

March 9, 2010

## Accounting

### Amendments to Certain Subsequent Events Recognition and Disclosure Requirements

Questions have arisen in practice about Financial Accounting Standards Board (FASB) Accounting Standards Codification Topic 855, *Subsequent Events*. Specifically, the SEC has certain requirements related to the identification and disclosure of subsequent events that potentially conflict with certain aspects of Topic 855. To alleviate potential conflicts between Topic 855 and the SEC's requirements, the FASB recently issued Accounting Standards Update (ASU) 2010-09, *Subsequent Events (Topic 855) – Amendments to Certain Recognition and Disclosure Requirements*. Per this ASU, an SEC filer would no longer be required to disclose the date through which subsequent events have been evaluated. An SEC filer is an entity that is required to file or furnish its financial statements with either the SEC or, with respect to an entity subject to Section 12(i) of the Securities Exchange Act of 1934, as amended, the appropriate agency under that Section. It does not include an entity that is not otherwise an SEC filer whose financial statements are included in a submission by another SEC filer.

An entity that either (a) is an SEC filer or (b) is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets) is required to evaluate subsequent events through the date that the financial statements are issued. If an entity meets neither of those criteria, then it should evaluate subsequent events through the date the financial statements are available to be issued. Prior to the issuance of ASU 2010-09, if an entity did not file or furnish financial statements with the SEC, it would evaluate subsequent events through the date the financial statements were available to be issued unless the entity had a current expectation of widely distributing its financial statements to its shareholders and other financial statements users, in which case it would evaluate subsequent events through the date that the financial statements were issued. In ASU 2010-09, the FASB decided to eliminate the concept of "wide distribution" for determining the appropriate date through which an entity should evaluate subsequent events.

The ASU also refines the scope of the reissuance disclosure requirements to include revised financial statements only. The term *revised financial statements* includes financial statements revised either as a result of correction of an error or retrospective application of U.S. generally accepted accounting principles. The amendments in this ASU no longer require disclosure of either the issuance date or the revised issuance date if an entity is an SEC filer. However, this ASU has no effect on disclosure of the issuance date for an entity that is not an SEC filer. If the financial statements have been revised, then an entity that is not an SEC filer should disclose both the date that the financial statements were issued or available to be issued and the date the revised financial statements were issued or available to be issued.

All of the amendments in ASU 2010-09 were effective upon issuance on February 24, 2010, except for the use of the issued date for conduit debt obligors. That amendment is effective for interim or annual periods ending after June 15, 2010. The ASU is available in full at [www.fasb.org](http://www.fasb.org).

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## Deferral of Statement No. 167 for Certain Investment Funds

The International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) recently affirmed their decision to jointly develop guidance for consolidation of all entities, including entities currently considered variable interest entities (VIEs). The IASB closely followed the deliberations that led to the issuance of FASB Statement No. 167, *Amendments to FASB Interpretation 46(R)*. Except for investment funds managed by investment managers, the deliberations of the IASB specific to structured entities (VIEs in U.S. generally accepted accounting principles (GAAP)) appear to yield similar consolidation results for other types of VIEs. However, the IASB's preliminary deliberations indicate a potentially different consolidation conclusion for investment funds when compared with the conclusion reached under U.S. GAAP. Accordingly, the FASB decided that the effective date of the amendments in Statement No. 167 should be deferred for certain investment funds so both Boards could develop consistent guidance on principal and agent relationships as part of the joint consolidation project. As a point of reference, FASB Statement No. 167 (added to the Accounting Standards Codification by Accounting Standards Update (ASU) 2009-17, *Consolidations (Topic 810) – Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities*) generally requires all entities to perform an analysis to determine whether their interests give them a controlling financial interest in a VIE.

