SEC Regulations Committee
October 21, 2015 - 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	***Division of Corporation Finance (Division)***	Annette Schumacher Barr, CAQ Observer
Christine Davine, Vice-Chair	Mark Kronforst, Chief Accountant	Brian Schramm, PwC
Brad Davidson	Craig Olinger, Deputy Chief Accountant	Kendra Decker, Grant Thornton
Melanie Dolan	Nili Shah, Deputy Chief Accountant	
Fred Frank	Patricia Armelin, Associate Chief Accountant	
Liz Gantnier	Jessica Barberich, Associate Chief Accountant	
Steven Jacobs	Jill Davis, Associate Chief Accountant*	
Jeff Lenz	Louise Dorsey, Associate Chief Accountant*	
	Todd Hardiman, Associate Chief Accountant	
	Zachary Fallon, Special Counsel	
	Cicely LaMothe, Associate Director	
	Austin Lee, Valuation Fellow	
	Joel Levine, Associate Chief Accountant	
	Ryan Milne, Associate Chief Accountant	
	Kyle Moffatt, Associate Director	
	Robert Shapiro, CF-OCA Rotator	
	Kevin Vaughn, Associate Chief Accountant	
	Mark Green, Senior Special Counsel	
	Angela Crane, Office Chief, Disclosure Standards	
	James Allegretto, Senior Assistant Chief Accountant	
	Jennifer Thompson, Branch Chief	
	Office of the Chief Accountant	
	Wes Bricker, Deputy Chief Accountant	
	Carlton Tartar, Associate Chief Accountant	
	* Via Teleconference	

II. DIVISION OF CORPORATION FINANCE PERSONNEL AND ORGANIZATIONAL UPDATE

A. Personnel Update

Nili Shah gave an update on the following personnel developments in the Division's Office of the Chief Accountant (CF-OCA):

- Robert Shapiro joined the CF-OCA as a rotator.
- Shelly Luisi has been named as an Associate Director in the Division of Corporation Finance in the Disclosure Standards Office.

Wes Bricker noted that Jennifer Minke-Girard has been named Assistant Deputy Chief Accountant in the SEC's Office of the Chief Accountant. In her new role, Ms. Minke-Girard will be responsible for consultations, communications and oversight of standard setting.

B. Division Reorganization

At the Committee's June Meeting, the staff noted that CF-OCA would be moving to a topical focus under which the Associate Chief Accountants will each be responsible for specific topical areas rather than being responsible for specific industries. The staff noted that inquiries and pre-clearance letters should still be directed to the CF-OCA's general mailbox at DCAOLetters@sec.gov.

C. Merger of Financial Services AD Groups

The staff noted that the two review groups responsible for financial services companies (AD Groups 7 and 12) were merged into a single review Group. The combined group will be led by Assistant Director Dieter King and Senior Assistant Chief Accountants John Nolan and Stephanie Sullivan. The review group will still perform continuous reviews of the large banks.

III. CURRENT FINANCIAL REPORTING MATTERS

A. Regulation A Update

Zachary Fallon provided an update on Regulation A. Mr. Fallon noted that since the amendments to Regulation A became effective on June 19, 2015, there have been 32 public Regulation A offering statements, 15 of which were Tier 1 and 17 Tier 2. Additionally, he noted his office has seen 14 draft offering statements for issuers that have not previously sold securities pursuant to a qualified offering statement under Regulation A. The 14 draft offering statement submissions included 5 Tier 1 and 9 Tier 2.

Mr. Fallon added that on June 23, 2015, the Commission issued CDI 182.07 which affirmed the Commission's position that Regulation A filings can be utilized for business combination transactions, such as a merger or acquisition.

