

2010

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# SEC DISCLOSURES CHECKLISTS

**Including Financial Statement, MD&A,  
and Sarbanes-Oxley Checklists**

**RONALD G. PIPPIN, CPA**



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# SEC Disclosures Checklists

by Ronald G. Pippin, CPA

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## Highlights

*SEC Disclosures Checklists* is a one-of-a-kind, comprehensive reference for preparers and reviewers of financial statements included in 1933 Act or 1934 Act domestic filings. Written for CPAs with public company clients and for corporate professionals, *SEC Disclosures Checklists* identifies the disclosure requirements for financial statements, Management's Discussion and Analysis, and Sarbanes-Oxley-mandated SEC rules. This reference tool gives you the resources you need to review, meet, and document your compliance with SEC disclosure requirements.

See **Recent Developments** for 2010—Congressional activity affecting internal control reporting by smaller companies, SEC changes to proxy rules, and documenting SEC staff views made at the 37<sup>th</sup> AICPA National Conference on Current SEC and PCAOB Developments—immediately following the Highlights.

## 2010 Edition

This 2010 edition of *SEC Disclosures Checklists* adds, revises, and updates numerous questions and makes changes to almost every chapter. We have also updated the various references herein, as appropriate, to reflect the new structure for authoritative generally accepted accounting principles (GAAP) in the United States. Specifically, the Financial Accounting Standards Board (FASB) restructured all U.S. GAAP effective July 1, 2009, with the issuance of the *FASB Accounting Standards Codification*<sup>TM</sup> (referred to in this publication as the Codification or ASC). In this year of transition, we include both the ASC reference, as well as the applicable GAAP reference prior to July 1, 2009.

Among the issues addressed by new questions are ASC 820, *Fair Value Measurements and Disclosures* (FASB Statement No. 157, *Fair*

*Value Measurements*), issuance of ASC 270, *Interim Reporting* (FASB Staff Position (FSP) FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments*), and disclosure requirements on Form 8-K, Item 2.02, *Results of Operations and Financial Condition*.

In addition to the above, we have made revisions to reflect the following guidance issued:

- The SEC's publication of revised Compliance and Disclosure Interpretations (C&DIs), *Exchange Act Rules*.

These C&DIs include the interpretations of the Division of Corporation Finance, in a question and answer (Q&A) format, of the rules promulgated under the registration and reporting provisions of Sections 12, 13, and 15 of the Securities Exchange Act of 1934. This guidance may be useful when preparing quarterly or annual reports.

In particular, Question 102.05 of the C&DIs provides clarification for registrants who disclose financial measures that are calculated in accordance with guidance published by a government, governmental authority, or self-regulatory organization but are not in accordance with GAAP or are not calculated exclusively from amounts presented in accordance with GAAP. In this situation, unless the information is required to be disclosed by a system of regulation that is applicable to the registrant, it is considered to be a "non-GAAP financial measure" and therefore subject to the SEC's disclosure requirements for non-GAAP measures. (See Chapter 41, Question 1, under "Non-GAAP Financial Measures." See also "Recent Developments" in this publication for possible changes forthcoming from the SEC on this topic.)

The updated C&DIs also provide, among other things, further guidance on the definitions of and conditions for "accelerated filer" and "large accelerated filer" status. (See Chapter 31, Question 1.)

- FSP FAS 140-4 and FIN 46(R)-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities*, amends ASC 860, *Transfers and Servicing* (FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*), to require public entities to provide additional disclosures about transfers of financial assets.
- New guidance in ASC 810, *Consolidation* (FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements*). ASC 810 changes the term "minority interests" to "noncontrolling interests." The new guidance is effective for

fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008 (i.e., January 1, 2009, for entities with calendar year-ends).

- Coverage of various *Financial Reporting Manual* Topics and updates to these topics from the Division of Corporation Finance.

