International Practices Task Force Highlights

CAQ

Joint Meeting with SEC Staff

May 10, 2023

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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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
Guilaine Saroul, Chair (PwC) Steven Jacobs, Vice-Chair (EY) Regina Croucher, KPMG Rich Davisson (RSM-US) Rohit Elhance (GT) Adam Dufour (EY)	SEC staff from the Division of Corporation Finance and Office of the Chief Accountant Annette Schumacher Barr (CAQ staff) Erin Cromwell (CAQ staff)

Task Force Members	Observers
Patrick Higgins (PwC) Grace Li (BDO) Kathleen Malone (Deloitte) Paul Manos (KPMG) Erin McCloskey (KPMG) Ignacio Perez Zaldivar (Deloitte)	

II. Staff Update

The staff indicated that the following new senior officers in the Division's Disclosure Operations Program have been named:

- Cicely LaMothe is the new Deputy Director.
- Barbara Jacobs, Sebastian Gomez Abero, Jessica Kane and Duc Dang have been named Associate Directors.

III. Loss of FPI Status and Quarterly Information

The Task Force and staff discussed the impact of a loss in FPI status on disclosures required under Item 302(a) of Regulation S-K. As background, the group considered the following excerpts from the staff's interpretive guidance:

Excerpt from the International Reporting and Disclosure Issues Outline (November 1, 2004)

A. Loss of Foreign Private Issuer Status

A registrant that loses its foreign private issuer status becomes subject to the reporting requirements for a domestic company… Registrants must also comply with the requirement of Item 302(a) of Regulation S-K to provide summarized quarterly data for each quarter of the two most recent fiscal years, beginning with the first Form 10-K that the registrant must file after its change in status. This means that the registrant must provide quarterly information on a US GAAP basis for certain periods preceding the change in status. Prospective application is not acceptable. In some cases the change in status may be triggered by transactions among shareholders or other circumstances outside the control of the registrant. The staff will not ordinarily waive the requirements of Item 302(a). However,

registrants that believe it is impracticable to obtain the comparative data may consult with the staff in advance of the filing of the Form 10-K.

NOTE – In various subsequent communications the SEC staff has indicated they do not have the delegated authority to waive the requirements of Regulation S-K.

This aforementioned guidance was last updated in 2005 before the Commission most recently amended Item 302 of Regulation S-K in 2021 through Securities Act Release No. 33-10890. Presented below is an excerpt from Item 302 and 33-10890.

33-10890

In a change from current Item 302(a), amended Item 302(a) will apply beginning with the first filing on Form 10-K after the registrant's initial registration of securities under sections 12(b) or 12(g) of the Exchange Act. We are making this change because we agree with commenters that it would be unnecessarily burdensome for registrants to provide disclosure for interim periods prior to those presented in an IPO registration statement. Although some commenters suggested that disclosure should not be required for any quarterly periods not previously presented on a standalone basis, such as in a Form 10-Q, we believe that such an approach would unduly delay disclosure of the impact of material retrospective changes. For this reason, and because the commenters' suggestions related primarily to current Item 302(a), which requires disclosure in every annual report, while amended Item 302(a) will require disclosure in more limited circumstances, we believe that it is appropriate to require newly reporting registrants to provide Item 302(a) disclosure, if applicable, beginning in their first Form 10-K. Nonetheless, when a new registrant has a material retrospective change to its year-to-date interim period information in its most recent registration statement, but has not yet disclosed that interim period information in quarterly increments, we would not object if Item 302(a) disclosures are presented for the affected year-to-date interim period and the fourth quarter in the affected year.

Item 302

Disclosure of material quarterly changes. *When there are one or more retrospective changes to the statements of comprehensive income for any of the quarters within the two most recent fiscal years or any subsequent interim period for which financial statements are included or are required to be included by §§ 210.3-01 through 210.3-20 of this chapter (Article 3 of Regulation S-X) that individually or in the aggregate are material, provide an explanation of the reasons for such material changes and disclose, for each affected quarterly period and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income as specified in § 210.1-02(bb)(1)(ii) of this chapter (Rule 1-02(bb)(1)(ii) of Regulation S-X) and earnings per share reflecting such changes.*

The Task Force observed that the amended rule requires disclosure of interim information only when there has been a material retrospective change from what was previously provided for an interim period.

