



International Practices Task Force Highlights

November 27, 2018 – Joint Meeting with SEC Staff

SEC Offices – Washington, DC

NOTICE:

The Center for Audit Quality (CAQ) SEC Regulations Committee and its International Practices Task Force (the Task Force or IPTF) meet 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 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 this website, highlights of Joint Meetings of the SEC Regulations Committee and its International Practices Task Force 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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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

Task Force Members	Observers	Guests
Steven Jacobs, Chair (EY) DJ Gannon, Vice-Chair (Deloitte) Greg Bakeis (PwC) Rich Davisson (RSM-US) Jonathan Guthart (KPMG) Kathleen Malone (Deloitte) Alan Millings (EY) Victor Oliveira (EY) Ignacio Perez Zaldivar (Deloitte) Scott Ruggiero (Grant Thornton) Guilaine Saroul (PwC)	Craig Olinger (SEC staff) Tom Collens (SEC staff) Jill Davis (SEC staff) Dana Hartz (SEC staff) Tom Kluck (SEC staff) via teleconference Kyle Moffatt (SEC staff) Annette Schumacher Barr (CAQ staff)	Timothy Kviz (BDO) Polia Nair (EY) David Oldham (KPMG)

II. Audit reports required for Canadian MJDS on Form 40-F

Canadian foreign private issuers (FPIs) filing under the Multijurisdictional Disclosure System (MJDS) continue to follow primarily Canadian disclosure requirements and certain incremental reporting requirements specified by the SEC, such as obtaining Internal Control Over Financial Reporting (ICFR) audits integrated with their annual financial statement audits, in specified circumstances. As it relates to the audit of the financial statements, Canadian FPIs are allowed to obtain and file audit reports on their annual financial statements with the SEC either in accordance with Canadian Auditing Standards (CAS) or US PCAOB standards, with the exception of insurance companies and banks, which are required by the Canadian federal regulators to obtain and file audit reports in accordance with CAS. In addition, Canada is adopting the new International Auditing Standards (ISAs) audit reporting standard in 2018.

General Instruction B(3) to Form 40-F specifies the following Form 40-F disclosure obligations for Canadian FPIs for their annual reporting with the SEC:

Registrants reporting pursuant to 13(a) or 15(d) of the Exchange Act should file under cover of this Form the annual information form required under Canadian law and the Registrant's audited annual financial statements and accompanying management's discussion and analysis.

The Instruction further requires that:

All other information material to an investment decision that a Registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile, (ii) files or is required to file with a stock exchange on which its securities are traded or (iii) distributes or is required to distribute to its securityholders shall be furnished by Registrants under cover of Form 6-K.

In Canada, the Annual Information Form (AIF) does not require inclusion or incorporation of either the audit report or the annual financial statements. Instead, it requires information that describes the company, its operations and prospects, risks and other external factors. The AIF is filed in Canada separately from the audited financial statements. The requirement in Canada for audited financial statements requires that a reporting issuer must file annual financial statements on the System for Electronic Document Analysis and Retrieval (SEDAR) and that those statements must be "audited." Auditors of Canadian reporting issuers that are also SEC issuers are permitted to use either CAS or PCAOB auditing standards for the financial statement audit. If an issuer obtains both a CAS and PCAOB audit report, there is nothing explicit in the Canadian regulations that require both audit reports to be included in the "audited annual financial statements" captioned filing on SEDAR.

The Task Force asked the staff if existing Canadian issuers that are required to or choose to obtain and file on SEDAR audit reports in accordance with CAS, in addition to the required report issued in accordance with PCAOB standards, are also required to file such CAS audit reports on their Form 40-F.



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In deference to Canadian laws which permit an issuer to satisfy the Canadian securities laws by using either CAS or PCAOB auditing standards, the staff indicated that if a PCAOB audit report was filed with the audited financial statements on SEDAR for an issuer and an additional audit report was filed under CAS, either accompanying such financial statements or separately, to satisfy other regulators, only the PCAOB report would be required to be filed on Form 40-F. The CAS audit report would be required to be furnished on Form 6-K as other material information.

The SEC staff did not address whether a company listed in Canada that has historically only obtained a CAS audit report would be able to replace that report with a PCAOB audit report when filing an initial registration statement on Form 40-F. Companies in this scenario should consider discussing their fact patterns with the SEC staff.

III. Application of Rule 2-01(f)(5)(iii) to a non-public or confidential submission

Rule 2-01(f)(5)(iii) of Regulation S-X states that “For audits of the financial statements of FPIs, the ‘audit and professional engagement period’ does not include periods ended prior to the first day of the last fiscal year before the FPI first filed, or was required to file, a registration statement or report with the Commission...”

