



Speech by SEC Staff: Remarks Before the 2009 AICPA National Conference on Current SEC and PCAOB Developments

by

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Introduction

Thank you for that warm introduction and good morning to this impressive group of professionals. It is truly a wonderful opportunity to join you once again and to share a few thoughts with you this morning.

There is certainly no shortage of subjects for accountants and auditors to discuss, and the agenda for this conference is filled with topics and interesting presenters to add color to the issues that we confront, read about or have interest in as professionals on a daily basis. With discussions such as the Economic Effect of the Bailout, current initiatives for smaller registrants and firms, enforcement matters, fair value and valuation practices, revenue recognition, consolidation and off-balance sheet accounting, and, of course, international accounting and reporting (just to mention a few), I am looking forward to learning a great deal myself during a very rewarding three days.

As has been the case since the inception of this conference some three and a half decades ago, you will hear from a number of senior members of the SEC staff, including a number of our staff from the Office of Chief Accountant. Further, our Division Directors from the Division of Corporation Finance and the Division of Enforcement and members of their staffs, as well as others, will also be participating in this event with you. And as a real honor, SEC Commissioner Elisse Walter will be giving a key note address bright and early on Wednesday — so please don't do too much catching up with old friends on Tuesday night. Of course before I go any further, I would like to begin by reminding you that, for all of the SEC staff speaking at this conference, the views expressed are each speaker's own and not necessarily those of the Commission, the individual Commissioners, or other colleagues on the Commission staff.

For my part, I want to share with you an overview of a number of the significant issues OCA is currently addressing. However, before I speak about these issues, I'd like to make a few comments about what you can expect to be occurring within my office.

If you haven't noticed already, we are very interested in hearing your views and we will continue to encourage you to reach out to us, whether that be

on individual accounting, auditing or independence matters through our consultation process (outlined on our website at www.sec.gov/info/accountants/ocasubguidance.htm), or through less formal measures such as industry or other meetings or even by stopping one of us in the hallway at conferences like this one and sharing your point of view. I believe there is a significant benefit to all by bringing accounting and auditing issues to our attention early in the process, and by taking the time to share your views. So thank you to the many who take the time to work with us on accounting and auditing developments.

I also want to reemphasize that our mission in this office and as an agency is to put investor protection at the forefront in all that we do. From an OCA perspective, that means thinking about accounting issues with a focus on the benefits of transparency and usability of financial information for investors. It includes asking questions like, "How does a change to financial reporting benefit transparency for the purpose of making investment and capital allocation decisions?" With this in mind, you are likely to notice we will be more proactively seeking to understand and discuss the views of investors. So to investors out there, consider this an open invitation to share your perspective with me or anyone on my team; and to preparers and auditors, do not be surprised when we ask you whether you have considered the perspective of the investing public.

Finally, I believe that the accounting profession has made great strides restoring investor confidence and the perception of what it means to be a Certified Public Accountant. I believe that the vast majority of accountants are honest hard working professionals who simply want to "do the right thing." As professionals, in all of your dealing with our office, you can expect to be treated professionally. However, let me be clear that you should not confuse professionalism with a notion of leniency. Those who fail to live up to their responsibilities, and those who cause harm to investors or our capital markets you can expect that we will take appropriate action.

Accounting Standard Convergence

An important area highlighted by the financial crisis is the potential for arbitrage or mischief that can result from differential regulatory standards when you cross national borders. The crisis has shown that accounting standards are not immune to this issue. Thus, the crisis has highlighted the importance of developing, implementing and enforcing high quality and consistent accounting standards around the world. The SEC has of course played a leadership role in fostering this ideal.

As I'm sure you all know, in August 2007, the Commission issued a concept release to obtain information about the extent and nature of the public's interest in allowing U.S. issuers to prepare financial statements in accordance with IFRS for purposes of complying with the rules and regulations of the Commission. Just over a year ago, in a proposed "road-map," the Commission sought public comment on a proposed approach with respect to a possible path to greater use of IFRS in the U.S. and suggested a number of milestones that the Commission might consider as important in making that evaluation. That public comment period ended in April of this year, and the staff has spent considerable time over these last few months focusing our attention on the very insightful input we received through that comment process, as well as evaluating potential courses of action.

