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*National Conference on Current SEC & PCAOB Developments*

***Current Developments in the  
Division of Corporation  
Finance***

*December 8, 2009*

*Wayne Carnall, Chief Accountant  
Mark Kronforst, Deputy Chief Accountant  
Craig Olinger, Deputy Chief Accountant  
Angela Crane, Associate Chief Accountant  
Jill Davis, Associate Chief Accountant  
Michael Fay, Associate Chief Accountant  
Steven Jacobs, Associate Chief Accountant*

# *Disclaimer*

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# *Agenda*

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

# *Review Statistics*

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**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**

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# *Improving Communications*

# ***Financial Reporting Manual***

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## **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**

# *Financial Reporting Manual, cont.*

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## **Input Sources**

- ❖ **Filing review process**

- ❖ **Firms / Registrants**

- ❖ **New accounting standards or regulations**

# *FRM Project*

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**1983**

***SEC REGULATIONS COMMITTEE  
MEETS WITH SEC STAFF***

*FRM Project*

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**25 YEARS**

**780 ISSUES**

**OVER 1000 PAGES**

# ***Compliance and Disclosure Interpretations - C&DI's***

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**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*

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## **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*

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**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*

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## **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*

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## **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*

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- ❖ **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*

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**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*

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**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*

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## **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**

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# *Improving Disclosure*

# *Critical Accounting Estimates*

## *Goodwill Impairment*

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**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*

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**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.*

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- ❖ **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*

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## **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*

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## **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***

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**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*

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## **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***

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## **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*

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- ❖ **Discuss underlying factors included in net income tax**
  - ❖ *Income Tax Rate Reconciliation*
- ❖ **Highlight material changes in income tax items not apparent from footnote disclosure**

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# *Other Issues*

# ***SFAS 160 (ASC Topic 810)***

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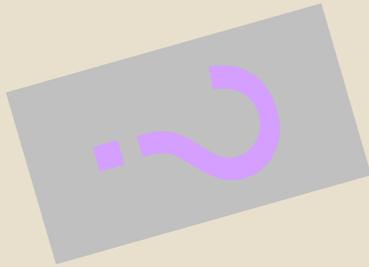
## **Technical Amendment**

- ❖ **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*

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- ❖ **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*

