pursuant to Article 11 "Pro forma Financial Information" of Regulation S-X (Revisit of Discussion Document I from the June 15, 2004 Meeting).

Background:

Through the comment letter process, certain staff members have indicated to registrants that certain amounts recorded in the historical financial statements should not be removed for the purpose of preparing Article 11 pro forma financial information.

Rule 11-02(b)(5) states in part: “The pro forma income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction . Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the registrant within the 12 months succeeding the transaction shall be disclosed separately.”

In addition, Rule 11-02(b)(6) states in part: “Pro forma adjustments related to the pro forma income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustments which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the registrant , and (iii) factually supportable.”

Discussion: Company A and Company B both have a December 31 year-end. On December 29, 2003 Company A acquired Company B in a purchase business combination and recorded a charge to operations for Acquired in-Process Research and Development Activities (IPR&D). Prior to its acquisition by Company A, in 2003, Company B recorded incremental costs directly related to its acquisition by Company A as expense. Company A will prepare an Article 11 pro forma income statement for the year ended December 31, 2003.

Question: Is it acceptable to record pro forma adjustments to remove both the IPR&D charge recorded by Company A and the acquisition costs recorded by Company B?

View A: Yes, since both amounts are nonrecurring charges directly attributable to the transaction. With respect to Company A's acquisition of Company B, the purpose of the pro forma income statement is to only include amounts related to the acquisition that have a continuing impact on the registrant. If the acquisition occurred on January 3, 2004, the pro forma income statement for 2003 would not include the IPR&D charge since the amount would not have been recorded in the historical income statement. To present different pro forma income statements due solely to a different transaction date could be confusing to investors.

View B: No. Charges recorded in the historical income statements of either Company A or Company B can not be removed through pro forma adjustments. The notes to the pro forma statements should contain adequate disclosure of material nonrecurring charges recorded.

Committee Comment: The committee take View A. The committee views the IPR&D charge as a material, nonrecurring charge which resulted directly from the transaction (and which will be included in income of the registrant within 12 months following the transaction). Topic Three.II.C of the SEC Staff Training Manual (2000 edition) indicates that this type of charge should not be included in the pro-forma income statement but rather should be disclosed in a note clearly indicating that it is not included. Although the committee did not perform an exhaustive search, for the Staff's consideration, a couple of higher profile examples of this treatment include the HP-Compaq transaction and the Compaq-Digital transaction.

Additionally, the committee believe that past practice has been to treat IPR&D charges similar to a gain or loss on a debt extinguishment or a gain or loss on divestiture of a business in Article 11 pro-forma financial statements (i.e. exclude from the pro-forma income statements but include in the pro-forma balance sheet as a retained earnings adjustment with clear disclosure of the treatment reflected).

Staff Response: Regarding the IPR&D write-off, the staff commented that it would not object to a pro-forma adjustment to remove such write-off from the Article 11 pro-forma financial statements. The staff further commented that the pro-forma financial statements should contain

adequate disclosure of the amount and nature of the write-off and the fact that it is not included in the pro-forma income statement, the reasons for the write-off and, if applicable, a statement that the write-off is not necessarily indicative of continuing annual research and development expenses.

In a follow-up question, assume the same facts above, however, the acquisition occurred instead on January 2, 2004 and Company A will prepare Article 11 pro-forma annual financial statements for December 31, 2003. Regarding this question, the Staff stated that it would not require a pro-forma adjustment to be recorded to include the IPR&D write-off in the December 31, 2003 annual pro-forma financial statements.

Regarding the transaction costs expensed by Company B, the staff commented that it would likely not object to a pro-forma adjustment to remove such costs from the Article 11 pro-forma financial statements.

Discussion Document B:

Topic: Determining the Section 404 Reporting Requirements for a Voluntary Filer

Background

In an additional committee question to the issue described in Discussion Document E during the June 15, 2004 meeting, the committee presented the Staff with a scenario whereby a calendar year-end company had historically been a voluntary filer (perhaps due to a bank debt requirement), completed and had a registration statement declared effective for the offer and sale of common stock (which was concurrently listed for exchange on a national stock exchange) prior to June 30, 2004 and whose common equity public float was greater than $75 million at June 30, 2004. The question was whether that company would be an accelerated filer and subject to 404 reporting at December 31, 2004?

