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Heads Up | Volume 29, Issue 18
December 18, 2022

In This Issue

Highlights of the 2022 AICPA & CIMA Conference on Current SEC and PCAOB Developments

Executive Summary

The annual AICPA & CIMA Conference on Current SEC and PCAOB Developments in Washington, D.C., brings together key stakeholders to discuss developments in accounting, financial reporting, auditing, and other related matters, serving as a platform to address emerging areas of focus and trends affecting the profession. At this year's conference, participants renewed their focus on the critical role stakeholder communication plays in the delivery of high-quality financial reporting.

Topics that were central to the conversations at the conference included various projects on the FASB's technical and research agendas, including digital assets, segment reporting, the statement of cash flows, and income statement disaggregation; emerging issues, including those related to climate change, environmental, social, and governance (ESG) reporting, and cybersecurity; SEC reporting matters; attracting talent to the profession; and audit quality.

In a keynote session, SEC Acting Chief Accountant Paul Munter focused on how standards can be improved to meet investors' needs. Specifically, Mr. Munter emphasized the disaggregation of financial information, including that related to the income statement, income taxes, segment reporting, and the statement of cash flows. Mr. Munter also discussed the importance of accounting for crypto assets based on the substance of the transaction.

Staff from the SEC's Division of Corporation Finance (CF or the "Division") provided important updates on recent rulemaking, an overview of new and updated compliance and disclosure interpretations (C&DIs) on non-GAAP financial measures, and expectations that companies continue to evaluate and update their disclosures in light of the multitude of evolving macroeconomic conditions and emerging issues. In addition, Office of the Chief Accountant (OCA) Senior Associate Chief Accountant Jonathan Wiggins shared perspectives on recent accounting consultation trends, especially those related to crypto assets.

During the PCAOB keynote session and standard-setting update, PCAOB Chair Erica Williams addressed the Board's recent adoption of amendments to its auditing standards as part of its Other Auditors project. Moreover, she highlighted the Board's new five-year strategic plan, which includes actively updating over 30 standards as part of 10 standard-setting projects. Ms. Williams also remarked on the PCAOB's 2022 inspection cycle, noting that it has resulted in an increased number of comments. She further stressed the importance of high-quality audits to upholding trust in the profession.

Multiple conference sessions touched on accounting and auditing during challenging economic times, including considerations for financial statement preparers. Speakers emphasized the increasing importance of transparency related to key judgments, estimates, and the identification of estimation uncertainties.

These and other topics discussed at the 2022 AICPA & CIMA conference are summarized throughout this *Heads Up*.

ESG Reporting

Key Takeaways Regarding Climate-Related Disclosures

Given the evolving focus on regulations associated with climate change, companies are beginning to prepare for reporting under a climate-related disclosure framework. During the conference, multiple individuals, including Deloitte Partner Laura McCracken, highlighted key considerations for companies as they begin, or continue, their ESG reporting journey:

- Establish strong cross-functional teams, which should include all relevant stakeholders in the organization, and combine the expertise of sustainability and finance personnel.
- Establish appropriate governance structures to enable effective oversight.
- Perform a gap analysis comparing (1) current climate-related disclosures with those proposed and (2) current reporting capabilities with those that would be required for the company to provide the proposed disclosures.
- Create a robust system of internal controls to ensure that the data that will be used to create disclosures can be reproduced, assured, and relied on.
- Educate decision-making individuals throughout the company's supply chain to ensure that they have the knowledge they need to understand how business decisions and strategy affect the company's climate-related commitments.
- Evaluate the need for systems and tools, including those used in (1) the development of a greenhouse gas emission inventory, (2) forecasting, (3) tracking emissions, and (4) reporting.

Preparers also noted that they either currently have their auditors provide assurance services over certain ESG reporting metrics or are working with auditors to ensure that the company's disclosures and the underlying data used to generate those disclosures are capable of being subject to audit or other assurance in the future.

ESG Standard Setting

Several speakers highlighted recent global standard-setting activity associated with rules on climate-related disclosures and climate-related risks in financial statements. Two of the most frequently cited rules were:

- The SEC's March 2022 proposed rule on climate-related disclosures, which would apply to all companies that are currently SEC registrants or that are seeking registration on a U.S. exchange.
- The International Sustainability Standards Board's (ISSB's) exposure drafts IFRS S1 (on disclosure requirements associated with sustainability-related financial information) and IFRS S2 (on climate-related disclosures).

For further details on the SEC proposal and the ISSB's exposure drafts, see Deloitte's March 21, 2022 (updated March 29, 2022), and May 26, 2022, *Heads Up* newsletters, respectively.

SEC staff members noted that they have been asked about standard-setting convergence, and several speakers discussed the SEC's recent climate proposal as well as how the Commission continues to monitor and collaborate with other standard setters. For example, Paul Munter noted that the SEC is actively monitoring climate-related rulemaking by other standard setters in an effort to work with, and learn from, these standard setters to shape the Commission's final rule on climate-related disclosures. OCA Senior Associate Chief Accountant Nigel James highlighted the SEC's role on the IFRS Foundation Monitoring Board (the "Monitoring Board") and how this allows the SEC to be active in international standard setting.

Connecting the Dots

The Monitoring Board is the governing body over the IFRS Foundation, which oversees the ISSB and the International Accounting Standards Board (IASB). The OCA represents the SEC on the Monitoring Board and participates in governance and due process oversight with respect to rulemaking and other matters that affect the Monitoring Board. In addition, Mr. Munter is the vice chairman of the International Organization of Securities Commissions's (IOSCO's) Committee One, which deals with auditing, accounting, and disclosure matters. As Mr. James pointed out during the conference, IOSCO has positioned itself as the organization that will endorse the ISSB's standards for jurisdictions around the globe. This relationship positions the SEC to participate in the standard-setting process with these standard setters.

In addition, speakers on a panel of ESG preparers noted that the Corporate Sustainability Reporting Directive (CSRD) was proposed by the European Commission and adopted by the European Union in November 2022. Once effective, the CSRD will require sustainability reporting far beyond what most companies provide today. The CSRD will also apply to a substantial number of companies that have not been subject to mandatory sustainability reporting, and it will affect more than just E.U.-based entities. All companies with operations in E.U. jurisdictions, including certain U.S.-based entities with subsidiaries or branches in the European Union, will be subject to the CSRD's reporting and assurance requirements.

Stay tuned for a *Heads Up* to be issued in the next few weeks on the recently adopted CSRD and considerations for U.S. companies.

ESG Assurance Update

The importance of obtaining assurance on ESG information to promote the credibility and reliability of the information being disclosed was a common theme during the conference. While standard setters are still finalizing rulemaking on climate-related disclosures, there is an increasing demand from investors. Accordingly, engaging with audit firms early is key to a successful transition to climate-related reporting.

As assurers of climate-related disclosures, audit firms are upskilling their people to meet the increasing demands of investors and regulators for assurance on such disclosures. In doing so, they are leveraging existing talent, bringing in individuals with subject matter expertise, and providing ample training opportunities. European countries and regulators are ahead of the United States and other countries in standard setting on climate-related matters, and in a panel discussion at the conference, Laura McCracken noted that audit firms are leveraging their global networks to (1) ensure a consistent approach in interpreting standards and regulations, (2) drive the application of a consistent assurance approach, and (3) provide consistent training for their people across the globe.

Preparers are facing challenges related to the gathering of quality data for their reporting. This is an area that assurers will have to keep top of mind when obtaining an understanding of the risks, processes, and controls over the information used and evaluating the reliability of that information.

Digital Assets

Digital assets were once again an area of focus in several sessions of this year's conference. In response to recent market conditions, SEC Commissioner Hester Peirce emphasized that individuals and businesses in the digital asset market should leverage the lessons learned from traditional finance: investors and counterparties should perform appropriate due diligence, ask for proof of reserve, and be mindful of conflicts of interest and other counterparty and investment risks. However, Ms. Peirce noted that while it is prudent for businesses dealing with crypto assets to apply best practices and that some regulation may follow, such regulation should not be so difficult to comply with that it becomes a barrier to entry for smaller companies.

Paul Munter observed that there are a number of different accounting issues that the SEC has spent considerable time addressing. For arrangements for which there are no accounting standards that are directly on point, the staff has drawn upon existing accounting standards in determining which accounting treatment best depicts the economics of digital asset arrangements. Mr. Munter emphasized that there are unique risks inherent to arrangements involving digital assets that are not present in other types of arrangements.

Accounting and Reporting

Accounting for Crypto Lending Arrangements

Jonathan Wiggins stated that the SEC staff has observed different approaches in the application of U.S. GAAP or IFRS® Accounting Standards to crypto lending transactions and that the staff believes that some of the approaches do not faithfully represent the underlying economics of the transactions or serve the needs of investors. He described a basic fact pattern in which a lending entity loans a fixed quantity of crypto assets to a borrower for a specific period. While the loan is outstanding, the borrower has the right to use the crypto assets at its sole discretion (e.g., to sell or to pledge the crypto assets to a third party). At the end of the loan term, the borrower is required to return the same type and quantity of crypto assets to the lending entity. The lending entity earns a fee as compensation, which is typically expressed as a percentage of the crypto assets lent. In certain arrangements, the lending entity might also require the borrower to pledge collateral to the lending entity.

Mr. Wiggins stated that with regard to this fact pattern, the staff concluded that it would not object to the following accounting treatment:

- The lending entity derecognizes the crypto assets when they are lent to the borrower because the lending entity no longer has the right to the economic benefits of the crypto assets and therefore does not have control over the crypto assets lent until they are returned.
- At derecognition of the crypto assets, the lending entity recognizes an asset that reflects the lending entity's right to receive the crypto assets back from the borrower (referred to below as a crypto asset loan receivable), as follows:
  - The crypto asset loan receivable would be measured at inception and at subsequent reporting dates on the basis of the fair value of the crypto assets lent, with changes in fair value reflected in profit and loss. Mr. Wiggins noted that this accounting could result in the recognition of a gain or loss at the inception of the loan, which would be calculated as the difference between the carrying value of the crypto assets and the fair value of the lent crypto assets at the time of the loan's inception. He also noted that the staff believes that any gains or losses that are recorded upon initial derecognition of the lent crypto assets or are based on remeasurement of the loan asset receivable would be presented separately from revenue in the income statement.
  - Because the lending transaction exposes the entity to the borrower's credit risk, the entity should recognize an allowance for credit losses at the inception of the loan and at the end of each subsequent reporting period. In recognizing the allowance, the lending entity would look to the principles of ASC 326 under U.S. GAAP or to IFRS 9 under IFRS Accounting Standards.

Connecting the Dots

At its October 12, 2022, Board meeting to discuss its project on accounting for and disclosure of crypto assets, the FASB tentatively decided to require all public and private entities to initially and subsequently measure certain crypto assets at fair value in accordance with ASC 820. (See Deloitte's October 18, 2022, *Heads Up* for additional information.) If that proposed requirement is included in a final ASU, we would expect that upon adoption of such guidance by an entity that applies U.S. GAAP, any gain or loss recognized upon the lending of digital assets within the scope of the ASU related to the difference between (1) the carrying value of the lent assets and (2) the fair value of the crypto asset loan receivable would be minimal; this is because the assets would be required to be carried at fair value. However, there may still be a requirement to record a loss related to the lending entity's recognition of an allowance for credit losses.

Mr. Wiggins also emphasized the importance of disclosing information to satisfy the overall principle of providing investors with information regarding the terms, nature, and risks and uncertainties associated with the arrangements. Entities should look to existing accounting guidance as a starting point in identifying other relevant disclosures to meet the overall principle. He listed some examples of disclosures that the staff would expect regarding these types of arrangements:

- *Collateral* — As noted above, lending arrangements may require the borrower to post collateral to the lender. In such instances, the staff would expect disclosures of the following:
  - A description of the type and amount of collateral posted by the borrower.
  - Any requirement for the borrower to pledge additional collateral during the term of the loan.

