

SEC Regulations Committee
September 26, 2017 - Joint Meeting with SEC Staff
SEC Offices – Washington DC

HIGHLIGHTS

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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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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	Phillip Posey, Deloitte
Janie Copeland	Christy Adams, Associate Chief Accountant	Annette Schumacher
Jason Cuomo	Tricia Armelin, Associate Chief Accountant	Barr, CAQ Observer
Brad Davidson	Jessica Barberich, Associate Chief Accountant	
Rich Davisson	(via teleconference)	
Melanie Dolan	Jill Davis, Associate Chief Accountant	
Fred Frank	Patrick Gilmore, Associate Chief Accountant	
Paula Hamric	Todd Hardiman, Associate Chief Accountant	
Bridgette Hodges	Jaime John, Associate Chief Accountant	
Larry Kallio	Lindsay McCord, Associate Chief Accountant	
John May	Ryan Milne, Associate Chief Accountant	
Jake Vossen	Kyle Moffatt, Associate Director – Disclosure Operations	
	Eiko Yaoita Pyles, CF-OCA Rotator	
	Jarrett Torno, CF-OCA Rotator	
	Karen Garnett, Associate Director – Disclosure Operations	
	Sara von Althann, Counsel	
	<i>Office of Chief Accountant</i>	
	Joseph Epstein, Professional Accounting Fellow	

II. PERSONNEL AND COMMITTEE UPDATE

The staff noted that Nili Shah, Deputy Chief Accountant of the Division of Corporation Finance Office of Chief Accountant (CF-OCA), left the Commission in September 2017.

III. CURRENT FINANCIAL REPORTING MATTERS

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

The Committee and staff continued the dialogue from the July 11, 2017 SEC Regulations Committee meeting on Rule 3-13 waivers, noting the following recent developments:

1. On August 25, the staff updated the [Financial Reporting Manual \(FRM\)](#) to include a section titled “Communications with the Division of Corporation Finance’s Office of Chief Accountant.” Included therein are the names, organized by subject matter, of staff members to discuss questions regarding potential relief under Rule 3-13. The staff indicated they are available to discuss potential waiver fact patterns telephonically in advance of submitting a written request. The staff further indicated that concise waiver requests that include information pertinent to the specific facts and circumstances of the registrant will facilitate a more efficient process.
2. On August 25, the staff also updated FRM Section 2065, *Acquisition of Selected Parts of an Entity may Result in Less than Full Financial Statements*. Questions about applying the guidance on abbreviated financial statements to a predecessor entity should be directed to CF-OCA. The Committee and staff discussed fact patterns where requests to provide abbreviated financial statements for a predecessor may be granted, such as when full financial statements for some successor periods have been included in a filing.

B. Update on process for requesting omission of selected financial data

At the July 2017 SEC Regulations Committee Meeting the staff indicated that written waiver requests for 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. At the September Meeting, the staff clarified that registrants seeking to omit selected financial data are encouraged to contact either CF-OCA or their respective Assistant Director (AD) industry review office to discuss whether such information may be omitted without comment or objection from the staff.

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.

C. Draft registration statement processing

The Committee and staff discussed questions submitted by the Committee regarding (1) the [Draft Registration Statement Processing Procedures Expanded announcement](#) issued by the staff on June 29, 2017 (as updated on August 17, 2017) and (2) the newly-issued compliance and disclosure interpretations (C&DIs) on Securities Act forms ([Securities Act Forms C&DIs Questions 101.04² and 101.05, issued August 17, 2017](#)). The Committee's questions and the staff's responses have been included as **Addendum A**.