In particular, Topic 1320 provides clarification for registrants filing Form 10, Form 10-K, and Form 10-Q. (See Chapter 1, Question 1, under "Financial Statements and Reporting Periods.") Topic 2005.4 provides clarification for registrants on the assessment of probability. (See Chapter 18, Question 1.) Topic 8100 offers guidance on non-GAAP measures of financial performance, liquidity, and net worth. (See Chapter 41, Question 1, under "Non-GAAP Financial Information.") Topic 4500 provides disclosure information on a change in accountants for registrants or subsidiaries. (See Chapter 43, Question 1, under "Changes in Registrant's Certifying Accountant—Item 4.01.") Topic 4600 focuses on non-reliance on previously issued financial statements, related audit report, or completed interim review. (See Chapter 43, Question 1, under "Non-Reliance on Previously Issued Financial Statements or Related Audit Report or Completed Interim Review—Item 4.02(a).") Topic 9210 offers guidance on liquidity and capital resources. (See Chapter 48, Question 2, under "Liquidity.")

- SEC staff remarks before the 2008 AICPA National Conference on Current SEC and PCAOB Developments related to push down accounting discussed in SAB Topic 5J (See Chapter 20, Question 2), the impact of the economic environment on internal control over financial reporting (See Chapter 41, Question 1, under "Internal Control Reports"), and FASB Statement No. 144, *Accounting for the Impairment of Long-Lived Assets (ASC 360, Property, Plant, and Equipment)*. (See Chapter 47, Question 1, under "Impairment and Restructuring.")
- Division of Corporation Finance sample letter dated August 2009 sent to public companies on MD&A disclosure regarding provisions and allowances for loan losses.
- Issuance of SEC final rule, *Internal Control over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers*. This final rule requires that all nonaccelerated filers begin complying with the final portion of Section 404 of the Sarbanes-Oxley Act of 2002 in nine months, beginning with their annual reports for fiscal years ending on or after June 15, 2010, instead of for fiscal years ending on or after December 15, 2009. During 2008, the SEC granted an extension to all

nonaccelerated filers for compliance with Section 404(b) until fiscal years ending on or after December 15, 2009. Section 404(b) requires a registrant to provide an attestation report on management's assessment of internal controls over financial reporting by the registrant's external auditor. Under the final rule, all nonaccelerated filers will be required to provide their auditor's attestation on management's assessment of internal controls over financial reporting in their annual reports filed for fiscal years ending on or after June 15, 2010. Prior to that time, a nonaccelerated filer continues to be required to state in its management report on ICFR that the company's annual report does not include an auditor attestation report. (See also "Recent Developments" in this publication for possible legislation that would permanently exclude certain smaller companies from the auditor attestation requirement.)

- SEC staff amendments to SEC Staff Accounting Bulletin (SAB) Topic 5M, "Miscellaneous Accounting—Other Than Temporary Impairment of Certain Investments in Equity Securities" (SAB 111).

The amendments reflect FSP No. FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*. The amended SAB Topic 5M maintains the prior staff views related to equity securities but has been amended to exclude debt securities from its scope.

- Revised SEC guidance on smaller reporting company compliance and disclosure interpretations, which reflects updates through October 26, 2009. (See Appendix 1-a.)

Further amendments, too numerous to detail, have been made throughout the publication to keep the content up-to-date and to enhance the guidance provided. The Summary Checklists have been updated to reflect the above-noted changes.

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## RECENT DEVELOPMENTS

On December 11, 2009, the U.S. House of Representatives passed H.R. 4173, termed by Congress as the "Wall Street Reform and Consumer Protection Act of 2009" (the Act). Section 7606 of the Act permanently exempts small public companies from the audit requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. These small companies, or "nonaccelerated filers," are public companies with market capital of less than \$75 million. Section 7606 also provides that the Securities and Exchange Commission (SEC) and the Comptroller General jointly conduct a study to determine how the SEC could reduce the burden of complying with section 404(b) for companies whose market capitalization is between \$75 and \$250 million. Section 404(b) requires a registrant to provide an attestation report on management's assessment of internal controls over financial reporting by the registrant's external auditor.

