



CAQ Alert #2007-52 – October 9, 2007

DEAR CENTER MEMBERS

CAQ Submits Comment Letters to SEC on Small Business Initiatives and Proposal to Eliminate Requirement for U.S. GAAP Reconciliation for Foreign Private Issuers

Comment Letters on SEC Small Business Initiatives

The Center for Audit Quality (CAQ or the Center) recently submitted comments to the SEC on the following four rule proposals relating to capital raising and disclosure requirements by small businesses. (See [CAQ Alert 2007-36](#) for an overview of each of the proposals.)

Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3

Under this [proposal](#), companies with a worldwide public float of less than \$75 million would be eligible to use Forms S-3 and F-3 (as long as other specified conditions are met). These registrants would be eligible to use Form S-3/F-3 for purposes of offering securities on a delayed basis under Rule 415. The Commission noted in the SEC Proposal, under Rule 430B, that "the filing of the prospectus will not be a new effective date for auditors who provided consent in an existing registration statement for their report on previously issued financial statements..." The Commission requested comment as to whether this 'potential "gap" in liability' would be appropriate if the proposed amendments are adopted. In our comment letter, the CAQ responded that the Commission adopted the existing model for determining the effective date (for Section 11 liability purposes) in connection with the Securities Offering Reform rulemaking package. We noted that we do not see any compelling reason to change that model as a result of the proposed expansion of the population of registrants that may avail themselves of the shelf registration process. For the full text of the [CAQ comment letter on the Form S-3 F-3 proposal](#), please click on the respective link.

Electronic Filing and Simplification of Form D

This [proposal](#) would mandate the electronic filing of information required by Securities Act of 1933 Form D. In our comment letter, we recommended that all Form D information be filed in the standard format of XBRL. We noted that if the Commission decides to permit public companies to file information required by Form D as part of their periodic or current reports, the information should be tagged in a manner consistent with the automatic tagging that would apply to Form D filings in order to realize the benefits of uniformly tagged Form D information. For the full text of the [CAQ comment letter on the Form D proposal](#), please click on the respective link.

Exemption of Compensatory Employee Stock Options from Registration under Section 12(g) of the Securities Exchange Act of 1934

This [proposal](#) would: (1) provide an exemption for private, non-reporting issuers from Exchange Act Section 12 (g) registration for compensatory employee stock options issued under employee stock option plans; and (2) provide an exemption from Exchange Act Section 12(g) registration for compensatory employee stock options issued by issuers that have registered under Exchange Act Section 12 the class of equity security underlying the compensatory employee stock options.

In our comment letter, the CAQ raised a number of observations regarding the accounting implications of the proposal under SFAS No. 123R, Share-Based Payment, including

- valuation effects of transferability restrictions; and
- repurchase conditions and liability accounting.

For a full text of the [CAQ comment letter on the Section 12\(g\) proposal](#), please click on the respective link.

Smaller Reporting Company Regulatory Relief and Simplification

This [proposal](#) would extend the benefits of the current optional disclosure and reporting requirements for smaller companies to a much larger group of companies by allowing companies with a public float of less than \$75 million to qualify for the smaller company requirements, up from \$25 million for most companies today. The proposals also would combine for most purposes the “small business issuer” and “non-accelerated filer” categories of smaller companies into a single category of “smaller reporting companies.”

In our comment letter, the CAQ commended the Commission on the proposing rules to provide reporting relief and simplification to smaller companies. Our letter also provided responses to certain questions included in the proposal. Here are highlights of some of the positions voiced in our comment letter:

- Is the Commission’s proposed definition of a smaller reporting company appropriate? *The CAQ supports the Commission’s proposal to set the initial ceiling for smaller reporting companies at \$75 million in public float.*
- Will the proposed integration of Regulation S-B into Regulation S-K and S-X simplify the disclosure obligations of smaller companies? *The CAQ believes this integration would create a single set of registration and reporting rules and forms, thereby reducing regulatory complexity for smaller reporting companies.*
- Is it appropriate to require U.S. GAAP for foreign private issuers and other issuers who may want to take advantage of the smaller company requirements? *The CAQ supports the Commission’s proposal to allow any foreign private issuer to qualify as a smaller reporting company. In addition, the CAQ strongly encourages the Commission to continue to allow smaller Canadian issuers to file only two years of reconciled Canadian GAAP financial statements.*

- Should smaller reporting companies be required to provide two years of audited balance sheet data in annual reports and registration statements? *The CAQ believes that requiring a second year of audited balance sheet data for smaller public companies provides investors with a basis for comparison with the current period, with minimal costs. As a result, we support this requirement.*

Please refer to the full text of the [CAQ comment letter on the smaller reporting company proposal](#) for a complete discussion of these and other positions provided on the proposal.

Comment Letter on SEC Proposal to Eliminate Requirement for U.S. GAAP Reconciliation for Foreign Private Issuers

The CAQ also recently submitted a comment letter responding to the SEC [proposal](#) to accept from foreign private issuers their financial statements prepared in accordance with the English version of International Financial Reporting Standards (IFRS) as published by the International Accounting Standards Board (IASB) without reconciliation to U.S. GAAP. The CAQ believes the elimination of the U.S. GAAP reconciliation for foreign private issuers using IFRS is an important step in the process toward development of a single-set of high-quality globally-accepted accounting standards. As such, our comment letter expressed overall support for the proposal. Here are some other observations and recommendations made in the CAQ letter:

- We do not believe that the elimination of the U.S. GAAP reconciliation should be predicated on the adequacy or continuation of the convergence process, nor on the development of further guidance in areas not currently addressed by IFRS.
- We believe that foreign private issuers that use local GAAP (including jurisdictional IFRS) should have an ability to reconcile to IFRS in lieu of reconciling to U.S. GAAP.
- We recommend that in future drafting of rules, forms, releases and other materials, both the Commission and the SEC staff avoid making references to specific accounting standards when the respective requirement is intended to apply to all registrants regardless of the basis of accounting used in their primary financial statements. Instead, we recommend that the SEC's non-financial statement disclosure requirements describe the concept and objective of the required disclosure, and differentiate the operational instructions as necessary based on whether the registrant uses U.S. GAAP or IFRS. As a way of addressing this issue in existing SEC forms, rules and regulations, we provided a suggested categorization of U.S. GAAP pronouncements that have been referenced in the SEC rules and regulations.
- We encourage the SEC to utilize its rule-making authority to extend the statutory safe harbor protections to the forward looking information required in the notes to financial statements under IFRS 7.

Please refer to the full text of the [CAQ comment letter on the SEC proposal to eliminate the US GAAP reconciliation requirement](#) for a complete discussion of these and other positions provided on the proposal.

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As a member of the Center, your firm will receive periodic updates on important developments related to the PCAOB and the SEC, as well as the activities of the Center, particularly with respect to the submission of comment letters on PCAOB and SEC proposals. To stay abreast of these and other relevant events in public company audit practice, please visit the Center Web site at theCAQ.aicpa.org. Also, we welcome any suggestions or questions - please send them by email at center@theCAQ.org.

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