

**SEC Regulations Committee  
September 22, 2009 - Joint Meeting with SEC Staff  
SEC Offices – Washington DC**

**HIGHLIGHTS**

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**I. ATTENDANCE**

**A. SEC Regulations Committee**

Chris Holmes, Chair  
Melanie Dolan, Vice Chair  
Doug Bennett  
Leonard Brams  
Michael Cinalli  
Brad Davidson

Christine Davine  
Karin French  
Len Gatti  
Bob Laux  
Jeff Lenz  
Steve Meisel  
Scott Pohlman  
Tom Weirich  
Kurtis Wolff  
John Wolfson  
Don Zakrowski

**B. Securities and Exchange Commission**

*Division of Corporation Finance*

Wayne Carnall, Chief Accountant  
Craig Olinger, Deputy Chief Accountant  
Mark Kronforst, Deputy Chief Accountant  
Angela Crane, Associate Chief Accountant  
Jill Davis, Associate Chief Accountant  
Louise Dorsey, Associate Chief Accountant  
Michael Fay, Associate Chief Accountant  
Todd Hardiman, Associate Chief Accountant  
Leslie Overton, Associate Chief Accountant  
Michael Stehlik, Staff Accountant  
John Robinson, Academic Fellow  
Mark Green, Senior Special Counsel

*Office of the Chief Accountant*

Shelly Luisi, Senior Associate Chief Accountant

*Office of Interactive Data*

Joel Levine, Assistant Director

**C. Center for Audit Quality**

Annette Schumacher Barr

**D. Guests**

Mark Barton, E&Y  
Bridgette Hodges, GT  
John May, PwC

## II. DIVISION OF CORPORATION FINANCE PERSONNEL UPDATE

Wayne Carnall introduced [John Robinson](#) as the Division's new Academic Fellow. Mr. Robinson came to the SEC from the University of Texas at Austin. His one-year term began in August.

## III. CURRENT FINANCIAL REPORTING MATTERS

### A. Goodwill and Goodwill Impairment

Mr. Carnall indicated that the SEC staff is developing guidance regarding goodwill impairment risk disclosures in Management's Discussion and Analysis (MD&A). The purpose of the guidance is to provide suggestions for how registrants can provide information that will assist investors in assessing the likelihood of a material future goodwill impairment.

Mr. Carnall stated that the suggested disclosures will focus on reporting units for which a known uncertainty may exist with respect to goodwill impairment (i.e., it is reasonably likely that the reporting unit with a material amount of goodwill will fail a future "Step 1" impairment test under ASC 350, *Intangibles—Goodwill and Other*). Mr. Carnall stated that the disclosures will help users of financial statements identify which reporting units with material amounts of goodwill are at risk of failing a goodwill impairment test, determine the amounts of goodwill allocated to those units, and measure how close the units were to failing in the most recent test.

Mr. Carnall also noted that the guidance likely will include a reminder that registrants should disclose in MD&A the future implications to its business of the conditions that gave rise to an impairment of goodwill, as well as meaningful information for investors about its critical accounting policies relating to goodwill impairment testing.

Mark Kronforst, Deputy Chief Accountant, provided further insight on the specific types of disclosures that likely will be included in the SEC staff guidance. Mr. Kronforst stated that for each reporting unit with a material amount of goodwill that is at risk of failing Step 1 of the impairment test, the SEC staff will likely recommend that a registrant disclose the following in MD&A:

- The percentage by which the fair value of the reporting unit exceeds its carrying value at the date of the last impairment test

- The amount of goodwill allocated to the reporting unit
- A discussion of the methods and key assumptions that drive the fair value of the reporting unit
- A discussion of uncertainties surrounding those key valuation assumptions
- Events that could have a negative effect on the fair value of the reporting unit

If a registrant does not have any reporting units that are at significant risk of a future material goodwill impairment, Mr. Kronforst stated that the SEC staff will likely recommend that the registrant disclose that fact in MD&A.

Mr. Carnall noted that it is likely that the SEC staff will discuss this guidance at the AICPA National Conference on Current SEC and PCAOB Developments in December 2009 and include it in the Financial Reporting Manual.

