CAQ SEC Regulations Committee
April 6, 2010 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

HIGHLIGHTS

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I. ATTENDANCE

A. SEC Regulations Committee

Chris Holmes, Chair
Melanie Dolan, Vice Chair
Peter Bible
Jack Ciesielski
Brad Davidson
Christine Davine
Tom Elder

Dave Follett
Bridgette Hodges
Jeff Lenz
Steve Meisel
Scott Pohlman
Amy Ripepi
Tom Weirich
Don Zakrowski

B. Securities and Exchange Commission

Division of Corporation Finance

Wayne Carnall, Chief Accountant
Craig Olinger, Deputy Chief Accountant
Mark Kronforst, Deputy Chief Accountant
Angela Crane, Associate Chief Accountant
Jill Davis, Associate Chief Accountant
Louise Dorsey, Associate Chief Accountant
Todd Hardiman, Associate Chief Accountant
Steven Jacobs, Associate Chief Accountant
Leslie Overton, Associate Chief Accountant
Michael Stehlik, Staff Accountant
John Robinson, Academic Fellow
Mark Green, Senior Special Counsel
Nasreen Mohammed, Assistant Chief Accountant

Office of Interactive Data

Joel Levine, Assistant Director

C. Center for Audit Quality

Annette Schumacher Barr

D. Guests

Mark Barton, E&Y
Carolyn Clemmings, E&Y
John May, PwC

II. DIVISION OF CORPORATION FINANCE PERSONNEL UPDATE

Wayne Carnall introduced Nasreen Mohammed. Ms. Mohammed joined the Division's Office of Chief Accountant (DCAO) on a six month rotation and will be working on the Division's efforts related to the SEC's *Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers* (the Work Plan).

III. CURRENT FINANCIAL REPORTING MATTERS

A. 2009 Year-End Reporting Challenges

The Committee asked for the SEC staff's feedback on the following reporting challenges encountered in the 2009 year-end reporting season:

- **Rule 3-09 Compliance Issues**

  The Committee reported an increase in the number of questions regarding the application of Rule 3-09 of Regulation S-X and related pre-filing requests to the SEC staff for relief. Craig Olinger indicated there were no unusual issues raised in recent pre-filing requests. Mr. Carnall added that the SEC staff will grant relief from the requirements of Rule 3-09 on a facts and circumstances basis only. Mr. Carnall reiterated his comments from the AICPA conference that he would like to revisit the requirements of Rule 3-09 and Rule 4-08(g) of Regulation S-X, but he added that any possible SEC rulemaking is unlikely in 2010.

- **New Accounting Standards**

  Item 11(b) of Form S-3 requires registrants to recast prior period annual financial statements that are incorporated by reference into the registration statement to reflect a material retrospective application of a new accounting principle (assuming interim financial statements reflecting the adoption of the new accounting principle have been filed). Committee members indicated that the Item 11(b) recasting requirement will likely be problematic for registrants over the next few years because of the number of new accounting standards that are expected to be issued by the Financial Accounting Standards Board (FASB). Similar to the point above, Mr. Carnall reiterated his comments from the AICPA conference that he would like to revisit the requirements of Form S-3 and other reporting requirements to address accounting changes to more closely align reporting under

both the 1933 and 1934 Acts, but he added that any possible SEC rulemaking is unlikely in 2010.

- **Accelerated Deadlines**

  Members of the Committee stated that many registrants were challenged to meet the SEC's reporting deadlines during the 2009 year-end reporting season because of additional time needed to comply with XBRL tagging requirements, the challenges of complying with new accounting and disclosure requirements and an increased need for registrants and auditors to involve valuation and other specialists. The Committee added that these challenges could affect, among other things, the time available to analyze the effects of pending accounting standards under SAB Topic 11.M (SAB74). Mr. Carnall stated that he was not aware of any plans to revisit the reporting deadlines.

B. Matters Discussed at 2009 AICPA Conference on Current SEC and PCAOB Developments

The Committee and the SEC staff discussed the MD&A disclosure matters that had been addressed by the SEC staff at the 2009 AICPA National Conference on Current SEC and PCAOB Developments (the Conference):

- **Goodwill Impairment Risk Disclosures**

  Recent updates were made to the Division's Financial Reporting Manual (FRM) to address MD&A disclosure considerations regarding the possible future impairment of goodwill (see Sections 9510.3 and 9510.4). One of the SEC staff's recommendations is that if goodwill is not significantly at risk of impairment, the registrant should make an affirmative statement to this effect. The Committee noted their experience that some registrants do not believe it is necessary to make an affirmative statement about goodwill that is not significantly at risk. Mark Kronforst explained that this disclosure recommendation is targeted at registrants that have identified goodwill impairment as a critical accounting estimate. The SEC staff believes that if a registrant considers goodwill impairment a critical accounting policy, then disclosing the conclusion that no reporting units have a reasonable risk of failing the step 1 goodwill impairment test (as defined in ASC Topic 350) would be helpful to investors.

