



# SEC Regulations Committee Highlights

## Joint Meeting with SEC Staff Held Virtually on June 23, 2021

**NOTICE:**

The Center for Audit Quality (CAQ) SEC Regulations Committee meets 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 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subsequent issuance of technical pronouncements or positions taken by the SEC staff, nor are they deleted when they are superseded by the issuance of subsequent highlights or authoritative accounting or auditing literature.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

SEC Regulations Committee	Securities and Exchange Commission	Observers and Guests
Jonathan Guthart, Chair John May, Vice-Chair Kendra Decker Fred Frank Marie Gallagher Paula Hamric Steven Jacobs Lisa Mitrovich Dan Morrill Steve Neiheisel Mark Shannon Mary Stone Scott Wilgenbusch	<i>Staff from the Division of Corporation Finance (Division) and Office of the Chief Accountant</i>	Erin McCloskey, KPMG Annette Schumacher Barr, CAQ Observer Carolyn Hall, CAQ Observer



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## II. ORGANIZATIONAL, PERSONNEL AND PROJECT UPDATES

### A. Staff Update

The staff provided the following updates on personnel developments in the Division:

- Renee Jones has been named as the new Division Director. John Coates, who previously served as the Acting Division Director, is now the Commission's General Counsel.
- Sarah Lowe will soon join the Division as a Deputy Chief Accountant.
- Patrick Gilmore has left the SEC, creating an open position for a Deputy Chief Accountant. This position will be filled on an acting/temporary basis by current staff members until a public and internal posting for the permanent replacement is done.
- Angela Kim will join CF-OCA through December to assist with rulemaking and updates to the Financial Reporting Manual (FRM).

### B. FRM Update

The staff is continuing its work on updates to the FRM, focusing on revisions to reflect recently released rules and deleting references to outdated rules and requirements.

## III. CURRENT FINANCIAL REPORTING MATTERS

### A. Pre-merger SPAC financial statements after the de-SPAC merger has been completed

The Committee members and staff considered an illustrative scenario in which a calendar year-end SEC registrant SPAC merged with a calendar year-end private operating company in Q1 2021 in a transaction that was accounted for as a reverse recapitalization. The post-merger registrant intends to file a new registration statement on Form S-1 (e.g., to register the shares of common stock which may be issued upon exercise of warrants to purchase the registrant's common stock).

The Committee members asked whether the staff would object to a registrant not including the pre-merger historical financial statements of the SPAC in connection with the Form S-1 if it includes financial statements of the registrant for a post-merger interim period and also includes the historical financial statements of the previously private operating company retrospectively revised, as appropriate, for the impact of the share exchange.



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In this scenario, the staff indicated it would *not* object if the registrant omits the pre-merger historical financial statements of the SPAC from the Form S-1. The staff indicated, however, that this position would not necessarily apply in situations other than reverse recapitalizations.

The staff indicated that it *would* object if the Form S-1 omits the pre-merger historical financial statements of the SPAC in situations where the registration statement does not include financial statements of the registrant for a post-merger period and the historical financial statements of the previously private operating company retrospectively revised, as appropriate, for the impact of the share exchange.

## **B. Change in accountants disclosure relating to a non-reporting target in a SPAC transaction**

The Committee members asked whether a non-reporting target in a SPAC transaction that has had a change in accountants during the two most recent fiscal years or any subsequent interim period would be required to provide disclosures required by Item 304(a) of Regulation S-K in a proxy statement on Schedule 14A or a combined proxy and registration statement on Form S-4. The staff stated that disclosure under Item 304(a) is not required for a non-reporting target in a proxy statement or in a combined proxy and registration statement, but the disclosure could be provided if the information was believed to be material. That said, the disclosures set forth in Item 304(b) of Regulation S-K would be required in both the proxy statement on Schedule 14A or a combined proxy and registration statement on Form S-4.

This response is specific only to a proxy statement or combined proxy and registration statement. FRM 12230.3 contains the following guidance with respect to the Form 8-K filed to report the loss of shell company status shortly after the completion of the de-SPAC merger:

***12230.3** In a reverse recapitalization with a shell company, any change in accountants during the two most recent fiscal years and interim period for the accounting acquirer must be reported in the Form 8-K, as it is required by Item 14 of Form 10. Any change must be reported even if a successor accountant reaudits all of the periods of the financial statements contained in the Form 8-K.*

## **C. Loss of Emerging Growth Company (EGC) status due to exceeding the rolling three-year \$1 billion non-convertible debt issuance threshold**

The staff discussed reporting requirements that apply when a registrant loses its EGC status because it exceeded the rolling three-year \$1 billion non-convertible debt issuance threshold after fiscal period end (annual or quarterly) but before the periodic report associated with that period end (either Form 10-K or Form 10-Q) is filed. For example, a calendar year-end registrant loses



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EGC status in January 2021 because it exceeded the rolling three-year \$1 billion non-convertible debt issuance threshold and will not file its 2020 Form 10-K until February 2021. Given this scenario, the staff addressed the question of whether non-EGC reporting requirements would be applicable in the 2020 Form 10-K.

The staff indicated that the JOBS Act stipulates that EGC status is lost on the date non-convertible debt issuances exceed \$1 billion over a rolling three-year period; from that point on, the entity must comply with non-EGC reporting requirements. In addition, the staff noted that form eligibility is assessed on the date the form is filed. In the above scenario, the registrant would be required to comply with the reporting requirements applicable to a non-EGC in its 2020 Form 10-K since the registrant is no longer an EGC as of the date the Form 10-K is filed. For example, the registrant would not be permitted to avail itself of the exemption afforded to EGCs relating to the auditor attestation requirements relating to internal control over financial reporting set forth in Item 308(b) of Regulation S-K in connection with the 2020 Form 10-K. The registrant also would not be permitted to use the extended transition period exemption for new or revised accounting standards for EGCs and would need reflect in its 2020 Form 10-K the adoption of such accounting standards that had previously been deferred.

The staff also indicated that the same conclusion would apply in the context of a reverse merger in which the accounting acquiror had issued more than \$1 billion in non-convertible debt during a relevant 3-year period.