## **B. Disclosures of Non-GAAP Financial Measures**

Mr. Carnall noted that another area of current SEC staff interest relates to the disclosure of non-GAAP financial measures in SEC filings. The SEC staff plans to develop guidance clarifying its views regarding these disclosures. Mr. Carnall indicated that the SEC staff was concerned that non-GAAP information that was relevant and important to an investor and was otherwise provided on websites, press releases, etc. was being excluded from 10-K, 10-Q and other SEC filings because certain companies were concerned the SEC staff would require them to exclude such non-GAAP information from those filings. Mr. Carnall stated that the SEC staff often reviews information that resides in places other than filed documents (e.g., earnings releases, analyst calls, websites, etc.) and may question why a registrant identifies a non-GAAP financial measure as a key metric in such places, yet its filings omit or contradict that information.

Mr. Carnall added that the SEC staff is considering whether the Commission's rules or staff interpretations and practices regarding non-GAAP financial measures are impeding the disclosure of meaningful information to investors in periodic reports or other SEC filings.

Mr. Carnall indicated that the guidance may be issued in the form of a C&DI, an update to the FRM, or both, most likely in 2010. The

Committee encouraged the SEC staff to communicate its views as soon as possible.

### **C. Staff Filing Review and Comment Process**

The Committee asked whether there have been changes in the SEC staff's comment and review process (e.g., reduced willingness to review draft responses, increased use of verbal comments) and whether changes were on the horizon. Mr. Carnall indicated there has been no change in practice. Mr. Carnall indicated that verbal comments should be rare and emphasized that all substantive communications between the SEC staff and registrants should be in writing. Regarding the submission of draft responses, Mr. Carnall noted that registrants should not presume this is standard practice and the willingness to review draft responses remains at the discretion of individual reviewers based on the particular facts and circumstances.

The committee also commented on the SEC staff's request to review a registrant's valuation assessment. Mr. Carnall noted that valuation experts on the SEC staff review valuation reports and ask pertinent questions related to assumptions and methodologies used.

## **IV. IMPLEMENTATION AND INTERPRETATION OF RECENT SEC RELEASES**

### **A. XBRL**

Joel Levine (Assistant Director of Office of Interactive Data) provided the following SEC staff observations related to XBRL exhibits submitted by the first transition group of registrants on second quarter Form 10-Q's:

- Approximately 430 submissions relating to June 30 filings had been made
- SEC staff reviews covered several aspects of the XBRL data, with a focus on proper tag selection and the use of extension tags
- 60% of registrants used the 2009 US GAAP taxonomy; 40% used the 2008 taxonomy and created extensions for any items for which the taxonomy had not yet been updated. Registrants that used the 2008 taxonomy for their June 30 filings are expected to use the 2009 US GAAP taxonomy beginning with their September 30 filings.
- A small percentage of registrants utilized the 30-day grace period allowed under the SEC rule
- A few registrants voluntarily filed their XBRL exhibits prior to the required phase-in date

Mr. Levine recommended that registrants focus on the following areas in future XBRL filings:

- *Specificity of standard element used* – In a number of instances, a registrant appeared to select a standard element with a definition (documentation label) that was either too narrow or too broad for the intended purpose (e.g., a registrant may have tagged a cash flow statement line item as “payment or repurchase of equity” as opposed to “payment or repurchase of common stock”)
- *Choosing between a standard tag (element) and an extension* – Registrants sometimes appeared to create an extension tag when a standard tag seemed more appropriate (i.e., registrants should minimize the use of extensions to maximize comparability across registrants)
- *Tagging negative values* – A tagged amount usually should not be reported as a negative value (i.e., the taxonomy was designed so that in most cases a positive value should be entered). A registrant should carefully consider the monetary element’s balance attribute (i.e., Debit or Credit) and definition to determine whether to enter a value as a positive or negative amount. The appearance of the amount in brackets does not enter into this determination.
- *Decimal attributes* – When tagging, registrants should pay close attention to the decimal attribute value assigned to the tag (e.g., earnings per share should be assigned a decimal attribute value of 2)
- *Distinguishing different sets of financial statements* – When there are separate entity or sector financial statements in an instance document, XBRL contexts are required to distinguish the respective entity or sector. A registrant should use the same elements to tag identical financial statement line items and then attribute those elements to the respective entity or sector using XBRL contexts as opposed to creating new extension tags

