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CAQ Alert #2009-08 – January 29, 2009

DEAR CENTER MEMBERS

Frequent SEC Comment Letter Issues for Smaller Registrants

The staff of the [Securities and Exchange Commission's](#) (SEC or the Commission) Division of Corporation Finance participated in the [Public Company Accounting Oversight Board's](#) (PCAOB or the Board) Forums on Auditing in the Small Business Environment ([Small Business Forums](#)) during 2008. Participants at these Small Business Forums included auditors from smaller PCAOB-registered public accounting firms and directors and financial executives of smaller public companies.

During the presentation at the Small Business Forums, staff from the SEC's Division of Corporation Finance [discussed](#) financial reporting issues that are frequently incorporated in SEC comment letters to smaller registrants.

The CAQ encourages members to review the SEC's [slide-deck](#) (pages 21 through 36), which includes their commentary on frequently raised financial reporting issues for smaller registrants. The sections below represent a high-level summary of topics highlighted by the SEC in their presentation before the Small Business Forums.

I. Revenue Recognition (Page 22)

- Disclosures
 - Revenue Recognition Policy Disclosures ([SEC Staff Accounting Bulletin No. 104](#))
 - Vague or “Boilerplate” Disclosures
 - Compliance with [EITF Issue No. 00-21](#), *Revenue Arrangements with Multiple Deliverables*
 - Compliance with [EITF Issue No. 99-19](#), *Reporting Revenue Gross as a Principal versus Net as an Agent*

II. Business Combinations (Pages 23-25)

- Classification of Transaction as Acquisition of Business or Assets
 - Accounting Purposes – [EITF Issue No. 98-3](#), *Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business*
 - Reporting Purposes – [Rule 11-01\(d\) of Regulation S-X](#)
- Purchase Price Allocations
 - [SFAS No. 142](#), *Goodwill and Other Intangible Assets*, ¶11
- Appropriate Disclosures
 - [SFAS No. 141](#), *Business Combinations*, ¶ 51 through 58
- Reverse Acquisitions/Recapitalizations
 - [SFAS No. 141](#), *Business Combinations*, ¶17
- Entities Under Common Control
 - [SFAS No. 141](#), *Business Combinations*, Appendix D
 - [EITF Issue No. 02-5](#), *Definition of "Common Control" in Relation to FASB SFAS 141*
- Separate Financial Statements of an Acquired Business
 - [Rule 3-05 of Regulation S-X](#)
 - [Rule 8-04 of Regulation S-X](#)
- Predecessor Financial Statements

III. Equity Transactions (Page 26)

- Fair Value Determination
 - [SFAS No. 157](#), *Fair Value Measurements*
 - [FSP No. SFAS 157-3](#), *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*
- Appropriate Disclosure for Fair Value Determination

IV. Embedded Conversion Options & Warrants (Pages 27-29)

- Bifurcation of Conversion Option
 - Classification as Liability or Equity
 - Instruments Involved
 - Convertible Debt
 - Convertible Preferred Stock
 - Freestanding Warrants to Buy Registrant's Stock
-

V. Management's Discussion and Analysis (MD&A) (Page 30)

- Executive Level Overview, Critical Accounting Estimates, Comparative Results of Operations, and Liquidity and Capital Resources
 - [Release No. 33-6835](#), *SEC Interpretation: MD&A of Financial Condition and Results of Operations; Certain Investment Company Disclosures*
 - [Release No. 33-8350](#), *SEC Interpretation: Commission Guidance Regarding MD&A of Financial Condition and Results of Operations*

VI. Form 8-K (Pages 31-32)

- Compliance with Form 8-K Item 4.01- *Changes in Registrant's Certifying Accountant*
- Compliance with Form 8-K Item 4.02 – *Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review*
 - [SEC Form 8-K Interpretations](#)

NOTE: On August 26, 2008, the CAQ issued [Alert #2008-50](#) – SEC's Division of Corporation Finance Updates Interpretations of Exchange Act Form 8-K and Section 16.

VII. Internal Control over Financial Reporting (ICFR) (Pages 33-34)

- Management Reports under [Item 308\(a\) of Regulation S-K](#)
- Auditor Attestation under [Item 308\(b\) of Regulation S-K](#)
- Disclosures of Changes in ICFR under [Item 308\(c\) of SEC Regulation S-K](#)

NOTE: On December 31, 2008 the CAQ issued [Alert #2008-94](#) - SEC's Findings of Section 404(a) Deficiencies for First Time Filers.

VIII. CEO/CFO Certifications (Page 35)

- Deviations from Specific Form and Content in [Item 601\(b\)\(31\)\(ii\) of Regulation S-K](#)

IX. Audit Reports (Page 36)

- Auditor Must be:
 - PCAOB-Registered Accountant
 - Meet Requirements of [Article 2 of Regulation S-X](#)

- Audit Reports Must be Filed for all Financial Statements Required to be Audited
- Audit Report Refers to Report(s) of Another Auditor(s)

X. Other Areas (Appendix) (Pages 51-56)

- Financial Statement Classification – [Article 8 of Regulation S-X](#)
- General Reporting Requirements
 - Registration Statements – [Rule 8-08 of Regulation S-X](#)
- Disclosure Controls and Procedures – [Item 307 of Regulation S-K](#)
 - Insufficient conclusions
 - Incomplete definition of disclosure controls and procedures
 - “Reasonable assurance” language

To view the SEC’s complete slide-deck and corresponding notes for this presentation, please click on the respective link entitled: [SEC Staff Review of Common Financial Reporting Issues Facing Smaller Issuers.](#)

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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 to center@theCAQ.org.

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