The FASB has issued ASU 2010-10, *Consolidation (Topic 810) - Amendments for Certain Investment Funds*, which defers the requirements in Statement No. 167 for reporting entities with interests in an entity (1) that has all the attributes of an investment company or (2) for which it is industry practice to apply measurement principles for financial reporting purposes that are consistent with those followed by investment companies. The deferral does not apply in situations in which a reporting entity has the explicit or implicit obligation to fund losses of an entity that could potentially be significant to the entity. The deferral also does not apply to interests in securitization entities, asset-backed financing entities, or entities formerly considered qualifying special-purpose entities. In addition, the deferral applies to a reporting entity's interest in an entity that is required to comply or operate in accordance with requirements similar to those in Rule 2a-7 of the Investment Company Act of 1940 for registered money market funds. An entity that qualifies for the deferral will continue to be assessed under the overall guidance on the consolidation of VIEs in Subtopic 810-10 (before its amendment by Statement No.167) or other applicable consolidation guidance, such as the guidance for the consolidation of partnerships in Subtopic 810-20. The amendments in ASU 2010-10 do not defer the disclosure requirements in Statement No. 167. Accordingly, both public and nonpublic companies are required to provide the disclosures included in Statement No. 167 for all VIEs in which they hold a variable interest, including those VIEs that qualify for the deferral.

ASU 2010-10 also clarifies that for entities that do not qualify for the deferral, related parties should be considered when evaluating each of the criteria in Statement No. 167 for determining whether a decision maker or service provider fee represents a variable interest. In addition, the requirements for evaluating whether a decision maker's or service provider's fee is a variable interest are modified to clarify that a quantitative calculation should not be the sole basis for this evaluation.

The amendments in ASU 2010-10 are effective as of the effective date for Statement No. 167 (*i.e.*, as of the beginning of a reporting entity's first annual period that begins after November 15, 2009, and for interim periods within that first annual reporting period). ASU 2010-10 is available at [www.fasb.org](http://www.fasb.org).

## Determining the Acquisition Date of a Business Combination

The *acquisition date* is important for an acquirer of a business to establish as it determines the timing of when a business combination is recorded and when the operating results of the acquired business are reflected in the acquirer's financial statements. FASB Statement No. 141R (now codified in ASC Topic 805, *Business Combinations*) was effective for acquisitions in years beginning after December 15, 2008. The acquirer recognizes and measures the identifiable tangible and intangible assets acquired, liabilities assumed, noncontrolling interests in

the acquiree and goodwill and begins the consolidation of the net assets and operations acquired on the acquisition date.

The acquisition date is the date on which the acquirer obtains control of the acquiree. That date is generally the date on which the acquirer legally transfers the consideration, acquires the assets and assumes the liabilities of the acquiree (referred to as the closing date). A date other than the closing date may generally be used if a written agreement provides that the acquirer obtains control of the acquiree on a different specified date. When the acquisition date is not on or near the end of an accounting period (*e.g.*, the end of a month), there are practical problems to deal with related to cutoff, starting new accounting records, *etc.* As a result of these practical matters, companies often want to account for a business combination on a date other than the acquisition date.

In the business combinations accounting guidance prior to ASC 805, there was a concept to address these practical matters referred to as a convenience date. The convenience date notion allowed for acquirers to record an acquisition at a date other than the date control of the acquiree was obtained as long as certain adjustments were made to the cost of the acquiree and net income. In eliminating this notion in ASC 805, the FASB placed reliance on the underlying principle and reasoned that the financial statement effects of eliminating the convenience date exception would rarely be material.

Given the FASB's reasoning, the absence of a written agreement may not necessarily eliminate the ability to use an acquisition date other than the closing date. In its Basis for Conclusions, the FASB observes that unless events between the convenience date and the closing date result in material changes in the amounts recognized, the practice of using a convenience date would not be inconsistent with the intent of ASC 805. This observation creates a presumption that using a convenience date would, as stated in the preceding paragraph, rarely have a material effect on the acquirer's financial statements. For example, if the interval between a convenience date and closing date is short (*e.g.*, seven days or less may be a short interval) and there is an absence of material events or transactions occurring during that period (*e.g.*, there have been no significant borrowings or payments, sales/shipments of major customer orders, acquisitions or disposals of significant assets, settlement of litigation, or other evidence of nonroutine transactions or events), it would be acceptable for the acquirer to apply the acquisition method as of the convenience date. If the interval between the closing date and convenience date is long (*e.g.*, over ten days may be a long interval) or material events or transactions occur during that period, it appears the presumption of immateriality would not exist. When the presumption of immateriality cannot be overcome in these scenarios, the acquisition method should be applied as of the closing date. The advice of legal counsel should always be sought when there is a question about when a legal change of control occurs.