- How the lending entity monitors its ability to liquidate the collateral in the case of the borrower's default.
- Changes in the collateral's fair value during the term of the loan.

- *Credit risk* — The staff would expect disclosure of information that would give investors insight into how the lending entity monitors and manages its exposure to credit risk. Mr. Wiggins noted that the disclosures currently required by ASC 326 or IFRS 7 (which includes disclosure requirements for financial instruments within the scope of IFRS 9) provide a meaningful starting point for considering which disclosures would be important for investors. Specific disclosures the staff would expect include:
  - Factors that management considers in evaluating and managing the entity's exposure to credit risk at inception and on an ongoing basis.
  - Qualitative and quantitative factors influencing estimates of expected credit losses.
  - Changes during the period in the allowance for expected credit losses, including current-period provisions, write-offs, and recoveries of previous write-offs.
  - Crypto asset loans that are past due and the determination of such status.

  Mr. Wiggins also stated that lending entities should consider providing disclosures if a lending arrangement involves a related party or concentration of credit risk. Finally, he noted that the examples given are not intended to represent a comprehensive list, and entities should think about how to provide decision-useful information.

Connecting the Dots

The treatment described by Mr. Wiggins is different from the approach previously outlined in Q&A 25 of AICPA Practice Aid *Accounting for and Auditing of Digital Assets*, which was subsequently rescinded. We understand that the AICPA's Digital Assets Working Group will be collaborating with the SEC to provide new interpretive guidance in response to the fact pattern described in Q&A 25. Companies should consider consulting with their professional advisers for assistance with lending-related transactions associated with crypto assets.

SAB 121

During the session on the OCA's current projects, Mr. Wiggins reiterated the unique risks and complexities of arrangements involving digital assets and noted that the SEC has received questions since the issuance of SEC Staff Accounting Bulletin (SAB) No. 121 specifically related to its scope. During the conference, both Mr. Wiggins and Mr. Munter emphasized that it is important for companies to understand the facts and circumstances of a transaction when determining whether it is within the scope of SAB 121. Mr. Wiggins noted that investors have been complimentary of the additional information received as a result of entities' application of the SAB.

For additional information, see Deloitte's April 6, 2022 (updated July 28, 2022), *Financial Reporting Alert* and Appendix B of the AICPA's Practice Aid *Accounting for and Auditing of Digital Assets*.

Other Accounting and Disclosure Considerations

During the session on Division developments, Division Chief Accountant Lindsay McCord discussed accounting issues related to crypto assets deemed to be securities when the issuer is registering the assets in compliance with federal securities laws (often referred to as an initial coin offering). Ms. McCord emphasized that it is important for an entity to understand the explicit and implicit terms and conditions of the crypto assets being offered in determining the accounting treatment. She also noted that such terms should be clearly disclosed in the filings. Ms. McCord shared a nonexhaustive list of examples of important terms that the Division may focus on when reviewing companies' filings:

- Vesting terms.
- Conversion features.
- Holder's ability to obtain, transfer, or return the crypto assets to the issuer.
- Voting rights, dividends, and other distribution features.
- Minimum sale or issuance requirements.
- Consideration of rights or obligations contingent on future events.
- Sales of future token issuances.
- In instances in which obligations are related to the issuance of assets upon completion of technology supporting the asset, a description of development status and the expected date the technology will be completed.

In addition, Ms. McCord noted that a company's accounting conclusions should be well-supported, including providing the rationale for rejecting other alternatives, and that such conclusions should be communicated with the company's auditors and audit committee. To help facilitate a smooth review, companies should complete such preparations before submitting any registration statement or offering document to the staff.

FASB Update

During the panel discussion on FASB accounting standard-setting updates, Deputy Technical Director Helen Debbeler summarized the FASB's project related to crypto assets. Ms. Debbeler clarified that the scope of the project focuses on holders of crypto assets and does not affect issuers' accounting for crypto assets. Ms. Debbeler shared that there has been positive feedback regarding the current tentative decisions.

Connecting the Dots

At its December 14, 2022, meeting, the FASB discussed the presentation and disclosure of crypto assets and made tentative decisions regarding how both public and private companies should present and disclose information about their crypto asset holdings.

For more information about the FASB's project on the accounting for crypto assets, see Deloitte's September 8, 2022, and October 18, 2022, *Heads Up* newsletters. Stay tuned for Deloitte's upcoming *Heads Up* on recent digital asset developments.

Assurance and ICFR

OCA Senior Associate Chief Accountant Anita Doutt shared her views regarding auditing transactions involving crypto assets, emphasizing the importance of risk assessment, understanding the company's ICFR, and the audit response planned for the identified risks as well as evaluating whether sufficient audit evidence has been obtained. She noted, at a high level, that there are a host of audit considerations that come with the novelty related to crypto assets, including whether companies need to engage the services of individuals with specialized skills or knowledge in cryptography, distributed ledger technology, valuation, or the related laws and regulations. She further observed that in light of the abundance of factors to consider and the potential risks, ongoing risk assessment is crucial in the design and implementation of processes and controls to respond to those risks.

Ms. Doutt cited the following examples of factors to consider as part of a risk assessment:

- How the private keys are generated and managed.
- Whether there is a fraud risk.
- Whether there is a risk of management override of controls over the private keys that could result in the misuse or misappropriation of assets.
- Whether the information pulled from the blockchain is reliable and whether third-party providers are involved.

Further, Ms. Doutt clarified that when crypto assets are on a decentralized blockchain, auditors need to be mindful of the risks associated with related-party transactions because (1) pseudonyms are widely used and (2) it can be difficult to spot a related-party transaction. Moreover, because of the way the blockchains are designed, it is nearly impossible to reverse fraudulent or erroneous transactions.

In the session on PCAOB inspection updates, PCAOB Division of Registration and Inspections Director George Botic indicated that the Board continues to select audits for inspection when transactions in crypto assets are material to the financial statements. He also pointed out an inspection deficiency in which the auditor's procedures for evaluating the sufficiency and appropriateness of the evidence obtained for crypto assets or crypto transactions were insufficient.

"Dear Issuer" Letter for Digital Assets

Cicely LaMothe, acting deputy director of the Division's Disclosure Operations program, noted that in light of recent bankruptcies and financial distress in the crypto market, on December 8, 2022, the Division released a sample letter that highlights the types of comments the Division may issue regarding the need for entities to evaluate their exposure to recent bankruptcies and financial distress in the crypto asset markets, as well as their exposure to other parties and regulatory impacts, and to address any such material impacts in their disclosures.

The letter urges companies to "evaluate their disclosures with a view towards providing investors with specific, tailored disclosure about market events and conditions, the company's situation in relation to those events and conditions, and the potential impact on investors." Ms. LaMothe also explained that the sample letter focuses on the direct and indirect impact of market events, which may include:

- A company's exposure to counterparties and other market participants' risks.
- Risks related to the company's liquidity and ability to obtain financing.
- Risks related to legal proceedings.
- Investigations or other regulatory impacts in the crypto asset markets.

Ms. LaMothe stated that the comments in the letter should not be considered new disclosure requirements but rather example comments that the staff may issue on the basis of current disclosure requirements. Companies may determine that some of the example comments do not apply to their businesses. In addition, companies should exercise judgment in evaluating their disclosures because the list of comments in the letter is not meant to be comprehensive. Ms. LaMothe also reminded companies that they should consider these disclosures in transactional filings and disclosure documents that might not typically be subject to further review by the Division, such as automatically effective registration statements or prospectus supplements for takedowns from existing shelf registration statements.

Accounting and Financial Reporting

Accounting in Uncertain Economic Times

The topic of challenges in accounting and financial reporting as a result of economic uncertainty was raised in various sessions during the conference. For example, Paul Munter discussed how inflation, rising interest rates, labor challenges, and supply-chain issues all create uncertainties that may present challenges in making estimates and judgments that are embedded in financial statements. He noted the need for transparency related to the identification of key judgments and the associated estimation uncertainty.

During the panel discussion on the OCA's current projects, Nigel James noted that registrants should be mindful about how best to meet the informational needs of investors when preparing financial statements, MD&A, and other required disclosures in the current economic environment. He mentioned going-concern assumptions, discontinued-operations considerations, and subsequent-events disclosures as potential areas of focus and noted that estimates should be internally consistent across all areas of an entity's financial reporting. For additional discussion of financial reporting challenges, see the Macroeconomic and Geopolitical Environments section.

For further discussion of accounting and reporting considerations related to the current macroeconomic and geopolitical environment, see Deloitte's December 1, 2022, *Financial Reporting Alert*.

Consolidation and Variable Interest Entities

Jonathan Wiggins commented on recent consultation trends related to consolidation matters. Some consultations have focused on the evaluation of whether a parent entity maintains a controlling financial interest in a foreign subsidiary. In a manner consistent with his comments at last year's conference, he described complexities associated with China-based variable interest entities (see Deloitte's December 12, 2021, *Heads Up* for additional information). This year, Mr. Wiggins noted that the scope of questions received has broadened and that inquiries are sometimes related to consolidation analyses of subsidiaries in other foreign jurisdictions where complexities can arise in the primary beneficiary analysis as a result of the regulatory environment. Mr. Wiggins also described recent consultations that have focused on the evaluation of whether a reporting entity has power over an investee in situations in which the investor acquires or retains a large economic interest in the investee and claims to not have power over that investee. He emphasized the importance of applying skepticism in such scenarios.

Segment Reporting

Paul Munter discussed the FASB's recent proposed ASU that would require enhanced disclosures, including the disclosure of significant segment expenses. (See Deloitte's November 11, 2022, *Heads Up* for additional information.) Mr. Munter also highlighted investor feedback on segment reporting, indicating that investors have requested additional information about the identification of segments, including the aggregation of operating segments, and have questioned whether current disclosures are providing relevant information. For a discussion of the FASB's proposed updates to the guidance on segment reporting, see the Improvements to Reportable Segment Disclosures section.

During the session on Division developments, Deputy Chief Accountant Melissa Rocha further emphasized the SEC's current focus on the identification of operating segments because of its significance in segment reporting and in other areas of accounting. Ms. Rocha's remarks focused on identifying information reviewed by the chief operating decision maker (CODM), which is one of the criteria used in identifying operating segments. She noted that no single piece of information is expected to be determinative in this process. Instead, the mix of information presented to the CODM should be evaluated in totality to align the presentation of segment information in the financial statements with management's internal evaluation and other publicly available information. Ms. Rocha provided two fact patterns to illustrate the SEC's recent analysis in this area:

- *Fact pattern 1* — The SEC staff observed an entity discussing revenue and margin information on earnings calls at a more granular level than the information included in the financial statements. The entity had originally identified a single operating segment, which, as originally presented, aggregated multiple business units. During the comment letter process, the staff learned that the CODM regularly reviewed the operating results, including a comparison with forecasts, at the lower level presented during the earnings call. In this case, the staff objected to the identification of a single operating segment.
- *Fact pattern 2* — The SEC staff observed that management publicly discussed revenue and non-GAAP margin metrics for certain product lines and services and geographic regions, even though the reporting entity had identified a single operating segment. The staff learned through the comment letter process that the CODM was reviewing the non-GAAP measures at both a disaggregated level and a consolidated level. The entity proactively revised its number of operating segments from one to two.