At the April 8, 2004 meeting, the Staff requested firms to submit scenarios and questions such as these to be considered for inclusion in a forthcoming FAQ document. Further, at the April 8, 2004, meeting, the Staff deferred its answer to this additional question pending the issuance of "Management's Report on Internal Control Over Financial Reporting and Disclosure in Exchange Act Periodic Reports: Frequently Asked Questions".

In that issued FAQ document, Question No. 7 addresses when a registrant must determine whether it is an accelerated filer for the purposes of determining when it must comply with Items 308(a) and (b) of Regulations S-K and S-B? The answer stated that "As provided in Exchange Act Rule 12b-2, a registrant that is not already subject to accelerated filing should determine whether it is an accelerated filer at the end of its fiscal year, based on the market value of its public float of its common equity as of the last business day of its most recently completed second fiscal quarter. Consideration should also be given to the other components of the Rule 12b-2 definition (i.e. the registrant has been subject to Exchange Act reporting for at least 12 months, has filed at least one annual report, and is not eligible to use Forms 10-KSB and 10-QSB)."

Issue No. 1: The committee seeks clarification as to how the voluntary filer, in the original example outlined above, would evaluate the second and third criteria of the definition in Rule 12b-2 of an accelerated filer as of December 31, 2004. (Given the one-year deferral, this particular fact pattern is relevant for voluntary filers in 2005).

Committee Recommendation: The Committee believes that since the voluntary filer's '34 Act reporting obligations were previously terminated (either automatically by Section 15(d) or through the operation of Rule 12h-3) that any '34 Act reporting history that preceded the effective date of its Form S-1 should be disregarded by the registrant in determining its status as an accelerated filer. The committee believes this is consistent with the response to Question 1 of Discussion Document E from the June 2004 Committee meeting.

Issue No. 2: If the prior '34 Act reporting history of the voluntary filer needs to be considered:

Regarding the second criterion (The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months), should the requirement "for a period of at least twelve calendar months" be interpreted as twelve consecutive or continuous months or any twelve months?

For example, if the registrant had previously been "subject to" (i.e., required to file rather than filing voluntarily) the Exchange Act reporting requirements for several months prior to the suspension of its reporting obligations (either pursuant to Section 15(d) or Rule 12h-3), should those "calendar months" be aggregated with any other "calendar months" in which the registrant was required to file under the Exchange Act in determining whether the registrant has been subject to the requirements of Section 13(a) or 15(d) for a period of at least twelve calendar months?

As an example, assume a calendar year-end private company files an initial registration statement on Form S-4 to register the exchange of debt securities which it had previously issued in the 144A market. The registration statement was declared effective on September 1, 2002 and the exchange offer was completed on September 15, 2002. The debt was held by less than 300 investors as of January 1, 2003, and, accordingly, the company's reporting obligations were automatically suspended as of that date pursuant to Section 15(d). The company filed a Form 15 pursuant to Rule 15d-6.

That same company filed another registration statement on Form S-4 to register the exchange of another series of debt previously issued in the 144A market. The second registration statement was declared effective on November 1, 2003. Again, this debt was held by less than 300 investors and, accordingly, the company's reporting obligation was automatically suspended as of January 1, 2004.

This same company filed a registration statement on Form S-1 for the offer and sale of its equity securities which was declared effective on June 1, 2005. As of June 30, 2005, the common equity public float was greater than $75 million. The company is not eligible to use small business forms. The company voluntarily filed Exchange Act reports throughout this period, notwithstanding the fact that its reporting obligations had been suspended.

How should the company evaluate the second and third criteria of Rule 12b-2?

View A: The company has filed an annual report pursuant to Sections 13(a) or 15(d) under the Exchange Act, and therefore has satisfied the third criterion of the definition of an accelerated filer. Additionally, the company has been subject to the reporting requirements of Sections 13(a) or 15(d) for a period of at least 12 calendar months (4 months in 2002, 2 months in 2003 and 7 months in 2005). Therefore, the company would be considered an accelerated filer as of December 31, 2005.