B. Revenue Recognition

In 2014, the FASB and the IASB each issued a new accounting standard, Revenue from Contracts with Customers (Accounting Standards Update (ASU) 2014-09 and IFRS 15, respectively), intended to improve and converge the financial reporting requirements for revenue from contracts with customers. Members of the Committee and staff discussed the following questions relating to implementation of the new guidance:

1. Impact of retrospective adoption on significance testing under Rules 3-09 and 4-08(g) of Regulation S-X

The staff is considering how its current guidance might be modified to address the concerns articulated by members of the Committee.

[Note: Subsequent to the meeting, the staff discussed this topic at the 2015 AICPA National Conference on Current SEC and PCAOB Developments. Craig Olinger indicated that the staff plans to provide guidance that would allow companies adopting the new revenue standard retrospectively to use their pre-transition significance tests for evaluating the applicability of Rule 3-09 of Regulation S-X for periods that precede the date of adoption of the new standard. Although Mr. Olinger did not specifically reference Rule 4-08(g), it is expected the guidance will be applicable to that rule as well.]

2. Ratio of earnings to fixed charges

Consistent with existing guidance regarding the application of the new standard to the selected financial data table, the staff noted they would not object to applying the new revenue standard retrospectively for the same years as presented in the registrant's primary financial statements in connection with the preparation of the ratio of earnings to fixed charges and ratio of earnings to fixed charges and preferred stock dividend requirements when full retrospective adoption is applied. The staff indicated that registrants should clearly disclose that earlier years are not adjusted.

3. Interaction of retrospective adoption and the requirements to revise previously issued financial statements in connection with certain SEC filings.

Item 11(b) of Form S-3 requires retrospective revision of pre-transition financial statements to reflect a change in accounting principle (for which retrospective application was either required or elected) if the Form S-3 also incorporates by reference interim financial statements prepared under the new principle.

C. Interaction between ASU 2014-17 (Push Down Accounting) and the presentation/computation guidance in Rule 3-10(i) of Regulation S-X, SAB Topic 6-K, and SAB Topic 1-J

The Committee and the staff discussed the impact of ASU 2014-17 (and the rescission of SAB Topic 5-J) on the references to push-down accounting in Rule 3-10(i) and SAB Topics 1-J and 6-K. Regarding Rule 3-10(i), the staff indicated that condensed consolidating information for subsidiaries that prepare separate financial statements should be consistent, meaning if push down accounting is applied in separate subsidiary financial statements under GAAP then that accounting basis should be utilized in connection with Rule 3-10(i). The staff also indicated that registrants should continue to apply pushdown accounting with respect to change-in-control events for which pushdown accounting had been reflected previously in the condensed consolidating financial information.

- Regarding SAB Topic 1:J, the staff indicated that the guidance in FRM 2070.4(A) and 2070.6(A) continues to be applicable, meaning the numerator should give effect to any new cost basis arising from acquisition accounting irrespective of whether pushdown accounting is applied.

- Regarding SAB Topic 6:K.2, the staff noted that questions regarding the restricted net assets test have been rare, and declined to answer absent a live fact pattern.

D. FRM Section 3420, Distributions to Promoters/Owners At or Prior to Closing of an IPO

The staff and members of the Committee discussed the guidance in FRM 3420 including how the pro-forma Earnings Per Share (EPS) metric is calculated and used and how that information interacts with pro forma EPS presentations prepared under Article 11 of Regulation S-X. Members of the Committee expressed that there was confusion in practice about the calculation of this measure and it wasn't clear whether investors use the information. The staff mentioned they were going to continue to evaluate this guidance.

IV. CURRENT PRACTICE ISSUES

A. Shelf Take Downs and Greater than 50% Completed and Probable Business Acquisitions

The Committee asked the staff to confirm that the guidance in FRM 2045.3 and 2050.3, which indicates that financial statements of an acquired business that is greater than 50% significant are required to be filed prior to offering securities pursuant to an effective registration statement (except in certain limited types of offerings specified in FRM 2050.3), does not apply to a *probable* business acquisition unless management determines that the probable business acquisition constitutes a fundamental change. The staff confirmed that the "bright line" guidance only applies to *completed* acquisitions.