

**CAQ SEC Regulations Committee**  
**March 29, 2011 - 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  
Jim Brendel  
Jack Ciesielski  
Brad Davidson  
Christine Davine  
David Follett  
Bridgette Hodges

Wayne Landsman  
Jeff Lenz  
Kevin McBride  
Steve Meisel  
Scott Pohlman  
Sandra Peters  
Michelle Stillman

**B. Securities and Exchange Commission**

*Division of Corporation Finance (Division)*

Mark Kronforst, Associate Director  
Craig Olinger, Deputy Chief Accountant  
Nili Shah, Deputy Chief Accountant  
Angela Crane, Associate Chief Accountant  
Jill Davis, Associate Chief Accountant  
Louise Dorsey, Associate Chief Accountant  
Todd Hardiman, Associate Chief Accountant  
Joel Levine, Associate Chief Accountant  
Leslie Overton, Associate Chief Accountant  
Michael Stehlik, Assistant Chief Accountant  
Angela Andrews, Academic Fellow  
Mark Green, Senior Special Counsel

*Office of the Chief Accountant (OCA)*

Mike Starr, Deputy Chief Accountant  
Shelly Luisi, Senior Associate Chief Accountant

**C. Center for Audit Quality**

Carrie Cristinzio  
Annette Schumacher Barr

**D. Guests**

Carolyn Clemmings, E&Y  
John May, PwC

## **II. DIVISION OF CORPORATION FINANCE PERSONNEL AND ORGANIZATIONAL UPDATE**

### **A. Personnel Changes**

Craig Olinger provided the following update of personnel developments in the Division:

- Nili Shah, formerly an Associate Chief Accountant in OCA, is a new Division Deputy Chief Accountant. Ms. Shah is in charge of the policy group within the Division's Chief Accountant's Office (CF-OCA) and replaces Mark Kronforst, who was named Associate Director in the Division in October 2010.
- CF-OCA is interviewing for three Associate Chief Accountants, two within its operations group and one within its policy group.

*[Note: Subsequent to the meeting, Mr. Carnall announced that the following staff members were promoted to Associate Chief Accountant in CF-OCA: Ryan Milne, Kyle Moffat and Mark Shannon. Mr. Milne will work in the policy group and Mr. Moffat and Mr. Shannon will work in the operations group.]*

### **B. Specialized Office Focusing on Large Financial Institutions**

In July 2010, the Division announced the creation of a new specialized office within its disclosure operations group (Assistant Director's Office 12, Financial Services II) to focus exclusively on large financial institutions. Mark Kronforst noted that the office is operating, but not yet fully staffed. Stephanie Hunsaker has been appointed Senior Assistant Chief Accountant for this group.

## **III. CURRENT FINANCIAL REPORTING MATTERS**

### **A. Japanese Natural Disaster**

Mr. Olinger noted that the SEC staff has been in communication with the accounting and legal communities to identify financial reporting challenges for Japanese foreign private issuers as well as U.S. multinational registrants with significant Japanese operations. These challenges include the possibility that affected registrants will be unable to timely file periodic reports or to test new controls required for management's annual assessment of internal control over financial reporting.

The SEC staff will address financial reporting and other issues on a company-by-company basis given each registrant's specific facts and circumstances. The staff expects to continuously evaluate developments and will address them as appropriate in the circumstances.

Mr. Olinger highlighted other accounting and financial reporting matters related to the Japanese natural disaster, including:

- **Extraordinary income statement classification** – A registrant is encouraged to contact the SEC staff if it concludes that the effects of the Japanese earthquake and/or tsunami should be classified as an extraordinary item for accounting purposes.
- **Summarized financial information of Japanese operations** – A registrant should consider providing summarized financial information about its Japanese operations if those operations have been materially affected by the natural disaster such that summarized financial information is necessary for an investor to understand the implications to the consolidated entity.
- **Accounting and disclosures** - A registrant should use its best efforts in addressing accounting recognition and measurement (e.g., impairment analysis) issues and preparing disclosures even though certain information related to the natural disaster may not be known. Registrants may want to consider whether expanded critical accounting estimate disclosure would be warranted
- **Internal control over financial reporting** - Registrants should evaluate whether Regulation S-K Item 308(c) disclosures are required about any change in internal control over financial reporting during the quarter in response to the Japanese natural disaster based on whether that change has “materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting.”

