

SEC Regulations Committee
June 14, 2016 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

HIGHLIGHTS

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I. ATTENDANCE

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
John May, Chair	<i>Division of Corporation Finance (Division)</i>	Annette Schumacher
Christine Davine, Vice-Chair	Keith Higgins, Director	Barr, CAQ Observer
Scott Bourgeois	Mark Kronforst, Chief Accountant	Brian Schramm, PwC
Timothy Brown	Craig Olinger, Deputy Chief Accountant	Oksana Thimko, PwC
Janie Copeland	Nili Shah, Deputy Chief Accountant	Kendra Decker, Grant Thornton
Jason Cuomo	Tricia Armelin, Associate Chief Accountant	
Brad Davidson	Jessica Barberich, Associate Chief Accountant	
Melanie Dolan	Jill Davis, Associate Chief Accountant*	
Fred Frank	Patrick Gilmore, Associate Chief Accountant	
Liz Gantnier	Cicely LaMothe, Associate Director	
David Hilder	Austin Lee, Valuation Fellow	
Steven Jacobs	Lindsay McCord, Associate Chief Accountant	
Jeff Lenz	Ryan Milne, Associate Chief Accountant	
Sharon Virag	Kevin Vaughn, Associate Chief Accountant	
	Mark Green, Senior Special Counsel	
<i>Office of the Chief Accountant</i>		
Sylvia Alicea, Professional Accounting Fellow		
Sean May, Professional Accounting Fellow		
Jenifer Minke-Girard, Assistant Deputy Chief Accountant*		

* Via Teleconference

II. CURRENT FINANCIAL REPORTING MATTERS

A. Non-GAAP Financial Measures

The Committee and the staff discussed the continued focus on non-GAAP financial measures, the recently issued [Compliance and Disclosure Interpretations \(C&DIs\)](#) and recent public remarks made by various senior SEC officials. In particular, the Committee and the staff discussed the following broad areas:

- ***Adjusted Revenue and Tailored Accounting Models.*** In light of the recently issued C&DI 100.04, the staff reiterated statements that it has recently made in various forums that while it may be appropriate to present measures of performance that adjust revenue and expenses for the anticipated impacts of adopting ASC 606, the staff has not yet seen any acceptable examples. As a related follow-up to the discussion held at the [March 2016 Joint Meeting](#), the staff said it is still considering whether companies that utilize the modified retrospective method of adoption would be able to show supplemental revenue (and expense) amounts in MD&A disclosing what revenue (and expense) would have been for a particular historical period if the new revenue standard had been applied in that period.
- ***Non-GAAP Per-Share Measures.*** The Committee and the staff discussed whether the per se prohibition on presenting a per share measure of earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation and amortization (EBITDA) would also extend to per share measures of Adjusted EBIT and Adjusted EBITDA. The staff indicated that there is no per se prohibition on presenting a per share measure of Adjusted EBIT or Adjusted EBITDA. Rather, the determination of whether it is acceptable to present such a per-share measure will depend on the nature of the adjustments and on whether the measure is, in substance, a performance measure.
- ***Tax Effects of Non-GAAP Measures.*** The staff emphasized that they are focused on the reasonableness of the tax rate being used relative to the level of non-GAAP earnings and the transparency of the tax effects of non-GAAP adjustments.

B. Industry Guide 3 and revised FDIC insurance coverage disclosures

The Committee and the staff discussed the differences between the disclosure requirements relating to time deposits in ASC 942-405-50-1 and Industry Guide 3, Item V.D.

In [Editorial and maintenance update 2014-07](#), the FASB amended ASC 942-405-50-1 to require financial institutions to disclose time deposits “in denominations that meet or exceed the FDIC insurance limit at the balance sheet date.” The previous requirement had been to disclose time deposits “in denominations of \$100,000 or more at the balance sheet date.” The change was made to recognize that the amount insured by the FDIC had been raised from \$100,000 to \$250,000.

Guide 3, Item V.D. requires disclosure of “...the amount outstanding of (1) time certificates of deposit in amounts of \$100,000 or more and (2) other time deposits of \$100,000 or more....”

The Committee and the staff discussed the different disclosure thresholds. The staff noted that Industry Guide 3, Item V.D. was not intended to be linked to the FDIC insurance limit and that there is no direct linkage between the requirement to disclose deposits in accordance with Industry Guide 3, Item V.D. and ASU 942-405-50-1.