View B: For purposes of determining whether the registrant has satisfied the second criterion of the definition of an accelerated filer, the 12 calendar month period should be "reset" anytime that the duty to file is suspended. Periods of time that the registrant voluntarily files should not be included because the registrant is not "subject to" the reporting requirements of Section 13(a) or 15(d) during that time period—rather they are "filing under" Section 15(d).s

Committee Recommendation: The committee supports View B.

Staff Response: The Staff had not yet reached a consensus on a view as of the date of the joint meeting. The Staff's current thinking is that registrants who choose to file periodic, quarterly or annual reports as issuers on a voluntary basis should follow the instructions of the form in which they are filing. Registrants currently facing this issue should consult with the Office of the Chief Counsel (David Lynn, Paula Dubberly) with a copy to Carol Stacey, Chief Accountant of the Division of Corporation Finance.

Discussion Document C: Applying the Guidance in EITF 03-13 to Discontinued Operations (See the June 14, 2005 Joint Meeting Highlights – Attachment A)

Discussion Document D:

Topic: Application of EITF 04-8 When a Registrant Prepares a New or Amended Registration Statement.

Background: EITF Issue No. 04-8, *The Effect of Contingently Convertible Instruments on Diluted Earnings per Share* (EITF 04-8), requires that contingently convertible instruments should be included in diluted earnings per share (if dilutive) regardless of whether the market price trigger has been met. Unless the contingently convertible instruments have been cash settled prior to the initial date of adoption, all prior period earnings per share should be restated to conform to the guidance in EITF 04-8 for comparative purposes. EITF 04-8 should be applied to reporting periods ending after December 15, 2004.

Question: Must a registrant that is preparing a new or amended registration statement or proxy statement that includes or incorporates by reference financial statements as of a date on or after the date the company has adopted EITF 04-8 restate its historical financial statements that are included or incorporated by reference in the registration statement or proxy statement to reflect the retroactive application of the consensus guidance?

View A - The registrant must restate its historical financial statements that are included or incorporated by reference in the registration statement or proxy statement to reflect the retroactive application of EITF 04-8 (as would be required by Item 11 of Form S-3 - accounting change that requires restatement).

View B - The registrant must restate its prior period annual financial statements that are included (i.e., reproduced) in the registration statement or proxy statement. However, if the historical financial statements are incorporated by reference in the registration statement or proxy statement, the registrant would not necessarily be required to restate those historical financial statements for the retroactive application of EITF 04-8. The accommodation approach that has previously been afforded, by administrative practice, to stock splits, the initial adoption of EITF 03-6, FAS 128, and FAS 145, and the transitional disclosures relating to FAS 142 and FAS 143, would be available to registrants following the adoption of EITF 04-8.

Under the "accommodation" approach, it would be the responsibility of the registrant and its independent registered public accounting firm to make the assessment as to whether GAAP requires the restatement of the most recent annual financial statements that are being reissued via incorporation by reference (i.e., NOT reproduced) in a registration statement or proxy statement that also incorporates by reference interim financial statements already reflecting the initial adoption of EITF 04-8.

The independent registered public accounting firm should decide for itself whether it can permit reissuance of its audit report without restatement in this circumstance. However, if restated financial statements are not filed (under cover of Form 8-K, for example) then the registration statement or proxy statement must prominently present at least, selected financial data (even though not required by instructions to the registration statement or proxy statement) that includes the restated earnings per share information for all affected periods (e.g., all 5 years). Alternatively, registrants could convey the revised information by filing it in a Form 8-K that is incorporated by reference into the registration statement or proxy statement; or by including the revised annual earnings per share disclosures in a Form 10-Q that is incorporated by reference into the registration statement or proxy statement.

Irrespective of the method a registrant may choose for conveying the revised information, the disclosures should be robust and transparent and should cover all annual periods for which financial statements are incorporated by reference. The disclosures should include (or cross reference to) the date that EITF 04-8 was adopted, a brief description of the standard, the revised accounting policy, and a discussion of the impact that adoption has had on the financial statements.

As in other instances, the accommodation would be granted with the expectation that the independent registered public accounting firm will consent to incorporation of its report on the annual financial statements only after assuring that the restated information required by EITF 04-8 is complete and correct.

