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CAQ Alert #2010-20 – April 9, 2010

DEAR CENTER MEMBERS

New Standard on Accounting for Variable Interest Entities – Transition Questions for SEC Registrants

Note: ***Subsequent to the issuance of this alert, the SEC staff shared with the CAQ SEC Regulations Committee its views regarding the internal control over financial reporting (ICFR) reporting requirements for an entity newly consolidated pursuant to FASB Statement No. 167, now codified within Accounting Standards Codification Topic 810-10, Consolidation. For a summary of the SEC's views on this topic, please refer to CAQ Alert #2010-21.***

FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)* (Statement 167), now codified within Accounting Standards Codification (ASC) Topic 810, *Consolidation,* addresses the effects of eliminating the qualifying special-purpose entity (QSPE) concept from FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (Statement 140), now codified within ASC Topic 860, *Transfers and Servicing*, and responds to concerns about the application of certain key provisions of FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities* (FIN 46(R)), now codified within ASC Topic 810, including concerns over the transparency of enterprises' involvement with variable interest entities (VIEs). Statement 167 is effective as of the beginning of a company's first annual reporting period that begins after November 15, 2009. That is, Statement 167 is effective for calendar year-end companies beginning on January 1, 2010. At a company's option, Statement 167 may be applied retrospectively in one or more earlier fiscal years with a cumulative-effect adjustment to retained earnings as of the beginning of the earliest year restated.

The SEC staff recently shared with the CAQ SEC Regulations Committee (Committee) its views on the following Statement 167 practice issues:

Filing Registration Statements After Adoption of Statement 167

The SEC staff shared its views regarding how the adoption of Statement 167 should be considered when filing a registration statement (other than on Form S-8) that incorporates the most recent annual report on Form 10-K in addition to financial statements for an interim period that includes the date of adoption.

Questions have arisen regarding the financial statement requirements in a company's SEC registration statements that become effective or are post-effectively amended following the filing of a company's first Form 10-Q reflecting the adoption of Statement 167. The SEC staff has indicated that if a company has elected to adopt Statement 167 retrospectively and has filed interim financial statements for a period that includes the date of adoption, that registrant must recast its prior period annual financial statements that are incorporated by reference to reflect a material retrospective application of Statement 167. Conversely, if a registrant elects to adopt Statement 167 only on a prospective basis, or if the retrospective application of Statement 167 is not material, its registration statement may incorporate by reference its most recent Form 10-K, which would include its historical annual financial statements of periods prior to the adoption of Statement 167 (assuming that the prior financial statements do not require revision for other purposes).

Applying the Transition Provisions of Statement 167

An SEC registrant must present in its Form 10-K three years of comparative income statements and two years of comparative balance sheets (two years of comparative income statements and balance sheets for a smaller reporting company). The Form 10-K of an SEC registrant that is not a smaller reporting company also must include a table of selected financial data for the past five years (or a longer period at the registrant's option).

Questions have arisen about how the transition provisions of Statement 167 apply to an SEC registrant that is not a smaller reporting company. Specifically, questions have arisen about whether an SEC registrant that retrospectively applies Statement 167 to all periods presented in its financial statements would be permitted to retrospectively apply the effects of Statement 167 to any additional periods presented in the table of selected financial data. For example, a calendar year-end company adopts Statement 167 on January 1, 2010 and elects to retrospectively apply Statement 167 to fiscal years 2009 and 2008. The company records a cumulative effect adjustment to retained earnings as of January 1, 2008. Questions have arisen about whether the company also would be permitted to retrospectively apply the effects of Statement 167 to fiscal years 2006 and 2007 within its selected financial data table. The SEC staff indicated that it expects there to be consistency between the application of Statement 167 in the financial statements and in the table of selected financial data. For example, in the fact pattern illustrated above, if the registrant retrospectively applies Statement 167 only to fiscal year 2009, it should apply Statement 167 beginning in 2009 in the table of selected financial data. If the registrant elects to retrospectively apply Statement 167 to fiscal years 2009 and 2008, the SEC staff indicated that the registrant may decide whether it will also apply Statement 167 to fiscal years 2006 and 2007 within the selected financial data table. In all cases, the SEC staff expects a registrant to disclose to which periods it has retrospectively applied Statement 167 and, if necessary, the fact that certain periods are not comparable to the periods for which the audited financial statements are provided.

Pro Forma Requirements

Article 11 of Regulation S-X describes the SEC's requirements for registrants to provide pro forma financial information. Article 11 applies to registration statements, certain proxy statements, and Form 8-K filings. Item 2.01 of Form 8-K addresses the reporting requirements relating to a registrant's acquisition or disposition of a significant amount of assets. The SEC staff previously indicated that it did not believe consolidation or deconsolidation upon the initial adoption of FIN 46(R) would trigger a requirement to report under either Article 11 or Item 2.01 of Form 8-K. Questions have arisen whether consolidation or deconsolidation upon the initial adoption of Statement 167 would trigger either an Article 11 or an Item 2.01 Form 8-K reporting requirement. The SEC staff indicated that the initial adoption of Statement 167 would not trigger either an Article 11 or an Item 2.01 Form 8-K reporting requirement.

Rule 3-05, Rule 3-14 and Form 8-K Considerations

Rule 3-05 of Regulation S-X and Item 9.01(a) of Form 8-K describe the SEC's requirements for registrants to provide audited financial statements of a business acquired or to be acquired, including acquisition of an interest in a business accounted for under the equity method. Rule 3-14 of Regulation S-X describes the requirements for audited financial statements of real estate operations acquired or to be acquired. The SEC staff previously indicated that it did not believe consolidation upon the initial adoption of FIN 46(R) would trigger a requirement to report under Rule 3-05, Item 9.01(a) or Rule 3-14. Questions have arisen whether consolidation upon the adoption of Statement 167 would trigger a Rule 3-05, Item 9.01(a) or Rule 3-14 reporting requirement. The SEC staff stated that consolidation upon the initial adoption of Statement 167 would not trigger a Rule 3-05, Item 9.01(a) or Rule 3-14 reporting requirement.

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