- **Income Tax Disclosures**

  At the Conference, the SEC staff suggested that MD&A should include a more complete and informative discussion about income taxes. Mr. Carnall noted that although income tax expense is often one of the most significant line items in the income statement and the components of the effective rate can significantly change, frequently little information and analysis is provided in the MD&A. Mr. Carnall indicated that consideration is being given to update the MD&A section of the FRM for the points made at the 2009 conference.

- **SAB Topic 11.M (SAB 74 Disclosures)**

  The Committee complimented the SEC staff's clarification at the Conference about the respective scope of MD&A and financial statement disclosures about pending accounting changes. The Committee observed that some, but not all, registrants reduced redundancy between MD&A and financial statement disclosures based on SEC staff comments at the Conference. Mr. Carnall indicated that consideration is also being given to include these points in the FRM.

- **SEC Staff Observations Regarding Venezuela**

  Mr. Carnall stated that a number of registrants filed Form 8-Ks to report the effects of the January 2010 devaluation of the Venezuelan currency. The SEC staff may be reviewing the prior filings of registrants with significant operations in Venezuela to see how the risks and uncertainties associated with the inflationary environment in Venezuela, and the corresponding economic exposure to currency risks in that country, were disclosed.

  Mr. Carnall added that registrants that changed the rate used to translate the financial statements of a Venezuelan subsidiary with Bolivar fuerte (BsF) functional currency, from the official rate to the parallel rate during 2009 should ensure that there is clear disclosure of the effects on the financial statements.

  Mr. Carnall shared with the Committee a list of possible MD&A disclosures that may help an investor understand how the currency situation in Venezuela is affecting a registrant's financial position and results of operations. These disclosures include the following:

Change to Highly Inflationary Economy

- Timing of, and the economic factors that led to, Venezuela becoming a highly inflationary economy
- A discussion of how the change in functional currency will affect the registrant's accounting and financial reporting

Multiple Exchange Rate System

- Disaggregated financial information about the Venezuelan operations (e.g., summarized balance sheets, income statements and cash flows statements)
- Exchange rates used for translation from local currency (Bolívar fuerte or Bs.F) into U.S. dollars (e.g., official rate or parallel rate), as well as an explanation of any changes in the rate used
- If the registrant changed rates during 2009:
  - The amount included in "Other Comprehensive Income" relating to Venezuela
  - The effect of the different exchange rate on the results of operations and the carrying amounts in the balance sheet
- The exchange rates used for remeasurement purposes - from U.S. dollars into Bs.F in 2009 and from Bs.F into U.S. dollars in 2010
  - If multiple exchange rates are being used, a registrant should provide an explanation of the criteria used to make the distinction and provide information on the relative significance of the various exchange rates
- Net monetary assets and liabilities that are exposed to exchange rate changes (e.g., a receivable in Bs.F initially measured at the official rate, but settled at the parallel rate)
- The amount of Bs.F pending government approval for settlement at the official rate - and which official rate in 2010 - and the length of time pending
- Discussion of the exchange rate systems and the effects on a registrant's Venezuelan operations and related cash flows
- Discussion of government actions regarding exchange rates, including changes in the registrant's ability to settle transactions at either the official or parallel rates

Devaluation

- The timing and implications of the devaluation, both from an accounting and operational standpoint
- An estimate of the financial effect of the devaluation, including gains and losses on monetary items
- Discussion of changes in profitability related to the currency devaluation's increase in the cost of imports and in-country sales prices of imported goods

- Discussion regarding government pressures on vendors not to change sales prices and the expected effect on profitability post-currency devaluation
- Business practices or policies that have changed or are expected to change in response to the devaluation
- The effect the devaluation had or is expected to have on the registrant's compliance with debt covenants

Mr. Carnall stated that this list is not exhaustive. Registrants need to assess the appropriate disclosures based on their facts and circumstances.