The above legislation has yet to be considered by the U.S. Senate and must still be signed by the president before it becomes law. Users of this publication should be alert for changes in this law. If passed, the discussion throughout Chapter 41 and the table on page 41.89 would require modification.

On December 7-9, 2009, representatives of the Financial Accounting Standards Board (FASB), the Public Company Accounting Oversight Board (PCAOB), the SEC and others, spoke at the 37th AICPA National Conference on Current SEC & PCAOB Developments in Washington, D.C. It was announced at this conference that the SEC staff was planning on revising its guidance for non-GAAP financial measures that is currently reflected in its rules and regulations. For example, such guidance is documented in Regulation S-K, Item 10, as well as in "Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures," dated June 13, 2003. This concept is discussed in various sections of this publication, notably Chapter 41. Users of this publication should be alert for any changes in the SEC rules or staff guidance as it relates to non-GAAP financial measures.

In addition, the SEC staff made various comments or observations at the above noted conference that users of this publication may find useful as follows:

- The former "SEC Staff Training Manual" was replaced in December 2008 with the "Financial Reporting Manual" as issued by the staff in the Division of Corporation Finance (Corp Fin). This tool is used by the staff in Corp Fin as they review registrant filings. Unlike the former Staff Training Manual that rarely was updated, Wayne Carnall, Chief Accountant in Corp Fin, announced in December 2009, that his staff plans to keep the guidance therein current and update

the Financial Reporting Manual on a quarterly basis. Where appropriate, such guidance is reflected in this publication.

- A major change in the GAAP accounting for revenue recognition was adopted by the Emerging Issues Task Force (EITF) in September 2009. This revised guidance was contained in EITF Issues No. 08-1, "Revenue Arrangements with Multiple Deliverables," and No. 09-3, "Certain Revenue Arrangements That Include Software Elements." The FASB ratified these decisions and incorporated them into the Codification with the issuance of FASB Accounting Standards Update 2009-13 and 2009-14. The SEC staff reminded registrants of the importance of good disclosure when a major change in an accounting standard is approved by the FASB and its effect on the registrant if material either to the historical results or could significantly affect the timing of future revenue.
- Consistent with the view expressed in the preceding point, the chief accountant of Corp Fin reiterated the requirements in Staff Accounting Bulletin No. 74, "Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of the Registrant When Adopted in a Future Period." While the SEC staff notes that most registrants are aware of the requirements in SAB 74, the staff believes registrants could improve their disclosure and limit the use of the exact same disclosures in more than one place in a filing. For example, many registrants make the SAB 74 disclosure in its financial statement footnotes and use the exact same disclosure in its MD&A. Mr. Carnall indicated that the purpose of financial statement footnotes is different from that in MD&A and he would expect the required SAB 74 disclosure to be different as well. Specifically, footnotes are generally more historical looking, whereas MD&A is more forward looking and "from the eyes of management." While citing the SAB 74 disclosures specifically, Mr. Carnall's comments included the general suggestion that registrants take a fresh look at their SEC filings to try and limit the use of the exact same disclosure in more than one place.
- Registrants were reminded by various SEC staff members that application of the fair value standard (FASB Statement No. 157, *Fair Value Measurements*, as codified into ASC Topic 820, *Fair Value Measurements and Disclosures*) is very important when readers of financial statements are trying to understand the accounting and various disclosures being made. Explaining such details and requirements in plain English would be most helpful to readers of financial statements. Mr. Carnall also advocated making disclosures without referring to a particular FASB standard or SEC release. In other words, to say a

particular disclosure is required by the SEC is not helpful to the reader in understanding the issue being communicated.