There was also recognition that MD&A and risk factor disclosures may be required even if a registrant does not have operations in Japan (e.g., registrants with key suppliers or customers located in Japan).

## **B. Loss Contingency Disclosures**

Members of the Committee noted that the SEC staff’s public comments regarding loss contingencies prompted many registrants to reassess their disclosures during the 2010 reporting season. These comments included the statement that the *Statement of Policy Regarding Lawyers’ Responses to Auditors’ Request for Information* (agreed upon by the ABA and AICPA in 1976) is not a part of U.S. GAAP and does not affect a registrant’s responsibility to provide the required financial statement disclosures about loss contingencies. The SEC staff continues to focus on registrants’ accounting and disclosure for loss contingencies.

Ms. Shah commented that the FASB will be interested in the results of the SEC staff's reviews as the FASB assesses its exposure draft, *Disclosure of Certain Loss Contingencies*.

### **C. Preliminary Financial Information**

At the effective date, a registration statement, including an IPO, may include preliminary financial information (i.e., financial information about a recently completed period for which financial statements are not yet available). Mr. Kronforst discussed that, although registrants have flexibility in providing this information, it should be presented in a balanced manner. For example, it may not be appropriate to limit the disclosure to include only revenue for an interim fiscal period if revenue increased but net income decreased. What constitutes a balanced presentation depends on the specific facts and circumstances. Mr. Kronforst noted that the decision to disclose this information is the registrant's and that the SEC staff would not normally insist that the registration statement include preliminary financial information unless it is otherwise required.

### **D. Tangible Book Value**

Under certain specified circumstance, S-K 506 requires disclosure of net tangible book value per share. Mr. Olinger acknowledged that there is limited guidance regarding the calculation of net tangible book value. Members of the Committee commented that, additional guidance might be helpful (e.g., types of intangible assets that must be excluded from the net tangible book value calculation).

### **E. Domestic Companies with Majority of Operations Outside U.S.**

The SEC staff has discussed that U.S. domestic registrants and foreign private issuers that use U.S. GAAP and have the majority of operations outside the U.S. (e.g., China) may receive questions regarding compliance with internal controls over financial reporting. Specifically, the staff has asked questions regarding the background of the people preparing the financial statements in terms of education, licenses and professional experience. If the registrant uses outside consultants the staff has inquired about their qualifications. The staff indicated that a number of companies provided information regarding the qualifications of the people preparing the financial statements to support the conclusion that ICFR was effective. However, in response to the staff's questions, it appears that other registrants:

- elected to deregister;
- amended their filings to acknowledge they do not have adequate resources to prepare U.S. GAAP financial statements and disclose a material weakness in ICFR; and/or
- hired U.S.-trained people knowledgeable about U.S. GAAP.

#### **F. IFRS Work Plan - Application of IFRS**

CF-OCA is studying the application of IFRS in financial statements of large global companies. The study is being performed as a part of the IFRS Work Plan that the Commission directed the staff to perform. The study includes both SEC registrants and non-registrants. One of the goals of the study is to evaluate whether jurisdictional differences exist in the application of IFRS. Mr. Olinger explained that the SEC staff is in the process of summarizing its observations.

### **IV. STAFF FILING AND REVIEW PROCESS**

#### **A. Clearing SEC Comments Prior to Form 10-K Filing**

Members of the Committee noted concerns of registrants that receive comment letters shortly before the end of their fiscal year because the registrant may have difficulty in resolving SEC staff comments prior to filing. If registrants have specific concerns, Mr. Kronforst recommended that they contact the SEC staff reviewer to discuss these concerns and work together for timely resolution.

#### **B. Pilot Program for Email Comment Letter Distribution**

Mr. Kronforst discussed the SEC staff's pilot program to email certain comment letters to registrants, instead of faxing them. The SEC staff will normally contact a registrant to verify whether the registrant would like to receive its comment letter by email and obtain a proper email address (generally of an executive officer who signs the registrant's SEC filings). Based on the results of the pilot program, the email distribution may be extended within Disclosure Operations. Mr. Olinger also commented that email distribution, if successful, could eventually expand to CF-OCA responses to pre-filing requests.