The Task Force asked the staff for their views on how to apply Rule 2-01(f)(5)(iii) in the context of a confidential or non-public submission of an initial registration statement by an FPI. Specifically, the Task Force asked if the professional engagement period begins on the first day of the fiscal year preceding the confidential submission or preceding the first public filing. For example, if a calendar-year emerging growth company FPI is submitting a confidential or non-public draft registration statement in 2018 with financial statements only for the year-ended 2017 (as permitted by the Division of Corporation Finance processing accommodation) but expects to first publicly file that registration statement in 2019 with financial statements for the year-ended 2018 as well, would the auditor of the FPI only need to be SEC and PCAOB independent for the 2018 and subsequent year financial statements?

The staff indicated that it would not consider a confidential submission to be “filed or required to be filed, In the specific fact pattern discussed, and similarly if a non-emerging growth company initially submitted two years of financial statements instead of three years (as permitted by the Division of Corporation Finance expanded draft processing accommodation), they would view the professional engagement period as beginning on the first day of the year preceding the 2019 filing (i.e., the professional engagement period begins on January 1, 2018) Also, per Rule 2-05(f)(5)(iii) the audit firm would be required to be independent with respect to the FPI in accordance with home country independence standards in all prior periods covered by the registration statement or report.

The Task Force and SEC staff discussed how and whether reliance on Rule 2-01(f)(5)(iii) should be disclosed in the submission or communicated to the SEC staff. The SEC staff highlighted that FPIs submitting draft registration statements that do not yet include financial statements covering

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the “professional engagement period” (i.e., they do not include financial statements for any periods in which the auditor was required to be independent under SEC and PCAOB rules) are strongly encouraged to inform the staff in advance of their submission. In addition, an audit firm is required to follow PCAOB Rule 3526.

IV. Application of FRM 6230.1 and 6230.2 to certain prospectus supplements of FPIs

FRM 6230.1 states (in part) that takedowns from existing shelf registration statements may not commence, and continuous offerings must be suspended, during periods when the financial statements are not current. FRM 6230.2 states (in part) that the requirement for current financial statements includes all required financial statements, including those required under S-X 3-05, 3-09, etc. However, the staff may consider requests for relief in circumstances where this would result in the need to provide financial statements of other entities more current than those that would be provided by a similarly situated domestic registrant.

The Task Force noted that this guidance was discussed in the [September 27, 2004 IPTF Meeting](#), at which time the staff indicated that “once the registration statement is effective, financial statements of a subsequently acquired business would only be required in a delayed or continuous offering if the company concludes that the acquisition represents a fundamental change” consistent with the guidance in FRM 2045.3¹ which explicitly refers to domestic registrants.

The Task Force asked the staff for its position regarding the application of this guidance to an FPI doing a takedown from an effective shelf registration statement when the FPI either: (a) makes an acquisition for which financial statements were not required at the date of effectiveness of the registration statement or (b) includes financial statements of the acquiree that were required at the date of effectiveness but that would be needed to be updated if a new registration statement were to be filed. The staff confirmed its view from the 2004 IPTF meeting that acquisitions made subsequent to effectiveness of the registration statement do not need to be assessed for a takedown, except in those situations where the company concludes that the acquisition represents a fundamental change. However, the staff noted that financial statements for significant acquisitions that were required to be included in the registration statement at

¹ FRM 2045.3 states (in part) that after effectiveness a domestic registrant has no specific obligation to update the prospectus except as stipulated by 1933 Act Section 10(a)(3) and S-K 512(a) with respect to any fundamental change.

effectiveness would have to be current for purposes of a takedown. The staff pointed to Item 512(a)(4) of Regulation S-K which contains a specific requirement for FPIs to update their own and their significant acquiree financial statements at the start of any delayed offering or throughout a continuous offering (e.g., a shelf takedown).

V. Audit reports for abbreviated financial statements of non-issuers

The Task Force and staff discussed alternative presentations for non-issuer financial statements and the reporting thereon. The staff indicated that in certain non-issuer circumstances, it has accepted, on a pre-clearance basis, abbreviated special purpose financial statements that are based upon and in reference to International Financial Reporting Standards as issued by the IASB (IFRS/IASB) without reconciliation even if such financial statements do not fully comply with International Accounting Standard 1 *Presentation of Financial Statements*. For example, an issuer and its auditor may report that the financial statements are “based upon the recognition and measurement principles of IFRS/IASB” or the “principles of IFRS/IASB relevant to such financial statements.”

The SEC staff acknowledged that it may be open to other variations of special purposes financial statements based upon and with reference to, but not fully compliant with, IFRS/IASB if needed to satisfy SEC rules and regulations to include financial statements of a non-issuer. Registrants looking to present such financial statements are encouraged to discuss their specific facts and circumstances with the staff prior to submission.

VI. Monitoring inflation in certain countries

The summary of inflation data collected by the members of the IPTF can be found on the CAQ website at <https://www.thecaq.org/resources/publications>.

VII. Next meeting

The next meeting of the Task Force has been set for May 21, 2019.