We received over 200 comment letters on the Proposed Roadmap from a wide variety of market participants, including those representing investors, regulators, issuers, accounting, legal and other professions, academia, standard setters and international organizations. Commenters generally expressed widespread and strong support for the goal of having a single set of high-quality globally accepted accounting standards. However, a handful of commenters questioned the feasibility of achieving that goal and even questioned the wisdom of a single globally accepted set of accounting standards, especially given the potential for jurisdictional variants.

Nevertheless, while there was widespread agreement expressed in the letters with the broad objective of a single set of high quality standards, commenter views varied significantly about the approach in the Proposed Roadmap to achieve further use of IFRS in the U.S. capital markets. Further, many commenters highlighted operational, structural and transitional challenges and issues that exist regardless of the approach. For example, and while this is certainly not an all inclusive list, commenters suggested that progress related to the current FASB/IASB MOU efforts should be completed, improvements in the consistency of approach to interpretation and enforcement across countries should be addressed, the ongoing role of the FASB should be clarified and the effect accounting changes due to IFRS would have for differing regulatory purposes (such as tax and utility regulation) should be more fully considered.

While there are a number of operational, structural and transitional challenges that must be addressed, I believe the fundamental focus of our evaluation of implementing a set of high quality international standards must be on the impact to investors. I believe that implementing a single set of global accounting standards for U.S. issuers *can, and must*, be done only in a manner that is beneficial to U.S. capital markets and consistent with the SEC's mission of protecting investors. As we continue to evaluate such a monumentally important initiative, I believe we must carefully consider and fully understand and address issues, such as:

- U.S. Investor understanding of and perspectives on IFRS;
- The development and application of IFRS for use as the single set of globally accepted accounting standards for U.S. issuers;
- The impact on the U.S. regulatory environment;
- Preparer considerations, including, among other matters, changes to accounting systems, changes to contractual agreements, corporate governance considerations, and litigation contingencies;
- Human capital readiness; and
- The role of the FASB in achieving the goal of a single global standard.

Of course, this is not necessarily an all-inclusive list, and I'm sure as you listened as I listed these issues you can realize there is a lot packed in them.

In any case, I expect that you will hear more from us on this topic in the near-term.

Principles for Addressing Changes to Accounting Standards

Regardless of any potential future action by the SEC, I believe that it is important for the FASB to continue to work closely with the IASB to raise the quality of financial reporting standards in the U.S. and around the globe. Accordingly, I'd like to offer a few thoughts or principles that I believe must continue to guide us as we implement changes to accounting standards.

I think it goes without saying, at least for those in attendance at this conference, that the quality of financial information companies provide is essential to the confidence of investors in making capital allocation decisions. While investor protection must be the clear focus; in implementing improvements, accounting standard setters of course must benefit from informative input into their standard setting initiatives from a broad range of stakeholders. As an advocate for investors, I believe it would be a serious mistake, however, to take our focus off of investors' need for unbiased and transparent information in order to design, as some may suggest, accounting standards that attempt to compensate for today's banking crisis. In my mind, accounting standards must not be designed to:

- portray an artificial stability;
- mute the impacts of real business cycles;
- mask a lack of adequate risk management or supervision; or
- favor one industry or business practice over another.

Accounting standards (and the resulting company reports) therefore must be designed to foster that public trust. They do so by providing investors with a relevant, reliable, unbiased, and comparable account of economic performance. Therefore, as accounting standards are evaluated for necessary improvement, we must also remember that new accounting standards must result in improvements in the information provided to investors. In fact, it is in this way that accounting standards contribute to financial stability — by providing investors with information to assist them in efficiently allocating capital.

Perhaps as important as the resulting accounting standards is the process by which those standards are developed. Accounting standards must be established through an independent (in both fact and appearance) and transparent process — one in which the standard setter seeks and considers input from all constituents openly, but also one in which the standard setter is then allowed to independently exercise its expert judgment.

I think these lessons, and their importance, have been brought to the forefront as a result of recent events. Accounting issues have once again drawn national and international political attention. This attention has resulted in a focus not only on individual accounting issues and standards but upon the entire standard setting process and the independence that is provided to those to develop accounting standards (both the FASB and the IASB). Throughout the existence of the agency, the SEC has consistently recognized the importance of independent standard setting. So let me be clear about my unwavering support for a strong and independent standard setter. It is times when pressures are highest, and investor confidence has the greatest potential to be shaken by uncertainty, that the importance of a credible and independent standard-setting process in the interest of investors is most pronounced.

