

Snapshot

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Highlights of recent SEC Regulations Committee meetings

The Center for Audit Quality (CAQ) recently issued highlights of the [September 2021](#) and the [March 2022](#) meetings between its SEC Regulations Committee and the SEC staff. The SEC Regulations Committee meets periodically with the SEC staff to discuss emerging financial reporting issues relating to SEC rules and regulations. Key topics discussed at the meetings are summarized here.

September 2021 meeting

Omission of pre-merger SPAC financial statements

The SEC staff and committee members discussed an example where a calendar-year special purpose acquisition company (SPAC) merged with a calendar-year private operating company through a forward acquisition in the second quarter of 2021. After completing the merger, the registrant intended to file a new registration statement on Form S-1.

The SEC staff indicated two scenarios in which it would not object to the registrant omitting the SPAC's pre-merger historical financial statements:

1. If the June 30, 2021 Form 10-Q includes both (a) the private operating company's historical financial statements through the transaction date, and (b) the registrant's financial statements for the post-merger period
2. If the December 31, 2021 Form 10-K includes (a) the private operating company's audited historical financial statements for one or two years ended December 31, 2020 as well as the 2021 audited financial statements through the transaction date, and (b) the registrant's audited financial statements for the post-merger period

The financial statement presentation in both Forms 10-Q and 10-K should include a black line separating the predecessor and successor periods.

In addition, when asked whether the staff would object if a registrant omits the SPAC's pre-merger historical financial statements in Form S-1 filed in September 2021, but includes both (a) the private operating company's audited historical financial statements for two or three years ended December 31, 2020, and (b) the unaudited periods noted in bullet #1 in the adjacent column, the SEC staff indicated that Rule 3-02 of Regulation S-X applies to the financial statement requirements. The SEC staff also noted that the financial statements required for a forward acquisition might differ from those required in a reverse recapitalization.

Use of pro forma information in significance tests

Committee members asked the SEC staff whether a registrant may use pro forma financial information included in a registration statement that reflects the consummation of one acquisition in order to test the significance of subsequent acquisitions that have occurred in the same year.

In the first example, a calendar-year emerging growth company (EGC) planning to confidentially submit its draft IPO registration statement consummated two acquisitions after its most recent year-end—Target X was acquired in February and Target Y was acquired in April. The registrant intends to include the pre-acquisition financial statements and pro forma financial information for Target X in both the confidential submission and the public filing of Form S-1. The staff indicated that in this fact pattern, it appears that the registrant would meet the requirements of S-X Rule 11-01(b)(3) and could use the pro forma information

that reflects the acquisition of Target X to test the significance of Target Y.

In the second fact pattern, the same registrant noted that there was a change in control in the first example and said it plans on presenting its results of operations using a black line presentation, which forms the basis of the pro forma financial information. The SEC staff noted that in this situation, the registrant should preclear with the staff in order to use pro forma financial information to measure significance.

Application of the income test when investee is accounted for at fair value

Committee members asked the SEC staff whether the revenue component of the income test applies when testing significance of an investee under S-X Rule 3-09 if the investee is accounted for using the fair value option. Subsequent to the meeting, the SEC staff clarified that the revenue component of the income test does apply in this situation when calculating significance for the purposes of both S-X Rules 3-09 and 4-08(g).

The SEC staff indicated that for the income component of the income test, Section 2435.2 of the [Financial Reporting Manual](#) (FRM) continues to apply. That section states that “the income test should be computed using as the numerator the change in the fair value reflected in the registrant’s statement of comprehensive income.”

March 2022 meeting

De-SPAC transactions

Use of ‘double dummy’ structures

Committee members noted an increase in the use of “double dummy” structures in de-SPAC transactions and asked the staff to confirm their understanding of certain SEC reporting matters. In response, the staff pointed to the SEC’s [SPAC proposal](#), which incorporates current reporting practices and interpretations.

Loss of EGC status

Committee members asked about the impacts on EGC accommodations when a target no longer qualifies for EGC status. In the first scenario, the target no longer qualifies for EGC status after the initial filing of Form S-4/merger proxy (Form S-4) but before Form S-4 effectiveness. In the second scenario, the target no longer qualifies for EGC status after the effective date of Form S-4 but before filing the Super 8-K, which will include updated financial statements.

The staff noted that it would not object to the company continuing to apply EGC accommodations to the target

until Form S-4 is declared effective. However, the company would not be eligible to apply EGC accommodations to the target for any filings after the effective date of Form S-4. With respect to the Super 8-K, the staff indicated that the applicability of the EGC accommodations would depend on the target’s EGC status as of the date the Super 8-K is filed. If EGC accommodations are not allowed in the Super 8-K, the company would be required to, among other things, reflect the adoption of accounting standards applicable to public companies and report critical audit matters for applicable periods, including those that were previously included in Form S-4.

SRC accommodations for a private operating company

Committee members asked the SEC staff whether FRM Section 5110.4 can be analogized when evaluating the reporting requirements for a private operating company in a de-SPAC transaction. The staff noted that Section 5110.4 is specific to a spin-off and does not extend to a de-SPAC transaction.

Significance calculation for an acquisition by a non-wholly-owned consolidated subsidiary

The SEC staff discussed an example where a consolidated 60%-owned subsidiary acquires 100% of a business. This same fact pattern was subsequently discussed at the 2022 AICPA & CIMA Conference on Current SEC and PCAOB Developments and is summarized in Grant Thornton’s [New Developments Summary 2022-02](#).

Applicability of the revenue component of the income test

Predecessor and successor periods

Committee members asked the SEC staff (1) how to determine whether there has been material revenue when a registrant or a target is a successor to a predecessor company, and (2) how the registrant or the target would apply the revenue component if applicable (that is, if there is material revenue).

The staff indicated that the registrant should consider all the activity for the full relevant predecessor and successor periods in determining whether there is material revenue. The revenue component of the income test then would be applied, consistent with the income component of the test as described in FRM Section 2025.

SRC acquisition of an equity method investee

The SEC staff further indicated that Note 2 to FRM Section 2420.9 should be read to include the revenue component of the income test when a smaller reporting company (SRC) acquires an equity method investment.

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