Based on these observations, the SEC staff hopes to issue updated guidance for use in connection with the third quarter filings. This guidance will be posted on the SEC website. In addition, Mr. Levine noted the following:

- The EDGAR validation process will be updated as of September 28, 2009. As a result, the EDGAR system may reject XBRL exhibits that previously would have been accepted. Filers are encouraged to take appropriate steps to ensure that all submissions comply with the EDGAR Filer Manual requirements. Registrants are also encouraged

to test compliance of their submissions well in advance of required filing dates to eliminate any last-minute rejection surprises.

- New FASB exposure drafts often include tables of proposed changes to the XBRL taxonomies. The SEC staff is encouraging the accounting profession and registrants to participate actively in the review and comment process related to these proposed changes.
- The SEC website contains a chart that assisted registrants in determining initial phase-in dates. Registrants can also use this chart to determine Phase II (June 15, 2010) dates by moving the dates up one year. This chart can be found on Slide No. 9 of the following webpage:  
<http://sec.gov/spotlight/xbrl/idreportingseminar061009slides-1.pdf>.

*[Note: Subsequent to the meeting, [Staff Observations From Review of Interactive Data Financial Statements](#) was posted to the SEC website.]*

## **B. Section 404(b) for Non-Accelerated Filers**

Unless the SEC takes action otherwise, Section 404(b) will become effective for non-accelerated filers for annual reports of fiscal years ending on or after December 15, 2009. Mr. Carnall added that the SEC staff is in the process of finalizing the 404 cost-benefit study.

*[Note: Subsequent to the meeting, the SEC [announced](#) a six-month extension of the auditor attestation requirement under Section 404(b) for non-accelerated filers. Those companies will be required to comply with Section 404(b) beginning with annual reports of fiscal years ending on or after June 15, 2010.*

*Subsequent to the meeting, the Commission also issued its [Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control Over Financial Reporting Requirements](#).]*

## **V. NEW OR PENDING ACCOUNTING STANDARDS AND PRONOUNCEMENTS**

### **A. ASC 855, *Subsequent Events***

ASC paragraphs 855-10-25-4 and 50-4 (formerly paragraph 15 of Statement 165) outline requirements when an entity reissues its financial statements (e.g., in reports filed with the SEC or other regulatory agencies). These paragraphs state that an entity should disclose the date through which subsequent events have been evaluated in both the originally issued financial statements and the reissued financial statements. The Committee asked for clarification about when financial statements might be considered “reissued.”



Mr. Carnall acknowledged that it is unclear how to apply the guidance in paragraphs 25-4 and 50-4 to various circumstances where financial statements might be considered reissued in filings with the SEC. He expressed concern that a literal reading of the standard would eliminate the ability to incorporate by reference previously filed financial statements into a new registration statement, as some have suggested. Mr. Carnall indicated that the SEC staff does not intend to define the term “reissuance.” Instead, the SEC staff is working on what it hopes to be a practical approach to clarifying the requirements of paragraphs 25-4 and 50-4 for public companies.

Mr. Carnall noted that registrants have a responsibility to comply with Federal securities law with respect to material information through the date of effectiveness of a registration statement. In light of this obligation, the SEC staff will allow registration statements to go effective without registrants revising for the subsequent events disclosure applicable to reissued financial statements subject to ASC 855 that are incorporated by reference. In addition, registrants may rely on disclosures about subsequent events contained in other reports that are also incorporated by reference into the registration statement in meeting the ASC 855 requirements.

