
**CURRENT DEVELOPMENTS
IN THE
DIVISION OF CORPORATION FINANCE**
National Conference on Current SEC & PCAOB Developments
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Polling Question #1

Text a **KEYWORD** to **22333**

Have you or your client received a comment letter from the SEC in the past 12 months?

A. Yes

LETTERYES

B. No

LETTERNO

C. Not sure

LETTERNS

D. Not applicable

LETTERNA

Review Process

TOP 10 Best Practices For Working with the Staff

10. Yes, it has to be Edgarized
9. Amendments are not always required
8. Document, document, document
7. Keep your EDGAR filer information current
6. Do not cut and paste
5. Respond promptly
4. Make sure accountants are involved for accounting matters
3. Use all available resources in preparing your financial statements and responding to our comments
2. Make your first response your last response
1. Pick up the phone and give us a call

Best Practices For Emailing with the Staff

- ❖ ALL correspondence must be submitted on EDGAR
- ❖ If you have questions, CALL – do not email
- ❖ Check your spam folder
- ❖ Return our calls

JOBS ACT

The JOBS Act

Title I – Reopening American Capital Markets to Emerging Growth Companies (“EGC”)

Title II – Access to Capital for Job Creators – General Solicitation

Title III – Crowdfunding

Title IV – Small Company Capital Formation - Regulation A+

Title V – Private Company Flexibility and Growth - 12(g)

Title VI – Capital Expansion - 15(d)

Title VII – Outreach on Changes to the Law

Polling Question #2

Text a **KEYWORD** to 22333

Do you work for or audit a company that qualifies as an emerging growth company?

A. Yes

EMERGEYES

B. No

EMERGENO

C. Not sure

EMERGENS

D. Not applicable

EMERGENA

EGC Eligibility Criteria

- ❖ Less than \$1 billion in total annual gross revenue during its most recently completed fiscal year
- ❖ First sale of common equity pursuant to an effective registration statement under the 1933 Act has either (1) not yet occurred or (2) occurred after December 8, 2011
- ❖ Not yet disqualified
 - Test EGC status continuously
 - Once lost, “generally” can’t get back

EGC Eligibility Criteria

❖ Disqualification provisions:

1. Last day of the first fiscal year in which revenue is \$1B or more
2. Last day of the fiscal year following the fifth anniversary of the first registered sale of common equity securities
3. Date on which the company has issued more than \$1B in non-convertible debt securities in the preceding rolling 3-years
4. Date on which the company becomes a large accelerated filer

Accommodations Available to EGCs

- ❖ Confidential submission
- ❖ Financial reporting accommodations
 - Number of years of financial statements presented
 - MD&A
 - Selected financial data
 - Ratio of earnings to fixed charges (if a debt offering)
[FAQ 27]
- ❖ Delay in adoption of new or revised accounting standards
- ❖ Exemption from auditor attestation on internal controls over financial reporting (SOX 404(b))
- ❖ Other

Frequent Areas of Comment

Frequent Areas of Comment

- ❖ Segments
- ❖ Management' s Discussion & Analysis
- ❖ Income Tax
- ❖ Contingencies
- ❖ Revenue Recognition
- ❖ Goodwill
- ❖ Non-GAAP

Polling Question #3

Text a **KEYWORD** to 22333

What do you think is the most frequent area of SEC staff comment?