Office Chief Anne Parker from the Division's Office of Manufacturing clarified that in the preparation of comment letters, the SEC staff can consider all publicly available information — including a company's Web site, analyst reports, earnings call transcripts, public comments, and social media posts — when evaluating whether an entity has appropriately identified operating segments.

In addition, during a Q&A session, Lindsay McCord stated that financial information (e.g., segment profit or loss for each reportable segment) that must be disclosed under GAAP is not a non-GAAP measure. Disclosure of total segment profit or loss on a consolidated basis outside of the financial statements (e.g., MD&A) would be considered a non-GAAP disclosure that may be included outside of the financial statements if it is in compliance with the SEC's non-GAAP regulations.

Statement of Cash Flows

In his remarks related to the disaggregation of financial statement information, Paul Munter noted that investors often request additional details about an entity's cash flows. He mentioned that the FASB's research agenda project on the presentation of the statement of cash flows was underway but in the early stages. Further, he encouraged participants to consider the incremental information provided by using the direct method of preparing the statement of cash flows, noting that such method gives investors decision-useful data.

Connecting the Dots

Currently, substantially all preparers use the indirect method of presenting the statement of cash flows. When applying that method, preparers should be sure to disclose sufficient information about the most relevant operating activity captions (e.g., receivables, payables, inventory) since doing so would permit financial statement users to roughly approximate results under the direct method, as discussed in paragraph 121 of the Basis for Conclusions of FASB Statement 95 (superseded).

Business Combinations

Jonathan Wiggins noted that a high volume of consultations focused on business combinations. He indicated that the most common questions were related to the identification of an accounting acquirer; the evaluation of whether a transaction should be considered part of, or separate from, a business combination (e.g., compensation expense); the determination of whether a transaction is a spin-off or a reverse spin-off; and the assessment of whether a distribution is pro rata or non-pro-rata.

SEC Reporting

Disclosure Trends and Areas of Focus and Comment Letter Trends

Non-GAAP Measures and Metrics

Lindsay McCord noted that on December 13, 2022, the SEC staff released new and updated C&DIs on non-GAAP financial measures (see Appendix B). She indicated that the updated C&DIs had not been refreshed since being published in 2016. In addition, she observed that the volume of non-GAAP disclosure comments has remained high over the past several years and that the SEC staff continues to receive questions on this topic. She also explained that the SEC staff is striving to use the C&DIs to provide transparency into the staff's process for evaluating certain non-GAAP measures and its criteria for considering such measures misleading.

Further, Ms. McCord emphasized that the intent of the C&DIs is to memorialize interpretive feedback that the SEC staff has provided to registrants in various speeches and the comment letter process. Also, the updates to the C&DIs are not intended to change the SEC staff's position on non-GAAP adjustments that they have not objected to in the past (e.g., adjustments for restructuring costs and stock-based compensation). However, she further acknowledged that conclusions about the application of the C&DIs to non-GAAP measures and adjustments will depend on a registrant's individual facts and circumstances.

Ms. McCord highlighted the following updated or newly issued non-GAAP C&DIs:

- C&DI 100.01, which was updated to add interpretive guidance on what may be considered normal or recurring. The C&DI cautions issuers that a non-GAAP measure may be considered misleading if it excludes cash operating expenses that are normal and recurring in the operation of a registrant's business.

  Ms. McCord explained that the SEC staff evaluates whether an expense is "normal" by considering the nature and effect of the non-GAAP adjustment and how the expense is related to the registrant's operations, revenue-generating activities, business strategy, industry, and regulatory environment. She also noted that the SEC staff evaluates whether an operating expense is considered "recurring" when it occurs repeatedly or occasionally, including at irregular intervals of reoccurrence.

  Further, Ms. McCord provided an example from the retail industry in which retailers often open, close, and relocate stores in the normal course of business. A retailer would not be able to make a reasonable argument that the expenses associated with opening a new store would be unique because opening new stores would be considered part of revenue-generation and part of the business strategy for the retailer's growth. While new store openings may not be occurring at a high frequency (e.g., daily or monthly), they would still be considered part of normal operations, and it is likely that store openings would be occurring occasionally at irregular intervals. Therefore, the associated preopening expenses should not be excluded from the calculation of a non-GAAP measure. Ms. McCord noted that this concept would also apply in the restaurant industry.

  > See Section 4.3.1 of Deloitte's Roadmap *Non-GAAP Financial Measures and Metrics* for more examples of expenses that may be considered normal, recurring cash operating expenses.

- C&DI 100.04, which was updated to clarify that adjustments that represent the application of individually tailored accounting principles extend beyond the original example of adjustments that accelerate revenue recognition. The C&DI specifies that non-GAAP adjustments that change the GAAP recognition and measurement principles would be considered individually tailored and may cause the non-GAAP measure presentation to be misleading.

  Ms. McCord emphasized that individually tailored measures extend beyond those affecting revenue recognition. The C&DI includes new examples that illustrate the application of individually tailored accounting principles and thus may be misleading, such as (1) presenting a non-GAAP measure of revenue net when gross presentation is required by GAAP and vice versa and (2) changing the basis of accounting for revenue or expenses in a non-GAAP measure from a GAAP accrual basis to a cash basis.

  See Section 4.3.3 of Deloitte's Roadmap *Non-GAAP Financial Measures and Metrics* for more examples of measures that may be considered individually tailored accounting.

- C&DI 100.05, which was added to memorialize the SEC's guidance that non-GAAP measures should be labeled as such and that adjustments should be clearly labeled within the disclosures.

  The C&DI also provides examples of misleading labels and descriptions for non-GAAP measures, which include (1) labeling a non-GAAP contribution margin as net revenue; (2) non-GAAP measure descriptions that are the same as, or are confusingly similar to, titles or descriptions used for GAAP financial measures; and (3) non-GAAP measures labeled as "pro forma" that are not calculated in accordance with the requirements of Regulation S-X, Article 11.

  Connecting the Dots

  During a panel discussion, Ms. McCord clarified that registrants are not required to use the term "non-GAAP" in the title of each non-GAAP measure; however, they must label the related disclosures as non-GAAP. For example, a registrant can use "adjusted income" as the title for a non-GAAP measure and then explain that the measure is non-GAAP in the disclosure.

- C&DI 100.06, which was added to emphasize that no amount of disclosure can make a measure compliant with non-GAAP rules if it has been determined to be misleading.

  Ms. McCord indicated that once a conclusion has been reached that a non-GAAP measure or adjustment is misleading or otherwise inconsistent with non-GAAP rules, the SEC staff expectation is that the registrant will correct such presentation in the next filing or publicly available SEC document by removing such measure or adjustment. If comparable periods are presented, the non-GAAP measure or adjustment should be removed from all periods presented.

- C&DI 102.10, which provides guidance on when a non-GAAP measure is more prominent than the corresponding GAAP measure, was updated to add three subsections:

  - C&DI 102.10(a), which highlights the scope of what is considered undue prominence and includes refreshed examples of situations in which non-GAAP measures would be disclosed more prominently than the comparable GAAP measures. Those include presenting (1) ratios when a non-GAAP measure is used in the numerator, denominator, or both without disclosing the equivalent GAAP ratio or (2) charts, tables, or graphs of non-GAAP measures without disclosing the comparable GAAP measures.

Ms. McCord noted that footnote 27 of the SEC's original final rule on the conditions for the use of non-GAAP financial measures (issued in 2003) already extended the non-GAAP requirements to each non-GAAP measure used in the calculation of a ratio, but the guidance in the C&DI serves as an additional reminder for registrants that the GAAP counterpart should also be presented.

- C&DI 102.10(b), which provides examples of situations in which non-GAAP reconciliations may give undue prominence to a non-GAAP measure. Ms. McCord stressed that non-GAAP reconciliations should always begin with the most directly comparable GAAP measure and reconcile down to the non-GAAP measure.

  See Section 3.3 of Deloitte's Roadmap *Non-GAAP Financial Measures and Metrics* for more information about the prominence of presentation.

- C&DI 102.10(c), which specifies that a non-GAAP income statement would include all or most of the line items and subtotals contained in a comparable GAAP income statement. Before being updated, C&DI 102.10 indicated that disclosing a "full income statement of non-GAAP measures" would be an example of a non-GAAP measure that is presented with undue prominence. Ms. McCord noted that issuers often had questions about the meaning of the term "full" in that context, so the guidance was updated to delete the term "full."

  See Section 3.3.1 of Deloitte's Roadmap *Non-GAAP Financial Measures and Metrics* for more information about the presentation of a non-GAAP income statement.

For the text of the new and updated non-GAAP C&DIs, see Appendix B.

Macroeconomic and Geopolitical Environments

Cicely LaMothe highlighted the need for companies to consider the impacts of current macroeconomic and geopolitical conditions such as rising inflation and interest rates, supply-chain disruptions, the Russia-Ukraine war, and COVID-19 on their required disclosures and public filings.

The Division has issued several "Dear Issuer" letters in the past year, as discussed in more detail in the "Dear Issuer" Letters and CF Disclosure Guidance section, to provide example comments for registrants to consider when preparing their disclosures. Such comments emphasize the need for companies to provide information about their financial and operating statuses, as well as their expectations for the future, in a timely manner. That need was reiterated by Ms. LaMothe, who highlighted that companies should continue to reevaluate their disclosures each period. In particular, if prior disclosures described the potential impact of macroeconomic and geopolitical events as a future or hypothetical risk, registrants should consider whether more recent events have had, or are expected to have, an impact; if so, registrants should update their disclosures to provide specificity regarding such events.

Anne Parker provided additional guidance related to some of the more prevalent macroeconomic and geopolitical issues, including:

- *Russia-Ukraine war* — Even if companies do not have material operations in the affected geographies, they should consider the potential spillover effects of the war, such as heightened cybersecurity risks, supply-chain challenges, and volatility related to the trading prices of commodities.

- *COVID-19* — Although it has been nearly three years since the start of the pandemic, many companies are still experiencing lingering effects that may require disclosure. These effects include, but are not limited to, whether the company has evolved in the way it operates, incremental costs associated with employees returning to work, wage rates, and supply-chain shortages.
- *Inflation* — Companies should consider how inflation has affected their outlook or business goals, both short- and long-term liquidities, and operating costs such as labor, as well as whether such costs can be passed on to customers.
- *Supply-chain disruptions* — In a manner similar to the consideration of rising inflation, companies should think about (1) how supply-chain disruptions have affected their outlook and business goals and (2) the potential impacts of labor shortages, including changes in output, lead times, staff levels, and wages. In addition, companies should consider potential margin pressure resulting from higher costs or sourcing issues, whether backlogs have increased, and any changes in customer demand.

Lindsay McCord emphasized that companies should discuss the impact of each relevant macroeconomic and geopolitical condition separately so that an investor can understand the magnitude of the potential impact of each condition. For example, if a company is affected by both supply-chain disruption and rising inflation, it should describe the effects of each issue individually rather than grouping them as "macroeconomic events" and explaining the effects on a combined basis.

Further, Ms. McCord noted that some companies have removed historical COVID-19 disclosures. She acknowledged that the extent of disclosure needed on this topic may be different from what was needed in the early stages of the pandemic. Accordingly, companies should consider the evolution of the pandemic and its effect on the business; as a result, they may need to provide updated COVID-19-related disclosures that discuss the current, or expected future, effects of the pandemic on the company.

In addition to discussing the impact on historical results, registrants are also reminded to disclose any known trends or uncertainties that have had, or are reasonably likely to have, a material impact on their financial condition, results of operations, or liquidity. These forward-looking disclosures are especially critical in connection with the current macroeconomic or geopolitical conditions and associated economic uncertainty.

