

SEC Regulations Committee
March 21, 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	Mark Kronforst, Chief Accountant	Barr, CAQ Observer
Timothy Brown	Craig Olinger, Deputy Chief Accountant	Brian Schramm, PwC
Janie Copeland	Patricia Armelin, Associate Chief Accountant	
Jason Cuomo	Jill Davis, Associate Chief Accountant*	
Brad Davidson	Cicely LaMothe, Associate Director	
Rich Davisson	Austin Lee, Valuation Fellow	
Melanie Dolan	Joel Levine, Associate Chief Accountant*	
Fred Frank	Lindsay McCord Associate Chief Accountant	
Liz Gantnier	Kyle Moffatt, Associate Director	
Bridgette Hodges	Kevin Vaughn, Associate Chief Accountant	
Steven Jacobs	Angela Crane, Office Chief, Disclosure Standards	
Jeff Lenz		
	<i>Office of the Chief Accountant</i>	
	Carlton Tartar, Associate Chief Accountant	

* Via Teleconference

II. WELCOME AND INTRODUCTIONS

John May introduced the following new Committee members: Tim Brown, Jason Cuomo and Rich Davisson.

III. CURRENT FINANCIAL REPORTING MATTERS

A. Transition Questions Related to New Leasing Standard

On February 25, 2016, the FASB issued ASU 2016-02 (Leases, Topic 842). For public business entities, ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The transition guidance requires a modified retrospective approach for both lessees and lessors. Lessees will apply the new standard to capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements (the date of initial application). Similarly for lessors, the new standard will apply to sales-type, direct financing, and operating leases existing at, or entered into after, 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.

The Committee and staff addressed the following transition questions related to the impact of the new standard's implementation on the selected financial data table required by Item 301 of Regulation S-K:

1. Should the new standard be applied 1) to all periods presented in the selected financial data table or 2) only to those periods which correspond to the periods reflected in the registrant's financial statements that are included in the relevant filing?

The staff indicated that the selected financial data table should follow the transition provisions of the ASU (i.e., the new leasing standard should be applied as of the beginning of the earliest comparative period presented in the financial statements).

As an example, consider a calendar year-end, SEC registrant that is neither an emerging growth company (EGC) nor a smaller reporting company (SRC). 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 and selected financial data for each of the five 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. Accordingly, the registrant would only apply the new standard to 2019, 2018 and 2017 in the selected financial data table. The selected financial data for 2016 and 2015 are not considered comparative financial statements and therefore do not change the date of initial application of the new leasing standard for purposes of

GAAP. The 2016 and 2015 information included in the selected financial data table will be prepared using the pre-ASU 2016-02 lease accounting model. Consistent with Instruction 2 to S-K Item 301, the registrant must provide disclosure regarding the lack of comparability of the data presented in the selected financial data table (if applicable and material).

2. Would the date of initial application be different in the above fact pattern if the registrant were to revise its annual financial statements in connection with a new or amended registration statement filed after the new leasing standard has been applied in a set of interim financial statements (e.g., the March 31, 2019 Form 10-Q), but before the annual financial statements for the year of adoption have been filed (e.g., in the December 31, 2019 Form 10-K)?

The staff indicated that it is in the process of considering this question and determining whether and, if so, how to communicate any views related to this and other transition issues.

B. FAST Act Filing Accommodations

The Committee asked the staff whether the Fixing America's Surface Transportation Act (FAST Act) initial filing accommodations are available to registrants other than EGCs and to forms other than Form S-1 and F-1. The staff noted that it is unable to extend the relief broadly beyond what is set forth in the January 2016 Interim Final Rule (which included a request for comment on this specific point). Registrants may contact the appropriate group in CF-Disclosure Operations to discuss questions regarding the timing of reviews.

C. Conflict Minerals

The Committee asked whether the following guidance included in the staff's [April 29, 2014 Public Statement](#) is still current:

"No company is required to describe its products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable." If a company voluntarily elects to describe any of its products as "DRC conflict free" in its Conflict Minerals Report, it would be permitted to do so provided it had obtained an independent private sector audit (IPSA) as required by the rule. Pending further action, an IPSA will not be required unless a company voluntarily elects to describe a product as "DRC conflict free" in its Conflict Minerals Report." [fn omitted]

The staff confirmed that this continues to reflect the staff's position.