## Auditing

### Three Auditing Standards Issued

The Auditing Standards Board of the American Institute of Certified Public Accountants recently issued three new standards that relate to the auditing of information outside of the financial statements:

- Statement on Auditing Standards (SAS) No. 118, *Other Information in Documents Containing Audited Financial Statements* - This Standard supersedes the requirements and guidance in AU Section 550. Among other requirements, SAS No. 118 eliminates the distinction between (a) other information that is included in an auditor-submitted document that contains the client's basic financial statements and the auditor's report thereon; and (b) other information that is in a client-prepared document. Additionally, this Standard establishes a presumptively mandatory requirement that the auditor read the other information of which the auditor is aware in order to identify material inconsistencies, if any, with the audited financial statements. The Standard also establishes presumptively mandatory requirements for report revisions, communications with management and/or those charged with governance, and other procedures as appropriate when the auditor identifies a material inconsistency.

- SAS No. 119, *Supplementary Information in Relation to the Financial Statements as a Whole* – Together with SAS No. 118, this Standard supersedes the requirements and guidance in AU Section 551. In order to opine on whether supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole, SAS No. 119 establishes a presumptively mandatory requirement that the auditor perform certain procedures in addition to the procedures performed during the audit of the financial statements. Further, the Standard establishes presumptively mandatory requirements for the auditor's reporting on the supplementary information, taking into consideration the type of report issued on the financial statements and whether the supplementary information is presented with the financial statements.
- SAS No. 120, *Required Supplementary Information* - This Standard supersedes the requirements and guidance in AU Section 558. SAS No. 120 defines *required supplementary information* as information that a designated accounting standard setter requires to accompany an entity's basic financial statements. The Standard establishes that the auditor's objectives when a designated accounting standard setter requires information to accompany an entity's basic financial statements are to perform procedures in order to (a) describe, in the auditor's report, whether required supplementary information is presented; and (b) communicate therein when some or all of the required supplementary information has not been presented in accordance with guidelines established by a designated accounting standard setter or when the auditor has identified material modifications that should be made to the required supplementary information for it to be in accordance with guidelines established by the designated accounting standard setter.

The above Standards are effective for audits of financial statements for periods beginning on or after December 15, 2010. Early application is permitted.

### Proposed Standard Regarding Consistency of Financial Statements

In conjunction with its efforts to clarify generally accepted auditing standards for audits of nonpublic companies, the Auditing Standards Board of the American Institute of Certified Public Accountants recently issued a proposed Statement on Auditing Standards (SAS), *Consistency of Financial Statements*. To avoid unnecessary conflicts with the standards of the Public Company Accounting Oversight Board (PCAOB), the proposed SAS was drafted considering the requirements of PCAOB Auditing Standard (AS) No. 6, *Evaluating Consistency of Financial Statements*. AS 6 was issued to reflect the issuance of Financial Accounting Standards Board (FASB) Statement No. 154, *Accounting Changes and Error Corrections*, which is codified in FASB *Accounting Standards Codification* 250, *Accounting Changes and Error Corrections*. If finalized, the proposed SAS would supersede SAS No. 1, Section 420, *Consistency of Application of Generally Accepted Accounting Principles*, as amended. The proposed SAS does not change or expand SAS No. 1, Section 420 in any significant respect except as stated in the next paragraph.

Extant AU Section 420 paragraph .17 states that changes and material reclassifications made in previously issued financial statements to enhance comparability with current financial statements ordinarily would not need to be referred to in the independent auditor's report. However, paragraph 17 of the proposed SAS requires the auditor to evaluate a material change in financial statement classification and the related disclosure to determine whether such a change is also either a change in accounting principle or an adjustment to correct a material misstatement in previously issued financial statements. If so, the requirements in the proposed SAS would apply.

If finalized, the proposed SAS would be effective for audits of nonpublic financial statements for periods beginning on or after December 15, 2010. This effective date is provisional but will not be earlier than December 15, 2010. The proposed SAS is available for comment until May 19, 2010 at [http://www.aicpa.org/download/auditstd/ED\\_Conistency.pdf](http://www.aicpa.org/download/auditstd/ED_Conistency.pdf).

