



SEC Regulations Committee Highlights

Joint Meeting with SEC Staff

Held Virtually on March 21, 2023

NOTICE:

The Center for Audit Quality (CAQ) SEC Regulations Committee meets periodically with the staff of the SEC 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 the CAQ’s website, highlights of Joint Meetings of the SEC Regulations Committee 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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
John May, Chair Paula Hamric, Vice-Chair Timothy Brown Muneera Carr Jason Cuomo Kendra Decker Fred Frank Pat Gilmore John Griffin 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>	Lisa Mitrovich, Deloitte Kavish Singh, PwC Denise Muschett Wray, Mazars 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 the following personnel updates in the Division:

- [Cicely LaMothe](#) has been named Deputy Director of Disclosure Operations.
- The Division is also finalizing hiring from the public posting of additional associate directors in Disclosure Operations.

III. CURRENT FINANCIAL REPORTING MATTERS

A. 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 may 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.

For example, assume a registrant presents (in an unaudited note to the financial statements for the fiscal year ended 2X23 in Form 10-K) the correction of material misstatements in its financial statements for the interim periods ended 03/31/2X23, 06/30/2X23, and 09/30/23. The error only affected those interim periods. The annual periods presented in the 2X23 Form 10-K were not impacted by the errors.



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The Committee asked the staff whether the registrant in this example would need to select the check box.

- B.** The staff indicated that they are continuing to consider whether this example would need to select the check box. **Pay versus performance disclosure transition**

The Committee and the staff discussed the following question regarding implementation of the recently adopted Pay versus Performance rules:

If a calendar-year Emerging Growth Company (EGC) that completed its IPO in March 2020 lost its EGC status on December 31, 2023, how many years of Pay versus Performance disclosure would the registrant be required to provide in its annual meeting proxy statement to be filed in early 2024?

The staff confirmed that consistent with the transition provisions in S-K 402(v)(8) and Instruction 1 to S-K 402(v), the registrant referred to above would be required to provide three years of Pay versus Performance disclosure (two years for a Smaller Reporting Company (SRC)) in its early 2024 proxy statement.

- C.** [Staff Legal Bulletin No. 2 \(SLB 2\)](#)

In light of current economic circumstances, the Committee and staff discussed SLB 2. Companies subject to the jurisdiction of the Bankruptcy Court are not relieved of their Exchange Act reporting obligations. However, in Release 9660 (1972), the SEC indicated that it may accept reports which differ in form and content from reports otherwise required to be filed under the Exchange Act from issuers that are in Bankruptcy. SLB 2 was issued in 1997 to provide the staff's views on requests to modify periodic reporting obligations for registrants that are either reorganizing or liquidating under provisions of the United States Bankruptcy Code. For example, SLB 2 states that "the Division will accept, instead of Form 10-K and 10-Q filings, the monthly reports an issuer must file with the Bankruptcy Court under Rule 2015 . . . on a Form 8-K within 15 calendar days after the monthly report is due to the Bankruptcy Court."

Given the passage of time since the issuance of SLB 2, the Committee asked whether there have been any developments with respect to the views previously expressed by the staff. For instance, noting that many Form 8-K due dates have been accelerated from 15 calendar days to 4 business



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days since the issuance of SLB 2, the Committee asked whether the 15 calendar-day deadline still applies. As part of the discussion, the staff noted that the timing of information is usually driven by bankruptcy courts. The staff indicated that they would not expect to see significant delays between the time the information was filed with the bankruptcy court and when the Form 8-K was filed with the SEC. However, the staff would continue to accept filings within the current 15 calendar-day deadline.

The Committee also discussed with the staff whether registrants are required to seek a no-action position prior to using the type of modified Exchange Act reporting referred to in SLB 2. As part of the discussion, the staff noted that registrants oftentimes refer to relevant prior no-action positions that have been published to help determine whether modified Exchange Act reporting would be appropriate in the registrant's individual facts and circumstances, and that there is no requirement to obtain a no-action position from the staff prior to using the SLB 2 modified Exchange Act reporting model. However, registrants may choose to obtain the staff's views in order to reduce the risk that their facts and circumstances may be different from those contemplated by prior no-action positions. The staff emphasized that modified Exchange Act reporting would not be appropriate in a situation in which a registrant was not current with respect to its prior Exchange Act reporting obligations or if the registrant's securities are still trading on an exchange or otherwise have an active trading market.

D. Transition for new disclosures required by the SEC's recent insider trading rulemaking

Section III of [Release 33-11138, Insider Trading Arrangements and Related Disclosures](#) states in part:

Issuers that are SRCs will be required to comply with the new disclosure and tagging requirements in Exchange Act periodic reports on Forms 10-Q, 10-K and 20-F and in any proxy or information statements that are required to include the Item 408, Item 402(x), and/or Item 16J disclosures in the first filing that covers the first full fiscal period that begins on or after October 1, 2023.

Similarly, the [February 24, 2023 Small Entity Compliance Guide](#) relating to the new rules contains the following guidance with respect to transition for SRCs:

Item 408(b), Item 402(x), and Item 16J (for foreign private issuers) disclosure and tagging requirements in the annual report on Form 10-K or Form 20-F that covers the first full fiscal year that begins on or after October 1, 2023.

The Committee wanted to confirm that a Form 20-F filer can apply the SRC test to determine if it could use the SRC transition date for its Item 16J disclosures. For example, the Committee wanted to confirm that a Form 20-F filer with a June 30 fiscal year-end that would meet the definition of an SRC if it were filing on domestic forms could begin complying with the



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requirements of Item 16J in its Form 20-F for the fiscal year ending June 30, 2025 (i.e., the Form 20-F that covers the first full fiscal year that begins on or after October 1, 2023)?

The staff confirmed under the transition provisions of the *Insider Trading Arrangements* release, for the limited purpose of this disclosure, if a foreign private issuer qualifies as an SRC, it will be permitted to begin complying with the Item 16J requirements in its Form 20-F for the fiscal year ending June 30, 2025.