## V. IMPLEMENTATION AND INTERPRETATION OF RECENT SEC RELEASES

### A. XBRL

SEC XBRL rules require registrants to tag financial statements for periods after June 15, 2011 (except foreign private issuers that do not use IFRS or U.S. GAAP). Members of the Committee conveyed observations about the difficulties and delays experienced by large accelerated registrants with current XBRL tagging requirements. For example, a registrant may need to finalize its filing 48 hours prior to its planned EDGAR filing to allow time for a third-party service provider to complete tagging. Third-party service providers may not have the ability to timely process changes and there are concerns that the capacity of service providers may be overwhelmed as accelerated and non-accelerated filers require XBRL tagging in the summer of 2011. Additionally, members of the Committee shared concerns from XBRL users about the amount of usable XBRL data, the amount of user mapping required to use the available data and inconsistencies in XBRL tagging practices among companies.

Mike Starr summarized communications between the SEC staff and the Committee on Corporate Reporting (“CCR”) of Financial Executives International (FEI). The CCR recommended four XBRL modifications:

- **Delay the required submission of XBRL filings by 7-14 days** - Mr. Starr discussed SEC staff outreach to XBRL users to evaluate the effects of delaying XBRL information (e.g., would the delay render the XBRL information useless?). Mr. Starr indicated that input from users is required in addition to the preparer viewpoints.
- **Allow block tagging for non-standard/company specific notes instead of detail tagging**- The SEC staff requested CCR provide more specific recommendations and will discuss these issues in further detail at a meeting in May 2011.
- **Detail tagging delay for smaller companies** - The SEC staff is considering this recommendation.
- **Delay on limited liability phase-out** - The SEC staff is reviewing this recommendation.

Members of the Committee noted that relief during the transition process would provide time for each registrant to develop XBRL process enhancements.

Mr. Starr noted that companies that perform the XBRL tagging in-house may not experience the delays noted by those that used external service providers.

Mr. Starr also commented that the SEC staff requested CCR to review Inline XBRL, which assists in the preparation of XBRL documents.

There is a planned meeting between CCR and the third-party software providers in May 2011 to discuss XBRL transition.

In summary, Mr. Starr observed that XBRL filings are a significant change, there are limited resources with XBRL experience and additional guidance on detail tagging footnotes may be needed.

Mr. Starr also noted that the SEC has not yet approved the IFRS XBRL taxonomy for use in EDGAR filings, even though foreign private issuers that use IFRS must begin XBRL tagging for periods after June 15, 2011.

*[Note: Subsequent to the meeting, the SEC staff issued a No-Action Letter to the CAQ stating that “foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB are not required to submit to the Commission and post on their corporate websites, if any, Interactive Data Files until the Commission specifies on its website a taxonomy for use by such foreign private issuers in preparing their Interactive Data Files.”]*

#### **B. Staff Accounting Bulletin (SAB) 114**

The SEC staff recently published [SAB 114](#) to make the references to FASB pronouncements in the SAB Codification consistent with the FASB’s Accounting Standards Codification (ASC). The updates also reflect formatting changes for consistency across the SAB Topics. Mr. Olinger noted the revisions were not intended to change the substance of the guidance provided in the SABs.

### **VI. SEC STAFF AND OTHER INITIATIVES**

#### **A. Financial Reporting Manual (FRM)**

The next update to the Division’s [Financial Reporting Manual \(FRM\)](#) is expected to be issued soon, with updates dated as of December 31, 2010.

*[Note: On April 1, 2011, the Division's staff released its quarterly update of the FRM. The revisions include updates for issues related to combined periodic reporting, income averaging, changes in accountants, foreign private issuer financial statements, as well as other changes.]*



## VII. CURRENT PRACTICE ISSUES

### A. Income Averaging and the Significant Subsidiary Test (Rule 1-02(w) - Significant Subsidiary)

Regulation S-X Rule 1-02(w), Computational Note 2 indicates that a registrant should use its “average income” for the denominator in the income test of significance if the registrant’s income for the most recent fiscal year is at least 10% lower than the average of the past five years. FRM Section 2015.8 has been revised to indicate that income averaging also applies when a registrant reported a loss in the most recent fiscal year. Todd Hardiman noted that if a registrant has a loss in the most recent year, the registrant should use the absolute value of the loss and compare that amount to the average income of the past five years (calculated using zero for the loss years and dividing aggregate income by five) to determine if it qualifies for income averaging (i.e., the average income is in excess of the absolute value of the loss).