Committee Recommendation: The committee supports View B. The committee believes that a sufficient level of context could be presented to provide readers with an appropriate level of information but that the level of disclosure would likely be significantly more than has been generally provided in the case of a stock split (e.g., full EPS footnote disclosures should be presented as previously discussed under the EITF 03-06 model at the September 13, 2004 meeting).

Staff Response: The Staff takes View B.

Discussion Document E: Applying Rules 3-09 and 4-08(g) When an Investor Adopts EITF 02-14 for an Investment in In-Substance Common Stock (See the June 14, 2005 Joint Meeting Highlights – Attachment B)

Discussion Document F: Clarification of Instruction 4 of Item 2.01 of Form 8-K (See the June 14, 2005 Joint Meeting Highlights – Attachment D)

Discussion Document G:

Topic: Applying 404 Reporting Requirements when a Registrant Changes Its Fiscal Year-End

Background: In June 2004, the SEC staff issued the document "Management's Report on Internal Control Over Financial Reporting and Disclosure in Exchange Act Periodic Reports: Frequently Asked Questions" (the "FAQ"). Question 8 to the FAQ ("FAQ 8") states that a registrant is required to provide a management report on internal control over financial reporting, and the related auditor attestation report when filing a transition report on Form 10-K or 10-KSB. This is because transition reports filed on Form 10-K or 10-KSB (whether by rule or by election) must contain audited financial statements and, as such, they must also include management's report on internal control, subject to the transition provisions.

The FAQ also states that transition reports on Form 10-Q or 10-QSB are not required to include a management report on internal control over financial reporting. However, the FAQ did not address whether, in this case, management would be required to perform an assessment of and file a report on its internal control over financial reporting as of the end of the transition period for inclusion in the first Form 10-K or 10-KSB filed for the registrant's new fiscal year (which will include audited financial statements for the transition period to replace the unaudited transition period financial statements filed in the registrant's transition report on Form 10-Q or 10-QSB).

Issue: Is a registrant required to provide a management assessment with two "as of" dates in connection with the first Form 10-K or 10-KSB filed following a change in fiscal year that was originally reported on Form 10-Q or 10-QSB?

As an example, assume on April 1, 2005, an accelerated filer (the "registrant") changes its fiscal year from December 31 to March 31. The registrant elects to file a Form 10-Q for the transition period from January 1, 2005 to March 31, 2005 and, thereafter files Form 10-Qs for its quarters throughout its new fiscal year. Must that registrant include a management report, and related auditor attestation report, on internal control over financial reporting "as of" both March 31, 2005 and March 31, 2006 in the registrant's Form 10-K for the year ending March 31, 2006?

View A: The registrant would only include a management report, and related auditor attestation report, on internal control over financial reporting as of March 31, 2006. Regulation S-K Item 308(a) requires that a registrant provide a report on management's assessment of the effectiveness of internal control over financial reporting, "as of the end of the registrant's most recent fiscal year…" Further, in applying the conclusion in FAQ 8, transition reports filed on Form 10-K/T must contain audited financial statements for transition periods of six months or longer and, as

such transition periods of six months or longer are required to include a management report, and related auditor attestation report, on internal control over financial reporting. (Further, a company may elect to file audited financial statements of a transition period on a Form 10-K/T of any length of time; such Form 10-K/T is required to include a management report, and related auditor attestation report, on internal control over financial reporting). Proponents of View A believe that transition reports filed on Form 10-Q or 10-QSB are not annual periods and therefore, not required to include a management report, and related auditor attestation report, on internal control over financial reporting either in the Form 10-Q or when subsequently audited and included in a Form 10-K. Proponents of View A also believe that information on the effectiveness of the registrant's internal control over financial reporting as of March 31, 2005 would have little current value to investors in May 2006 (which is when the report would be filed). Unlike comparative financial statements, Proponents of View A do not believe that there is value in providing "comparative" assessments of internal control over financial reporting (which is supported by the Commissions rules which do not require comparative presentation of such reports). Proponents of View A also note that the CEO and CFO of the registrant will be required to provide their conclusions regarding the effectiveness of the registrant's disclosure controls and procedures in accordance with Item 307 of Regulation S-K in the March 31, 2005 transition report on Form 10-Q.