C. SEC Staff Filing Review and Comment Process

- **Use of Pre-Clearance Letters for IPOs**

There has been a slight increase in the number of IPO filings. Some new issuers are pre-clearing questions with the SEC staff. Frequently those questions relate to common control and predecessor financial statements. There are circumstances however, where issues are identified during the comment letter process that might have been resolved more efficiently via the preclearance process. Mr. Carnall recommended that companies utilize the SEC staff's preclearance process to address financial reporting issues before filing an initial registration statement. Mr. Carnall noted that this process enhances the overall efficiency of the filing process for both the company and the SEC staff. Mr. Carnall stated that CF-OCA typically addresses pre-filing requests within 10 business days following receipt.

D. Other Staff Observations

- **New Health Care Legislation**

The Committee observed that despite the publicity surrounding the effects of the new health care legislation on deferred taxes, registrants are just starting to analyze the effects of the new legislation comprehensively. Mr. Carnall noted that registrant disclosures would logically be based on their analysis-to-date of the new legislation and that MD&A disclosures likely would evolve as registrants gain a greater understanding of the legislation during 2010. Mr. Carnall observed that investors typically would be interested in the legislation's effects on the registrant's operations and liquidity, including any effects on employee or retiree benefit plans.

[Note: Subsequent to the meeting on April 14, 2010, the FASB Emerging Issues Task Force Chair announced on behalf of the SEC Deputy Chief Accountant in Charge of the Accounting Group the

SEC's release of an SEC Staff Announcement, *Accounting for the Health Care and Education Reconciliation Act of 2010 and the Patient Protection and Affordable Care Act*.]

- **Disclosures in Interim Financial Statements - Newly Adopted Accounting Standards**

  Article 10 of Regulation S-X requires disclosures about material matters that were not disclosed in the most recent annual financial statements. Accordingly, when a registrant adopts a new accounting standard in an interim period, the registrant should provide in the interim financial statements all of the disclosures that are required by the new accounting standard, including those that would normally be provided only at year-end. These disclosures should be included in each quarterly report in the year of adoption. As a reminder, there are a number of new accounting standards that will be adopted by many registrants in 2010, including standards related to transfers of financial assets (Statement 166) and consolidation of variable interest entities (Statement 167).

IV. IMPLEMENTATION AND INTERPRETATION OF RECENT SEC RELEASES

A. Commission Statement in Support of Convergence and Global Accounting Standards

In February, the Commission directed the SEC staff to execute a Work Plan to assist the Commission in its evaluation of the impact that the use of IFRS by U.S. companies would have on the U.S. securities market. As part of the Work Plan, Mr. Carnall indicated that the SEC staff in the Division will be looking at the IFRS financial statements of a cross section of non-U.S. companies including many that do not file with the SEC. The purpose of these reviews is to understand the nature and extent to which there are varying interpretations and practices in different jurisdictions that use International Financial Reporting Standards. A summary of findings resulting from the reviews will be included in the SEC staff's report on the Work Plan.

B. Section 404(b) for Non-Accelerated Filers

Section 404(b) of the Sarbanes-Oxley Act requires registrants to obtain an audit report on internal control over financial reporting. The implementation of this requirement was delayed a number of times for non-accelerated filers. However, in October 2009, the Commission stated in a release that it did not expect to further defer the obligation of non-

accelerated filers to comply with Section 404(b). For non-accelerated filers, the requirement to obtain an audit report on internal control over financial reporting thus becomes effective for the first annual report for fiscal years ending on or after June 15, 2010. The Committee indicated that subsequent legislative activity and the history of deferrals may be causing some non-accelerated filers to delay preparing for compliance with the auditor attestation requirement under Section 404(b). The Committee explained that such delays could increase the number of unremediated material weaknesses and inhibit the ability to complete integrated audits by the Form 10-K filing deadline, particularly for June 30 fiscal year non-accelerated filers. Mr. Carnall thanked the Committee for sharing their perspectives, but referred to the language in the release.

C. Commission Guidance Regarding Disclosure Related to Climate Change

In February the SEC issued interpretive guidance about how its current disclosure requirements apply to climate change matters (*Commission Guidance Regarding Disclosure Related to Climate Change*). Mr. Carnall commented that this guidance did not create a new disclosure requirement; rather, it was issued to provide guidance regarding the Commission's existing disclosure requirements as they apply to climate change matters. Mr. Carnall noted that climate change disclosures likely will affect registrants in some industries more than others. Mr. Carnall stated that the public roundtable that the SEC announced for the spring of 2010 has not yet been scheduled.