The adopting and proposing releases did not specifically address a situation in which there is a change in the basis of accounting – i.e., a change to US GAAP. In such a situation the registrant has not previously provided US GAAP information for an interim period.

The Task Force asked whether the staff would object if a registrant that previously reported interim financial information under IFRS-IASB concluded that, until it has reported interim information on a US GAAP basis, they are not subject to Item 302(a) disclosure (i.e., the change from IFRS to US GAAP is not a retrospective change contemplated by Item 302 of Regulation S-K). The staff indicated that a change from IFRS to US GAAP *is* considered a material change. As a result, Item 302(a) disclosures would be required in the aforementioned scenario.

In this situation only the four quarters comprising the most recent fiscal year would be presented in future Form 10-Qs or potentially in other future filings. As a result, the staff would not object if the registrant provides Item 302(a) summarized financial information for only those last four quarters of the most recent fiscal year (but not the comparative prior year fiscal quarters) in its first Form 10-K. The SEC staff expressed that this view would apply regardless of the frequency or nature of interim financial information previously provided under IFRS. For example, if a calendar year end FPI that reported under IFRS-IASB lost FPI status in June 2023, then the registrant would, in its December 31, 2023 Form 10-K filed in 2024, disclose unaudited selected quarterly financial data for each of the four quarters in the fiscal year ended December 31, 2023. The staff would not object to the omission of corresponding interim financial information for fiscal year 2022.

IV. Change in Registrant's Certifying Accountants

Item 16F of Form 20-F requires the disclosure about "Change in Registrant's Certifying Accountant." The disclosure requirements consist of two parts – Paragraph (a) addresses the "basic disclosure requirements" when there is a change in the registrant's certifying accountant and Paragraph (b) addresses situations when there is a disagreement. In addition, Instruction 2 to Item 5 of Form F-3 stipulates that material changes to be disclosed include changes in and disagreements with registrant's certifying accountants and that disclosure pursuant to Item 16F of Form 20-F should be provided as of the date of the registration statement or prospectus. This issue only addresses the disclosure requirements of Paragraph (a) and only addresses the disclosure requirements of companies that are currently registrants.

The instructions to Item 16F describe situations in which the disclosure does not need to be repeated. See except from Form 20-F below:

***Instructions to Item 16F of Form 20-F**:*

2. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2 of this chapter). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

Rule 12b-2 of the Exchange Act

Previously filed or reported. The terms "previously filed" and "previously reported" mean previously filed with, or reported in, a statement under section 12, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14 of the act, or a registration statement under the Securities Act of 1933: Provided, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

The Task Force noted that the concept of "previously reported" under Rule 12b-2 of the Exchange Act is not clearly defined and it is unclear whether it would include a furnished Form 6-K. Unlike domestic registrants that provide disclosures on Form 8-K, there is no way for an investor to easily identify the nature of a 6-K submission and there is diversity in practice in FPIs furnishing 6-Ks for changes in accountants that include all the disclosure requirements of Item 16F[(a)?] (including a letter from the former accountants).

Given this background the Task Force asked the staff the following questions,

For Questions 1-3 - Assume a company provided all of the required disclosure of Item 16F - including the letter from the prior auditor - on Form 6-K.

1. Would the Staff consider this information to be "previously reported" under Rule 12b-2 even though a Form 6-K is furnished?
2. If yes to question 1, would the disclosure need to be included in the next Form 20-F? That is, should the disclosure about the change in the Registrant's Certifying Accountant be included at least once on Form 20-F – regardless of whether the change has been previously reported?
3. If yes to question 1 – would this information need to be repeated in a Form F-3 or prospectus supplement? Specifically, can the information be omitted by applying the concept of Rule 12b-2? As discussed above, does the requirement to provide this information in a Form F-3 or prospectus supplement assume the information was not previously reported under Rule 12b-2 and thus it does not need to be repeated if it was previously reported, or, alternatively, given its importance the disclosure needs to be included in the F-3/prospectus supplement regardless of the disclosure being previously reported?

