

**SEC Regulations Committee  
October 14, 2008 - Joint Meeting with SEC Staff  
SEC Offices – Washington DC**

**HIGHLIGHTS**

**NOTICE:** The SEC Regulations Committee meets periodically with the staff of the SEC to discuss emerging technical accounting and reporting issues relating to SEC rules and regulations. The purpose of the following highlights is to summarize the issues discussed at the meetings. These highlights have not been considered and acted on by senior technical committees of the AICPA, or by the Financial Accounting Standards Board, and do not represent an official position of either organization.

In addition, these highlights are not authoritative positions or interpretations issued by the SEC or its Staff. The highlights were not transcribed by the SEC and have not been considered or acted upon by the SEC or its Staff. Accordingly, these highlights do not constitute an official statement of the views of the Commission or of the Staff of the Commission.

**I. ATTENDANCE**

**A. SEC Regulations Committee**

John Wolfson, Chair  
Chris Holmes, Vice Chair  
Doug Bennett  
Leonard Brams  
Michael Cinalli  
Brad Davidson  
Melanie Dolan  
Bob Laux  
Steve Meisel  
Scott Pohlman  
Amy Ripepi  
Tom Weirich  
Kurtis Wolff

**B. Securities and Exchange Commission**

*Division of Corporation Finance*

Wayne Carnall, Chief Accountant  
Craig Olinger, Deputy Chief Accountant  
Greg Burton, Academic Fellow  
Louise Dorsey, Associate Chief Accountant  
Michael Fay, Associate Chief Accountant  
Stephanie Hunsaker, Associate Chief Accountant  
Todd Hardiman, Associate Chief Accountant  
Joel Levine, Associate Chief Accountant

**C. Center for Audit Quality**

Annette Schumacher Barr

**D. Guests**

Nedra Downing, D&T  
John May, PwC  
Bridgette Hodges, Grant Thornton  
Debra MacLaughlin, BDO

**II. DIVISION OF CORPORATION FINANCE UPDATE**

**A. Personnel Update**

Mr. Carnall welcomed Greg Burton, the Division's new Academic Fellow, who will take a lead role in the Division's training efforts for its accounting staff.

**B. Division Training**

Mr. Carnall noted that all Division staff will attend internal training that will focus on current developments and issues. This training will provide staff with the tools needed to review registrants' filings with the SEC in the current economic environment. Areas of focus will include reporting issues related to Other Than Temporary Impairment (OTTI), valuation allowances for deferred tax assets and goodwill impairment.

**III. STATUS UPDATE OF PROJECTS**

**A. CFO Letter Regarding MD&A**

In September, the Division Staff posted an [addendum](#) to the [original SFAS 157 MD&A letter](#) that was issued in March. The Staff sent the addendum to the same (approximately 27) financial institutions that received the original letter. Mr. Carnall stated that the disclosures suggested in the letters were encouraged but not specifically required and, like the original letter, the comments in the addendum apply to other organizations as well. The Committee expressed support for these letters, stating that they were an effective way for the staff to communicate and emphasize the SEC staff's observations regarding potential fair value disclosures in MD&A. The Committee asked whether the staff is planning another letter reflecting recent economic developments. Mr. Carnall replied that the staff would consider issuing additional letters if the staff believes it would enhance the transparency of disclosures.

**B. IFRS Roadmap/XBRL**

Mr. Carnall indicated that he cannot provide dates when the Commission's IFRS Roadmap proposal will be issued or when the Commission might consider adopting a final XBRL rule.

**C. Oil and Gas Proposed Rulemaking**

Mr. Carnall noted that the majority of comments received on the Commission's proposal to modernize oil and gas reporting requirements were supportive. He indicated that only one investor group provided comments on the proposal. He did not indicate when the Commission might consider adopting a final rule. *[Note: The CAQ submitted comments on this proposal. See <http://thecaq.org/newsroom/pdfs/CAQCommentLetter-090508OilAndGas.pdf>]*

**D. Successor to the Staff Training Manual**

Mr. Carnall provided an update of the staff's efforts in updating the Staff Training Manual. This is a priority for the Division and the staff expects to issue a revision of the current document (under a new title) soon. The document will include all the sections and topics addressed in the 2000 edition although the format will likely differ. The document will also incorporate many topics that have been previously discussed in joint meetings of the SEC Regulations Committee and the staff. The staff intends to update sections of the revised manual as needed. Because each subsection of the manual will carry a publication date, updates will be evident via a change to the 'publication date'.