"Dear Issuer" Letters and CF Disclosure Guidance

Ms. LaMothe discussed evolving risks in global markets, noting that the SEC staff continues to focus on issuers' disclosures related to matters that management and boards of directors are monitoring, evaluating, and addressing. The Division staff reminded issuers that it has published several "Dear Issuer" sample comment letters and other CF disclosure guidance to assist them in preparing their business, risk factor, MD&A, and financial statement disclosures in upcoming filings. These include:

- A "Dear Issuer" letter on crypto asset markets that emphasizes the need for issuers to evaluate their exposure to recent bankruptcies and financial distress in the crypto asset markets, along with their exposure to other parties and regulatory impacts, and address any such material impacts in their disclosures. For more information, see the "Dear Issuer" Letter for Digital Assets section.
- A "Dear Issuer" letter on climate change that highlights the types of comments the SEC staff may issue regarding climate-related disclosures in a manner consistent with the SEC's 2010 interpretive release.

> See Deloitte's September 27, 2021, *Heads Up* and November 16, 2022, *Financial Reporting Alert* for additional information.

- A "Dear Issuer" letter on the Russia-Ukraine war that provides considerations related to the direct and indirect impact of Russia's invasion of Ukraine on an issuer's business and associated supply-chain issues, including potential or actual disruptions to suppliers, customers, or employees.

> See Deloitte's March 10, 2022 (updated May 7, 2022), *Financial Reporting Alert* for additional information.

- A "Dear Issuer" letter to China-based companies regarding more specific and prominent disclosure of the legal and operational risks associated with having the majority of a company's operations in China. The sample comments focused on the need for clear and prominent disclosure regarding the structure of the company, including the relationship between the entity conducting an offering and the entities conducting the operating activities; the risks associated with a company's use of variable interest entity structures; and the potential impact on the company's operations and investors' interests if such structures were disallowed or the contracts were determined to be unenforceable.

  The staff reminded registrants with China-based operations that (1) although the letter refers to disclosure locations in a registration statement (e.g., the prospectus cover), the comments in the letter apply broadly to all such issuers and (2) the staff expects the comments to be reflected (as applicable) in an appropriate location within the annual report on Form 20-F, Form 10-K, or Form 40-F.

- *CF Disclosure Topic No. 9* and *CF Disclosure Topic No. 9A*, which provide guidance related to COVID-19 disclosures that issuers should consider regarding the current and expected impact of the pandemic on an issuer's business operations, liquidity, and capital resources. The SEC staff observed that while this guidance was prompted by a specific event, it provides a framework for issuers when evaluating their disclosures in today's economic and geopolitical environment.

> See Deloitte's December 1, 2022, and December 2, 2021, *Financial Reporting Alert* newsletters for additional information regarding financial reporting considerations for various macroeconomic and geopolitical issues, such as inflation and supply-chain disruptions.

- *CF Disclosure Topic No. 11*, which provides guidance for both special-purpose acquisition company (SPAC) IPOs and the subsequent business combinations involving a private operating company (also known as a de-SPAC transaction). The guidance includes a series of questions that companies should consider when evaluating disclosures about the financing necessary to complete the transaction; material factors the SPAC considered in pursuing the transaction; any conflicts of interest the SPAC's sponsors, directors, or officers may have; and the interests of any underwriters involved in the transaction.

> See Deloitte's October 2, 2020 (updated April 11, 2022), *Financial Reporting Alert* for additional information.

Cybersecurity Disclosures

During a panel discussion on cybersecurity defense and disclosures, David Hirsch, chief of the SEC Division of Enforcement's Crypto Assets and Cyber Unit, reminded registrants of the importance of providing investors with accurate and timely information about material cybersecurity incidents. He observed that registrants are expected to have procedures in place to ensure that cyber incidents are communicated to individuals at the appropriate levels within the organization who can make disclosure determinations. Further, Mr. Hirsch highlighted that it is not sufficient for a company that has experienced a material cybersecurity breach to continue to simply disclose that there is a risk that a breach could occur or to disclose a hypothetical risk that data may be compromised when a company is aware that the data has been stolen.

Connecting the Dots

In a separate panel, OCA Deputy Chief Accountant Diana Stoltzfus answered a question about the relationship between cybersecurity breaches and ICFR deficiencies. She explained that a breach affecting a financial reporting system would most likely result from a deficiency in ICFR and that an entity would need to evaluate the severity of the deficiency to determine whether it represents a deficiency, a significant deficiency, or material weakness.

Critical Accounting Estimates

Lindsay McCord reminded registrants that critical accounting estimates (CAEs) are intended to provide the quantitative and qualitative information investors need to understand estimation uncertainty and the impact an estimate has had or is reasonably likely to have on a registrant's financial condition or results of operations. She further highlighted several questions a registrant should consider when preparing its CAE disclosures, including:

- Can an investor understand from the CAE disclosure why the particular estimate disclosed is critical? Specifically, if the disclosure only informs the investor about the existence of the estimate, the objective of the disclosure requirement has not been met.
- Is there numerical information in the disclosure, including dollar amounts? Ms. McCord noted that it would be hard for an investor to understand the estimation uncertainty without quantitative information.
- Does the disclosure provide information incremental to the accounting policy? The disclosure should not repeat financial statement disclosures related to the accounting policy.
- Can an investor understand past variability in the estimate and assumptions?
- Does the disclosure discuss qualitatively and quantitatively the sensitivity of the reported estimate to the method and assumptions underlying its calculation? Ms. McCord has observed CAE disclosures that do not meet such expectations.

Ms. McCord indicated that a preparer's analysis should generally become more robust as a potential effect becomes more likely or increases in magnitude. For example, she noted that in an environment of increasing interest rates, disclosures about estimates affected by those rates should become more common.

Board Oversight and Governance

Over the past year, the SEC staff has focused on whether disclosures about corporate governance matters in proxy statements could be enhanced, particularly those provided under Regulation S-K, Item 407, related to the board leadership structure and risk oversight. Ms. LaMothe observed that the staff had examined disclosures from a cross-section of companies and found that information was often boilerplate and did not communicate the unique challenges and opportunities of the governance structures despite the diverse industries and risk profiles of the entities observed. Further, the staff has noted an increase in shareholder interest in these matters and increasing workloads among CEOs and boards.

Ms. LaMothe noted that comments issued on this topic have primarily covered transparency related to two broad areas: (1) "why the registrant believes this leadership structure is appropriate" and (2) "how the board administers its risk oversight function." She clarified that the staff is not encouraging any particular board structure but is trying to elicit greater transparency in line with the requirements of Item 407, which are considered less prescriptive than some of the other requirements of Regulation S-K. Preparers were encouraged to take a fresh look at the disclosures required under Item 407 and consider the adoption release of Item 407, which provides additional guidance on such disclosures.

Update on Rulemaking

Cicely LaMothe discussed the SEC's rulemaking agenda and noted that, over the past year, the Division has released several substantial proposed rules, including those on climate change and cybersecurity, as well as nine final rules (e.g., rules on pay versus performance, recovery of erroneously awarded compensation ["clawbacks"]). For a summary of SEC rulemaking initiatives and relevant Deloitte resources, see Appendix A.

Lindsay McCord offered the following implementation guidance on the rule about pay versus performance:

- When disclosing compensation actually paid (CAP) to executives, a registrant needs to measure equity awards at fair value (generally determined in a manner consistent with fair value applicable to share-based payments reflected in the registrant's financial statements) on a recurring basis until the award vests. Therefore, registrants will need to update their assumptions, including the expected term. It would not be appropriate to simply deduct time elapsed from the expected term as of the grant date.
- While a market condition is not a vesting condition in accordance with ASC 718, when developing disclosures about pay versus performance, a registrant should consider market conditions in the evaluation of whether an award is vested or unvested.
- Dividends that are already reflected in the fair value of an equity award should not also be included in the CAP. However, since the award is remeasured until it vests, some dividends may actually be paid and should be captured in the CAP since they would no longer be reflected in the fair value of the equity award.
- Registrants should disclose any assumptions used to calculate the equity award's fair value if these assumptions materially differ from those used to measure the grant-date fair value of the award. In evaluating this disclosure, registrants should consider whether the updated assumptions would have resulted in a material change to the grant-date fair value.

With respect to the clawback rule, Craig Olinger, senior advisor to the Division chief accountant, clarified that a clawback analysis would not be required when a registrant corrects a clearly immaterial error, including out-of-period adjustments, or chooses to voluntarily revise prior-period financial statements to correct such an error.

Acquired or to Be Acquired Businesses Under Regulation S-X, Rule 3-05

Revenue Component

The revenue component of the income test for determining the significance of the acquiree applies when a registrant and the acquired or to be acquired business (acquiree) have material revenue in each of the two most recently completed fiscal years. Melissa Rocha indicated that the determination of whether the acquiree has material revenue is separate from that for the registrant. That is, the determination of whether an acquiree has material revenue should be in the context of that acquiree and not that of the registrant. Ms. Rocha also clarified that the revenue component of the income test applies both to acquisitions of investees that are accounted for under the equity method and acquisitions of investees for which a registrant has elected to apply the fair value option as permitted by ASC 323.[1]

[1] See Regulation S-X, Rule 3-05(a)(2)(ii).

See Section 2.3.4.2 of Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for additional information about the revenue component of the income test.

Prospectus Supplements to Currently Effective Registration Statements

Ms. Rocha also indicated that for a registrant that has a currently effective registration statement (e.g., Form S-3), if the registrant completes an acquisition that exceeds the 50 percent significance threshold, offerings in accordance with that currently effective registration statement may not proceed without the historical financial statements of the acquiree and related pro forma financial information, except in certain limited circumstances (i.e., offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights, dividend or reinvestment plans, employee benefit plans, transactions involving secondary offerings, and sales of securities under Rule 144 of the Securities Act of 1933 [the Securities Act]). This requirement may not apply to a probable business acquisition and individually insignificant acquirees[2] that are significant in the aggregate (i.e., exceed 50 percent significance in the aggregate).

Connecting the Dots

We understand that a domestic registrant is not obligated to update a prospectus for a currently effective registration statement except with respect to any fundamental change (as specified by Section 10(a)(3) of the Securities Act and Regulation S-K, Rule 512(a)). Unless any of the following represent a fundamental change, we understand that the registrant has no specific obligation to provide or update the financial statements of the respective acquiree:

- A consummated acquisition that does not exceed 50 percent significance.
- A probable business acquisition.
- Individually insignificant acquisitions in the aggregate.

Management, in consultation with SEC legal counsel, is responsible for determining what constitutes a fundamental change.

See Sections 2.4.3 and 2.9.1 of Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for further details related to prospectus supplements for currently effective registration statements.

Acquisition by a Registrant's Non-Wholly-Owned Consolidated Subsidiary

In a panel discussion, Ms. Rocha discussed the application of the significance tests in situations in which a registrant's non-wholly-owned consolidated subsidiary (rather than the registrant itself) acquires (or it is probable that it will acquire) a business. She noted that the registrant would perform each of the significance tests as follows:

- *The asset test* — The registrant should compare 100 percent of the acquiree's total assets with the registrant's consolidated total assets. For example, under this test, if a registrant owns 60 percent of a consolidated subsidiary that acquires 100 percent of a business, 100 percent of the acquiree's assets should be compared with the registrant's consolidated total assets.

[2] Acquirees in the following three categories are commonly referred to as individually insignificant acquirees: (1) probable acquisitions that do not exceed 50 percent, (2) consummated acquisitions that exceed 20 percent but do not exceed 50 percent and whose financial statements do not yet have to be filed (i.e., within the 75-day grace period), and (3) any acquisitions consummated since the end of the registrant's most recently completed fiscal year presented that do not exceed 20 percent.