- Corp Fin discussed highlights of its recent review of registrant disclosures of critical accounting estimates used for goodwill impairment testing. Specifically, Corp Fin urged registrants that for each reporting unit with material goodwill that is at risk of failing “step one” of the goodwill impairment test, to disclose: (a) the percentage by which fair value exceeded carrying value as of the most recent step one test; (b) amount of goodwill allocated to the particular reporting unit; (c) a description of key assumptions that drive fair value; and (d) a discussion of the uncertainty, or lack of uncertainty, associated with key assumptions used and any potential events or circumstances that could have a negative effect.
- Corp Fin also discussed several disclosures a registrant should consider regarding its consolidation policy and variable interest entities. Specifically, a registrant should consider disclosing in the financial statement footnotes: (a) why an entity is or is not consolidated; (b) rights afforded the registrant in a particular transaction with a variable interest entity; and (c) an explanation of why the registrant is or is not the primary beneficiary of a particular variable interest entity.
- Corp Fin urged registrants to review their disclosures regarding income taxes within MD&A and, among other things, to make sure narrative disclosures are consistent with other income tax disclosures, including the income tax rate reconciliation in the financial statement footnotes. The Corp Fin staff recommended that registrants disclose within MD&A: (a) the underlying factors included in net income tax; and (b) highlight material changes in income tax items not apparent from the income tax footnote disclosure.
- In addition to the above, on December 16, 2009, the SEC issued “Proxy Disclosure Enhancements,” as documented in Release 34-61175. While not directly affecting the focus of this publication, users should be aware of its existence when preparing proxy statements. For example, the SEC changed how a registrant should disclose the components in its “Summary Compensation Table.” The rule change is effective for fiscal years ending on or after December 20, 2009.

# Preface

*SEC Disclosures Checklists* identifies SEC disclosure requirements for financial statements, Management's Discussion and Analysis (MD&A), and the Sarbanes-Oxley mandated SEC rules. The Sarbanes-Oxley Act of 2002 (the Act) strengthened the SEC's disclosure rules. The Act requires a registrant's principal executive and financial officers to certify annual and quarterly reports and the certification must include a conclusion on the effectiveness of the registrant's disclosure controls. The term "disclosure controls" is new with the Act, and encompasses controls and procedures related to disclosures in financial statement footnotes and MD&A. These control rules are intended to complement requirements for SEC reporting companies to establish and maintain systems of internal controls. This book places a registrant on the path to compliance by identifying SEC disclosure requirements in a checklist format and providing a means to document compliance.

*SEC Disclosures Checklists* is for both preparers and reviewers of financial statements and MD&As that will be included in SEC 1933 Act and 1934 Act filings (e.g., Forms S-1, 10-K, and 10-Q). This book can be used as a resource for preparing and reviewing the financial statement disclosures of domestic registrants. Part III, "Sarbanes-Oxley," may also be used for foreign registrants.

The SEC specifically requires that the financial statements of registrants follow U.S. GAAP with limited exceptions for registrants filing using certain international standards. In certain instances, the SEC has prescribed rules that go beyond U.S. GAAP, and the disclosure portions of these incremental rules are the focus of *SEC Disclosures Checklists*. The financial accounting and disclosure rules of the SEC are set forth primarily in Articles 3A through 12 of Regulation S-X, Financial Reporting Releases (FRRs), Accounting and Audit Enforcement Releases (AAERs), and Industry Guides. The MD&A rules of the SEC are primarily in Item 303 of Regulation S-K. These SEC rules all represent official positions of the SEC. The Staff Accounting Bulletins (SABs), SEC views expressed at Emerging Issues Task Force (EITF) meetings, and the guidance in the *Financial Reporting Manual* as issued by the Division of Corporation Finance are recognized as staff practice and guidance. Although staff practice and guidance do not have the same authority as the SEC official positions, both should be followed in SEC filings.