A. Segment disclosures

SEGMENT

B. Goodwill impairments

GOODWILL

C. Loss contingency disclosures

LOSS

D. MD&A

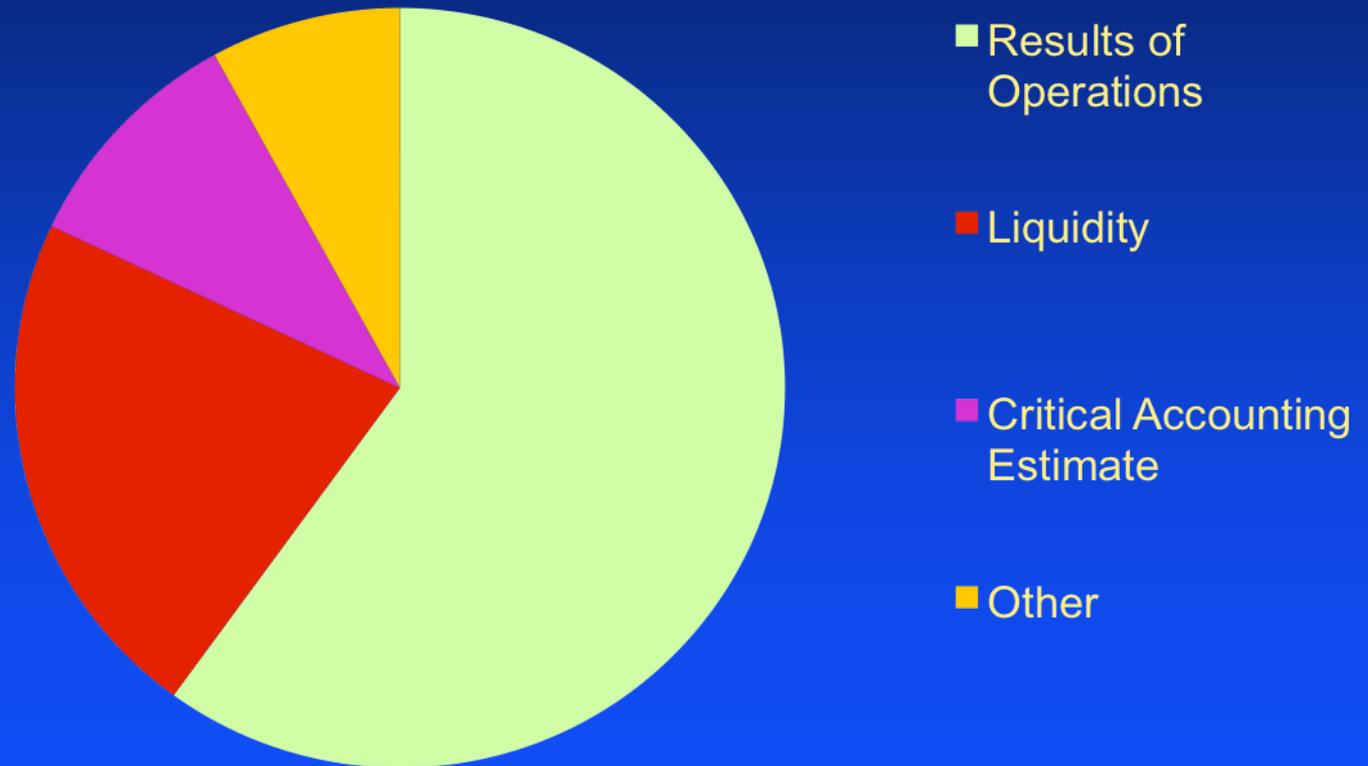
MDAA

Segments

Management's Discussion & Analysis

Frequent MD&A Comment Area

MD&A Comments



MD&A Considerations

- ❖ **Results of operations**

- ❖ Analyze results
- ❖ Segment level discussion
- ❖ Key metrics

- ❖ **Table of contractual obligations**

- ❖ **Resources**

Income Taxes

Income Tax Considerations

- ❖ Decision to establish or reverse a valuation allowance – an area of significant judgment
- ❖ Cumulative losses in recent years - negative evidence that is difficult to overcome
- ❖ Continual evaluation of all positive and negative evidence
 - How much and how long?
 - Significant drivers?
 - Impact of economic uncertainty?
 - Ability to forecast?
- ❖ Consistency of assumptions and disclosures

Loss Contingencies

Loss Contingencies – Frequent Areas of Comment

- 1. Surprise disclosures and accruals**
- 2. Reasonably possible range of loss**
- 3. Third party recoveries**
- 4. Policy for legal fee accrual**
- 5. Clarity of disclosures**

Revenue Recognition

Collection Is Not Reasonably Assured

Considerations:

- ❖ Customer credit-worthiness
- ❖ Payment terms
- ❖ Historical collection practices
 - Past-due collection policies
 - Payment term modifications
- ❖ Unfavorable resolutions in collection disputes
- ❖ Trend in the A/R aging
- ❖ Collection and write-off history

Goodwill

Goodwill

❖ Goodwill impairment disclosures

- “At risk” reporting units (FRM Topic 9510)
- What gave rise to the impairment charge?
- How key assumptions affected?
- Why did those changes occur?
- Known trends reasonably expected to affect income
- Interim goodwill impairment tests

❖ Allocation of assets and liabilities to reporting units

Non-GAAP Measures

Non-GAAP Measures

- ❖ **Non-GAAP income statement**
 - **Compliance and Disclosure Interpretation: Non-GAAP Financial Measures 102.10**
- ❖ **Pension Disclosures/OPEB-related adjustments**
 - **Clear disclosure and labeling as to what the adjustment represents**
 - **Quantitative context for the actual and expected asset returns**