- *The revenue component of the income test* — If both the registrant and the acquiree have material revenue in each of the two most recently completed fiscal years, the registrant should compare 100 percent of the acquiree's revenue with the registrant's revenue. For example, under this test, if a registrant owns 60 percent of a consolidated subsidiary that acquires 100 percent of a business, 100 percent of the acquiree's revenue should be compared with the registrant's revenue.

- *The income component of the income test* — The registrant should compare its proportionate share of the acquiree's pretax income or loss from continuing operations[3] with the registrant's own pretax income or loss from continuing operations. For example, under this test, if a registrant owns 60 percent of a consolidated subsidiary that acquires 100 percent of a business, 60 percent of the acquiree's pretax income should be compared with the registrant's pretax income or loss from continuing operations.

- *The investment test* — The registrant should compare 100 percent of the investment in the acquiree with the registrant's aggregate worldwide market value (AWMV), if available. A registrant that has no AWMV should compare the investment in the acquiree with the registrant's total assets. For example, in this scenario, if a registrant owns 60 percent of a consolidated subsidiary that acquires 100 percent of a business, 100 percent of the investment in the acquiree should be compared with the registrant's AWMV.

See Section 2.3.5.2 of Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for further details on performing the significance tests for a transaction of this nature.

Pro Forma Financial Information

Transaction Costs in a Business Combination

Craig Olinger provided specific commentary on the treatment of transaction costs in pro forma financial information for a business combination, noting that their treatment depends on (1) which entity incurred the transaction costs (i.e., the registrant or the acquired or to be acquired business [acquiree]), (2) whether the transaction costs have been incurred and are reflected in the historical financial statement periods presented, and (3) whether the transaction costs have been incurred in periods subsequent to the historical financial statement periods presented.

Transaction costs incurred by the registrant or the acquiree that have been reflected in the historical income statement periods presented should remain as presented (i.e., pro forma adjustments should not eliminate or move such costs to another period). Transaction costs incurred by the registrant after the historical financial statement periods presented should be included as a pro forma adjustment to transaction expenses in the pro forma income statement as if the transaction occurred at the beginning of the fiscal year presented (i.e., in the annual financial statement period presented).

No pro forma adjustments are needed for transaction costs incurred by the acquiree after the historical financial statement periods presented. This is because the pro forma financial information is intended to present the registrant's accounting for the transaction, which does not include the acquiree's transaction costs.

[3] We refer to "income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interest" in Regulation S-X, Rule 1-02(w)(1)(iii)(A)(*1*), as "pretax income or loss from continuing operations."

Connecting the Dots

While Mr. Olinger did not specifically address expected transaction costs not yet incurred by the registrant, we believe that such costs should be estimated and included as a pro forma adjustment to transaction expenses in the pro forma income statement as if the transaction occurred at the beginning of the fiscal year presented (i.e., in the annual financial statement periods presented). Further, transaction costs that are not reflected in the historical financial statements presented (i.e., costs incurred after the periods presented and estimated costs that have not yet been incurred) should be included as a pro forma adjustment to accrued expenses and retained earnings in the pro forma balance sheet. Since transaction costs are generally nonrecurring, that fact should be disclosed in the notes.

See Section 4.4.2 of Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for further detail on transaction accounting adjustments in a business combination.

Transaction Structured in Such a Way That Significantly Different Results May Occur

Mr. Olinger reminded registrants that under Regulation S-X, Rule 11-02(a)(10), they must provide additional pro forma presentations that give effect to the range of possible results if a transaction is structured in such a manner that significantly different results may occur. He noted that this requirement is commonly applicable to merger transactions that involve a SPAC but may be broadly applicable to other types of transactions. In such scenarios, a registrant should carefully analyze the facts and circumstances when determining whether additional pro forma financial presentations are necessary.

In conclusion, Mr. Olinger noted that if there is a range of possible results for which pro forma information will be provided, an introductory paragraph in accordance with Regulation S-X, Rule 11-02(a)(2), should be consistent and must include the relevant facts and circumstances for each of the possible outcomes and highlight the purpose of the presentations for investors.

See Section 4.2 of Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for more information about pro forma presentation matters.

Waiver Letters Related to Significant Acquisitions

Regulation S-X, Rule 3-13, gives the SEC staff the authority to permit the omission or substitution of certain financial statements otherwise required under Regulation S-X "where consistent with the protection of investors." Craig Olinger indicated that the overall volume of such waiver letters has been down since the 2020 amendments to Regulation S-X, Rule 3-05, related to significant acquisitions. He observed that the 2020 amendments to the significance tests in Rule 3-05 eliminated the need for many of these requests, adding that recent waiver requests have involved more complex fact patterns. He noted that when the SEC staff evaluates such requests, it will consider all available information about the size of an acquisition as compared with the size of the registrant, including all significance tests and relevant financial statement and operating metrics.

Mr. Olinger offered the following recommendations to registrants submitting a waiver request:

- Ensure that the initial waiver request is as complete as possible and includes a description of the key terms of the acquisition.
- Explain why the significance tests required by Rule 3-05 are not reflective of the overall size of the acquisition.
- Articulate why the information subject to the waiver request is not necessary to protect investors.
- Explain any other compensating disclosures that will provide investors with information related to the acquisition.

Further, Mr. Olinger explained that when a registrant is required to file two years of audited financial statements for a significant acquired business, it may wish to seek a waiver for the latest annual period. In connection with that request, if a registrant would like the waiver to also include the omission of the prior comparative interim period information that would have been required in a two-year presentation, this specific request should be included in the waiver letter. That is, the waiver of the comparative interim financial statements is not automatic.

Mr. Olinger noted that although the above recommendations are related to waivers for significant acquisitions (Rule 3-05), the SEC staff may also grant waivers for significant acquisitions of real estate operations (Regulation S-X, Rule 3-14) and significant equity method investments (Regulation S-X, Rule 3-09). Some of the recommendations above may also apply in those circumstances.

See Section B.2.1 of Deloitte's Roadmap *SEC Comment Letter Considerations, Including Industry Insights*, for more information about requests to waive financial statements.

Targeted Improvements to Guidance on Long-Duration Contracts

Craig Olinger discussed the transition-date reporting implications of the FASB's targeted improvements to the guidance on long-duration contracts (the "LDTI standard") for domestic registrants under ASU 2018-12 and foreign private issuers (FPIs) under IFRS 17 when a new registration statement is filed in the year of adoption.

For most domestic registrants, ASU 2018-12 is effective as of January 1, 2023, and the transition date is January 1, 2021. The requirement to retrospectively revise the annual financial statements in a new registration statement would not cause the transition date of ASU 2018-12 to change from January 1, 2021, to January 1, 2020, a fact that was also acknowledged during the December 2021 AICPA Insurance Expert Panel.

For example, consider a scenario in which a calendar-year-end domestic registrant adopts the new LDTI standard on January 1, 2023, with a transition date of January 1, 2021. In May 2023, the registrant files its first-quarter Form 10-Q, which reflects the adoption of the new standard for all periods presented. The next month, the registrant files a new registration statement on Form S-3 that incorporates by reference the registrant's Form 10-Q that includes its interim financial statements for the quarters ending March 31, 2023, and 2022 along with the Form 10-K that includes its annual financial statements for the years ending December 31, 2022, 2021, and 2020. In this scenario, although the annual financial statements for 2022 and 2021 would need to be retrospectively revised to reflect the adoption, the registrant would not need to change the transition date of the accounting standard from 2021 to 2020 and the 2020 financial statements would not need to be retrospectively revised. However, the timing of the retrospective revisions would be accelerated as a result of the inclusion of these financial statements in the registration statement.

Connecting the Dots

When a registrant is required to retrospectively adjust its previously issued financial statements in connection with a new or amended registration statement, it must also consider updating other affected financial information that it previously included in its Form 10-K, such as MD&A and selected quarterly financial information.

A similar concept applies to FPIs under IFRS 17; however, there are a couple of differences. While the date of initial application is also generally January 1, 2023, the transition date under IFRS 17 for most registrants is January 1, 2022. Further, the timing of the subsequent registration statement will affect the determination of whether previously issued financial statements must be revised.

For example, consider a scenario in which a calendar-year-end FPI adopts IFRS 17 on January 1, 2023, with a transition date of January 1, 2022. If the registrant files a new registration statement after September 30, 2023, the FPI would be required to present interim financial statements for the six-month interim periods ending June 30, 2023, and 2022 along with retrospectively revised annual financial information. As with the example for domestic registrants, the retrospective revision requirement would not cause the registrant to retrospectively revise a period before the January 1, 2022, transition date (i.e., 2021 or 2020).

If the FPI files a registration statement on or before September 30, 2023, no interim financial information would be required on the basis of the requirements in Item 5 of Form 20-F related to the age of financial statements. However, if interim financial information for 2023 that reflects the adoption of IFRS 17 has been made public, the registrant would be required to include such information in the registration statement. Mr. Olinger clarified that including this more current financial information for an interim period of 2023 would not trigger the need to recast the annual financial information, since such information was only included because it had been made public to foreign shareholders.

During a separate Q&A panel, Mr. Olinger mentioned that for both domestic registrants and FPIs, the concept of a fundamental change under Regulation S-K, Item 512(a)(1), still applies to already effective shelf registration statements in the determination of whether a post-effective amendment to include retrospectively revised financial statements for 2022 (and 2021 for domestic registrants) would be triggered. In the absence of a fundamental change, retrospective application would not be required for a domestic registrant. However, Mr. Olinger noted that FPIs also need to consider the undertaking requirements in Regulation S-K, Item 512(a)(4), which indicate that financial statements must remain current through the date of the offering. Therefore, a takedown on a delayed or continuous offering more than nine months after the registrant's year-end would result in the need to file a post-effective amendment to include interim financial statements, thereby triggering the requirement to provide retrospectively revised annual financial statements.

Change in the Disclosure Review Program

The SEC staff noted that it recently established two new industry offices within the Division's Disclosure Review Program (DRP), which performs most of the SEC's selective and required filing reviews. The DRP was previously composed of seven industry offices[4] and was expanded to include the Office of Crypto Assets and the Office of Industrial Applications and Services. The Office of Crypto Assets provides more specialized support for this emerging area; reviews related to this topic were previously performed across the different industry groups in the Program. The Office of Industrial Applications and Services reviews a subset of companies previously assigned to the Office of Life Sciences, given the growth in life sciences registrants. This subset of companies being reviewed by the Office of Industrial Applications and Services includes agricultural, chemical, medical technology, and health care delivery companies.

[4] The seven legacy industry offices include the Office of Energy & Transportation, the Office of Finance, the Office of Life Sciences, the Office of Manufacturing, the Office of Real Estate & Construction, the Office of Technology, and the Office of Trade & Services.

Accounting Standard Setting

FASB Standard Setting

During several sessions, SEC staff members commented on the Commission's role in overseeing the FASB. Jonathan Wiggins and Paul Munter described feedback received on the FASB's role and emphasized that it was important for the FASB to focus on ensuring that investors receive decision-useful information. Speakers highlighted that investor feedback was a critical part of this process.

In his remarks, FASB Chairman Richard Jones discussed the FASB's mission, including its emphasis on providing decision-useful information to investors. He noted that the FASB continues to engage with financial statement users and considers their feedback heavily in determining which projects to add to its agenda and in making decisions about its active projects. To demonstrate its commitment to incorporating investor feedback, the FASB has issued an Investor Outreach Report for each of the last two years and plans to continue to do so. Mr. Jones also stressed that it was important for the FASB to receive broad and balanced feedback on proposed changes to its accounting standards (e.g., from preparers and practitioners).