V. NEW OR PENDING ACCOUNTING STANDARDS AND PRONOUNCEMENTS

A. Subsequent Events (ASC Topic 855/SFAS No. 165 and ASU Topic 2010-09)

ASU 2010-09, which amended ASC 855, *Subsequent Events*, requires "SEC Filers" to evaluate subsequent events through the date the financial statements are issued. However, SEC Filers are not required to disclose the date through which subsequent events have been evaluated in issued and revised financial statements. ASC 855, as amended, defines an SEC Filer as "an entity that is required to file or furnish its financial statements with either of the following:

- The Securities and Exchange Commission (SEC)
- With respect to an entity subject to Section 12(i) of the Securities Exchange Act of 1934, as amended, the appropriate agency under that Section"

Application of this definition is dependent on knowledge of which entities are *required* to file or furnish financial statements with the SEC. There are

situations when it is not clear whether an entity is required to file or furnish financial statements with the SEC. For example, an entity may file financial statements with the SEC in an initial registration statement in order to comply with a contractual obligation to register securities, or it may file financial statements with the SEC on Forms 10-K and 10-Q to comply with the requirements of a debt agreement even though the entity has not registered any securities. The Committee asked the SEC staff to provide its views regarding which entities are *required* to file or furnish financial statements with the SEC.

Steven Jacobs explained that the SEC staff approaches these questions by determining at what point the entity becomes required, by statute or regulation, to file financial statements with the SEC under the periodic reporting requirements of the Exchange Act. For example, in an IPO, Mr. Jacobs stated that a registrant does not become an SEC Filer until its registration statement goes effective because that is the point at which it becomes required by regulation to file or furnish financial statements with the SEC. The effect of this is that a company that has reached the cut-off date for recognizing subsequent events in its financial statements will not have to "re-open" its subsequent events recognition if its financial statements are subsequently filed with the SEC. The one exception to this principle is when an entity files annual and interim financial statements with the Commission on a purely voluntary basis. The SEC staff's longstanding view has been that when an entity has no registered securities but voluntary files financial statements with the SEC, its filings must comply with all the SEC's requirements. In other words, a voluntary filer cannot pick and choose which regulations to comply with in its filings. Appendix A illustrates the application of the principle used by the SEC staff to determine whether an entity is an SEC Filer. The list of scenarios included in Appendix A should not be considered comprehensive.

Under this principle, the determination of whether a registrant is an SEC Filer is made at the time the financial statements are first issued. That determination does not change if the financial statements are subsequently reissued or revised. For example, Mr. Jacobs explained that an entity that does not meet the definition of an SEC Filer until the effective date of its initial SEC registration statement should retain the disclosure of the date through which subsequent events were evaluated in financial statements that are reissued or revised (e.g., to report a discontinued operation) subsequent to effectiveness because the entity was not an SEC Filer at the time the financial statements for the period were first available to be issued.

B. Internal Control Reporting Considerations and the Initial Consolidation of a VIE (ASC Topic 810-10/Statement 167 and Section 404)

The SEC staff's FAQ #1 on Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic

Reports (see also Section 4310.11 of the Division of Corporation Finance Financial Reporting Manual) addresses how a registrant should apply the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 to an entity consolidated pursuant to FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities — An Interpretation of ARB No. 51* (FIN 46(R)). The question in FAQ #1 was raised amidst concerns that in instances where a registrant lacks the ability to dictate or modify the internal controls of a variable interest entity (VIE), the registrant may not have legal or contractual rights or authority to assess the internal controls of the newly consolidated entity even though that entity's financial information is included in the registrant's consolidated financial statements. The SEC staff concluded that a VIE in existence prior to December 15, 2003 that is consolidated may be scoped out of the internal control reporting requirements if the registrant does not have the right or authority to assess the internal controls of the FIN 46(R) consolidated entity and also lacks the ability, in practice, to make that assessment. A similar exception also is available for an entity accounted for via proportionate consolidation in accordance with ASC 810-10-45-14 (EITF 00-1) if management does not have the ability to assess internal control over financial reporting (ICFR). The SEC staff also provided for a short deferral of the requirement to review internal controls for a newly acquired business (see SEC staff FAQ #3/Section 4310.11(c) in the Division of Corporation Finance Financial Reporting Manual). Questions have arisen regarding the ICFR reporting requirements for an entity newly consolidated pursuant to Statement 167/ASC 810-10.

The SEC staff stated that VIEs consolidated upon adoption of Statement 167/ASC 810-10 should be included in management's reports on ICFR. Because the criteria for consolidation of a VIE are based upon control, the SEC staff stated that a registrant will no longer be able to justify excluding consolidated VIEs from the scope of their internal controls assessment. Registrants likely will have the right or authority to assess the internal controls of those VIEs. Furthermore, because the consolidation of VIEs under Statement 167/ASC 810-10 will occur as of the first day of the registrant's fiscal year, the SEC staff believes the registrant will have sufficient time to perform that assessment and would be unable to rely on the temporary relief provided under FAQ #3.