Note: For purposes of this discussion including the disclosure in the registration statement or specifically incorporating by reference the Form 6-K with the disclosure is viewed as the same.

4. If the required disclosure is first included in a Form F-3, or a prospectus supplement to a preexisting Form F-3 is the disclosure required to be repeated in the Annual Report on Form 20-F, or alternatively, can the company rely on Rule 12b-2 and not repeat the information?

The staff indicated that they are still considering this issue. In the interim, the staff encourages registrants to include all of the required Item 16F disclosures in the Form 20-F. The staff also reminded registrants of their disclosure obligations under General Instruction B to Form 6-K, which includes providing information that is material concerning changes in their certifying accountants, among other things. Registrants with this fact pattern may consult with the staff of the Office of International Corporate Finance if they have questions.

V. Narrative Description of Differences between local GAAP and IFRS

In accordance with the revisions to Rule 3-05 in 2020, when an FPI that prepares its financial statements in accordance with IFRS acquires an entity that is either a foreign business or would meet the definition of an FPI ("foreign acquiree") the financial statements of the foreign acquiree may be prepared in accordance with US GAAP, IFRS as issued by the IASB or local GAAP with a reconciliation to either IFRS or US GAAP. The reconciliation is to be prepared in accordance with Item 17 of Form 20-F. In situations where significance of the acquiree is between 20% and 30% Item 17(c)(2)(v) indicates that the quantified reconciliation of differences between local GAAP and US GAAP set forth in Item 17(c)(2)(i) – (iii) may be omitted, however the narrative description of differences between local GAAP and US GAAP set forth in Item 17(c)(2) are required.

The Task Force asked the staff whether the staff would object if the foreign acquiree financial statements included a narrative description of the differences between local GAAP and IFRS (in lieu of US GAAP) when the significance of the acquisition is between 20% and 30%, and the registrant is an FPI that prepares its financial statements in accordance with IFRS. The staff indicated that they would not object to providing the narrative description of differences between local GAAP and IFRS given that the narrative description is part of the totality of the reconciliation that is required by Rules 3-05(c) and (d) and described in Item 17 of Form 20-F.

VI. Applicability of EGC Accommodation regarding accounting policy transition when FPI EGC loses FPI Status

An EGC reporting using US GAAP is required to indicate in its initial registration statement and subsequent annual reports whether it has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. Such election is irrevocable. An EGC reporting using IFRS is not required to make such indication given such accommodation is only applicable to the standards established by the Financial Accounting Standards Board.

At the time of loss of FPI status, there may be US GAAP standards issued for which the transition date has already passed but for which the transition date for non-PBEs is in the future. Additionally, there may be US GAAP standards issued for which the transition dates for PBEs and non-PBEs are in the future.

Given the above, the Task Force asked the staff whether an FPI EGC that subsequently loses FPI status while still an EGC, may take advantage of this accommodation upon transition to US GAAP and in any subsequent years that they remain an EGC. For example, if there was a standard for which the US GAAP transition period for non-PBEs or non-SEC filers was still open at the time of loss of FPI status, may the EGC apply the accommodation and utilize the extended transition dates upon conversion to US GAAP?

The staff indicated that an FPI EGC that loses FPI status but remains an EGC can avail themselves of the ability to use the extended transition provisions under US GAAP as long as 1) it states that it is not making the election to not use the extended transition period in the first filing of a registration statement, periodic report, or other report filed as a non-FPI 2) it notifies the SEC of this decision in this first filing. The Task Force observes that Forms 8-K, 10-K, 10-Q, S-1, S-3, and S-4 (among others) contain checkboxes regarding the election which the FPI EGC should leave unchecked if it intends to utilize the extended transition period.

