

SEC Regulations Committee
July 11, 2017 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

HIGHLIGHTS

NOTICE: The Center for Audit Quality (CAQ) SEC Regulations Committee meets periodically with the staff of the SEC to discuss emerging financial 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 or acted on by senior technical committees of the AICPA and do not represent an official position of the AICPA or the CAQ. As with all other documents issued by the CAQ, these highlights are not authoritative and users are urged to refer directly to applicable authoritative pronouncements for the text of the technical literature. These highlights do not purport to be applicable or sufficient to the circumstances of any work performed by practitioners. They are not intended to be a substitute for professional judgment applied by practitioners.

These highlights were prepared by a representative of CAQ who attended the meeting and do not purport to be a transcript of the matters discussed. The views attributed to the SEC staff are informal views of one or more of the staff members present, do not constitute an official statement of the views of the Commission or of the staff of the Commission and should not be relied upon as authoritative.

As available on this website, highlights of Joint Meetings of the SEC Regulations Committee and the SEC staff are not updated for the subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature. As a result, the information, commentary or guidance contained herein may not be current or accurate and the CAQ is under no obligation to update such information. Readers are therefore urged to refer to current authoritative or source material.

I. ATTENDANCE

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
Christine Davine, Chair	<i>Division of Corporation Finance (Division)</i>	Chris Alabi, CAQ
Steven Jacobs, Vice-Chair	Craig Olinger, Deputy Chief	Observer
Timothy Brown	Accountant	Rick Condon, RSM
Jason Cuomo	Nili Shah, Deputy Chief Accountant	Phillip Posey, Deloitte
Brad Davidson	Christy Adams, Associate Chief Accountant	Brian Cassidy, CAQ
Melanie Dolan	Tricia Armelin, Associate Chief Accountant	Observer
Fred Frank	Jessica Barberich, Associate Chief Accountant	Annette Schumacher
Paula Hamric	(via teleconference)	Barr, CAQ Observer
Bridgette Hodges	Angela Crane, Office Chief	
Larry Kallio	Jill Davis, Associate Chief Accountant (via teleconference)	
John May	Joseph Epstein, Professional Accounting Fellow	
	Zachary Fallon, Special Counsel, Office of Small Business Policy	
	Patrick Gilmore, Associate Chief Accountant	
	Mark Green, Senior Special Counsel – Regulatory Policy (via teleconference)	
	Jaime John, Associate Chief Accountant	
	Lindsay McCord, Associate Chief Accountant	
	Ryan Milne, Associate Chief Accountant	
	Eiko Yaoita Pyles, CF-OCA Rotator	
	Jarrett Torno, CF-OCA Rotator	
	Mark Green, Senior Special Counsel (via teleconference)	

II. PERSONNEL AND COMMITTEE UPDATE

The staff noted that Bill Hinman and Robert Evans were recently named the Director and Deputy Director, respectively, of the Division of Corporation Finance.

III. CURRENT FINANCIAL REPORTING MATTERS

A. Waivers via Rule 3-13 of Regulation S-X

Rule 3-13 of Regulation S-X gives the staff authority, where consistent with investor protection, to permit the omission of or substitution for certain financial statements otherwise required by Regulation S-X. In granting such waivers the staff considers the facts and circumstances specific to each fact pattern. Examples of waiver requests under Rule 3-13 may include provision of abbreviated financial statements (i.e., statement of revenues and direct expenses) in lieu of full financial statements for a recently acquired business under Rule 3-05 of Regulation S-X, omission of one or more years of historical financial statements for a recently acquired business under Rule 3-05 of Regulation S-X, or omission of certain financial statements of an equity method investment under Rule 3-09 of Regulation S-X.

Mark Kronforst, Chief Accountant of the Division of Corporation Finance's Office of Chief Accountant (CF-OCA) discussed Rule 3-13 waivers at the June 8, 2017 36th Annual SEC and Financial Reporting Institute Conference. He emphasized that the staff will consider granting such waivers, and he encouraged companies to discuss their facts and circumstances with the staff.

B. Process for requesting omission of selected financial data

The staff indicated that written waiver requests from non-EGC¹ domestic registrants requesting omission of the earliest two years of selected financial data required by Item 301 of Regulation S-K should not be submitted to CF-OCA because the staff does not have the delegated authority to waive Regulation S-K requirements. Instead, registrants seeking to omit selected financial data may call CF-OCA to facilitate resolution of their specific fact pattern.