*[Note: The update to the FRM made on April 1, 2011 addressed this issue and clarified the guidance.]*

### B. Transition Issues Related to Pending Accounting Standards

Several significant updates to the Accounting Standards Codification have been proposed and are under consideration by the FASB. The proposed transition for certain changes results in various SEC reporting questions that would arise if the standards are finalized as proposed. Some examples include:

#### *Leases Exposure Draft*

The transition reflected in the proposed ASU (paragraphs 88-89) is as follows:

- For the purposes of the transition provisions in paragraphs 88-96, the date of initial application is the beginning of the first comparative period presented in the first financial statements in which the entity applies this guidance. An entity shall recognize and measure all outstanding contracts within the scope of this guidance as of the date of initial application using a simplified retrospective approach as described in paragraphs 90–96.
- An entity shall adjust the opening balance of each affected component of equity for the earliest prior period presented and the other comparative amounts disclosed for each prior period presented as if the new accounting policy had been applied from the beginning of the earliest period presented.

Based on the proposed initial measurement provisions and the proposed subsequent accounting provisions, if a registrant applied the new standard as of the beginning of the first year presented in a selected financial data table, rather than the first year presented in the financial statements, the amounts recognized in the financial statements in the period of adoption would be different. The Committee questioned whether a registrant will be permitted or required to apply the new accounting in all years presented in the selected financial data table.

### **Revenue Recognition**

The transition reflected in the proposed ASU (paragraph 85) is as follows:

- An entity shall apply the proposed requirements retrospectively by applying the guidance on accounting changes and error corrections in paragraphs 250-10-45-5 through 45-10. In the period of adoption, an entity shall provide the disclosures required in paragraphs 250-10-50-1 through 50-3.

ASC paragraphs 250-10-45-5 through 45-10 require retrospective application to all prior periods, unless it is impracticable to do so.

The Committee questioned, assuming it is practicable to do so, whether registrant would be permitted or required to apply the new accounting in all years presented in the selected financial data table.

### **Accounting for Financial Instruments**

The transition reflected in the proposed ASU (paragraphs 137-138) is as follows:

- An entity shall apply the proposed guidance by means of a cumulative effect adjustment to the statement of financial position for the reporting period that immediately precedes the effective date. The statement of financial position for that reporting period shall be restated in the first set of financial statements issued after the effective date. For example, an entity for which the effective date is January 1, 20X4, would restate in its first quarter's financial report its statement of financial position as of December 31, 20X3.
- An entity shall determine the amount of the cumulative-effect adjustment in accordance with the guidance on accounting changes and error corrections in Topic 250. An entity shall disclose all of the following in the fiscal period in which the proposed guidance is adopted and, if the entity provides interim-period financial statements and adopts the proposed guidance in an interim period, also in the annual financial statement that include that interim period:

- The nature and reason for the change in accounting principle, including an explanation of the newly adopted accounting principle.
- The method of applying the adoption.
- The effect of the adoption on any line item in the statement of financial position for the reporting period that immediately precedes the effective date. Presentation of the effect on financial statement subtotals is not required.
- The cumulative effect of the change on retained earnings or other components of equity in the statement of financial position as of the reporting period that immediately precedes the effective date.

The Committee questioned if a registrant files a new or amended registration statement (other than on Form S-8) or proxy statement that incorporates by reference interim financial statements as of a date on or after the date the company has adopted the new accounting and restated its balance sheet as of the end of the preceding year, whether the registrant would need to restate its annual financial statements to reflect the new accounting before incorporating them by reference in a registration statement. Alternatively, given the disclosure of the effect of the restatement of the latest year-end balance sheet required in the subsequent interim financial statements, if the independent registered public accounting firm will permit reissuance of its audit report without restating the annual financial statements, could the registrant incorporate by reference its annual financial statements into a registration statement or proxy without restating them?

**Receivables: Clarifications to Accounting for Troubled Debt Restructurings by Creditors**

The transition reflected in the proposed ASU (paragraph 310-40-65-1) for the proposed disclosure and measurement provisions is as follows:

- The pending content that links to this paragraph that affects financial statement disclosures shall be effective for interim and annual reporting periods ending after June 15, 2011. Retrospective application is required for receivables restructured on or after the beginning of the earliest period presented.
- The pending content that links to this paragraph may result in an entity changing the method of calculating impairment on a receivable from the guidance in Subtopic 450-20 to the guidance in Section 310-10-35. The effect of the change in the method of calculating impairment shall be effective for interim and annual reporting periods ending after June 15, 2011, and shall be applied prospectively to the troubled debt restructurings identified in (a) above that remain outstanding as of the end of the period of adoption. Retrospective application is permitted.