VII. Interim Financial Statement Requirements for Foreign Business Acquirees (From November 9, 2022 Meeting)

The Task Force observed that it is unclear if and when a registrant (whether foreign or domestic) that acquires a foreign business should consider the concept of "more current interim financial information" in Item 8.A.5 on Form 20-F for the purpose of separate financial statements of a foreign business acquiree. To illustrate the ambiguity, the Task Force provided the following illustration:

> Assume Company A, which meets the definition of a foreign private issuer ("FPI") (while the registrant is an FPI in this situation, the fact pattern should be considered the same if the

registrant were a domestic issuer), acquired company B, which meets the definition of a foreign business. Company A prepares its initial registration statement on Form F-1.

The acquisition occurred on June 15, 20X1, and was 30 percent significant to Company A. The following summarizes the discussed fact patterns:

- Both entities have a December 31 year-end.
- Company A plans to file its Form F-1 on May 20X2, which will include its financial statements for the years ended on December 31, 20X1 and 20X0 (assume Company A also meets the definition of an emerging growth company).
- Company B is a private company incorporated in country Z and provides financial services. According to the local laws in country Z, Company B is required to submit interim financial information (i.e., balance sheet, statement of income, statement of cash flows, statement of change in equity, and notes) for each quarter. Therefore, Company B has submitted this information as of March 31, 20X1 to the local regulator under its GAAP (i.e., local regulator GAAP, which differs from IFRS-IASB) and in the local language. The financial information is not audited or reviewed by Company B's auditor.

In the fact pattern above, and similar fact patterns, it is unclear whether the reference to Item 8.A.5 in FRM 2045.15 is intended to be limited to financial statements of the registrant or also include those of the acquired businesses. The Task Force understands that the intent of the disclosure requirement was to provide US investors with the same financial information for a registrant as provided to investors by the registrant in its home jurisdiction.

Given this background, the Task Force asked the staff how it considers the applicability of the "most recent financial information" concept in the context of Rule 3-05 financial statements. The staff indicated that the requirements of Item 8.A.5 would not apply to interim Rule 3-05 target financial information published by the Rule 3-05 target. However, if a registrant were to publish interim financial information that covers a more current period than otherwise required by Item 8.A.5, Item 8.A.5's requirements would apply.

VIII. Risk factor disclosure in an existing registration statement and in a new registration statement (From May 19, 2021 Meeting)

Footnote 12 in the recent rules on the Modernization of Regulation S-K Items 101, 103 and 105 generally states that Regulation S-K Items 101 and 103 affect only domestic registrants and FPIs that have elected to file on domestic forms. It also states that Item 105 will impact FPIs, including those that file registration statements on certain F-Forms. Specifically, Forms F-1, F-3 and F-4 refer to Item 105, which requires a summary of the risk factors "in the forepart of the prospectus or annual report, as applicable" if the risk

factor discussion exceeds 15 pages. Form 20-F requires disclosure of risk factors under Part I, Item 3(D), and it does not refer to Item 105.

Assume the Form 20-F contains over 15 pages of risk factors and the Form 20-F will be incorporated into (i) a new registration statement on Forms F-1, F-3 or F-4 and (ii) an effective registration statement. Assume further that in both situations the base prospectus and prospectus supplement have less than 15 pages in total of risk factors - excluding the risk factors that are incorporated by reference as part of the Form 20-F.

The Task Force and staff discussed whether the risk factors included in the Form 20-F that is incorporated by reference should be included in determining the number of pages of risk factors in either (i) the (base) prospectus/registration statement or (ii) the prospectus supplement to an existing registration statement.

The staff indicated that **for a new registration statement,** the risk factors included in the Form 20-F and all other documents that are incorporated by reference should be included in determining the number of pages of risk factors for the 15-page limit. Where the page numbers exceed 15, that registration statement must contain a risk factor summary in the forepart of the prospectus.