## SEC

### Item 4 in Forms 10-K and 10-Q to Be Reserved – Following Items No Longer Renumbered

As previously announced in Release No. 33-9089, effective February 28, 2010, the SEC required the results of any matter that was submitted to a vote of shareholders to be disclosed in new Item 5.07 on Form 8-K within four business days after the end of the meeting at which the vote was held. Formerly, such voting results were required to be disclosed in Item 4 in Part II of Form 10-Q and Item 4 in Form 10-K for any matter that was submitted to a vote of shareholders during the fiscal quarter covered by either the Form 10-Q or Form 10-K with respect to the fourth fiscal quarter. Release No. 33-9089 stated that a Form 10-K filed on or after February 28, 2010 should remove existing Item 4 in Part 1 and redesignate Items 5 through 15 as Items 4 through 14; similarly, a Form 10-Q filed on or after February 28, 2010 should remove existing Item 4 in Part II and redesignate Items 5 and 6 as Items 4 and 5. On February 23, 2010, the SEC issued Release No. 33-9089A to make technical corrections to the revised disclosure rules adopted in Release No. 33-9089. Specifically, the SEC corrected the revisions to Forms 10-Q and 10-K to retain the current numbering of the items appearing in each form to avoid confusion that might otherwise arise from references to the current numbering in professional literature. As a result, effective February 28, 2010, Item 4 in Part 1 of Form 10-K and Item 4 in Part II of Form 10-Q are removed and reserved, and the current numbering of the remaining items is retained.

Release No. 33-9089A is available in full at <http://www.sec.gov/rules/final/2010/33-9089a.pdf>.

### Seminar to Help Companies Comply with XBRL Reporting Rules

As previously announced, SEC Final Rule No. 33-9002, *Interactive Data to Improve Financial Reporting*, requires companies to submit financial statements in XBRL (extensible business reporting language) format with their SEC filings on a phased-in schedule as follows:

- The largest companies (with a public float above \$5 billion) that file using U.S. GAAP were required to provide interactive data reports starting with their first quarterly report for fiscal periods ending on or after June 15, 2009.
- All other domestic and foreign large accelerated filers using U.S. GAAP are required to provide interactive data reports starting with their first quarterly report for fiscal periods ending on or after June 15, 2010.
- All remaining filers using U.S. GAAP, including smaller reporting companies, and all foreign private issuers that prepare financial statements in accordance with IFRS are required to provide interactive data reports starting with their first quarterly report for fiscal periods ending on or after June 15, 2011.

On March 23, 2010, beginning at 1 p.m. ET, the staff of the SEC will conduct a public seminar to help companies and preparers understand how to comply with the rules that require financial reports to be filed using XBRL. The seminar will help answer frequently asked questions about the rules and technology requirements. SEC staff also will provide an overview of the XBRL taxonomy — the list of tags associated with U.S. generally accepted accounting principles.

The March 23 seminar will be held in the auditorium at the SEC's headquarters in Washington D.C. and also will be webcast on the SEC Web site. The SEC staff is seeking suggested questions and topics to be discussed at the seminar; interested parties should e-mail their questions to [Ask-OID@sec.gov](mailto:Ask-OID@sec.gov) and include "Public Education Seminar" in the subject line. For additional information about the seminar, call 202.551.4144.

## SEC Supports Global Accounting Standards

On February 24, 2010, the SEC issued an update regarding its consideration of global accounting standards, and the implications of convergence with respect to the SEC's ongoing consideration of incorporating International Financial Reporting Standards (IFRS) into the financial reporting system for U.S. issuers. The SEC made clear its belief that a single set of high-quality globally accepted accounting standards would benefit U.S. investors, reaffirmed recognition that IFRS is best positioned to be able to serve the role as that set of standards for the U.S. market, and stated its continued support for the convergence of U.S. generally accepted accounting principles (GAAP) and IFRS.

The SEC has directed its staff to execute a Work Plan, the results of which will aid the SEC in its evaluation of the impact that the use of IFRS by U.S. companies would have on the U.S. securities market. Included in this Work Plan will be consideration of IFRS, as it exists today and after the completion of various convergence projects currently underway between U.S. and international accounting standards setters. Among other matters, the staff's Work Plan will address:

- Determining whether IFRS is sufficiently developed and consistent in application for use as the single set of accounting standards in the U.S. reporting system.
- Ensuring that accounting standards are set by an independent standard setter and for the benefit of investors.
- Investor understanding and education regarding IFRS, and how it differs from U.S. GAAP.
- Understanding whether U.S. laws or regulations, outside of the securities laws, for example tax laws and regulatory reporting, would be affected by a change in accounting standards.
- Understanding the impact on companies, both large and small, including changes to accounting systems, changes to contractual arrangements, corporate governance considerations, and litigation contingencies.
- Determining whether the people who prepare and audit financial statements are sufficiently prepared, through education and experience, to make the conversion to IFRS.