## How This Book Is Organized

There are four parts to *SEC Disclosures Checklists*:

- I. **Financial Statements—Commercial Companies** This checklist begins with SEC disclosure requirements for financial

reporting statements, periods, and presentation. Then, financial disclosures for balance sheet and income statement topics such as cash, debt, common stock, and revenue are addressed. Next, financial disclosure topics such as discontinued operations and accounting changes are reviewed. The checklist ends with chapters on interim (Form 10-Q), annual (Form 10-K), and registration statement financial disclosure requirements.

- II. Financial Statements—Specialized Industries** This checklist outlines SEC financial disclosure requirements for specialized industries including bank holding companies; regulated industries; oil and gas companies; registered management investment companies; employee stock purchase, savings and similar plans; insurance companies; and others.
- III. Sarbanes-Oxley** This checklist outlines new SEC disclosure requirements mandated by the Sarbanes-Oxley Act. It presents incremental disclosure requirements in five reporting areas: annual and quarterly reports, proxy statements, Form 8-Ks, press releases, and MD&A. The checklists also provide effective dates for the new rules.
- IV. MD&A** This checklist outlines SEC disclosure requirements including MD&A general disclosures, financial conditions and results of operations, liquidity and capital resources, off-balance sheet arrangements, inflation and changing prices, forward-looking disclosures, interim disclosures, and specialized industries.

The checklists are organized topically by disclosure requirements and reference sources. First the reader is prompted with a question to see if the requirement is relevant, such as, "Does the company have restrictions on its cash?" If the answer is yes, the reader proceeds to the detailed disclosure requirements. For restricted cash, the requirements include a separate presentation on the balance sheet and a description of the restrictions. The reader can efficiently perform more in-depth, focused research on the topic by reading the on-point SEC reference material that follows the requirement. For restricted cash, these materials include Regulation S-X, Rule 5-02-01; Financial Reporting Release Section 203; and Staff Accounting Bulletin Topic 6H. Once the reader is satisfied that the company has met the disclosure requirements, the company's compliance can be documented and the workpaper reference entered into the book or the worksheet included on the free, companion CD-ROM. The completed checklists can be placed in annual or quarterly workpapers to support review and compliance procedures.

## Smaller Reporting Companies

Effective February 4, 2008, the SEC changed the concept of a “small business issuer” to that of a “smaller reporting company.” To qualify, a registrant cannot be an investment company, an asset-backed issuer, or the majority-owned subsidiary of a parent that is not a smaller reporting company; had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter; and, in the case of an issuer whose public float was zero, had annual revenues of less than \$50 million during its most recently completed fiscal year for which audited financial statements are available on the date of the filing. Such issuers have “scaled” disclosure requirements. The new rule allows smaller reporting companies to comply with the scaled financial disclosure and nonfinancial disclosure on an item-by-item basis.

The checklists included in this publication generally identify the scaled disclosure requirements for smaller reporting companies; however, the views of the SEC staff that are frequently referred to typically do *not* distinguish its views between those of smaller reporting companies and those of regular registrants. As a result, smaller reporting companies must apply judgment on whether the SEC staff views identified herein might apply to them.

Appendix I, “Smaller Reporting Companies,” includes releases issued by the SEC staff in the first quarter of 2008 together with changes through October 2009. A registrant that qualifies as a smaller reporting company, and wishes to use the scaled disclosure requirements allowed by the SEC for its external reporting, should find the guidance in this appendix useful.

## Acronyms

The following acronyms, listed below in alphabetical order, refer to accounting principles used throughout the text:

AAER	Accounting and Auditing Enforcement Release
ASC	FASB Accounting Standards Codification <sup>TM</sup>
APB	Accounting Principles Board Opinion*
ASR	Accounting Series Release of the SEC
EITF	Consensus Positions of the Emerging Issues Task Force*
FAS	FASB Statement of Financial Accounting Standards*
FRR	SEC Financial Reporting Release
SAB	SEC Staff Accounting Bulletin
SOP	AICPA Statement of Position*

\*Codified into the FASB Accounting Standards Codification in 2009.

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