



# SEC Regulations Committee Highlights

## Joint Meeting with SEC Staff

June 15, 2023

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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.

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### I. ATTENDANCE

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
John May, Chair Paula Hamric, Vice-Chair Jason Cuomo Kendra Decker Fred Frank Pat Gilmore John Griffin Mary Agoglia Hoeltzel Michael Henson Steven Jacobs Sandy Peters Mark Shannon Scott Wilgenbusch	<i>Staff from the Division of Corporation Finance (Division) and Office of the Chief Accountant</i>	Joe Lanza, Mazars Erin McCloskey, KPMG Lisa Mitrovich, Deloitte Kyle Moffatt, PwC Laura Wietlispach, PwC Annette Schumacher Barr, CAQ Observer Erin Cromwell, CAQ Observer



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## II. ORGANIZATIONAL, PERSONNEL AND PROJECT UPDATES

### A. Staff Update

The staff provided a summary of the following personnel changes:

- Cicely LaMothe is now Deputy Director, Disclosure Operations --CF
- Jonathan Wiggins is now Deputy Chief Accountant (Accounting Group) – OCA
- Gaurav Hiranandani is now Senior Associate Chief Accountant (Accounting Group) – OCA
- Jarrett Torno and Ethan Horowitz are now Associate Chief Accountants--CF
- Mellissa Duru is now Deputy Director for Legal and Regulatory Policy-CF
- Barbara Jacobs, Sebastian Gomez Abero, and Duc Dang are now Associate Directors, Disclosure Review Program-CF
- Chris Windsor, Dan Morris, Kat Bagley, Drew Yale and Jennifer Lopez Molina are now Legal Branch Chiefs-CF

## III. CURRENT FINANCIAL REPORTING MATTERS

### A. Applicability of Rules 3-09, 4-08(g), 10-01(b)(1) and 8-03(b)(3) of Regulation S-X to investments accounted for under the Proportional Amortization Method in accordance with ASC 323-740.

ASU [2023-02](#) was issued in March 2023 and updated the guidance in ASC 323-740 to expand the applicability of the Proportional Amortization Method (PAM). Prior to the updated ASU, PAM was only applicable to investments in low-income housing tax credit structures that met certain conditions, and because of this narrow scope, tax equity investors that applied PAM were primarily large financial institutions. ASU 2023-02 allows PAM to be applied to other tax equity investments (e.g., solar investment tax credit investments, on- and off-shore wind investment tax credit investments, etc.) regardless of the program that generates tax credits, as long as certain conditions are met. The application of PAM is an accounting policy election for investments that meet the revised scoping conditions in ASC 323-740-25-1. Because of the broader availability of PAM to tax equity investments, more entities from a broader array of industries are considering applying PAM to their tax equity investments.

Absent an election to apply PAM, these investments would ordinarily be accounted for under the equity method of accounting under ASC 323, and the investor's share of the project's earnings would be reflected in pre-tax income. However, if PAM is applied, the investor's cost of investment is amortized into the income tax expense line item in proportion to the tax credits and other tax benefits received. Under PAM, there is no traditional equity method income or loss recognized by the investor in the income statement although any non-income tax related benefits



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received from the investee, which are expected to be minimal<sup>1</sup>, would be included in pre-tax earnings when realized or realizable.

The Committee and the staff discussed whether investments for which a registrant elects to apply PAM, which otherwise would be accounted for under the equity method of accounting, would be within scope of Rules 3-09, 4-08(g), 10-01(b)(1) and 8-03(b)(3) of Regulation S-X. Members of the Committee indicated that they would share relevant live fact patterns and other accounting related questions arising in relation to the application of PAM as an equity method investment with the staff in the future.

## **B. EDGAR submission requirements for annual reports**

Exchange Act Rule 14a-3 requires entities to submit electronically certain documents, such as glossy annual reports, that may previously have been submitted in paper format. The Committee asked the staff if a registrant would be required to electronically submit a document on Form ARS (such as a PDF of their Form 10-K) in order to satisfy the requirements of this rule if it does not prepare a glossy annual report, but instead relies on its Form 10-K (not a 10-K “wrap”). The staff indicated that registrants should look to SEC Release 33-11070, *Updating EDGAR Filing Requirements and Form 144 Filings*, for guidance on this matter.

## **C. Aggregate worldwide market value for purposes of applying the S-X Rule 1-02(w) investment test of significance when the registrant’s common stock is only listed for trading on a non-US exchange**

Rule 1-02(w)(1) of Regulation S-X states “For acquisitions, other than those described in paragraph (w)(1)(i)(B) of this section, and dispositions this test is met when the registrant's and its other subsidiaries' investments in and advances to the tested subsidiary exceed 10 percent of the aggregate worldwide market value of the registrant's voting and non-voting common equity, or if the registrant has no such aggregate worldwide market value, the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year.”

To illustrate, the Committee presented the following scenarios where entities A and B are operating companies:

- 1: Entity A’s common stock is listed for trading only on a non-U.S. stock exchange (a public market). Entity A’s common stock is not listed for trading in the U.S. Entity A files an initial

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<sup>1</sup> To qualify for PAM, an investment must be expected to derive “substantially all of the projected benefits from income tax credits and other income tax benefits.” That is, non-income-tax-related benefits must be expected to be minimal.



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registration statement with the SEC (on Form S-1/ F-1, S-4/F-4, or Form 10/20-F). Entity A has acquired a business in, or subsequent to, the most recently completed fiscal year and is performing the investment test for purposes of Rule 3-05 of Regulation S-X.

2: Entity B's common stock is listed for trading only on a non-U.S. stock exchange (a public market). Entity B's common stock is not listed for trading in the U.S. A new holding company, Entity C, is created to be the registrant for its initial registration statement with the SEC on Form S-1/ F-1 or S-4/F-4. Entity B will be the predecessor, has acquired a business in the latest fiscal year, and is performing the investment test for purposes of S-X Rule 3-05.

The Committee and staff discussed the application of the investment test of significance under Rule 1-02(w)(1) of Regulation S-X in connection with an initial public offering or other initial registration in the U.S. Given the scenarios above, the Committee asked whether a company that has common equity securities listed for trading only on a non-U.S. stock exchange (i.e., not a U.S. exchange) would be considered to have an aggregate worldwide market value. The staff indicated that aggregate worldwide market value is determined using the market value from a public market, including a foreign market if that is the market where the equity is traded.

#### **D. Applicability of the new Form 10-K restatement check box when the financial statements include disclosure of an error in previously issued quarterly financial statements but not in any annual periods**

In connection with the new rule and rule amendments for the recovery of erroneously awarded compensation in the event of a required accounting restatement, a check box with the following language was added to the cover page of Form 10-K:

*If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.*

A similar check box was not added to the cover page of Form 10-Q.

The retrospective correction of a material error in a registrant's previously filed interim financial statements might be presented in the disclosure required by Item 302(a) of Regulation S-K within an unaudited note to the annual financial statements included in a Form 10-K. However, those financial statements might not disclose the correction of an error to any annual periods as the error being corrected only existed in the interim periods.



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For example, assume a registrant presents (in an unaudited note to the financial statements for the fiscal year ended 20X3 in Form 10-K) the correction of material misstatements in its financial statements for the interim periods ended 03/31/X3, 06/30/X3, and 09/30/X3. The error only affected those interim periods. The annual periods presented in the 20X3 Form 10-K were not impacted by the errors. The Committee asked the staff whether the registrant in this example would need to select the check box.

The staff indicated that in the above scenario, it would not object if the checkbox referred to above was not checked. The staff noted that the registrant should provide the disclosures required by S-K 402(w).

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