D. Public Business Entity (PBE) July 2017 EITF announcement

At the [July 20, 2017 Emerging Issues Task Force \(EITF\) Meeting](#), the SEC Observer announced that the SEC would not object if a public business entity, that meets the definition of a PBE solely because its financial statements or financial information is included or required to be included in another entity's filing with the SEC, adopts the new revenue and leases standards in accordance with the effective dates for nonpublic entities (i.e., 2019 annual reporting periods for calendar yearend companies for the revenue standard and 2020 annual reporting periods for calendar yearend companies for the leases standard). Examples of financial statements or financial information required in another entity's filing with the SEC are those prepared pursuant to the following rules of Regulation S-X:

- Rule 3-05, *Financial Statements of Businesses Acquired or to be Acquired*
- Rule 3-09, *Separate Financial Statements of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons*
- Rule 3-14, *Special Instructions for Real Estate Operations to Be Acquired*
- Rule 4-08(g), *Summarized Financial Information of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons*

The Committee and staff discussed the following matter with regard to the PBE announcement:

Application to Rule 3-10(g) of Regulation S-X:

The staff confirmed that financial statements prepared pursuant to Rule 3-10(g) *Recently Acquired Subsidiary Issuers or Subsidiary Guarantors* are also within the scope of the July 20, 2017 announcement.

E. Pro forma financial information for a business combination under common control or discontinued operation

Rule 11-02(c)(2)(ii) of Regulation S-X indicates that pro forma presentation for all periods presented (i.e., 3 years for a non-EGC and a non-Smaller Reporting Company (SRC)) is required for a business combination accounted for as a reorganization of entities under common control or for discontinued operations that are not yet reflected in the annual historical financial statements.

² The SEC staff also updated Question 1 of the FAST Act C&DIs, which corresponds to Securities Act Forms C&DI 101.04.

The Committee and staff discussed how the pro forma income statements for a common control merger or a discontinued operation should reflect those adjustments which are directly attributable to the transaction. Specifically, the discussion considered whether adjustments directly attributable to the transaction should be presented as of the beginning of the earliest period (i.e., 3rd year back) or be presented as at the beginning of the most recent year (i.e., only for the most recent fiscal year and interim period).

In the [March 27, 2012 SEC Regulations Committee Meeting](#), the Committee and staff discussed “other transactions” such as new contractual arrangements or reductions in interest expense attributable to refinancing and concluded at that time that such “other transactions” should only be reflected in the last annual and interim period in the pro forma information. However, that discussion did not clarify whether “other transactions” would include transactions that are directly attributable and related to the transaction triggering the pro forma presentation or only those that are being presented as separate transactions in the same pro forma financial information. For example, additional financing to fund all or a portion of the purchase price for the acquisition of a business under common control or a shared services agreement negotiated by the registrant in conjunction with and to make possible the near-term transfer of a business under common control would ordinarily be considered directly attributable to the common control transaction.

The staff indicated that the pro forma presentation for the earliest two years should be limited to the impacts of recasting the financial statements as required by US GAAP. Other pro forma adjustments should be limited to the annual and interim period specified in 11-02(c)(2)(i).

F. The effects of accounting changes by a successor entity on the predecessor period financial statements

The Committee and staff continued a discussion from the [March 23, 2017 SEC Regulations Committee Meeting](#) on the effects of accounting changes by a successor entity on the predecessor period financial statements when there is a different basis of accounting (e.g., due to a change in control, push-down accounting, or fresh-start reporting).

The Committee previously asked for the staff’s views on whether the adoption of a new accounting principle by a successor entity using full retrospective transition would be required to be applied to a predecessor entity that has not presented financial statements for the period of adoption (and may not exist as of the effective date) similar to the SEC staff position in FRM 13210.2 as it relates to the presentation of discontinued operations.

The staff observed that there is no US GAAP or other regulatory requirement to retrospectively adjust predecessor period financial statements for accounting changes by a successor entity.

Addendum A

The following list of questions was compiled by the Committee regarding (1) the [Draft Registration Statement Processing Procedures Expanded announcement](#) (the “Announcement”) by the staff on June 29, 2017 (as updated on August 17, 2017) and (2) the compliance and disclosure interpretations (C&DI)s on Securities Act forms (Questions 101.04³ and 101.05, issued August 17, 2017) and was presented to the staff for discussion during the meeting. Note that questions relating to the Announcement have been grouped separately from those relating to the C&DI)s. The staff’s response to each respective question is included as *blue text*.

Announcement:

1. What, if any, types of offerings are not eligible for non-public review as a “Securities Act Initial Public Offering” or “Securities Act offering within one year of an IPO”? For example, are Rule 144A exchange offers or merger/proxies on Form S-4 or Form F-4 or initial debt offerings on Form S-1 or Form F-1 eligible for non-public review?