D. FRM Updates

The Committee and staff discussed the [March 17 updates](#) to the Financial Reporting Manual (FRM), in particular the changes to Section 11100.2 – Supplementary

Quarterly Financial Data. The new guidance indicates that a calendar year-end EGC that elects to adopt the ASU 2014-09 for the annual period beginning on January 1, 2019 and for interim periods beginning on January 1, 2020 does not need to accelerate application of the standard to interim periods presented in the 2019 Form 10-K for the sole purpose of presenting quarterly financial data (e.g., under Item 302 of Regulation S-K). The Committee and the staff discussed the fact that the sum of the quarterly financial data for the year of adoption would not equal the corresponding annual period information. The staff noted that EGCs could address this discrepancy by clearly disclosing why the sum of the 4 quarterly figures for 2019 presented in the 2019 and 2020 annual reports do not agree to the corresponding annual amounts or provide other disclosures the EGC deems appropriate.

E. Disclosure Effectiveness Update

Mr. Kronforst indicated that staff is continuing work on its disclosure effectiveness initiative from both a Regulation S-K and a Regulation S-X perspective.

[Note: Subsequent to the meeting, on April 13, 2016, the Commission issued a Concept Release on modernizing certain business and financial disclosure requirements in Regulation S-K.]

F. Non- GAAP Measures

The Committee and staff discussed non-GAAP financial measures in light of [remarks](#) made by Chair White at the 2015 AICPA National Conference on Current SEC and PCAOB Developments and in other recent forums. The staff echoed the Chair's remarks, confirmed that this continues to be an area of staff focus and indicated that they expect that focus to continue.

[Note: Subsequent to the meeting, in speeches [March 22, 2016](#), [April 28, 2016](#) and [May 5, 2016](#), SEC Chief Accountant James Schnurr, SEC Division of Corporation Finance Chief Accountant Mark Kronforst and SEC Deputy Chief Accountant Wesley Bricker highlighted a number of concerns regarding non-GAAP measures, including concerns regarding non-GAAP earnings measures that reflect individually tailored accounting principles, concerns regarding per share data for non-GAAP performance measures that look like liquidity measures, and concerns regarding tax treatment of adjustments in non-GAAP earnings measures.]

G. Supplemental pro forma MD&A in connection with new revenue recognition standard (ASC 606)

The Committee and the staff discussed whether a registrant that adopts the new revenue standard on a modified retrospective basis may provide supplemental pro forma information in MD&A to show what revenue and cost of goods sold would have been in prior periods if the registrant had elected full retrospective adoption. The staff indicated that it is considering whether it is appropriate under current rules for registrants to provide supplemental pro forma information as referenced above,

including consideration as to whether this information would be considered non-GAAP financial information subject to the applicable requirements.

VI. CURRENT PRACTICE ISSUES

A. The applicability of General Instruction II.C of Form S-1 or General Instruction II.E of Form F-1 to pro-forma financial information

The SEC recently implemented Section 71003 of the FAST Act by adding General Instruction II.C to Form S-1 and General Instruction II.E to Form F-1. General Instruction II.C of Form S-1 reads as follows¹:

“A registration statement filed (or submitted for confidential review) under Section 6 of the Securities Act (15 U.S.C. 77f) by an emerging growth company, defined in Section 2(a)(19) of the Securities Act (15 U.S.C. 77b(a)(19)), prior to an initial public offering may omit financial information for historical periods otherwise required by Regulation S-X (17 CFR Part 210) as of the time of filing (or confidential submission) of the registration statement, provided that:

1. The omitted financial information relates to a historical period that the registrant reasonably believes will not be required to be included in this Form at the time of the contemplated offering; and
2. Prior to the registrant distributing a preliminary prospectus to investors, the registration statement is amended to include all financial information required by Regulation S-X at the date of the amendment.”

The Committee asked whether pro forma financial information for a fiscal year that the registrant reasonably believes will not be included in the registration statement at the time of the contemplated offering could be omitted from the pre-effective filings/submissions. The following scenario was presented:

Consider a calendar year-end EGC that submits or files a registration statement on Form S-1 for its initial public offering of common stock in December 2015. The company expects to commence its offering in April 2016 when annual financial statements for 2015 and 2014 will be required. The company completed a significant business acquisition in March 2015.

Would the company be required to include pro forma financial statements pursuant to Article 11 of Regulation S-X for the year ended December 31, 2014 in the December 2015 registration statement (recognizing that the pro forma

¹ General Instruction II.E to Form F-1 is substantially the same.

financial information included in the final prospectus will be for the year ended December 31, 2015)?

Prior to the implementation of Section 71003 of the FAST Act, the December 2015 Form S-1 would have been required to include Article 11 pro forma financial information for the year ended December 31, 2014 and for the nine-months ended September 30, 2015.

The staff indicated that it plans to update the Financial Reporting Manual to provide the staff's views on this matter.