Mr. Jones highlighted the agenda consultation process that the FASB undertook in 2021, noting that the objective of the process was to receive stakeholder feedback on the items on the FASB's technical agenda to help prioritize resources and ensure that the right issues were being addressed. In discussing that process, Mr. Jones described the significant outreach the FASB performed before issuing its invitation to comment, some key themes that emerged in the feedback received, and some of the changes the Board made to its technical agenda in response to that feedback. Mr. Jones further noted that, in determining whether to add a project to its technical agenda, the FASB must establish a case for change on the basis of the feedback received. In addition, he highlighted the FASB's goal of achievable standard setting, which involves clearly understanding a project's scope and direction.

Disaggregation of Financial Information

During the conference, several speakers discussed investors' requests for more disaggregated information in the financial statements. The FASB currently has three projects on its technical agenda with respect to providing further disaggregated information, as outlined in the sections below.

Improvements to Reportable Segment Disclosures

During the panel discussion on FASB accounting standard-setting updates, FASB Technical Director Hillary Salo elaborated on the changes to segment reporting recommended in the FASB's proposed ASU on this topic. Specifically, the proposed amendments would require public entities to disclose significant segment expenses provided to and reviewed by the CODM. Further, the proposed amendments would specify that more than one measure of segment profit or loss could be disclosed if the CODM is using these metrics to evaluate performance and allocate resources. The proposed ASU would also expand the disclosure requirements for entities with a single reportable segment to provide investors with a more transparent picture of how management views and operates its business.

Income Tax Disclosures

Mr. Munter mentioned the current FASB project on providing enhanced and disaggregated income tax disclosures. This topic was then discussed in more detail by Mr. Wiggins during the session on current OCA projects. Mr. Wiggins noted that the project has been on the FASB's technical agenda for several years and that the project's scope and objective have evolved over time. Most recently, during its agenda consultation process in 2021, the FASB revised the scope of the project to focus on further disaggregation of information about income taxes paid and a company's tax rate reconciliation in response to investors' feedback that these are the areas in which disaggregation would result in the most decision-useful information. (See Deloitte's *On the Radar: Income Taxes* for further details.) More specifically, Mr. Wiggins explained that investors have commented on the challenges associated with understanding the impact of income taxes on multinational entities' financial statements. He also mentioned that SEC Chair Gary Gensler has publicly indicated his support for the project's proposed disclosure requirements to both the Senate Banking Committee and the SEC Investor Advisory Committee.

During the panel discussion on FASB accounting standard-setting updates, Ms. Salo elaborated on the potential changes stemming from the project, including requirements to disclose specific categories in the tax rate reconciliation (e.g., rate changes associated with cross-border tax laws) as well as reconciling items above a 5 percent threshold (i.e., 5 percent of the pretax amount times the statutory tax rate). The FASB has also tentatively decided to require certain qualitative disclosures on an interim basis.

Ms. Salo also discussed the proposal to require further disaggregation of cash taxes paid, under which a quantitative threshold of 5 percent would be used to determine the jurisdictions to include in the annual disclosure. She also addressed the FASB's decision to propose requiring, on an annual and interim basis, disclosure at the federal, state, and foreign levels.

An exposure draft is expected to be issued in the first quarter of 2023. Transition is expected to be retrospectively applied to the beginning of the earliest period presented.

Income Statement

Several speakers also mentioned the FASB's project related to disaggregation of the income statement. For instance, Mr. Munter stated that he expects this project to be a significant focus of the FASB.

During the panel discussion on FASB accounting standard-setting updates, Helen Debbeler noted that the FASB has tentatively decided on an approach in which specific functional expenses would be disaggregated into "consistent natural categories," including employee compensation, depreciation, and amortization. Disaggregation of capitalized amounts, notably inventory, will focus on the nature of the costs incurred during the period. The FASB will continue deliberating this topic in the coming months, and the Board is targeting issuance of a proposed ASU for the first half of 2023.

Additional Standard-Setting Updates

Ms. Salo and Ms. Debbeler discussed the FASB's recent activity by describing the ASUs issued in 2022 and expected to be issued by the end of the year, including an ASU that will amend the transition related to an insurance entity's accounting for long-duration insurance contracts and that will extend the sunset date for ASC 848 regarding reference rate reform to better align with LIBOR transition. In addition, they discussed proposed ASUs that have been issued, including those on the formation of joint ventures and accounting for leases between entities under common control. Ms. Salo and Ms. Debbeler also gave an update on several of the projects currently on the FASB's technical agenda and research agenda.

> See Deloitte's December 1, 2022, and December 8, 2022, *Heads Up* newsletters for information about the FASB's proposed ASUs on leases under common control and joint ventures, respectively. Also, see Deloitte's December 2022 *EITF Snapshot* for information about the expansion of the application of the proportional amortization method.

IASB® Update

IASB Chairman Andreas Barckow discussed the FASB's and IASB's ongoing efforts to converge U.S. accounting literature and IFRS Accounting Standards. Dr. Barckow described two IASB projects in which convergence played an important role in recent decision making: (1) retention of the current goodwill impairment model and (2) postimplementation review (PIR) of the revenue recognition standard.

The IASB decided to retain the current goodwill impairment model because of the significant cost and complexity associated with making substantial improvements to the model. The Board was also influenced by the FASB's recent decision to no longer pursue its project on requiring goodwill amortization. Instead, the IASB proposed new disclosure requirements related to the reporting of postacquisition performance but maintained convergence with the FASB on an impairment-only accounting model for goodwill.

The initial phase of the IASB's PIR of the revenue recognition standard has begun, and in 2023, the Board will conduct the PIR of the leases guidance. The IASB's and FASB's joint efforts on both projects led to largely converged standards. The IASB will discuss the PIR with the FASB and will share any information gathered in the PIR process.

Dr. Barckow provided an update on the IASB's key priorities over the next five years based on the feedback received from stakeholders. He mentioned that the IASB has been asked to (1) increase the time and effort it spends on developing digital financial reporting as well as on the understandability and accessibility of IASB literature, (2) prioritize finalizing its current existing projects, and (3) increase communication, collaboration, and coordination between the IASB and the ISSB. The IASB has identified possible areas of collaboration with ISSB to address sustainability-related matters.

Further, Dr. Barckow noted that the IASB added three projects to its agenda on the following topics as part of its third agenda consultation process:

- *Intangible assets* — The IASB received feedback that the current guidance is outdated and should be refreshed.
- *Statement of cash flows* — Constituents indicated that certain noncash transactions, such as certain supplier financing arrangements, are not sufficiently presented.
- *Climate-related risks and financial reporting*.

Dr. Barckow also explained why the IASB has not added a project on the accounting for digital assets. He indicated that the IASB believes that the existing literature in IFRS Accounting Standards already provides for the accounting treatment of digital asset transactions and questioned whether this issue was significant or prevalent enough to warrant a separate project.

PCAOB Developments and Other Auditing Matters

PCAOB Developments

PCAOB Chair Erica Williams delivered keynote remarks highlighting actions taken by the Board since she and the other new members were sworn in nearly a year ago. The Board approved a new five-year strategic plan, added three new projects to the standard-setting and research agendas, and is actively updating over 30 standards, with 10 standard-setting projects.

Ms. Williams recalled the critical role of quality audits in protecting capital markets. The Board is sharply focused on enhancing inspections and strengthening enforcement. The PCAOB's December 2022 Spotlight summarizes inspection results from 2021, which showed a 4 percent increase in Part I.A deficiencies. Ms. Williams also mentioned that while the 2022 inspection cycle is not yet complete, the 2022 inspections have generated an increased number of comment forms, which usually result in inspection findings. Ms. Williams urged auditors to resist complacency and to be vigilant in fulfilling their responsibility to perform quality audits and uphold trust in the profession. She remarked about enforcement, stating that the PCAOB intends to impose significant sanctions, when appropriate, "to ensure there are consequences for putting investors at risk and that bad actors are removed."

Board member Christina Ho also highlighted the November 2022 launch of the Technology Innovation Alliance (TIA) Working Group, which comprises seasoned external professionals with expertise in emerging technologies. The TIA Working Group will advise the Board on the use of emerging technologies by auditors and preparers and their impact on the future of auditing.

PCAOB Standard-Setting and Research Projects

The PCAOB updated its standard-setting and research agendas in October 2022. Erica Williams acknowledged the Board's adoption of amendments in June 2022 to its auditing standards as a result of its Other Auditors project. The amendments require audit firms to ensure that lead auditors sufficiently plan, supervise, and evaluate the work of other auditors.

PCAOB Chief Auditor Barbara Vanich discussed the Board's quality control (QC) proposal and what to expect from standard-setting and research projects through 2023. While the Board's QC proposal was influenced by the QC standards issued by other audit standard setters (i.e., ISQM 1 and SQMS 1), it includes alternative or incremental provisions that are intended to better protect and serve investors and further the public interest. Ms. Vanich highlighted key differences between the QC proposal and ISQM 1, which were compared comprehensively in a staff document along with key differences between the QC proposal and SQMS 1. She encouraged stakeholders to provide feedback on the QC proposal during the public comment period, which ends February 1, 2023.

In December 2022, the PCAOB expects to issue a reproposal of its 2010 proposed standard on confirmations, which will (1) address changes in the current environment, including those related to technology, (2) align with the PCAOB's risk assessment standards, and (3) take into account feedback previously received on the 2010 proposal. In 2023, the Board expects to issue proposals on additional short-term standard-setting projects, including those related to:

- *Interim standards* — Consideration of changes to auditing standards in the AS 1000 series and AS 2815 as well as changes to interim attestation standards.
- *Noncompliance with laws and regulations* — Reconsideration of AS 2405.
- *Going concern* — Reconsideration of AS 2415.
- Certain aspects of designing and performing audit procedures that involve technology-assisted data analysis.

The PCAOB also added a new research project to better understand the needs of stakeholders related to firm and engagement performance metrics. Ms. Vanich explained that this project will include performing outreach related to such metrics and evaluating metrics already disclosed by firms to audit committees and the public, such as in the Form AP or auditor's report.

PCAOB Inspections

During the session on PCAOB inspection updates, George Botic explained that the Board's 2022 inspections focused on:

- Audits in industries that experienced continued elevated risk as a result of the pandemic and the evolving macroeconomic environment (e.g., transportation, entertainment and hospitality, manufacturing, retail, SPAC and de-SPAC transactions, IPOs, and merger and acquisition activity).

- Financial statement items and other reporting matters that were most affected by current economic events (e.g., impairments of long-lived assets, revenue, inventory, going concern, allowance for credit losses, and increased risk of fraud).

The inspections included a combination of risk-based and random audit file selections as well as inspection of nontraditional focus areas.

Mr. Botic described audit execution risk as another area of focus in 2022 inspections, particularly because of the impact of the great resignation, the ongoing remote work environment, and diminished on-the-job training for some new hires during the last two years. In addition, inspectors reviewed (1) auditors' work surrounding risks related to climate change that would affect the financial statements and (2) auditors' use of firm shared service centers.

In a manner consistent with the 2021 inspection cycle, there was increased focus on firms' quality control systems in 2022. Mr. Botic specifically cited a focus on firms' leadership and tone at the top, communications related to the importance of audit quality, the impact of the remote working environment, consultation requirements, real-time monitoring, and pre-issuance reviews.

Mr. Botic stated that revenue, inventory, business combinations, long-lived assets, allowance for credit losses, and equity were common themes from the 2022 inspection cycle. He noted that deficiencies persist related to ICFR, critical audit matters, audit committee communications, Form AP filings, independence, and engagement quality reviews.

Regarding the 2023 inspection cycle, Mr. Botic stated that inspection focuses will include (1) financial statement areas that are more complex, involve significant judgment, and are susceptible to change; (2) risk assessment; (3) auditor independence; and (4) audits of issuers with material crypto asset balances and transactions.