Other Areas of Comment

Regulation S-X: Rule 3-10

Rule 3-10 Issues

- ❖ **Conditions for relief**
 - 100% owned
 - Full and unconditional

- ❖ **Guarantee release provisions**
 - Subsidiary
 - Parent

Rule 3-10 Issues

Customary releases of subsidiary guarantees include, for example, when:

- the subsidiary is sold or sells all of its assets;
- the subsidiary is declared “unrestricted” for covenant purposes;
- the subsidiary’s guarantee of other indebtedness is terminated or released;
- the requirements for legal defeasance or covenant defeasance or to discharge the indenture have been satisfied;
- the rating on the parent’s debt securities is changed to investment grade; or
- the parent’s debt securities are converted or exchanged into equity securities.

Rule 3-10 Issues

- ❖ **Recently acquired subsidiary guarantor**
- ❖ **Form and content of condensed consolidating financial information**

Pro Forma Financial Information

VIE Consolidation

Variable Interest Entities (“VIE”)

- ❖ **ASC 810-10-50 disclosures:**
 - Methodology for determining primary beneficiary
 - Judgments made
 - Involvement with VIE

- ❖ **MD&A disclosures:**
 - Information about registrant apart from VIE
 - Flow of economics from VIE

Cybersecurity

Cybersecurity

- ❖ **Disclosure**
- ❖ **Recognition, measurement and classification of costs to prevent attacks or mitigate damage**
- ❖ **Disclosure controls and procedures**

Industry Issues

Biotech/Pharma

Multiple Element Arrangements Biotech/Pharma

Financial Statement Disclosures Overview

- ❖ **Greatly expanded by ASU' s 2009-13 and 2010-17**
- ❖ **Disclosure objective (ASC 605-25-50)**
- ❖ **Required disclosures (ASC 605-25-50 and ASC 605-28-50)**

Multiple Element Arrangements Biotech/Pharma

Vendor

- ❖ Intellectual property (i.e. license)
- ❖ R&D
- ❖ Committee Participation
- ❖ May provide:
 - Manufacturing

Customer

- ❖ Pays cash (i.e. upfront and milestone payments)
- ❖ May provide:
 - R&D
 - Manufacturing
 - Marketing
 - Selling

Multiple Element Arrangements Biotech/Pharma

Financial Statement Disclosures (605-25)

❖ Describe nature and terms

- Don't comingle rights and obligations w/ accounting
- Material undisclosed terms?
- Be precise: Is the right limited to commercializing a product or does it also give the right to develop it?

❖ Identify each significant deliverable and timing

- Be explicit
- Why or why not a separate unit of accounting?

Multiple Element Arrangements Biotech/Pharma

Financial Statement Disclosures (605-25)

- ❖ **Judgments about units of accounting**
 - Basis for “could resell” conclusion

- ❖ **Relative selling price method**
 - What is included in arrangement consideration?
 - Amount allocated to each unit of accounting
 - Selling price for each unit of accounting – how determined and what assumptions

- ❖ **Pattern/period of rev. rec. for each unit of accounting**

Multiple Element Arrangements Biotech/Pharma

Financial Statement Disclosures (605-28)

- ❖ Milestone method accounting policy**
- ❖ Terms and amount for each individually significant milestone**
- ❖ May be okay to group individually insignificant milestones by development stage or other reasonable basis**

High-tech Industry

Enhanced Disclosure

- ❖ Assumptions and underlying virtual goods accounting
- ❖ Means by which virtual goods are acquired by users
- ❖ Significant terms and arrangements related to transactions involving virtual currency
- ❖ How virtual currency or credits are accounted for
- ❖ Regulatory or legal requirement to refund
- ❖ Whether transactions are recorded gross or net

Banking Industry

Banking Industry Issues

- ❖ **CFDG No. 4: European Sovereign Debt Exposures**
 - Indirect exposures
 - Indexed/tranched credit derivatives

- ❖ **CFDG No. 5: Staff Observations Regarding Disclosures of Smaller Financial Institutions**
 - Applicable to all financial institutions regardless of size

- ❖ **Update on common comment themes and suggestions for disclosure**
 - Reserve releases
 - Allowance for loan losses
 - Fair value disclosures