## **B. SEC Registration Statement Requirements Following the Adoption of Statement 167**

Mr. Carnall addressed a Committee inquiry regarding how the adoption of FASB Statement No. 167, *Amendments to FASB Interpretation No. 46(R)* (not yet codified), should be considered when filing a registration statement (other than on Form S-8) that incorporates the most recent annual report on Form 10-K in addition to financial statements for an interim period that includes the date of adoption. Mr. Carnall indicated that if a company has elected to adopt Statement 167 retrospectively and has filed interim financial statements for a period that includes the date of adoption, that registrant must recast its prior period annual financial statements that are incorporated by reference to reflect a material retrospective application of Statement 167. Conversely, if a registrant elects to adopt Statement 167 only on a prospective basis, or if the retrospective application of Statement 167 is not material, its registration statement may incorporate by reference its most recent Form 10-K, which would include its historical annual financial statements of periods prior to the adoption of Statement 167 (assuming that the prior financial statements do not require revision for other purposes).

The Committee indicated that other Statement 167 implementation issues exist, including how the retrospective application of Statement 167 should be presented within the table of selected financial data. The Committee also suggested that the adoption of Statement 167 may create Section 404 scoping

questions. The Committee agreed to submit these transition issues for feedback from the SEC staff.

## **VI. SEC STAFF AND OTHER INITIATIVES**

### **A. Financial Reporting Manual (FRM)**

Mr. Carnall indicated that the next quarterly update to the Division's FRM will be issued between late October and early December 2009. Mr. Carnall stated that the SEC staff is in the process of incorporating into the FRM relevant staff positions expressed at previous Committee meetings. The SEC staff hopes to complete this process during 2010. The SEC staff plans to eventually undertake a similar process for highlights of the CAQ International Practice Task Force (IPTF).

### **B. Compliance & Disclosure Interpretations (C&DIs)**

Mr. Carnall acknowledged the issuance of C&DI [Securities Act Forms](#) Question 126.40. This C&DI addresses the question of whether a Form S-8 must reflect updated annual financial statements as a result of a subsequent accounting change (e.g., discontinued operation, change in segments, retrospective change in accounting principle). The interpretation concludes that while Form S-8 has the same concepts as Form S-3 regarding the need to describe material changes, Form S-8 does not contain a requirement similar to paragraph b(ii) of Item 11 of Form S-3 regarding restated financial statements. Rather, the interpretation states that it is the responsibility of the company and its counsel to determine whether there has been a material change and, if so, how it is to be disclosed in a Form S-8. The response to Question 126.40 also stipulates that it is the auditor's responsibility to determine if it will issue a consent to use of its report in a Form S-8 if there has been a change in the financial statements in a subsequent Form 10-Q and the financial statements in the Form 10-K have not been retroactively restated.

### **C. "Dear CFO Letter"**

Mr. Carnall commented on the Division's recent ["Dear CFO" letter on loan loss provisions and allowances](#). Mr. Carnall stated that the purpose of the letter was to assist companies in preparing loan loss disclosures in their MD&A. Mr. Carnall recommended that registrants not only consider the disclosures outlined in the "Dear CFO" letter, but also challenge whether disclosures provided in the past are the most applicable and most appropriate considering changes in the economic environment. Mr. Carnall stated that the letter was not intended to signal any change in the SEC's expectations about the application of GAAP to loan loss provisions and allowances. Committee members indicated that the preparer community has found the letter to be useful. Mr. Carnall was pleased to hear this positive input and added that the

letter was a collaborative effort between his staff, and the banking group in the Division and the staff of the Office of the Chief Accountant (OCA).

#### **D. Core Disclosure Project**

Mr. Carnall indicated that the SEC staff continues to work on its core disclosure project, which, among other things, will result in a re-evaluation of many of the SEC's required disclosures. Mr. Carnall stated that he would welcome input regarding items that should be considered as part of the project.

### **VII. CURRENT PRACTICE ISSUES**

#### **A. Updating requirement when an acquired business of “major significance” has been included in the registrant’s audited financial statements for at least nine months**

Item 2.01 of Form 8-K allows a registrant to file historical financial statements of a significant acquired business (and pro forma financial statements of the registrant) by an amendment to the Item 2.01 Form 8-K no later than 71 calendar days after the due date of the initial Form 8-K. The permitted age of the acquired business' financial statements is generally based on the filing date of the Item 2.01 Form 8-K initially reporting the acquisition (e.g., the 4th business day following the completion of the acquisition).