In his remarks, PCAOB Board member Duane DesParte acknowledged the value of sharing inspection insights with stakeholders through the PCAOB's public reporting, noting that understanding where audit firms may not be performing optimally helps audit committees appropriately focus their attention in performing their oversight role. Mr. DesParte said that the Board is assessing whether additional information should be provided in its inspection reports or other communications that would further benefit stakeholders.

Professional Skepticism and Fraud

Hester Peirce reinforced the importance of auditors' professional skepticism, particularly in challenging economic times when management may be more likely to cut corners or engage in fraud. She cautioned against thin staffing of audit engagements, which could lead to missing or failing to follow up on red flags.

As an example, the SEC staff shared a scenario in which an auditor believes that a long-lived asset may be impaired. Management does not believe that the asset is impaired and, near year-end, produces an unexecuted draft sales agreement in which the sales price indicates that the asset is not impaired. In this scenario, the auditor may exercise more skepticism when evaluating the draft sales agreement as audit evidence, particularly given the timing and the lack of previous discussions about potentially selling the asset.

Paul Munter reiterated that the heightened level of uncertainty often means increased fraud risk and opportunity for bias in estimates and judgments embedded in financial statements. He referred to the November 2022 IOSCO statement, and his remarks included the following reminders:

- For auditors, the importance of (1) identifying the resulting fraud risks, (2) ensuring that procedures to address the fraud risks are in the audit plan, (3) investigating red flags, and (4) maintaining professional skepticism.

- For preparers, the importance of (1) considering how heightened fraud risks affect ICFR, (2) recognizing potential bias in the development of estimates, and (3) being transparent about the judgments, assumptions, and uncertainty associated with the estimates.
- For audit committees, the importance of considering the heightened risks as they carry out their responsibilities, including understanding how management and the auditor are responding to the increased uncertainty.

Connecting the Dots

During the PCAOB inspection update session, George Botic encouraged auditors to focus on risk assessment and fraud by identifying new risks that require new responses. This assessment relies on having a deep understanding of the business and the pressures that management may be under to improve the financial results.

During the panel discussion on current OCA projects, reference was made to Mr. Munter's October 2022 statement on the auditor's responsibility for fraud detection. Anita Doutt underscored the pitfall of an auditor's having a "trust but verify" mindset, which, if based on the belief that management is honest and has integrity, could lead to potential anchoring bias.

The SEC staff advised auditors to consider whether issuers' entity-level controls, such as whistleblower programs, are simply check-the-box exercises. Ms. Doutt discussed going beyond what management is required to do and looking to what it is doing to create a culture of "see something, say something." For example, auditors may have interviews across various levels of the company, or they may determine whether the company conducts a culture survey and, if so, how it is designed and monitored. Gathering more information will inform an auditor's fraud risk assessment and contribute to better professional skepticism throughout the audit.

The SEC's Division of Enforcement reported a record number of tips this year, illustrating how whistleblower programs can be an important and effective tool for investor protection. The Division of Enforcement spotlighted specific enforcement cases related to revenue recognition, improperly reclassified expenses, and manipulation of flawed foreign currency translation policies. While these were not necessarily new ways to commit fraud, the Division of Enforcement noted that at a time when the pressure to demonstrate good financial results is intensified by challenges such as increased costs of labor and materials, the failure to develop a sufficient control environment may allow employees to exploit known deficiencies.

Lastly, with the hybrid working environment, auditors can turn their skepticism to their own team dynamics. The views expressed by various speakers reminded auditors of the importance of supervision and review on audit engagement teams, particularly with respect to developing junior staff members and empowering them to speak up (described by Mr. Botic as the "I've got your back" culture). In addition, auditors were encouraged to be strategic with audit procedures that benefit from in-person interactions, such as fraud inquiries.

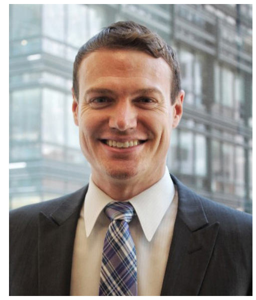
Auditor Independence and Ethical Behavior

Auditor independence was emphasized throughout the conference. During Paul Munter's opening remarks, he noted that independence and ethics are critical aspects of the auditor's responsibility. In the panel discussion of the OCA's current projects, Diana Stoltzfus highlighted that independence is the shared responsibility of the company's management, the audit committee, and the auditor.

The SEC staff has observed a trend in auditors' use of Regulation S-X, Rule 2-01(c), as a checklist of permissible services and relationships. However, the staff reminded participants that Rule 2-01(c) does not represent a comprehensive list of permissible services and relationships and should not be considered separately from Rule 2-01(b), the general standard of independence. The staff emphasized that the general standard is the "heart" of the SEC's independence rules and that auditors need to be independent in both fact and appearance. Further, the staff reiterated that as audit firms' business relationships and service offerings become more complex and potentially involve beneficial owners with significant influence, it is important for audit firms to establish a tone at the top that promotes a culture of ethical behavior and compliance with the SEC's auditor independence rules. Erica Williams echoed those sentiments, stating, "Let me be clear: the PCAOB will not tolerate unethical behavior."

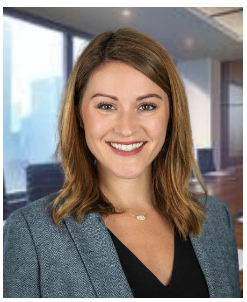
Contacts

Marla Lewis
Partner
Deloitte & Touche LLP
+1 203 708 4245
marlalewis@deloitte.com



PJ Theisen
Partner
Deloitte & Touche LLP
+1 202 220 2824
ptheisen@deloitte.com

For information about Deloitte's service offerings related to the matters discussed in this publication, please contact:



Jamie Davis
Partner
Deloitte & Touche LLP
+1 312 486 0303
jamiedavis@deloitte.com

Appendix A — Summary of SEC Rulemaking Initiatives and Related Deloitte Resources

The table below summarizes selected recent SEC final and proposed rules related to financial reporting and provides links to relevant Deloitte resources that contain additional information about them.

Final Rules	Summaries and Relevant Resources
Insider Trading Arrangements and Related Disclosures (The rule was issued on December 14, 2022, and is effective 60 days after publication in the *Federal Register*.)	**Summary:** The final rule amends certain requirements, including cooling-off periods for directors and officers, related to the implementation of Rule 10b5-1 of the Securities Exchange Act of 1934 trading plans. It also requires expanded disclosure regarding insider trading policies and procedures, including disclosure of policies related to the timing of option grants and the release of material nonpublic information. **Deloitte Resources:** December 14, 2022, news item.
Listing Standards for Recovery of Erroneously Awarded Compensation (The rule is effective January 27, 2023. Exchanges must adopt new listing rules no more than one year after November 28, 2022. Issuers must adopt a written "claw back" policy no more than 60 days after the effective date of the new listing rules and provide related disclosures after adopting such policy.)	**Summary:** The final rule requires issuers to adopt a written policy to "claw back" excess executive compensation for the three fiscal years before the determination of a restatement regardless of whether an executive officer had any involvement in the restatement. An issuer is also required to (1) disclose its recovery policy in an exhibit to its annual report, (2) include new check boxes on the cover of Form 10-K, Form 20-F, and Form 40-F that disclose the correction of an error in previously issued financial statements and the performance of a compensation recovery analysis, and (3) disclose other information about the restatement and amounts of compensation clawed back. **Deloitte Resources:** November 14, 2022, *Heads Up*.
Pay Versus Performance (The rule is effective October 11, 2022, and must be applied in proxy and information statements that are required to include Regulation S-K, Item 402, disclosures for fiscal years ending on or after December 16, 2022.)	**Summary:** The final rule requires certain registrants to provide disclosures about executive pay and company performance within any proxy statement or information statement for which executive compensation disclosures are required. **Deloitte Resources:** September 2, 2022, *Heads Up*.
Updating EDGAR Filing Requirements and Form 144 Filings (The rule is effective July 11, 2022. The transition period varies depending on the nature of the form being filed and ranges between six months and three years after the effective date.)	**Summary:** The final rule (1) requires entities to file or submit electronically certain documents (e.g., glossy annual reports) that may currently be filed or submitted in paper format and (2) amends certain forms (e.g., Form 11-K) to require structured data reporting. **Deloitte Resources:** June 3, 2022, news item.
Universal Proxy (The rule is effective January 31, 2022, and applies to any shareholder meeting featuring an election contest held after August 31, 2022.)	**Summary:** The final rule requires "the use of a universal proxy card in all nonexempt solicitations involving director election contests, except those involving registered investment companies and business development companies." The federal proxy rules were also updated "to establish certain notice, minimum solicitation, filing, formatting and presentation requirements, along with other related rule changes consistent with the adoption of a universal proxy requirement." **Deloitte Resources:** November 17, 2021, news item.
Holding Foreign Companies Accountable Act Disclosure (The rule is effective January 10, 2022, and applies only to registrants whose principal auditor has been identified by the SEC as not having been subject to PCAOB inspection for a specific year.)	**Summary:** The final rule states that if a company's auditors are located in a foreign jurisdiction and the PCAOB "is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction," the company will be identified, required to make special disclosures, and ultimately delisted from U.S. securities exchanges after three consecutive years of restricted PCAOB access. **Deloitte Resources:** October 15, 2021, *Heads Up*.

(Table continued)

Proposed Rules	Summaries and Relevant Resources
Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices (The latest comment period closed November 1, 2022.)	**Summary:** The proposed rule would require investment advisers to provide additional information regarding their ESG investment practices. The proposal is "designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry." **Deloitte Resources:** May 26, 2022, news item.
Special Purpose Acquisition Companies, Shell Companies, and Projections (The latest comment period closed November 1, 2022.)	**Summary:** The proposed rule would "more closely align the financial statement reporting requirements in business combinations involving a shell company and a private operating company [also known as a de-SPAC transaction] with those in traditional [IPOs]." The proposal would include changes in various filing requirements, enhanced disclosure requirements, and rule amendments that are intended to provide additional investor protections in SPAC IPOs and de-SPAC transactions. **Deloitte Resources:** October 2, 2020 (updated April 11, 2022), *Financial Reporting Alert*.
The Enhancement and Standardization of Climate-Related Disclosures for Investors (The latest comment period closed November 1, 2022.)	**Summary:** The proposed rule would enhance and standardize the required climate-related disclosures for public companies. Such disclosures would include climate-related financial impact and expenditure metrics as well as a discussion of climate-related impacts on financial estimates and assumptions, all of which would be presented in a footnote to the audited financial statements. Outside of the financial statements, a registrant would need to provide quantitative and qualitative disclosures in a separately captioned "Climate-Related Disclosure" section that would immediately precede MD&A and include information related to Scope 1, Scope 2, and Scope 3 greenhouse gas emissions and climate policies, goals, and governance. **Deloitte Resources:** March 29, 2022, *Heads Up*.
Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (The latest comment period closed November 1, 2022.)	**Summary:** The proposed rule would establish new requirements related to (1) material cybersecurity incidents, which would need to be disclosed on Form 8-K within four business days; (2) disclosures in Forms 10-Q and 10-K about cybersecurity incidents previously reported on Form 8-K; and (3) disclosures in Form 10-K about cybersecurity risk management and governance. **Deloitte Resources:** March 16, 2022, *Heads Up*.
Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies (The latest comment period closed November 1, 2022.)	**Summary:** The proposed rule would require registered investment advisers and investment companies "to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks." Under the proposed rule, advisers would also be required "to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission on a confidential basis." **Deloitte Resources:** February 10, 2022, news item.