For an existing registration statement that is updated pursuant to Securities Act Section 10(a)(3), Rule 401(b) requires this filing to conform to the applicable rules and forms as in effect on the filing date of such amendment. Accordingly, staff indicated that, for each such update, registrants must ensure they are complying with Item 105 by considering whether all risk factors aggregated across documents that are incorporated by reference exceed 15 pages. If so, registrants must, in some way, update their prospectus to include this summary such that it is in the "forepart" of the prospectus, per Item 105, and such summary may not be incorporated by reference.

For prospectus supplements filed under Rule 424 for takedowns, best practice would be to consider all risk factors that are incorporated by reference into that prospectus and provide a summary in the forepart of the prospectus supplement where total pages of risk factors exceed 15.

IX. Applicability of FRM 2200.8 in a merger transaction on Form F-4 when the target is a non-accelerated domestic registrant (From May 25, 2022 Meeting)

The Task Force and staff discussed a scenario in which an FPI ("F") files an F-4 for the acquisition of a domestic registrant ("D"). Neither entity is a Special Purpose Acquisition Company ("SPAC") or a shell company. Both entities have calendar year ends and D is a non-accelerated filer. The Task Force asked whether D would be required to update their financial statements to include the audited financial

statements for the most recently completed year end if the registration statement will be filed/declared effective more than 45 days after D's year end.

The Task Force noted that FRM 2200.8, which addresses the updating requirements for a target (both reporting and non-reporting target companies) in a merger transaction, refers only to Form S-4 and indicates that the target's determination is based on the registrant's obligation to update under S-X 3-12 (with a cross reference to FRM 2045.5). The Task Force also considered the updating requirements in S-X 3-12(f) for an FPI which references to the requirements of Item 8A of Form 20-F. S-X 3-12(f) also notes that foreign business financial statements filed pursuant to Rules 3-05 and 3-09 may also apply the requirements of Item 8A of Form 20-F, but does not explicitly address target company financial statements. In addition, the Task Force also considered FRM 6220.4 which states that the age of financial statements requirements "in Item 8 of Form 20-F apply to….(b) Foreign target businesses required in a Form S-4 or F-4," but does not address this fact pattern where the target is not a foreign business in a Form F-4.

Item 17(a) of Form F-4 indicates that a company that is not F-3 eligible but is subject to reporting requirements under Section 13(a) or 15(d) should furnish the information that would be required if the securities of such entity were being registered. While the Task Force noted that D would be required to include audited financial statements for the most recently completed year in any registration statement it filed more than 45 days after its year end (unless it met the criteria under S-X 3-01(c)), the Task Force also considered whether updated interim financial information of a target which is more current than that of the registrant provides relevant information necessary for investors to make a decision. The Task Force noted that the registration statement will not include pro forma financial information for the more current period which may limit the relevance of the more current interim financial information of the target. As such, the Task Force would like to seek the staff's views as to whether it is reasonable to apply FRM 2200.8 to Form F-4. As noted above, in accordance with S-K 512(f), F is not required to update its financial statements to include the most recently completed year end unless the filing is made more than 3 months after its year end. As such, if F were able to apply FRM 2200.8 to the financial statement requirements of its target, D would not be required to update its financial statements until the earlier of the filing of its 10-K or 3 months after its year end.

The Task Force noted that if the D was being acquired by a Domestic Registrant that met the criteria under S-X 3-01(c), following the guidance of FRM 2200.8 they would not be required to update their financial statements to include the most recently completed fiscal year end until the earlier of 90 days after its year end or the date on which it files its 10-K.

While the fact pattern discussed involved a non-accelerated domestic registrant target, the Task Force asked whether the staff considers it appropriate to apply FRM 2200.8 to any target financial statements

in an F-4, notwithstanding the statement in FRM 6220.4 which appears to limit the ability to apply Item 8 of Form 20-F to target foreign businesses.

The staff indicated that if the target is a domestic registrant, it must follow the age updating requirements applicable to domestic companies in Rule 3-12 of Regulation S-X. There could also be facts and circumstances where the staff would consider requests for relief under Rule 3-13.

X. Next Meeting

The Task Force and staff will meet next on November 9, 2023.