View B: The registrant is required to include a management report, and related auditor attestation report, on internal control over financial reporting as of both March 31, 2006 and March 31, 2005. Notwithstanding the requirement under Regulation S-K Item 308, since the transition period for the three months ended March 31, 2005 is required to be audited, reported in the March 31, 2006 Form 10-K and has not previously been subject to management's assessment of the effectiveness of internal control over financial reporting and an audit of management's assessment of and effectiveness of internal control over financial reporting as of March 31, 2005, reports including conclusions "as of" both dates (or a single report covering both dates) should be included in the March 31, 2006 Form 10-K. Further, proponents of View B submit that both reports should be required due to the fact that a period of more than 12 months has passed between management's assessment of the effectiveness of internal control over financial reporting and an audit of management's assessment of and effectiveness of the internal control over financial reporting. In addition, based on the guidance provided in FAQ 8, in the example above, had the registrant elected to file a transition report on Form 10-K for the period from January 1, 2005 to March 31, 2005, management's report, and the related auditor attestation report, on internal control over financial reporting would be required in that transition report. This is based on the principle described in FAQ 8 that audited financial statements included in a Form 10-K must also include management's report on internal control, subject to the transition provisions.

Committee View: The Committee supports View A.

Staff Response: The Staff takes View A and notes that 404 reporting is required in connection with a Form 10-K or 10-KSB, irrespective of whether it is a transition report and how many months are in the transition period.

<u>Discussion Document H:</u> Applying Rule 3-09 in the year a formerly consolidated subsidiary becomes an equity method investee (See the June 14, 2005 Joint Meeting Highlights – Attachment C)

Attachment A

PUSH DOWN ACCOUNTING UNDER SAB TOPIC 5-J (from the March 2001 Joint meeting highlights – as reprinted below)

Committee Question: Has the Staff's view changed on this issue since the conclusion reached in the March 2001 meeting?

Staff Response: Yes, the Staff commented that push down accounting under SAB Topic 5-J is preferable and would not want to interfere with a registrant's decision to apply such accounting. The Staff further noted that a preferability letter would be required and election of such "change in entity" accounting would require retroactive application.

In a follow-up discussion, the Staff and the committee agreed that should a registrant apply push down accounting in an interim period subsequent to the issuance of the annual financial statements, then, in connection with a new 1933 Act registration, the registrant would be required to restate those annual financial statements included or incorporated by reference in such a registration statement or a proxy statement

March 2001 Discussion:

Question: *Can a registrant that initially elects to not apply push-down accounting later elect to apply it?*

Background: *Under SAB 5-J, if a company becomes substantially wholly owned, the acquirer's cost should be pushed down and reflected as a new cost basis in the company's financial statements. Generally, the SEC staff will not require or object to push-down accounting when a minority interest of greater than 5 percent but not more than 20 percent exists.*

This question considers the fact pattern where an owner acquires sufficient ownership of an existing registrant so that push-down accounting is permitted but not required. At the time this level of ownership is reached, the registrant elects to not apply push-down accounting. Later, although there has been no change in ownership, the registrant decides it would rather apply push-down accounting.

- *Is the registrant permitted to apply push-down accounting?*
- *Does the answer to the previous question depend on whether the decision to change the accounting was made in the year of the acquisition vs. a subsequent year?*
- *If push-down accounting is permitted, how should the change be reflected in the financial statements? Should the previously issued financial statements be restated?*
- *Is a preferability letter required?*

Discussion: *We are not aware of any SEC staff guidance on this question. SAB 5-J indicates that the SEC staff encourages the use of push-down accounting. This might indicate that the later application of push-down accounting is an improvement in reporting that is permitted. We note that if the company in question was not a registrant at the time of the change in ownership, it could restate its financial statements to apply push-down accounting in connection with an initial registration of securities.*

On the other hand, the rationale for applying push-down accounting is that the parent has acquired the ability to control the form of ownership of the entity. The evaluation of whether the parent has this ability could be viewed as question of facts, the answer to which dictates whether push-down accounting should be used. Under this line of thinking, if not applying push-down accounting at the acquisition date was proper, a subsequent change in facts would be needed for push-down accounting to become permitted.

