National Conference on Current SEC & PCAOB Developments

Current Developments in the Division of Corporation Finance

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Agenda

- Introductions and Opening Remarks
- Review Statistics
- Improving Communications
- Improving Disclosure
- Other Issues
- Closing Remarks and Questions
Review Statistics

FYE September 30, 2009

- 4,720 issuer reviews  
  (40% of issuers)

- 370 IPOs; 170 new 34 Act reviews

- 25.3 days average time for initial comments on registration statements
Improving Communications
Financial Reporting Manual

New This Year

- FIRE Release
- Addition of Topic 4: Independent Accountants – and related schedules
- Retrospective changes (e.g. change in accounting principle, segment changes and disc ops)
  - Form S-8
  - Shelf takedown
- Escrow Shares
- Audit report in IPO must be by a registered firm
- Index
Input Sources

- Filing review process

- Firms / Registrants

- New accounting standards or regulations
FRM Project

1983
SEC REGULATIONS COMMITTEE MEETS WITH SEC STAFF
FRM Project

25 YEARS

780 ISSUES

OVER 1000 PAGES
Compliance and Disclosure Interpretations - C&DI’s

Initially published in July 2008 replacing the interpretations of Regulation S-K and Regulation S-B published in:

- the July 1997 Telephone Interpretations
- the March 1999 Telephone Interpretations
- the November 2000 Current Issues and Rulemaking Projects Outline

Includes information relevant to accountants
Pre-Filings Requests

Key considerations when writing in:

- Clearly state issue and relief sought
- Clearly state facts and relate them to analysis of issue
- Clearly state basis for relief
- Clearly describe proposed alternative presentation and disclosures
Pre-filing Requests – Rule 3-05

Is it a business under 11-01 of S-X?

- Entity presumption
- Revenue-generating activity generally the same?
- Do other factors indicate continuity?

Acquired business versus predecessor

- If predecessor, then significance tests don’t apply - all periods required
Pre-filing Requests – Rule 3-05

Significance tests

- Apply tests as written – don’t adjust

- If test results appear anomalous, then analyze all facts and circumstances

- May result in reduced number of periods rather than outright waiver
Pre-filing Requests – Rule 3-05

Rule 3-06

- Write in versus automatic?
- Nine-month period of post-acquisition results

Statement of revenues and direct expenses

- Ordinarily minor product line of seller or oil & gas property
- Direct expenses – must include all costs necessary to generate the revenue stream (selling, marketing, research & development, etc.)
**SFAS 141R (ASC Topic 805) Effects on Significance Tests**

- Contingent consideration – include GAAP amount (fair value) in investment test. Previously was full amount unless remote.

- Transaction costs – now expensed, so no longer include in investment test. Previously were included.

- Measurement Period Adjustments (MPA) may impact denominator of all 3 tests.
SFAS 141R (ASC Topic 805) Effects on Significance Tests

If MPA is recognized on prior business combination, then include in denominator even if not yet reflected in historical

- At due date of 8-K for reporting company
- At effectiveness of IPO or FPI registration statement

Additional observation - for registration statements, reflect post-balance sheet MPAs in revised financial statements
Pre-filing Requests - Other

Rule 3-09 – financials of equity method investees

- Strategic investment – anomalous result?

- Disposals versus reduction of investment to zero
Predecessor Financial Statements in SPAC Business Combinations

Considerations

- Important for voting decisions of SPAC shareholders in a proxy statement
- Useful for understanding trends post-transaction in periodic reporting
- Presumption that collection of assets being acquired by SPAC or shell constitutes a business under Article 11

Co-predecessors are unusual but may be appropriate in limited circumstances

Registrant’s pre-transaction statements should also continue to be included after merger in addition to financial statements predecessor
Improving Disclosure
Critical Accounting Estimates

Goodwill Impairment

Evaluation of goodwill impairment testing disclosures within MD&A (critical estimate)

- Registrant disclosures reviewed
- Comment letter trends observed
- Resulted in an evolution of our views
Disclosures

For each reporting unit (with material goodwill) that is at risk of failing step one of the impairment test:

- Percentage by which fair value exceeded carrying value as of the most recent step-one test
- Amount of goodwill allocated to the unit
- Description of key assumptions that drive fair value
Disclosures, cont.

- Discussion of the uncertainty associated with the key assumptions and any potential events and/or circumstances that could have a negative effect

- If none, registrant should make that assertion in disclosure

Addresses known uncertainty [S-K 303]
Definitions

Reporting unit at risk of failing step one
Last test resulted in fair value that was not substantially in excess of carrying value

Substantially
Judgment applied to the facts and circumstances
Segments
Aggregating Operating Segments

Economic characteristics:
- Totality of all the facts.
- Indicators of economic dissimilarity.
- Factors that correlate with an operating segment’s future prospects.
- Volatility underlying trends.

Disclosure
CODM’s reporting package
Codification

Codification issued by FASB on July 1, 2009

- Effective for interim and annual periods ending after September 15, 2009
- Reorganization of authoritative accounting literature
- Includes SEC guidance but is not an official source of SEC material
- FAS 168 (Topic 105-10-05) – officially established the Codification
SAB 74

Avoid boilerplate disclosure

Eliminate redundancies

- Financial Statement Footnotes
  - Disclose effect of adoption on financial statements

- MD&A Disclosure
  - Future impact of new accounting treatment
    - Material changes and trends
    - Financial and non-financial
Consolidation

Footnote disclosure best practices:

- Explain why an entity was or was not consolidated
- Be specific as to the rights afforded in the transaction
- Explain why the company is or is not the primary beneficiary
Non-GAAP Measures

Current focus of ongoing project

- FAQ issued in June 2003
  - FAQ 8 - eliminating recurring charges if identified as “recurring”
  - FAQ 9 - eliminating recurring charges if not labeled as “non-recurring”
  - FAQ 28 – FPIs and “expressly permitted”
  - Other

- Measures provided in places other than filings
MD&A – Income Taxes

- Discuss underlying factors included in net income tax
  - Income Tax Rate Reconciliation
- Highlight material changes in income tax items not apparent from footnote disclosure
Other Issues
**SFAS 160 (ASC Topic 810)**

**Technical Amendment**

- **Significance Tests**
- **Financial Statement Presentation and Line Item Descriptions**
- **Summarized Financial Information**
  - Selected Financial Data (Item 301) has not been changed yet
- **No changes to pro forma information (Article 11)**
  - May accept alternative presentations
Issuance of Financial Statements

- Formerly D-86 (ASC Topic 855-10-S99-2)

- Concept: Earlier of when widely distributed to all shareholder and other financial statement users or filed with the Commission

- Wide Distribution: Now includes posting to a registrant’s website prior to filing with the SEC if certain conditions are met

- SFAS 165 (ASC Topic 855): Disclosure of issuance and re-issuance dates
Questions