The SEC staff will provide public progress reports on the Work Plan, as well as on the status of the Financial Accounting Standards Board and International Accounting Standards Board convergence projects, beginning no later than October 2010 and frequently thereafter until the work is completed. Assuming completion of the staff's Work Plan and the accounting standard setters' convergence projects, the SEC will decide in 2011 whether to incorporate IFRS into the U.S. financial reporting system, and if so, when and how. If the SEC determines in 2011 to incorporate IFRS into the U.S. financial reporting system, the first time that U.S. companies would report under such a system would be no earlier than 2015. The Work Plan would further evaluate this timeline.

The *Commission Statement in Support of Convergence and Global Accounting Standards* is available in full at <http://www.sec.gov/rules/other/2010/33-9109.pdf>.

## Employee Benefit Plans

### DOL Clarifies 403(b) Plan Financial Reporting Relief and Provides Resources

As previously communicated, starting with plan years beginning on or after January 1, 2009, 403(b) plans that are considered to be ERISA-covered plans will be required to electronically file complete Form 5500s, including schedules such as Schedules A and either H (for large plans) or I (for small plans). As with other ERISA-covered plans, those plans with over 100 participants will be required to have an annual audit performed by a qualified independent auditor. The U.S. Department of Labor (DOL) previously issued [Field Assistance Bulletin \(FAB\) 2009-02, Annual Reporting Requirements for 403\(b\) Plan](#), to provide enforcement relief for 403(b) plan administrators who make good faith efforts to transition for the 2009 plan year to ERISA's generally applicable annual reporting requirements. FAB 2009-02 allows the plan administrator to exclude certain pre-January 1, 2009 annuity contracts and custodial accounts for ERISA reporting purposes. Recently, the DOL issued [FAB 2010-01, Annual Reporting and ERISA Coverage for 403\(b\) Plans](#), to address, among other things, the plan administrator's responsibility to determine whether the conditions of FAB 2009-02 have been satisfied with respect to excluded contracts from the plan's annual report. FAB 2010-01 provides answers to 18 questions on the scope of and conditions for the relief provided by FAB 2009-02. FAB 2010-01 states that if, as part of the audit the independent auditor was engaged to perform, the auditor discovers that contracts were incorrectly excluded under FAB 2009-02 from the plan's financial statements, the DOL expects the independent auditor to alert the plan administrator. Plan administrators have an obligation to take reasonable steps to resolve questions concerning the exclusion of such contracts. If the plan administrator and independent auditor do not agree regarding how to resolve issues relating to excluded contracts, the DOL expects these issues to be noted in the audit report. Exclusion of contracts would result in a modification to the auditor's report, regardless of whether the excluded contracts meet the condition of the FABs.

The DOL has provided the following resources, among other, for questions regarding the changes to the 2009 Form 5500 Annual Return/Report requirements for 403(b) plans, the requirement for plans with 100 or more participants to include a report of an independent qualified public accountant, and the requirement for all Form 5500s beginning with the 2009 plan year to be filed electronically using the DOL's new EFAST2 system:

- The DOL Employee Benefits Security Administration (EBSA) has a new 403(b) Web site at [www.dol.gov/ebsa/403b.html](http://www.dol.gov/ebsa/403b.html).
- The EFAST2 system allows the public to submit and access filings online at <http://www.efast.dol.gov/portal>. A helpful [video on electronic filing](#) is available. Assistance with the EFAST2 system, Form 5500, and Form 5500-SF is available toll-free at 866.463.3278.
- The DOL's Division of Coverage, Reporting, and Disclosure is available at 202.693.8523 for questions concerning the information contained in the DOL Field Assistance Bulletins.
- EBSA's Office of the Chief Accountant is available at 202.693.8360 for questions concerning individual plans facing specific transition issues.

To assist entities in preparing for the audit of 403(b) plans, McGladrey & Pullen's National Professional Standards Group has issued a [white paper](#) that answers many commonly encountered questions. Entities are encouraged to contact their 403(b) plan advisors and certified public accountant when preparing for the audit of 403(b) plans.