**E. Consents of Experts**

The staff discussed the question of whether a reference to an expert (e.g., a valuation professional) in an SEC filing requires the expert to be specifically named and a consent be obtained. Mr. Carnall indicated that he has been discussing this issue with the Division's Office of Chief Counsel and they are expected to issue guidance shortly in the form of a Compliance and Disclosure Interpretation which will be posted to the SEC website.

*[Note: Subsequent to this meeting, the SEC staff issued guidance about when a consent may be required in registration statements. See Compliance and Disclosure Interpretations, Securities Act Rules, Question 233.02]*

**F. Requirement for Updated Financial Statements for S-8 Filings**

The Committee asked the staff to clarify whether financial statements incorporated by reference in a new or amended registration statement on

Form S-8 need to be updated to reflect a material discontinued operation, change in reportable segments or accounting change that requires retrospective application. Mr. Carnall indicated that he has been discussing this issue with the Office of Chief Counsel and expects to be able to provide additional perspectives before the next meeting.

**G. Updating SAB Codification for FAS 141R/160**

The staff acknowledged that there are a number of areas in which Regulation S-X, Financial Reporting Polices and Staff Accounting Bulletins might conflict with Statement 141R and Statement 160. Mr. Carnall indicated that he expects the staff to recommend that the Commission revise Regulation S-X and the Financial Reporting Polices to be consistent with the new accounting standards. Likewise, the SEC staff will review the Staff Accounting Bulletins to determine the necessary modifications. Pending these technical amendments, the SEC staff expects registrants to follow the provisions of promulgated GAAP.

**H. PCAOB's Forum on Auditing in the Small Business Environment**

Mr. Carnall noted that the SEC staff was invited to participate in the [PCAOB's Forum on Auditing in the Small Business Environment](#). These presentations are geared toward registered accounting firms and public companies in the small business community. The SEC staff presentations, which focus on "common problems" facing the auditor of smaller companies, have been very well received. The staff will post the slide deck, along with detailed speaker notes, to the SEC website in late December.

**I. 404 Compliance by Non-Accelerated Filers**

Mr. Carnall noted that numerous non-accelerated filers had not complied with the provisions of Item 308T of Regulation S-K which operationalizes Section 404(a) of the Sarbanes-Oxley Act of 2002.

*[Note: Non-accelerated filers (other than newly public companies) were required to begin complying with the requirements to provide management's report on internal control over financial reporting in their annual reports for fiscal years ending on or after December 15, 2007. Only the audit reporting requirements of Section 404(b) have been deferred to years ending on or after December 15, 2009.]*

**IV. RECENT DEVELOPMENTS/CURRENT ISSUES**

**A. Broker Quotes and Pricing Services**

The SEC staff noted that the [September 2008 CFO letter](#) sets forth additional guidance to consider when evaluating disclosures related to broker quotes and pricing services. In response to questions, Stephanie

Hunsaker discussed the criteria that companies could follow in determining when the disclosure about the use of a broker or pricing service would require them to be named in SEC filings and a consent be provided in connection with a Securities Act filing. In many situations, the broker or pricing service will not need to be named nor would a consent be required. She indicated that registrants that have not been disclosing how they used information from brokers or pricing services because they believed that any such disclosure would automatically require a consent should reevaluate their disclosure and the Commission's requirements.

*[Note: Subsequent to this meeting, the SEC staff issued guidance about when a consent may be required in registration statements. See Compliance and Disclosure Interpretations, Securities Act Rules, Question 233.02].*

## **B. Areas of Current Focus in Staff Reviews**

Mr. Carnall noted that in the current economic environment the staff will likely ask questions about the areas noted below. In reporting and disclosing these issues, the staff recommends that registrants try to anticipate questions that investors will ask and structure their disclosures accordingly.