The SEC staff stated the guidance included in FAQ #1 continues to apply only in the rare circumstance in which the VIE was in existence prior to December 15, 2003 AND the registrant, despite having control, does not possess the right or authority to assess the VIE's internal controls and lacks the ability, in practice, to make that assessment. Registrants may continue to follow the guidance in FAQ #1 in this rare circumstance.

FAQ #3 addresses a situation where a registrant acquires a business during a year but it is not possible to conduct an assessment of an acquired business' internal controls during the period between the consummation date and year

end. A registrant may exclude an acquired business from the scope of its internal control assessment in this situation. **The SEC staff stated that after adoption of Statement 167/ASC 810-10, an SEC registrant may apply the guidance in FAQ #3 when considering whether it would be appropriate to exclude a VIE that is newly consolidated due to events or changes in circumstances from the scope of its internal control assessment in the fiscal year consolidation first occurs if an assessment is not possible.**

[Note: On April 19, 2010, the CAQ issued Alert #2010-21 to communicate this information to CAQ members and other interested parties.]

VI. SEC STAFF AND OTHER INITIATIVES

A. Financial Reporting Manual (FRM)

An update to the FRM was issued on March 2, 2010. The next update to the FRM is expected to be issued by the end of the second quarter.

B. Compliance & Disclosure Interpretations (CDIs) on Disclosures of Non-GAAP Financial Measures

Mr. Carnall stated that the Division recently issued Compliance and Disclosure Interpretations (CDIs) on the use of non-GAAP financial measures. Mr. Carnall indicated that the CDIs should be useful in understanding the SEC staff's interpretive positions regarding non-GAAP financial measures.

Mr. Carnall stated that the CDIs were issued to accomplish three objectives: (i) eliminate any actual or perceived restrictions in the FAQs on the disclosure of non-GAAP information that were not consistent with the actual rules, (ii) clarify the staff's interpretations, and (iii) centralize in one location the staff's interpretations.

Mr. Carnall stated the SEC staff is not encouraging the use of non-GAAP information; nor is the SEC staff requiring companies to include non-GAAP information in SEC filings if they use it outside of their SEC filing. However, the staff expects that the story the company tells about its results, liquidity and financial condition be consistent between the SEC filing and other public information. For example, a registrant should not indicate in a press release that certain non-GAAP measures are key performance indicators, but state that different metrics are key performance indicators in the SEC filing if those performance measures convey a different message to the investor.

The SEC staff has issued comment letters asking registrants to explain potential inconsistencies. Mr. Kronforst stated that this comment does not indicate that the SEC staff has concluded that the non-GAAP financial measure should be disclosed in SEC filings. Rather, Mr. Kronforst suggested

that a registrant respond, if true, by articulating why the registrant chose to exclude the non-GAAP financial measure from its SEC filing.

Some companies may elect to include non-GAAP information from press releases in their Commission filings and as part of that process determine that they have not historically complied with requirements of Regulation G and/or Item 10(e)(1)(i) of Regulation S-K. Mr. Carnall expressed to the Committee the importance of registrants' compliance with the Commission's rules regarding non- GAAP information in press releases.

Mr. Kronforst noted that the SEC staff has continued to object to presentations deemed confusing or misleading to investors (e.g., measures of "system-wide sales" by franchisors that include amounts from entities that the registrant does not control and measures that do not appropriately present all components on either a pre-tax or after-tax basis).

C. "Dear CFO" Letter on Repurchase Agreements

Mr. Carnall stated that in March 2010, the Division sent a comment letter to certain public companies requesting information about repurchase agreements, securities lending transactions, or other transactions involving the transfer of financial assets with an obligation to repurchase the transferred assets.

The letters were issued as part of the SEC staff's 10-K review process and registrant responses to the letter will be posted to EDGAR. Mr. Carnall stated that a registrant who received this letter may receive additional comments from the SEC staff on other aspects of its Form 10-K.

Separately, Mr. Carnall noted that the SEC staff is considering how the MD&A disclosure requirements about off-balance sheet obligations and the contractual obligations table apply to repurchase agreements and securities lending transactions.