When a registrant files a new or amended registration statement or proxy/information statement, the registrant must evaluate whether Rule 3-05 financial statements for an acquired business (and associated registrant pro forma financial statements) are required. Generally, the age of Rule 3-05 financial statements in a new or amended registration statement or proxy/information statement is assessed at the filing date and effective date of the registration statement (or the mailing date of a proxy/information statement). Accordingly, the registrant may be required to update the historical financial statements of the acquired business beyond the periods previously provided in the Item 2.01 Form 8-K.

Rule 3-05(b)(4)(iii) of Regulation S-X indicates that previously filed financial statements of an acquired business generally do not need to be included or incorporated by reference in a new or amended registration statement or proxy/information statement if the registrant's audited financial statements include the results of the acquired business for at least nine months unless the acquisition is of major significance. The SEC staff has provided interpretive guidance relating to determining whether an acquired business is of "major significance" in FRM 2040.2.

The Committee questioned whether an SEC registrant would be required to update the financial statements of an acquired business of “major

significance” beyond the periods included in an Item 2.01 Form 8-K if the acquired business has been included in the registrant's audited financial statements for at least 9 months. Mr. Carnall stated that in these circumstances the financial statements of an acquired business must meet the age requirements of Rule 3-05 at the effective date. However, Mr. Carnall suggested that a registrant could request relief from the SEC staff if updating the historical financial statements of the acquired business is impracticable, or is otherwise not cost-beneficial, and the updated financial statements are not necessary for the protection of investors.

## **B. Rule 3-14 Financial Statement Requirements**

Section 2310.2 of the FRM states that the accommodation provided in Rule 3-05 of Regulation S-X to omit from a registration statement financial statements for a business acquisition that does not exceed the 50% level of significance if the registration statement is declared effective no more than 74 days after the date the acquisition is consummated, does not apply to Regulation S-X, Rule 3-14 financial statements.

Mr. Carnall reaffirmed the SEC staff position that the accommodation provided under Rule 3-05 does not apply to Rule 3-14 financial statements. However, Mr. Carnall acknowledged the limited exception pursuant to the undertakings required by Item 20.D of Securities Act Industry Guide 5, that once the registration statement for a continuous offering becomes effective, a post effective amendment is only required every three months to provide the Rule 3-14 financial statements of properties acquired during the distribution period.

## **C. Variable Interest Entity (VIE) Reconsideration Events**

An Item 2.01 Form 8-K is required when a “registrant or any of its majority-owned subsidiaries has completed the acquisition or disposition of a significant amount of assets, otherwise than in the ordinary course of business....” Instruction 2 to Item 2.01 defines acquisitions to include “acquisition by lease, exchange, merger, consolidation, succession or other acquisition.” Accordingly, when a registrant concludes that it must consolidate a variable interest entity (VIE) as a result of a reconsideration event under ASC 810 (FIN 46(R) or SFAS No. 167, as applicable) that makes the registrant the entity’s primary beneficiary, the registrant should consider whether the consolidation meets the significance thresholds for reporting under Item 2.01 of Form 8-K, even though the registrant might have issued no consideration.

The Item 2.01 Form 8-K reporting thresholds and requirements vary based on whether or not the VIE represents a business under Regulation S-X Rule 11-01(d). If the VIE is a business and significant above the 20% level, the SEC

staff believes that the Item 2.01 Form 8-K must include S-X Rule 3-05 financial statements under Item 9.01 of Form 8-K, as well as pro forma financial information under S-X Article 11. If the VIE is not a business, the consolidation should be regarded as an asset acquisition and reported under Item 2.01 of Form 8-K if it exceeds the applicable 10% significance test and the need for pro forma information under Item 9.01 should also be considered.

A registrant must also consider whether it has a Form 8-K reporting obligation if a reconsideration event results in deconsolidation of a VIE.

Committee members requested that the SEC staff clarify the filing and timing requirements of the Form 8-K, whether it must be filed within four business days of the reconsideration event, and the implications to a registrant's eligibility to use Form S-3. Mr. Carnall stated the staff will need to evaluate this question.