Response: Eligibility depends on the issuer’s history as a registrant and the Form being used. The Committee and staff discussed certain non-exclusive examples of filings which are or are not eligible as follows:

Eligible:

- *Securities Act registration statements for debt or equity prior to the issuer’s initial public offering date*
- *Initial registration of a class of securities pursuant to Section 12(b) of the Exchange Act:*
 - *Form 10*
 - *Form 20-F*
 - *Form 40-F*
- *Registration statements submitted within one year of the issuer’s initial Securities Act registration statement or Exchange Act Section 12(b) registration statement*

To determine eligibility, the staff refers to the JOBS Act definition of “initial public offering date,” which means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act. For purposes of this definition, a registered debt offering will not be considered an “initial public offering,” while a resale registration statement will be considered an “initial public offering.”

A registration statement relating to an Exxon Capital debt exchange following a Rule 144A offering would be eligible for nonpublic review, provided that the registrant has not previously completed a sale of common equity pursuant to an effective Securities Act registration statement.

³ The SEC staff also updated Question 1 of the FAST Act C&DI)s which corresponds to Securities Act Forms C&DI 101.04.

Not Eligible:

- *Proxy statements, unless combined with a Form S-4 that is otherwise eligible for non-public review (see Form S-4 discussion below)*
- *Form 8-A pursuant to Section 12(b) of the Exchange Act*
- *Mandatory registration statements pursuant to Section 12(g) of the Exchange Act*

For a Form S-4 Registration Statement used for a merger transaction, it is dependent upon the specific facts and circumstances. Issuers with this fact pattern are encouraged to contact their respective Assistant Director (AD) industry review office to discuss whether a non-public review is acceptable.

2. May a non-EGC issuer omit financial statements of other entities (e.g., Rules 3-05, 3-09 or 3-14) and any related pro-forma financial information from its draft registration statement if it reasonably believes that those financial statements will not be required at the time of the first public filing?

Response: *Yes.*

C&DIs on Securities Act forms:

3. Please confirm that a non-EGC or EGC company submitting a draft registration statement may omit interim financial information from the draft registration statement even though that interim information will be included as part of an updated interim or annual period required to be included when the registration statement is filed publicly for the first time. For example, please confirm that a non-EGC calendar year end company submitting a draft registration statement in September 2017 that reasonably expects to file publicly for the first time in December 2017 may omit its six-month June 2017 and 2016 interim financial information from its nonpublic draft registration statement and even though the Company must include the nine-month September 2017 and 2016 interim financial information (which includes the June interim results as part of the nine months) when the registration statement is filed publicly for the first time in December 2017.

Response: *Yes.*

4. Please confirm that for an EGC company that interim information is required to be separately presented in a **publicly** filed registration statement even if that specific interim information will not be required to be separately presented at the time of the contemplated offering. For example, for an EGC calendar year end company that **publicly** files a registration statement in October 2017, in advance of its “contemplated offering” in late-November 2017, please confirm that six-month June 2017 and 2016 interim financial information is required in the **public filing** (October 2017) even though those interim periods would not be required to be separately presented at the time of the **contemplated offering** (late-November 2017) because interim financial information for the nine months ended September 30, 2017 and 2016 will be filed before effectiveness of the registration statement.

Response: *Yes.*

5. Would the SEC staff allow companies to voluntarily include (in a draft registration statement) the most recent interim period without the comparable period to facilitate the review of the information?

Response: Generally yes; however, since the utility of current period information may be limited without presentation of the comparable prior period, issuers may wish to contact their respective AD industry review office to discuss their specific facts and circumstances.

6. For a draft registration statement does the relief in C&DI Question 101.05 to omit **interim** financial information not expected to be required at the time of public filing extend to financial statements of other entities (e.g., financial statements prepared pursuant to Rules 3-05 and 3-14 of Regulation S-X or financial statements of a Target in a Form S-4)?

Response: Yes.

7. Even though C&DI 101.05 is listed under Securities Act Forms, please confirm the guidance in the C&DI is also applicable to an initial registration of a class of securities under Exchange Act Section 12(b).

Response: Yes.