(Table continued)

Proposed Rules	Summaries and Relevant Resources
Share Repurchase Disclosure Modernization (The comment period was reopened December 7, 2022, and will close January 11, 2023.)	**Summary:** The proposed amendments would "require an issuer to provide more timely disclosure on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase" and would "enhance the existing periodic disclosure requirements about these purchases." **Deloitte Resources:** December 15, 2021, news item.

Appendix B — New and Updated Non-GAAP Compliance and Disclosure Interpretations

On December 13, 2022, the SEC issued new and updated compliance and disclosure interpretations (C&DIs) that represent the Division's interpretations of the rules and regulations on the use of non-GAAP financial measures. The new and updated C&DIs are reproduced below. Added text is shown in underscore and deleted text is ~~struck out~~. The complete series of non-GAAP C&DIs is available on the SEC's Web site.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 100. General

Question 100.01

Question: Can certain adjustments, although not explicitly prohibited, result in a non-GAAP measure that is misleading?

Answer: Yes. Certain adjustments may violate Rule 100(b) of Regulation G because they cause the presentation of the non-GAAP measure to be misleading. ~~For example, presenting a performance measure that excludes normal, recurring, cash operating expenses necessary to operate a registrant's business could be misleading. [May 17, 2016]~~ Whether or not an adjustment results in a misleading non-GAAP measure depends on a company's individual facts and circumstances.

Presenting a non-GAAP performance measure that excludes normal, recurring, cash operating expenses necessary to operate a registrant's business is one example of a measure that could be misleading.

When evaluating what is a normal, operating expense, the staff considers the nature and effect of the non-GAAP adjustment and how it relates to the company's operations, revenue generating activities, business strategy, industry and regulatory environment.

The staff would view an operating expense that occurs repeatedly or occasionally, including at irregular intervals, as recurring. [December 13, 2022]

Question 100.04

Question: ~~A registrant presents a non-GAAP performance measure that is adjusted to accelerate revenue recognized ratably over time in accordance with GAAP as though it earned revenue when customers are billed. Can this measure be presented in documents filed or furnished with the Commission or provided elsewhere, such as on company websites?~~ Can a non-GAAP measure violate Rule 100(b) of Regulation G if the recognition and measurement principles used to calculate the measure are inconsistent with GAAP?

Answer: ~~No. Non-GAAP measures that substitute individually tailored revenue recognition and measurement methods for those of GAAP could violate Rule 100(b) of Regulation G. Other measures that use individually tailored recognition and measurement methods for financial statement line items other than revenue may also violate Rule 100(b) of Regulation G. [May 17, 2016]~~ Yes. By definition, a non-GAAP measure excludes or includes amounts from the most directly comparable GAAP measure. However, non-GAAP adjustments that have the effect of changing the recognition and measurement principles required to be applied in accordance with GAAP would be considered individually tailored and may cause the presentation of a non-GAAP measure to be misleading. Examples the staff may consider to be misleading include, but are not limited to:

- changing the pattern of recognition, such as including an adjustment in a non-GAAP performance measure to accelerate revenue recognized ratably over time in accordance with GAAP as though revenue was earned when customers were billed;
- presenting a non-GAAP measure of revenue that deducts transaction costs as if the company acted as an agent in the transaction, when gross presentation as a principal is required by GAAP, or the inverse, presenting a measure of revenue on a gross basis when net presentation is required by GAAP; and

- changing the basis of accounting for revenue or expenses in a non-GAAP performance measure from an accrual basis in accordance with GAAP to a cash basis. [December 13, 2022]

Question 100.05

Question: Can a non-GAAP measure be misleading if it, and/or any adjustment made to the GAAP measure, is not appropriately labeled and clearly described?

Answer: Yes. Non-GAAP measures are not always consistent across, or comparable with, non-GAAP measures disclosed by other companies. Without an appropriate label and clear description, a non-GAAP measure and/or any adjustment made to arrive at that measure could be misleading to investors. The following examples would violate Rule 100(b) of Regulation G:

- Failure to identify and describe a measure as non-GAAP.
- Presenting a non-GAAP measure with a label that does not reflect the nature of the non-GAAP measure, such as:
    - a contribution margin that is calculated as GAAP revenue less certain expenses, labeled “net revenue”;
    - non-GAAP measure labeled the same as a GAAP line item or subtotal even though it is calculated differently than the similarly labeled GAAP measure, such as “Gross Profit” or “Sales”; and
    - a non-GAAP measure labeled “pro forma” that is not calculated in a manner consistent with the pro forma requirements in Article 11 of Regulation S-X. [December 13, 2022]

Question 100.06

Question: Can a non-GAAP measure be misleading, and violate Rule 100(b) of Regulation G, even if it is accompanied by disclosure about the nature and effect of each adjustment made to the most directly comparable GAAP measure?

Answer: Yes. It is the staff’s view that a non-GAAP measure could mislead investors to such a degree that even extensive, detailed disclosure about the nature and effect of each adjustment would not prevent the non-GAAP measure from being materially misleading. [December 13, 2022]

Section 102. Item 10(e) of Regulation S-K

Question 102.10

Question 102.10(a): Item 10(e)(1)(i)(A) of Regulation S-K requires that when a registrant presents a non-GAAP measure it must present the most directly comparable GAAP measure with equal or greater prominence. This requirement applies to non-GAAP measures presented in documents filed with the Commission and also earnings releases furnished under Item 2.02 of Form 8-K. Are there examples of disclosures that would cause a non-GAAP measure to be more prominent?

Answer: Yes. This requirement applies to the presentation of, and any related discussion and analysis of, a non-GAAP measure. ~~Although whether~~ Whether a non-GAAP measure is more prominent than the comparable GAAP measure generally depends on the facts and circumstances in which the disclosure is made~~, t~~. The staff would consider the following to be examples of ~~disclosure of~~ non-GAAP measures ~~as~~that are more prominent than the comparable GAAP measures:

- Presenting ~~a full~~an income statement of non-GAAP measures. ~~or presenting a full non-GAAP income statement when reconciling non-GAAP measures to the most directly comparable GAAP measures;~~ See Question 102.10(c).
- Presenting a non-GAAP measure before the most directly comparable GAAP measure or omitting the comparable GAAP measure altogether, including in an earnings release headline or caption that includes a non-GAAP measure.

- Presenting a ratio where a non-GAAP financial measure is the numerator and/or denominator without also presenting the ratio calculated using the most directly comparable GAAP measure(s) with equal or greater prominence.
- ~~Omitting comparable GAAP measures from an earnings release headline or caption that includes non-GAAP measures;~~
- Presenting a non-GAAP measure using a style of presentation (e.g., bold, larger font~~)~~, etc.) that emphasizes the non-GAAP measure over the comparable GAAP measure~~;~~.
- ~~A non-GAAP measure that precedes the most directly comparable GAAP measure (including in an earnings release headline or caption);~~
- Describing a non-GAAP measure as, for example, "record performance" or "exceptional" without at least an equally prominent descriptive characterization of the comparable GAAP measure~~;~~.
- ~~Providing tabular disclosure~~Presenting charts, tables or graphs of a non-GAAP financial measures without ~~preceding it with an equally prominent tabular disclosure~~presenting charts, tables or graphs of the comparable GAAP measures ~~or including~~with equal or greater prominence, or omitting the comparable GAAP measures ~~in the same table;~~altogether.
- ~~Excluding a quantitative reconciliation with respect to a forward-looking non-GAAP measure in reliance on the "unreasonable efforts" exception in Item 10(e)(1)(i)(B) without disclosing that fact and identifying the information that is unavailable and its probable significance in a location of equal or greater prominence; and~~
- Providing discussion and analysis of a non-GAAP measure without a similar discussion and analysis of the comparable GAAP measure in a location with equal or greater prominence. ~~[May 17, 2016~~[December 13, 2022]

Question 102.10(b): Are there examples of disclosures that would cause the non-GAAP reconciliation required by Item 10(e)(1)(i)(B) of Regulation S-K to give undue prominence to a non-GAAP measure?

Answer: Yes. The staff would consider the following examples of disclosure of non-GAAP measures as more prominent than the comparable GAAP measures:

- Starting the reconciliation with a non-GAAP measure.
- Presenting a non-GAAP income statement when reconciling non-GAAP measures to the most directly comparable GAAP measures. See Question 102.10(c).
- When presenting a forward-looking non-GAAP measure, a registrant may exclude the quantitative reconciliation if it is relying on the exception provided by Item 10(e)(1)(i)(B) of Regulation S-K. A measure would be considered more prominent than the comparable GAAP measure if it is presented without disclosing reliance upon the exception, identifying the information that is unavailable, and its probable significance in a location of equal or greater prominence. [December 13, 2022]

Question 102.10(c): The staff considers the presentation of a non-GAAP income statement, alone or as part of the required non-GAAP reconciliation, as giving undue prominence to non-GAAP measures. What is considered to be a non-GAAP income statement?

Answer: The staff considers a non-GAAP income statement to be one that is comprised of non-GAAP measures and includes all or most of the line items and subtotals found in a GAAP income statement. [December 13, 2022]

Appendix C — Titles of Standards and Other Literature

AICPA Literature

Practice Aid, *Accounting for and Auditing of Digital Assets*

FASB Literature

2022 FASB Investor Outreach Report

2021 FASB Investor Outreach Report

Invitation to Comment, *Agenda Consultation*

For titles of *FASB Accounting Standards Codification* references, see Deloitte's "Titles of Topics and Subtopics in the *FASB Accounting Standards Codification*."

See the FASB's Web site for the titles of citations to:

- Accounting Standards Updates.
- Proposed Accounting Standards Updates (exposure drafts and public comment documents).
- Superseded Standards (including FASB Interpretations, Staff Positions, and EITF Abstracts).

PCAOB Literature

AS 1000, *General Principles and Responsibilities*

AS 2405, *Illegal Acts by Clients*

AS 2415, *Consideration of an Entity's Ability to Continue as a Going Concern*

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Appendix D — Abbreviations

Abbreviation	Description
AICPA	American Institute of Certified Public Accountants
AS	Auditing Standard
ASC	FASB Accounting Standards Codification
ASU	FASB Accounting Standards Update
AWMV	aggregate worldwide market value
CAE	critical accounting estimate
CAP	compensation actually paid
C&DIs	compliance and disclosure interpretations
CEO	chief executive officer
CF	SEC Division of Corporation Finance
CIMA	Chartered Institute of Management Accountants
CODM	chief operating decision maker
COVID-19	coronavirus disease 2019
CSRD	Corporate Sustainability Reporting Directive
DRP	SEC Disclosure Review Program
EDGAR	SEC Electronic Data Gathering, Analysis, and Retrieval
EITF	FASB Emerging Issues Task Force
ESG	environmental, social, and governance
E.U.	European Union
FASB	Financial Accounting Standards Board
FPI	foreign private issuer
GAAP	generally accepted accounting principles

Abbreviation	Description
IASB	International Accounting Standards Board
ICFR	internal control over financial reporting
IFRS	International Financial Reporting Standard
IOSCO	International Organization of Securities Commissions
IPO	initial public offering
ISQM	International Standard on Quality Management
ISSB	International Sustainability Standards Board
LIBOR	London Interbank Offered Rate
LDTI	targeted improvements for long-duration contract
MD&A	Management's Discussion & Analysis
OCA	SEC Office of the Chief Accountant
PCAOB	Public Company Accounting Oversight Board
PIR	postimplementation review
Q&A	question and answer
QC	quality control
SAB	SEC Staff Accounting Bulletin
SEC	U.S. Securities and Exchange Commission
SPAC	special-purpose acquisition company
SQMS	AICPA Statement on Quality Management Standards
TIA	PCAOB Technology Innovation Alliance

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