Recent Developments in Accounting Standards

On a more operational level, accounting standard setters are continuing to work on projects to address certain accounting standards that can be improved in light of the recent economic crisis.

As I know you are all well aware, the FASB recently finalized standards to improve the off-balance sheet arrangements accounting requirements, including securitizations. The need for continued improvement in the accounting for off-balance sheet arrangements has been widely acknowledged, and my office has been at the forefront of those efforts. In January 2008, as a follow up to the staff's study on off-balance sheet accounting, OCA requested the FASB implement improvements to accounting for securitization and other off-balance sheet accounting vehicles, and I am pleased that among the FASB's many priorities this new guidance was finalized.

When implemented, the FASB's new off-balance sheet accounting requirements have the potential to noticeably improve the financial reporting landscape for many regulated financial institutions. Of course, OCA worked closely with the various regulators responsible for monitoring the safety and soundness of affected financial institutions as they consider how FASB's actions will impact their assessments.

Although time will ultimately tell, and I am quite sure structured finance will evolve, I do believe that the new standards related to consolidation and off-balance sheet accounting have the potential to meaningfully improve the information provided to investors. The elimination of exceptions like the

exception for QSPE's, coupled with the focus on a clear consolidation objective, are consistent not only with prior SEC staff studies, but also with the recommendations of CIFIIR when it comes to implementing best-practices for standard-setting. Of course, it is also vital that we all work together to minimize any disruptions to financial reporting as the FASB's new guidance is implemented early next year.

I suspect however that many balance sheets are still being weighed down by underperforming assets such as past due loans, securities or real estate with declining values. In this vein, the staff is unfortunately aware of potential structures designed and marketed to "address" assets where prices have and are expected to continue to show weakness by entering into creative off-balance sheet structures, with little apparent transfer of risk. One of my staff will be providing our current thinking on the use of creative structures and I want to remind auditors and preparers to remain vigilant when evaluating the substance, or lack thereof, of elements of transactions included to achieve specific accounting results. Of course, OCA will also continue to work closely with our Division of Corporation Finance, and our Division of Enforcement, in evaluating the implementation of the FASB's new standards in filings next year.

Like off-balance sheet arrangements, the accounting for loan losses continues to be an area of interest to not only investors, but also prudential regulators. As many of you are aware, to address concerns most recently raised by the G-20, the Financial Stability Forum (now the FSB) set up working groups to examine potential forces that contribute to pro-cyclicality. Later this morning you will hear more from Paul Beswick on this important topic.

Of course, loss provisioning is but one aspect of the FASB and the IASB's comprehensive plan to readdress the accounting for financial instruments, which has been the subject of much controversy throughout the credit crisis. These comprehensive projects will address where, and in certain cases whether, fair value should be used in accounting for investments, as well as impairment (or provisions practices), and hedging. I strongly support these efforts and agree that the crisis offers important lessons for how accounting standards can be improved to offer greater transparency to the benefit of both investors and market integrity.

The need for improvement in the accounting for financial assets was recognized long before the crisis, certainly by those charged with maintaining and improving financial reporting standards. However, the current crisis has provided the opportunity and highlighted the need to focus efforts immediately on this project. We must not lose sight of the fact that the FASB's actions earlier this year related to impairments were intended to be interim solutions. It is important that momentum not be lost at this critical juncture and that aggressive timetables be met for a more comprehensive high-quality solution to the accounting for financial assets.

My office will continue to work closely both with the FASB and the IASB as they're looking at their projects on financial instruments. Right now, they're proposing a number of changes or improvements to address some of the lessons that we've learned coming out of the financial crisis. However in my personal view, it's time to move beyond the debate about whether fair value is relevant or whether in some cases amortized cost is relevant. We have discussed this issue with market participants representing all aspects of the capital markets, and it seems like there is a desire and room for both. In talking to a number of investors, I have heard strong support for greater transparency of fair value information, but also a general acknowledgement that information on an amortized cost basis that would include improvement to a provisioning standard is useful and relevant for certain financial assets. So I think then the discussion should move beyond whether the answer is fair value or whether it's amortized cost for certain assets. Rather it seems time to consider whether both sets of information can be equally important (depending upon the facts and circumstances) and

thus much of the focus should be on how to best portray that information.