Staff Comment: *We believe that push-down accounting is applied on the basis of the specific facts and circumstances at the time of the transaction. If the determination was proper at the acquisition, we believe no subsequent change by a registrant is permitted. We are unsure of how a subsequent change of facts would justify a change in the original determination. This position does not override the special exemption for an initial public distribution described in paragraph 29 of APB 20.*

Attachment B

Clarification of SEC's position on "managed basis" non-GAAP disclosures in MD&A (Discussion Document C from the September 13, 2004 meeting – reprinted below)

Additional Staff Comments: The Staff reaffirmed its earlier views presented at the September 13, 2004 meeting (which were also reiterated at the 2004 SEC and PCAOB Conference held on December 6-8) regarding system-wide sales disclosures. The Staff commented that such disclosures are acceptable in MD&A in discussing how a registrant determines its franchise fees under GAAP but would object to a general practice of presenting supplemental system-wide sales disclosures.

Regarding managed basis disclosures (Question 1 below), the Staff stated that an acceptable approach is likely somewhere between View B and View C; in applying View B, however the company must be able to justify that it internally uses such measure or measures presented. The Staff further commented that a supplemental income statement presentation on an "as-adjusted for FAS 140" basis in the MD&A would not be acceptable.

Background: *Managed basis disclosures are common non-GAAP disclosures found in the MD&A section of registrant filings with significant securitization activities. The premise behind managed basis is that it presents financial information on the assumption that previously securitized assets which qualified for sale accounting treatment under FAS 140 remain on the balance sheet of the transferor. Commonly, managed basis disclosures are made for performance measures (such as operating income) and for portfolio credit statistics (non-accruals, charge-offs, delinquencies). Adjustments include adding the relative off-balance sheet statistics to the on-balance statistics and (for the performance measures) reclassing certain P&L items to reflect the accounting results that would have been reported if the assets had remained on-balance sheet. Practice seems to have been mixed on whether or not performance measures eliminated the gain/loss on the sale of the asset.*

Question 1: *Are managed basis disclosures permissible non-GAAP disclosures in MD&A under Regulation S-K Item 10(e) ("S-K 10(e)")*

View A – *Non-GAAP measures should not eliminate the effects of certain accounting standards. Managed basis disclosures effectively reverse the effects of applying FAS 140 and therefore should not be a permissible disclosure.*

View B *– Managed basis disclosures with respect to portfolio credit statistics provide useful measures for investors in understanding the overall underwriting abilities of the registrant, the potential for future credit losses, and insights into what the registrant keeps on-balance sheet versus the assets it decides to securitize. Further, managed basis portfolio credit statistics are considered operating statistics as opposed to non-GAAP measurements and therefore are not subject to the S-K 10(e) rules. However, similar to View A, managed basis performance measures are not permissible under S-K 10(e) as they effectively eliminate the effects of applying FAS 140.*

View C *– Full managed basis disclosures are acceptable and useful disclosures, provided that the appropriate disclosures under S-K 10(e) are made.*

Committee Comment: *We have seen all three approaches outlined above used by registrants with View B being the most common approach. We would appreciate hearing the Staff's views.*

Question 2 *– What are the Staff's views as to whether the gain/loss on the sale of the assets should fully reflect the reversal of the securitization, including eliminating the recorded gain/loss on the sale of the asset?*

Staff Response: The Staff has not yet reached a consensus on a view. The staff analogized this presentation to the "system-wide sales" presentation which was a common MD&A disclosure used by companies in the retail industry with both company owned stores and franchises (i.e. this presentation combined revenue from owned stores and its franchisees). The Staff views such presentation of system-wide sales as prohibited under Item 10 but has generally commented it would accept such presentation as a supplement to selected financial data in a discussion regarding how a registrant calculates its franchise fees under GAAP.

In regard to "managed basis" presentation, the SEC staff noted that, when an entity has retained interests in securitized financial assets at the latest balance sheet date, FAS 140 requires the disclosure of certain information (e.g., the total principal amount outstanding, the related delinquencies at the end of the period, and credit losses, net of recoveries, during the period) on a "managed basis" by major asset type. In addition, some registrants follow a "managed basis" approach in presenting segment information under FAS 131. Further the staff noted that it is considering the appropriateness of "managed basis" disclosures and may clarify its views (e.g., at the November AICPA Banking Conference). The Staff further commented that if such a presentation is used or discussed as a combined performance measure, it would likely be problematic and that it does not generally support "undoing GAAP accounting".