The staff encouraged registrants and other interested parties to provide feedback on the Commission’s Concept Release *Business and Financial Disclosure Required by Regulation S-K*, which includes questions related to the industry guides (and specifically notes that the staff is currently considering recommendations for Industry Guide 3). Comments are due July 21.

C. Changes in ICFR in preparation for the adoption of a new accounting standard

Item 308(c) of Regulation S-K requires disclosure of changes in internal control over financial reporting (“ICFR”) during the most recent quarter that have materially affected or are reasonably likely to materially affect the registrant’s ICFR. The Committee and the staff discussed how this requirement applies to changes in ICFR that are made in preparation for the adoption of a new accounting standard when those changes are in periods that precede the date of adoption and do not impact the preparation of the financial statements until the new standard is adopted.

The staff indicated that they are evaluating whether additional guidance is necessary for applying the requirements of Item 308(c) in connection with the transition to the new revenue standard.

D. Requirement to provide restated financial statements when a Form S-3 registration statement is filed after the registrant has filed its first Form 10-Q reflecting full retrospective adoption of the new revenue standard

As a follow-up to a topic discussed at the March 2016 Joint Meeting, the Committee and the staff discussed Deputy Chief Accountant Wes Bricker’s [remarks at the 2016 Baruch College Financial Reporting Conference](#) on transition activities for the new revenue recognition standard. Specifically, the Committee and the staff discussed the provision in ASC 250-10-45-5 which indicates that “[a]n entity shall report a change in accounting principle through retrospective application of the new accounting principle to all prior periods, unless it is impracticable to do so.” ASC 250-10-45-9 provides guidance on the term “impracticable.”

The staff indicated that they are available for consultation with registrants that have concluded it would be impracticable to revise one or more comparative prior periods, but they also noted that consultation is not required.

E. Transition Questions Related to the New Leasing Standard

The FASB issued ASU 2016-2 (Leases, ASC Topic 842) on February 25, 2016. ASU 2016-2 is effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years.

The transition guidance requires a modified retrospective approach. Entities will apply the new standard to leases within the scope of ASC 842 that exist, or are entered into after, the beginning of the earliest comparative period presented in the financial statements (the date of initial application). The modified retrospective approach does not require any transition accounting for leases that expired before the date of initial application.

Given the importance of the “date of initial application” when determining which leases are “within scope” for purposes of applying the new leasing standard’s transition guidance, the Committee asked the staff how to apply that guidance in financial statements issued prior to the end of the year in which the standard is adopted. Specifically, the Committee asked the staff whether the “date of initial application” should be determined by reference to the earliest period financial statements that are expected to be presented for comparative purposes with the first full year of application.

As an example, consider a calendar year-end, SEC registrant that is neither an emerging growth company nor a smaller reporting company. That registrant’s Form 10-K for the year ending December 31, 2019 will include financial statements for each of the three years in the period ending December 31, 2019. In this example, January 1, 2017 would be the date of initial application since that date is the beginning of the earliest comparative period presented in the financial statements.

The Committee asked the staff whether January 1, 2017 would be the date of initial application for all purposes including preparation of the March 31, 2019 Form 10-Q (even though January 1, 2018 would be the earliest period presented in the financial statements in that specific document), any reissued financial statement that might be required prior to the issuance of the financial statements for the year ending December 31, 2019 (e.g., pursuant to Item 11(b) of Form S-3) and an initial registration statement.

The staff indicated that they would consider whether (and if so, how) to communicate additional guidance on this topic.

F. Differing adoption dates for ASU No. 2014-09, *Revenue from contracts with customers*

The Committee and the staff discussed various reporting scenarios including the interplay between ASU 2014-09 and S-X Rule 3-05, S-X Article 11, and S-X Rule 3-09. The Committee highlighted various scenarios in which an acquired business or

significant equity method investee would be deemed a public business entity and may need to adopt the new revenue standard prior to implementation by the registrant (acquirer/investor).

The staff noted that these scenarios are being evaluated and that they will consider whether (and if so, how) to communicate answers to these questions.

G. Implications of General Instruction A.4 of Form 10-K on Form S-3

The Committee and the staff discussed whether a registrant could file a new or amended registration statement on Form S-3 if the Form 10-K being incorporated by reference does not include one or more required S-X Article 12 financial statement schedules (in reliance on General Instruction A.4 of Form 10-K). Given the limited frequency with which this fact pattern arises, the staff indicated that they would prefer to address this situation on a case-by-case basis.