The Committee noted these transition provisions result in the following questions:

- A registrant files a new or amended registration statement (other than on Form S-8) or proxy statement that incorporates by reference interim financial statements as of a date on or after the date the company has adopted the new accounting. The previously filed annual financial statements do not contain the retrospectively required disclosures required by paragraph 310-40-65-1.a. Would the registrant need to file revised annual financial statements before incorporating them by reference in the registration statement?
- A registrant files a new or amended registration statement (other than on Form S-8) or proxy statement that incorporates by reference interim financial statements as of a date on or after the date the company has adopted the new method of calculating impairment of a receivable. In those financial statements, the registrant adopted the new accounting retrospectively. Would the registrant need to recast its prior period annual financial statements that are incorporated by reference to reflect a material retrospective application of the new accounting?
- If a registrant elects to apply the new method of calculating impairment of a receivable retrospectively, as permitted by paragraph 310-40-65-1.b, would it be permitted or required to apply the new accounting in all years presented in the selected financial data table?

Mr. Olinger noted that the SEC staff will address these matters as the FASB finalizes the noted standards and related transition provisions.

*[Note: Subsequent to the meeting, the FASB did adopt guidance regarding Troubled Debt Restructurings.]*

**C. Income Test of Significance in Connection with the Acquisition of an Equity Method Investment that will be Accounted for Using the Fair Value Option**

Rule 3-05 of Regulation S-X requires a registrant to file historical financial statements of a significant acquired business. FRM Section 2010.3 indicates that "[t]he staff considers the acquisition of an investment accounted for under the equity method to be a business for reporting purposes." However, the FRM does not specifically address whether the acquisition of an equity method investment that will be accounted for using the fair value option also should be considered to be a business for purposes of S-X Rule 3-05. Mr. Hardiman confirmed that an acquired equity method investment for which the fair value option had been elected is subject to S-X Rule 3-05.

S-X Rule 1-02(w)(3) does not specifically address how the income test of significance should be calculated for an equity method investment that will be accounted for using the fair value option. Mr. Hardiman noted that in these circumstances the income test of significance should be based on the change in fair value of the relevant instrument(s) (e.g., common stock) during the applicable historical period for which the test is being performed (e.g., most recently completed pre-acquisition fiscal year). This method of evaluating significance is consistent with the method that will be used to measure significance on a go-forward basis (i.e., under S-X Rules 3-09 and 4-08(g)).

Mr. Hardiman also confirmed that the on-going significance assessment under S-X Rules 3-09 and 4-08(g) should include the change in the fair value of any other relevant financial instruments of the investee held by the investor during the relevant period. U.S. GAAP states that if the fair value option is applied to an investment that would otherwise be accounted for using the equity method, the fair value option must be applied to all of the investor's financial interests in the same entity that are eligible items (which could include equity, debt and/or guarantees).

*[Note: The guidance above regarding Rule 3-05 of Regulation S-X would be equally applicable in the application of the guidance under Rule 8-04 of Regulation S-X for Smaller Reporting Companies.]*

#### **D. Age of Acquired Foreign Business Financial Statements in Connection with an Item 2.01 Form 8-K**

The age of financial statements requirements with respect to an Item 2.01 Form 8-K are generally<sup>1</sup> determined as of the filing date (or due date) of the initial Form 8-K reporting the acquisition. Item 9.01 of Form 8-K states that "[t]he financial statements [of the acquired business] shall be prepared pursuant to Regulation S-X..." S-X Rule 3-05(b)(2)(ii) indicates that "...financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in [S-X] Rule 3-01 and Rule 3-02." S-X Rule 3-01(h) indicates that "any foreign private issuer...may file the financial statements required by Item 8.A of Form 20-F..."<sup>2</sup> Item 8.A.4 of Form 20-F states: "The last year of audited financial statements may not be older than 15 months at the time of the offering or listing..."

Mr. Olinger confirmed that the age of annual audited financial statements of an acquired foreign business in a Form 8-K should follow the 15-month rule in Item 8.A of Form 20-F. As a result, a registrant might be required to file

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<sup>1</sup> Refer to FRM 2045.17 for an exception to this general rule. For purposes of this discussion, we have assumed that this exception does not come into play.