Insurance Industry

Insurance Industry Statutory Disclosures

**ASC 944-505 and Article 7 of S-X GAAP
financial statement disclosures:**

- ❖ **Amount of statutory capital and surplus**
 - **Actual**
 - **Necessary to meet regulatory requirements**
- ❖ **Statutory income or loss**
- ❖ **Nature and effect of SAP applied**

**Should not be labeled unaudited,
preliminary or subject to revision**

Insurance Industry

Statutory Disclosures – ASC 944-505

Statutory Capital and Surplus necessary to meet regulatory requirements:

- **Disclose the amount if significant to actual capital and surplus**
- **Provide amount, not just statement that requirement was met**

Insurance Industry

Dividend Restriction Disclosures

Disclosure under Rule 4-08(e) of S-X in audited financial statements:

- **Nature of restrictions should be addressed separately at parent and subsidiary level**
- **In the case of parent, amount restricted or free of restriction for payment to stockholders**
- **At the subsidiary level, the amount of restricted net assets (i.e., amount restricted for transfer to the parent in the form of dividends, loans or advances)**

Insurance Industry MD&A Disclosures

- ❖ **Analyze statutory and dividend restriction in MD&A disclosures**
- ❖ **Examples:**
 - **Amounts available from subsidiaries may not be sufficient for parent to meet obligations**
 - **Just meeting or barely exceeding regulatory requirement may be a red flag for future regulatory action**

Auditor Considerations

Auditor Considerations

- ❖ Risk factors related to non-PCAOB inspected jurisdictions
- ❖ “Standards” vs. “auditing standards” of the PCAOB

Polling Question #4

Text a **KEYWORD** to 22333

Company A has less than \$1 billion in revenue in its most recently completed fiscal year and no debt issuances over the prior three years. It intends to register on Form 10. Company A does not qualify as a smaller reporting company. Which of the following statements is true?

- A. Company A cannot be an EGC. **CANNOTBE**
- B. Company A may be an EGC and, if so, may confidentially submit its registration statement with two years of financial statements. **MAYBEAND**
- C. Company A may be an EGC but, if so, must publicly file its registration statement with three years of financial statements. **MAYBEBUT**
- D. What's an EGC again? **REPEAT**

Polling Question #5

Text a **KEYWORD** to **22333**

Up through 2011, Company A had a history of cumulative losses. In 2012, it generated income. At December 31, 2011, Company A had a full valuation allowance on its deferred tax asset. Which of the following is true as of December 31, 2012?

- A. Company A cannot reverse any part of its valuation allowance because it is still in a cumulative recent loss position. **ANSA**
- B. Company A can reverse its entire valuation allowance. **ANSB**
- C. Company A can reverse a portion of its valuation allowance equal to the amount of 2012 income. **ANSC**
- D. Need more information. **ANSD**

Appendix

Resources – General

❖ **Corporation Finance home page:**

<http://www.sec.gov/divisions/corpfin.shtml>

❖ **Information for Accountants:**

<http://www.sec.gov/divisions/corpfin/cfreportingguidance.shtml>

❖ **Financial Reporting Manual:**

<http://sec.gov/divisions/corpfin/cffinancialreportingmanual.shtml>

❖ **CF Disclosure Guidance Topics:**

<http://www.sec.gov/divisions/corpfin/fdisclosure.shtml#cfguidancetopics>

❖ **Compliance and Disclosure Interpretations:**

<http://www.sec.gov/divisions/corpfin/cfguidance.shtml>

Resources – JOBS Act

- ❖ **Frequently Asked Questions of General Applicability on Title I of the JOBS Act**
 - **September 28, 2012** (Questions 42–54)
 - **May 3, 2012** (Questions 18–41)
 - **April 16, 2012** (Questions 1–17)

- ❖ **Link to JOBS Act page on CF website**

Resources - Contacts

- ❖ **Comment process – Disclosure Operations
Staff listed in comment letter**
- ❖ **Staff interpretation or informal question –**
 - **Financial Reporting – CF Office of Chief Accountant at (202) 551-3400**
 - **Small Business Policy – CF Office of Small Business Policy (202) 551-3460**
 - **Submit request through online form at:
https://tts.sec.gov/cgi-bin/corp_fin_interpretive**

Resources - Contacts

- ❖ **Formal requests related to financial reporting:**

[http://dcaoletters@sec.gov](mailto:dcaoletters@sec.gov)

- ❖ **Formal consultations on the application of GAAP:**

[http://OCA@sec.gov](mailto:OCA@sec.gov)