VII. CURRENT PRACTICE ISSUES

A. Calculating book value per share after adopting ASC 810 (formerly SFAS No. 160)

When a company files a Form S-4 to register securities to be issued in a business combination, Item 3(f) of Form S-4 may require certain comparative share data. For example, a company may be required to disclose in the Form S-4 the historical and pro forma book value per share for the registrant and the historical and equivalent pro forma book value per share for the company being acquired. Similar considerations are also relevant to disclosures required under Item 506 of Regulation S-K (i.e., calculating/disclosing net tangible book value per share). Some have questioned how the book value per share disclosures required by Item 3(f)(1) of Form S-4 should be calculated when

the financial statements of either the registrant or the company being acquired include noncontrolling interests. The following example was considered:

Company X will acquire 100% of Target T by issuing 1 share of its common stock in exchange for each 2 outstanding Target T common shares. The fair value of the Company X stock to be issued to effect the merger is $40 per share. The relevant Company X and Target T historical balance sheets and the associated pro forma balance sheet are summarized as follows:

	Company X	Target T	Pro Forma
Common stock ($1 par)	$ 1,000	$ 100	$ 1,050
APIC	9,000	900	10,950
Retained Earnings	10,000	500	10,000
Company Shareholders' Equity	20,000	1,500	22,000
Noncontrolling interest	1,000	200	1,300
Total Equity	$21,000	$1,700	$23,300
Common shares outstanding	1,000	100	1,050

How should Company X and Target T calculate book value per share?

The SEC staff's view is that the book value per share amounts should be calculated based on "Company Shareholders' Equity." This is because the Company X and Target T shareholders do not have an ownership interest in the noncontrolling interest. The book value per share would not be affected by the fact that noncontrolling interests are now reported as a component of equity. This approach is similar to the approach used to compute earnings per share. Under this view, the net book value per share disclosures would be as follows:

	Company X	Target T
Historical	$20.00	$15.00
Pro Forma	$20.95	
Equivalent pro forma		$10.48

This view is consistent with the conclusion regarding the restricted net assets calculation under Rules 4-08(e) and 5-04 of Regulation S-X as discussed at the July 8, 2008 meeting.

B. **Applicability of the Disclosure Requirements of Item 3(f) of Form S-4 When the Target is a Reporting Company That is Significant at or below the 20% Level**

Item 3(f) of Form S-4 sets forth certain pro forma and pro forma equivalent per share disclosures that may be required in connection with a business combination transaction. Item 17(b)(7)(ii) of Form S-4 indicates that pro forma and comparative share data are not required for an insignificant nonreporting target if the registrant's shareholders are not voting and the transaction is not a roll-up. The Committee questioned whether a registrant is required to provide the disclosures set forth in Item 3(f) of Form S-4 if all of the elements specified by Item 17(b)(7)(ii) are present except that the insignificant target is an SEC reporting company.

[Mr. Carnall stated that the SEC staff plans to conduct further deliberations to address the Committee's question.]

C. **General Partner Balance Sheet in Oil and Gas Limited Partnership Registration Statement**

Staff Accounting Bulletin 113 (SAB 113) removed the prior requirement in SAB Topic 12.A.3.d, *Oil and Gas Producing Activities*, that a General Partner (GP) balance sheet was required in the registration statement of oil and gas producing limited partnerships. SAB 113 indicated the following:

> *Topic 12.A.3.d is removed to conform to the Commission's rules and regulations which do not require (and the Division of Corporation Finance no longer requests) a balance sheet of the general partner to be included in a registration statement for an offering of limited partnership interests.*

However, the Division's FRM Section 2805, which has been revised and updated after the issuance of SAB 113, has retained guidance requiring a general partner balance sheet notwithstanding the issuance of SAB 113. In addition, the requirement for a GP balance sheet is still in Rule 8-07 of Regulation S-X for smaller reporting companies.

The Committee questioned whether limited partnerships with oil and gas producing activities can rely on the description of the changes included in SAB 113 and omit a GP balance sheet or if they must seek preclearance from the SEC staff to omit the GP balance sheet. Mr. Carnall provided the following clarification of GP balance sheet requirements:

<u>Non-Smaller Reporting Companies</u>

- There is no specific Commission rule that requires the inclusion of the General Partner's Balance Sheet in filings of a limited partnership.

- The guidance in SAB 113 is applicable to oil and gas companies. Issuers in the oil and gas industry can rely on the SAB and do not need to request permission to exclude the balance sheet.

- The SEC staff has discussed the applicability of a GP balance sheet in other situations - e.g., real estate. There can always be situations in which there is a structure that the SEC staff did not contemplate and the SEC staff would request financial information under Rule 3-13 of Regulation S-X; however, the SEC staff is considering modifying the FRM to eliminate this explicit requirement to provide a GP balance sheet. In the meantime, if registrants have a situation in which the FRM would imply that a balance sheet of the GP is required, they can address this fact pattern with the SEC staff.