<sup>2</sup> Rule 3-01(h) specifically refers to a foreign private issuer, however, FRM 6220.4 indicates that "[t]he age requirements in Item 8 of Form 20-F also apply to financial statements of...[f]oreign businesses acquired by both foreign and domestic registrants under S-X 3-05, including filings by domestic registrants under Items 2.01 and 9.01 of Form 8-K..."

annual audited financial statements of an acquired foreign business sooner than that business would be required to file annual audited financial statements if it were a foreign private issuer filing Form 20-F (currently 6 months after year end).

*[Note: This difference in age requirements will be partially mitigated when the due date of the Form 20-F is accelerated to four months following the fiscal year end (effective for fiscal years ending on or after December 15, 2011). See the 12/31/10 update of the FRM – paragraph 2045.14.]*

#### **E. Calculating the Significance of a Business that is Contributed to a Joint Venture**

FRM Section 2025.4 indicates that when a registrant enters into an exchange transaction in which the registrant and another party each contribute businesses to a joint venture, the registrant is required to measure the significance of the disposition and the acquisition separately. FRM Section 2025.4 specifically addresses how to perform the significance tests with respect to the acquisition portion of the transaction (i.e., based on the acquired percentage of the joint venture partner's business). However, FRM Section 2025.4 does not specifically address how to perform the significance tests with respect to the disposition portion of the transaction. Ms. Overton clarified that the disposition transaction's significance test should be performed in the same way as the acquisition test (i.e., based on the percentage of the business disposed, not 100% of the business contributed to the joint venture).

#### **F. Determining Smaller Reporting Company status following a reverse merger between two operating companies**

In a reverse merger between an operating company that is a smaller reporting company (SRC) registrant and a non-reporting operating company that would not qualify for SRC status if it were a registrant, the financial statement requirements vary depending on the SEC form in which the financial statements of the legal target/accounting acquirer will be filed. In Form S-4, the financial statement filing requirements for a non-reporting target depend on whether it would meet the smaller reporting company requirements if it were an issuer. The SEC staff's Securities Act Form Compliance and Disclosure Interpretations (C&DI Question 125.11) indicate that the financial statements of the target company included in subsequent Form 8-K reporting the consummation of the business acquisition must comply with the Regulation S-X provisions applicable to the "combined company."

The Committee questioned whether following consummation of an acquisition accounted for as a reverse merger (1) the combined company inherits the reporting status of the legal registrant (SRC) until its next measurement and transition dates or (2) the combined company is required to re-determine its reporting status at the date the transaction closes. Mr. Stehlik confirmed that consistent with FRM Section 5230.2, the registrant (the legal acquirer) would continue to qualify as a smaller reporting company until the next determination date. The reference to “combined company” in the C&DI is a reference to the registrant (the legal acquirer).

**G. Whether a Parent has Independent Assets or Operations – S-X Rule 3-10(h)(5)**

Rule 3-10 of Regulation S-X provides relief from the requirement to provide condensed consolidating financial information in various situations in which, among other things, the parent company “has no independent assets or operations.” The Committee questioned whether amounts in the parent’s books related to the registered debt for which S-X Rule 3-10 is being applied affect the analysis of whether a parent company has “independent assets or operations” pursuant to Rule 3-10(h)(5). Mr. Olinger noted that the registered debt would not affect the conclusion whether a parent has independent assets or operations. Additionally, if the parent’s books include amounts related to other debt used solely to finance the acquisition or operation of its subsidiaries, those amounts also should be disregarded in the analysis of whether the parent company has “independent assets or operations” pursuant to Rule 3-10(h)(5).

Mr. Olinger cautioned that the use of proceeds from a parent’s debt offerings could affect the conclusion whether the parent has independent assets or operations. For example, any other investments held by the parent, whether accounted for by the cost or equity method, would be included in assessing whether the parent has “independent assets or operations.”

**H. Reflecting the Costs of Being a Public Company in Pro Forma Income Statements**

There are numerous pieces of guidance that apply to pro forma financial information presented in an initial registration statement, including Article 11 of Regulation S-X and the FRM. However, it is unclear which adjustments are appropriate to make in pro forma income statements in initial registration statements to reflect the costs of being a public company. Members of the Committee and the SEC staff discussed whether certain adjustments meet the conditions of being factually supportable and directly attributable to going public. Ms. Shah commented that the SEC staff would consider whether additional interpretive guidance in this area would be beneficial.