C. ASC 606, *Revenue from Contracts with Customers*

SAB 74 Disclosures²:

The staff indicated that SAB 74 disclosures observed in first quarter 2017 Forms 10-Q varied in nature, with some registrants continuing to include only boilerplate language regarding the expected impact of the standard while other registrants provided more comprehensive disclosures. The staff reiterated the requirement to provide an estimate of the impact of adoption or, in absence of quantitative information, provide additional qualitative information to assist readers in assessing the impact on the financial statements of the standard when

¹ Emerging Growth Company or EGC. An EGC is not required to present selected financial data in accordance with Item 301 of Regulation S-K for any period prior to the earliest audited period presented.

² Staff Accounting Bulletin (SAB) 74 was codified into SAB Topic 11-M *Disclosure of the Impact That Recently Issued Accounting Standards Will Have on the Financial Statements of the Registrant When Adopted in a Future Period*.

adopted. The staff also referred to [remarks](#) made by Chief Accountant Wes Bricker at the June 8, 2017 36th Annual SEC and Financial Reporting Institute Conference on this matter. Additional guidance can be found in [SAB Topic 11.M](#) and [Accounting Standards Codification \(ASC\) 250-10-S99-6](#).

D. Non-GAAP Financial Measures

The Committee and the staff discussed examples of recent non-GAAP financial measure comments issued by the staff. The staff welcomes observations about non-GAAP measures and challenges with applying the May 2016 guidance. Questions about a particular non-GAAP measure should be directed to CF-OCA.

E. Regulation A Submissions

Zachary Fallon provided an overview of Regulation A filing trends and statistics in the two years since Regulation A became effective in June 2015.

Mr. Fallon then referred the Committee to a white paper entitled [Regulation A+: What Do We Know So Far?](#) on the Commission's Division of Economic Analysis (DERA) webpage for more detailed information regarding Regulation A activity.

Lindsay McCord noted that some of the common financial statement issues have related to:

- *Consent in a Form 1-K* - [C&DI 182.19](#) was issued.
- *Audit opinion* - An issuer that plans to register its securities under the Exchange Act using Form 8-A concurrently with a Regulation A offering must comply with the audit and auditor requirements in Article 2 of Regulation S-X in the Form 1-A.
- *Audited financial statements for Tier 1 filings* - Tier 1 issuers are not required to include audited financial statements unless they are available. In instances where they are available, even if only one year, the staff expects the audit report to be included in the Form 1-A.
- *Predecessor financial statements* - The staff reminds issuers to consider whether a predecessor exists for newly formed issuers and provide the appropriate financial statements for predecessor entities.
- *Other basic questions* - For example, the staff has observed issuers not complying with the requirements pertaining to the age and timeliness of financial statements.

F. Evaluating significance of a business disposal in connection with a proxy statement soliciting authorization for the disposal

The Committee and staff discussed the significance threshold (that is, 10% or 20% significance) to be used for evaluating whether proxy statements soliciting authorization for a disposal require financial statements of the business being disposed. Section 1140.6 of the SEC's Financial Reporting Manual (FRM) indicates the financial statement periods for which unaudited financials of the "significant" disposed business should be provided.

The staff will not set a bright-line threshold in this circumstance. Companies are welcome to discuss individual fact patterns with the staff.

G. Pro-Forma Financial Information presented in a Form 8-K for a significant acquisition made after a previously reported significant acquisition

The Committee and staff discussed the application of pro-forma requirements of Item 9.01(b)(1) of Form 8-K for a significant acquisition that occurs *after* a previously reported significant acquisition during the most recent fiscal year or subsequent interim period. Specifically, the Committee and staff discussed whether, in this circumstance, the pro-forma financial information presented in the Form 8-K for the second acquisition must give effect to the first acquisition in addition to the second acquisition or, instead, provide the pro-forma effect of only the current, second acquisition for which the Form 8-K is being filed.

Pro-forma financial information included in a 1933 Act filing (e.g., Registration Statement) pursuant to Article 11 of Regulation S-X is required to include the effects of both acquisitions. However, Item 9.01(b)(1) of Form 8-K requires that “*for any transaction required to be described in answer to Item 2.01 of this form, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S-X.*”

The staff is aware that the appropriate application of the pro forma rules and related guidance is not always clear relative to a particular transaction; however, it understands that companies typically show both transactions in the second pro-forma and the staff encourages that presentation because it results in more comprehensive disclosure. Companies with questions about individual fact patterns should contact CF-OCA.