Smaller Reporting Companies

Rule 8-07 of Regulation S-X does require the balance sheet of the GP in certain circumstances. Companies should comply with this rule or if they believe that relief is appropriate, they should request relief in writing from the Division's Chief Accountant's Office. SAB 113 does not change Rule 8-07 of Regulation S-X.

With respect to preclearance requests, Mr. Carnall indicated that the factors that the staff will evaluate to determine if relief is appropriate are if the general partner has (a) minimal assets, (b) no obligation to fund the losses of the limited partnership and (c) no obligation to provide capital to the limited partnership.

D. XBRL Transition Provisions

In January 2009, the SEC published its final rule, *Interactive Data to Improve Financial Reporting* (Release Nos. 33-9002, 34-59324). The final rule identifies three phase-in groups as follows:

- For fiscal periods ending on or after 15 June 2009, large accelerated filers (both U.S. public companies and FPIs) that (a) file financial statements with the SEC using U.S. GAAP and (b) have a worldwide public float over $5 billion
- For fiscal periods ending on or after 15 June 2010, all other large accelerated filers using U.S. GAAP
- For fiscal periods ending on or after 15 June 2011, all other filers, including smaller reporting companies that use U.S. GAAP and all filers that use IFRS as issued by the IASB

The final rule defines worldwide public float as the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates as of the last business day of the second fiscal quarter of the company's most recently completed fiscal year (i.e., the same measure used to determine accelerated filer status).

The Committee questioned how the annual measurement of a registrant's worldwide public float affects the assessment of whether the registrant must join an XBRL phase-in group or whether it may suspend XBRL reporting until a future phase-in date.

Mark Green stated that the SEC staff addressed this question at the March 23, 2010 XBRL Public Education Seminar. The SEC staff stressed that a company must follow the specific rule text in assessing its XBRL compliance requirements and not the general commentary in the SEC's adopting release.

The SEC staff stated that an increase in a company's public float could require a registrant to accelerate its XBRL implementation, i.e., require that it join an earlier XBRL phase-in group (see illustration below). The SEC staff stressed that worldwide public float must be measured annually, and such measurement determines the XBRL phase-in group to which the company belongs. This annual determination supersedes any previous conclusions and affects the company's periodic reporting prospectively. Mr. Green observed that this approach is consistent with how a registrant determines its accelerated filer status and that status's prospective effect.

Mr. Green stated that when an increase in worldwide public float causes a company to join an earlier phase-in group, a company must begin detail tagging in the same SEC filing as if it had always been part of that phase-in group. He acknowledged that in some cases, a registrant could be required to detail tag its initial XBRL filing.

The following table contrasts the XBRL reporting requirements for a registrant that is initially in the first XBRL phase-in group (column I) with a registrant that joins the first XBRL phase-in group in the following year (column II). Two different year ends are presented. Similar conclusions would apply to registrants with respect to the second phase in group.

Large Accelerated Filer – Phase in Group 1

Year End	December 31		June 30	
Public Float	I > $5 billion years 1 & 2	II < $5 billion year 1 & > $5 billion year 2	I > $5 billion years 1 & 2	II < $5 billion year 1 & > $5 billion year 2
First measurement date	12/31/08	12/31/08	6/30/09	6/30/09
Relevant float date	6/30/08	6/30/08	12/31/08	12/31/08
First stage XBRL submission (block tag footnotes)	6/30/09 10-Q	N/A – XBRL not required in 2009	9/30/09 10-Q*	N/A – XBRL not required in 2009
Second measurement date	12/31/09	12/31/09	6/30/10	6/30/10
Relevant float date	6/30/09	6/30/09	12/31/09	12/31/09
First stage XBRL submission (block tag footnotes	N/A - Filed in 6/30/09 10-Q	3/31/10 10-Q*	N/A - Filed in 9/30/09 10-Q	N/A
Second stage XBRL submission (detail tag footnotes)	6/30/10 10-Q	6/30/10 10-Q	6/30/10 10-K	9/30/10 10-Q*

* Item 601(b)(101) indicates that an interactive data file is first required to be submitted and posted in a periodic report on Form 10-Q, Form 20-F or Form 40-F.

Mr. Green noted that a decrease in a company's public float could result in the company joining a later XBRL phase-in group. In this case, the company could suspend XBRL tagging until the transition date applicable to its new phase-in group.

The Committee noted that this reading of the transition requirements for XBRL seems inconsistent with the intent of the rule as expressed in the explanatory sections of the release and thus will be a surprise to the reporting community. Further, the fact that some registrants may need to implement the detail tagging requirements in their first XBRL submission (see the June 30 example in the above table) could result in potentially burdensome compliance requirements. Mr. Green noted that the explanatory section of the release is not authoritative and that registrants who find themselves in this situation may apply for hardship relief under Rules 201 and 202 of Regulation S-T.

