



International Practices Task Force Highlights

CAQ

November 19, 2019 – Joint Meeting with SEC Staff

SEC Offices – Washington, DC

NOTICE:

The Center for Audit Quality (CAQ) SEC Regulations Committee and its International Practices Task Force (the Task Force or IPTF) meet periodically with the staff of the SEC (the SEC staff or staff) to discuss emerging financial reporting issues relating to SEC rules and regulations. The purpose of the following highlights is to summarize the issues discussed at the meetings. These highlights have not been considered or acted on by senior technical committees of the AICPA and do not represent an official position of the AICPA or the CAQ. As with all other documents issued by the CAQ, these highlights are not authoritative and users are urged to refer directly to applicable authoritative pronouncements for the text of the technical literature. These highlights do not purport to be applicable or sufficient to the circumstances of any work performed by practitioners. They are not intended to be a substitute for professional judgment applied by practitioners

These highlights were prepared by a representative of the 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. Users are urged to refer directly to applicable authoritative pronouncements for the text of the technical literature.

As available on this website, highlights of Joint Meetings of the SEC Regulations Committee and its International Practices Task Force 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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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

| Task Force Members | Observers | Guests |
|---|---|--|
| D.J. Gannon, Chair (Deloitte) Judith Freeman, Vice-Chair (KPMG) Greg Bakeis (PwC) Timothy Brown (KPMG) Rich Davisson (RSM-US) Steven Jacobs (EY) Kathleen Malone (Deloitte) | SEC staff from the Division of Corporation Finance Annette Schumacher Barr (CAQ staff) Carolyn Hall (CAQ staff) | David Oldham (KPMG) Mike Hottel (BDO) |



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|---|-----------|--------|
| Alan Millings (EY) Victor Oliveira (EY) Ignacio Perez Zaldivar (Deloitte) Scott Ruggiero (Grant Thornton) Guilaine Saroul (PwC) | | |

II. Transition to FPI status of a foreign public shell immediately upon its reverse merger with a foreign operating company and basis of accounting reported by the operating company in conjunction with the transaction

In December 2008, the SEC adopted *Foreign Issuer Reporting Enhancements*, which mandated that SEC registrants with periodic reporting obligations test and establish foreign private issuer (FPI) status only once a year - on the last business day of their second fiscal quarter (that is, on the “determination date”). The purpose of creating the FPI annual determination date was to avoid the former continuous testing requirement which was viewed as burdensome to FPIs. In contrast, determining FPI status during an Initial Public Offering (IPO) registration could take place within 30 days of filing the IPO registration statement (Rule 405 under the Securities Act and Exchange Act Rule 3b-4).

Sections 6410.2.d and 6410.4, *Backdoor listings by foreign companies*, of the *Division of Corporation Finance Financial Reporting Manual (FRM)* require a foreign operating company merging with a US public shell to provide US GAAP financial statements given that the public shell is a US legal entity, and hence, could not be considered an FPI and the operating company succeeds into the SEC reporting obligations of the US public shell upon completion of the reverse merger.

However, in certain transactions, the public shell company is a foreign-domiciled entity with predominantly US shareholders (and hence reports as a domestic issuer) and the foreign operating company has readily available audited financial statements prepared under IFRS as issued by the IASB (IFRS-IASB). Immediately upon the foreign-domiciled public shell merger with a foreign operating company, the combined company would qualify as an FPI as a result of shareholder composition and/or its foreign nexus if it were allowed to perform an FPI qualification test at or in conjunction with its merger transaction.

In such transactions, the strict application of a single annual determination date in Exchange Act Rule 3b-4, would seem to preclude the merged entity from qualifying as an FPI until its next determination date.



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However, in many of these transactions, the merged entity may be able to clearly determine whether it would qualify or not at the next determination date. Given the guidance from FRM 6410 discussed above, it would appear that the evaluation of FPI status could have a bearing on the ability of the foreign operating company to use IFRS-IASB for purposes of the financial reporting of the operating company in both the Form S-4/merger proxy and Form 8-K (“Super 8-K”) reporting the merger. If the foreign private operating company is required to present financial statements in accordance with US GAAP, investors may only have financial statements on that basis for the purpose of the transaction (i.e. “one-time”) as the registrant would be able to convert to IFRS-IASB shortly after the transaction.

Observing that the Super 8-K (or “Super 20-F”) is expected to provide the same information for the foreign operating company as would be required in an initial registration statement on Form 10 or Form 20-F, the Task Force asked the SEC staff whether it would permit a foreign operating company merging with a foreign-domiciled public shell to transition to FPI status either (a) immediately upon completing a reverse merger/recapitalization or (b) 30 days prior to the reverse merger consistent with the determination for an initial registration statement and the substance of the transaction (i.e. initial registration for the foreign operating company).

The staff observed that the answer to this question involves a legal determination regarding the FPI status of the entity. Registrants are encouraged to consult the staff in the Office of International Corporate Finance (OCIE) if they believe their fact pattern presents a hardship.

III. Impact on updating schedules such as Schedule 12-28 (real estate) for the application of IAS 29

Rule 12-28 of Regulation S-X requires certain real estate companies to provide a schedule detailing real estate and accumulated depreciation amounts. This includes providing the initial costs to the company and costs capitalized subsequent to acquisition. IAS 29, *Financial Reporting in Hyperinflationary Economies*, requires entities to apply the standard from the beginning of the period in which the existence of hyper-inflation is identified.

The Task Force asked whether the staff would expect that all schedule information also be restated for the application of IAS 29 in the first filing (e.g., Form 20-F) where the financial statements are presented under IAS 29.

The staff indicated that they would expect the schedule information to conform to the basis of presentation of the financial statements and related notes. Registrants are encouraged to consult with the staff if they believe providing this information presents a hardship.



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IV. Next meeting

The next meeting of the Task Force has been set for May 19, 2020. *[This meeting was subsequently rescheduled to July 15-16, 2020.]*