- **Other Than Temporary Impairment (OTTI) of Certain Debt and Equity Securities**

Ms. Hunsaker observed that the current market situation has made it critical for registrants to evaluate OTTI and provide adequate disclosures. Related to disclosures, registrants are encouraged to explain the rationale underlying their conclusion, including a discussion of which OTTI model is applicable: FAS 115 or EITF 99-20. In particular, Mr. Carnall reminded the Committee that SAB Topic 5M identifies some factors that should be considered in reaching a conclusion on OTTI. The SAB explains that when a security's book value is greater than its market value, impairment is presumed absent evidence to support a realizable value in excess of the carrying value. Accordingly, when a registrant does not disclose the applicable OTTI model and the basis for its impairment conclusion, registrants should expect the staff to ask the company to explain the evidence it relied on in reaching its judgment and request additional disclosure in the filings about this conclusion.

- **Goodwill Impairment**

Ms. Hunsaker observed that in the current environment, the net book value of numerous companies exceeds their market capitalization. These cases may suggest that goodwill has been impaired and registrants should consider the guidance in SFAS No. 142.

Ms. Hunsaker noted that in many cases, companies use market comparables to estimate the fair value of individual reporting units. The Staff emphasized that management should ensure that market comparables are, in fact, comparable to the reporting unit being valued. Additionally, the SEC staff believes that it would be helpful for registrants to explain the difference between the aggregate estimated fair value of its reporting units to the market capitalization of the consolidated entity, at least in circumstances where the company was required to determine the fair value of each of its reporting units. While this test is not a requirement of SFAS 142, it does represent a useful tool. In those instances where a company determines that it is reasonably possible that it will recognize a material goodwill impairment in the near term, the staff recommends companies consider providing "early warning" disclosures to alert investors. Ms. Hunsaker also noted that companies issuing financial statements before completing step 2 of their impairment analysis (i.e., using a best estimate of the probable loss as discussed in paragraph 22 of FAS 142) should provide investors with transparent disclosure of that fact as well as the judgments and sensitivities relating to the estimated impairment.

- **Deferred Tax Assets**

Mr. Carnall noted that the staff may ask registrants with significant deferred tax assets questions regarding the realizability of these assets in light of the deteriorating economic conditions and the related effects on future taxable income and tax planning strategies.

## **V. SPECIFIC PRACTICE ISSUES – DISCUSSION DOCUMENTS**

The following emerging practice issues were addressed at the meeting and discussion documents have been posted to the Center for Audit Quality website at the URL indicated.

- A. Significance Calculations Under Rule 3-09 (Document I from the July 8, 2008 Meeting) NOTE: This issue was addressed in Section 2410.2 of the SEC Financial Reporting Manual (FRM).**
- B. Applying the Transition Provisions of FSP APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" (Document C from the July 8, 2008 Meeting)**
- C. Significance Testing and Reporting upon Adoption of FAS 141R and FAS 160 for an Acquisition of an Equity Interest that Results in Obtaining Control (Document F from the July 8, 2008 Meeting) NOTE: These issues were addressed in Sections 2410.3 and 2020.4 of the SEC Financial Reporting Manual (FRM).**
- D. Significance Testing and Reporting upon Adoption of FAS 141R and FAS 160 for a Disposition of an Equity Interest that Results in Loss of Control (Document G from the July 8, 2008 Meeting)**

- E. Performing the significance tests for acquisitions of noncontrolling interests in a consolidated subsidiary after the adoption of FAS 160 (Document E from the July 8, 2008 Meeting) NOTE: This issue was addressed in Section 2020.5 of the SEC Financial Reporting Manual (FRM)**
- F. Evaluating the Significance of an Equity Method Investee in Interim Periods and Associated Disclosure Issues (Document D from the July 8, 2008 Meeting) This issue was addressed in Section 2420.7 and 2420.8 of the SEC Financial Reporting Manual (FRM).**
- G. Application of S-K, Item 302(a), *Selected Quarterly Financial Data*, to a private company in a Form S-4 (Document J from the July 8, 2008 Meeting)**