The Committee also noted that since this interpretation is documented only in the recording of the staff's March 23 Public Education Seminar, it is difficult for registrants to become aware of it; accordingly, communicating the SEC staff's interpretation through some more visible means (e.g., a CDI) would increase the likelihood that registrants are aware of it. This is particularly important because issuers may interpret Exchange Act Forms CDIs 105.05 and 105.06 to suggest a different conclusion.

Appendix A

Determination of Whether Certain Entities are Required to File or Furnish Financial Statements with the SEC

NOTE: Each scenario below assumes that the entity is not otherwise a public company with an existing Exchange Act reporting obligation. If the entity is deemed not required to file or furnish its financial statements with the SEC the entity would evaluate subsequent events through the date its financial statements are available to be issued and disclose that date in both the available to be issued financial statements and revised financial statements filed with the SEC.

Entity	Required to file or furnish financial statements?	Comments
1 Entity filing an initial public offering registration statement (including all pre-effective amendments) or a voluntary initial registration on Form 10	No	In a voluntary initial registration statement an entity does not have an obligation to file with the SEC until after the registration statement is declared effective, or automatically goes effective in connection with a Form 10 registration.
2 Entity filing an initial registration statement on Form 10 because the entity's total assets exceed $10 million and the number of equity holders exceeds 500	No	The entity is obligated to register its securities with the SEC under Section 12(g) of the Exchange Act, but is not required to file or furnish financial statements with the SEC until the effective date of the Form 10.
3 Acquired business/real estate property (Item 9.01 of Form 8-K, S-X Rules 3-05 & 3-14)	No	
4 Target business in Form S-4/F-4	No	
5 Entity acquired by a public operating or shell company and either (a) the legal target/accounting acquiree will be the registrant's predecessor, so its financial statements will be required in future filings pursuant to Rules 3-01 and 3-02 or (b) the transaction will be accounted for as a reverse acquisition (Form 8-K)	No	The registrant is required to file the acquired entity's financial statements. The acquired entity does not have the filing obligation. This is no different than any other situation where acquired business financial statements must be filed under Item 9.01 of Form 8-K.
6 Equity method investee (S-X Rule 3-09)	No	

7 Guarantor of public debt, if not exempt under Rule 12h-5 (S-X Rule 3-10(a))	Yes	Following the effective date of the registration statement for the guarantee, a non-exempt guarantor has a reporting obligation with the SEC.
8 Entity whose securities collateralize public debt (S-X Rule 3-16)	No	
9 Issuer or non-issuer registered broker dealer	Yes	Following registration, the broker dealer must file financial statements with the SEC.
10 Investment company (1940 Act registrant)	Yes	Following the effective date of the registration statement, the investment company must file financial statements with the SEC.
11 Insurance product (registrant)	Yes	Following the effective date of the registration statement, the registrant must file financial statements with the SEC.
12 Insurance company sponsor of product	No	
13 Asset backed issuer	No	Under Regulation AB, issuers of asset-backed securities are not required to file financial statements with the SEC.
14 Significant obligor of asset backed issuer	No	
15 Employee benefit plan filing a Form 11-K	Yes	Following the effective date of the Form S-8 registration statement, the employee benefit plan must file financial statements with the SEC.
16 Voluntary filer - Forms 10-Q and 10-K	Yes	The SEC staff has indicated that entities that voluntarily file should follow the SEC's rules as if they are registered[1]

[1]For example, Question 9 of Sarbanes-Oxley Act of 2002 CDIs addresses requirements for voluntary filers to comply with Section 302 certifications. Also, see the following excerpt from Non-GAAP Financial Measures CDI Question 107.01:

The application of this standard to those registrants that no longer are "required" to report under Section 15(d) but choose to continue to report presents a difficult dilemma, as those registrants technically are not subject to Regulation G but their continued filing is intended to and does give the appearance that they are a public company whose disclosure is subject to the Commission's regulations. It is reasonable that this appearance would cause shareholders and other market participants to expect and rely on a company's required compliance with the requirements of the federal securities laws applicable to registrants reporting under Section 15(d). Accordingly, while Regulation G technically does not apply to a company such as the one described in this question, the failure of such a company to comply with all requirements (including Regulation G) applicable to a Section 15(d)-reporting company can raise significant issues regarding that company's compliance with the anti-fraud provisions of the federal securities laws.