Finally, on this topic, I cannot end without acknowledging the efforts of the FASB, the IASB and their respective trustee groups for recent actions to redouble their efforts to work together. Both Boards share the same mission, but just like individual board members on either Board, it isn't surprising to me that they may not agree on every detailed aspect of a standard. On a general basis, most of the so-called "easy issues" in accounting have been resolved. That means that the issues that are being addressed in financial reporting today are often some of the thorniest or controversial accounting issues. The role of fair value and financial instrument accounting has been a controversial issue for decades. So even when a standard-setting body tries to deal with those issues on a domestic level, they have challenges. When you then elevate those issues to a global level, it's not surprising that it adds an incremental set of challenges. While at this point there are differences in some of the details of the Boards' discussed and proposed approaches, I think they also have agreement on some of the most fundamental aspects of that standard. So while it can be challenging to work through the details, I think the Boards do generally tend to agree on the objectives of financial reporting and the highest level principles; and I am particularly encouraged by their commitment to joint deliberations on a monthly basis as they tackle the challenging agenda they have before them.

PCAOB Oversight

Although accounting topics have clearly been a focus over the past year, developments at the PCAOB affecting the audit profession also remain a topic that my office has been engaged with on a regular basis.

One of the key priorities in OCA is to continue to provide effective oversight of the PCAOB while fostering our collaborative and collegial relationship; particularly as they pursue a very aggressive standard setting agenda. With the submission to the Commission of their proposed standard on Engagement Quality Review, the PCAOB is nearing the point where they have addressed most of the key standards that were identified for them in the Sarbanes-Oxley legislation itself. Of course, as you all well know, they adopted the standards of the AICPA's Auditing Standards Board as their interim set of standards. Thus it seems completely appropriate and necessary for the Board to now turn their more complete attention to looking at improving and updating the core of their standards. It will also be important, I believe, that they consider what other bodies, like the International Auditing and Assurance Standards Board or the ASB, have done as the PCAOB updates their interim standards. Continuing to build upon our strong relationship with the PCAOB staff, I look forward to this as a priority for OCA's professional practice group.

Turning from standard-setting to inspections, the PCAOB has long recognized the special issues that arise in connection with the inspection of foreign firms and has continued to work through these challenges. However at this point, unfortunately these challenges have resulted in a state where inspection of non-U.S. registered firms has not yet been fully realized. That is a suboptimal state of affairs from the perspective of investor protection and the health of our capital markets.

Since 2003, when the PCAOB began operations, a number of jurisdictions have also developed similar oversight operations over their audit professions. The PCAOB has continued to work cooperatively with these other operations and, where deemed appropriate, coordinate its work with the work performed by its counterparts. Although, at times, coordination with foreign counterparts may be complicated, I believe it is in the best interest of all parties promising potential efficiency and reductions of unnecessary regulatory burden. I am encouraged by reports from PCAOB Board members of the positive experiences in those situations in which the PCAOB has worked jointly with foreign counterparts to accomplish this mutually important mission.

I expect that the PCAOB and its staff will continue to make all efforts to resolve the obstacles that may exist today impeding effective coordination. However, while the benefits of coordination should be carefully considered, I also remain focused on the objective of the inspection process as an important tool in maintaining and enhancing the quality of audits over those that choose to participate in the U.S. capital markets — and that objective should not be compromised.

Like the inspection of foreign audit firms, the inspection of auditors in the U.S. responsible for the audits of broker dealers and investment advisers is also a focus. Auditors of broker dealers are statutorily required to register with the PCAOB, however the application of the inspection, investigation, and disciplinary processes is less certain. In this state of affairs, I have concerns that an expectations gap is being created. That is, registration in the absence of inspection and disciplinary authority has the potential to communicate a false impression to the market that I believe should be avoided.

I believe that registration with the PCAOB should be accompanied by the clear ability to inspect and take enforcement action.

Municipal Securities and the GASB

Finally, I would like to conclude today by discussing the Governmental Accounting Standards Board (the GASB). Before you all groan or tune me out, I believe that governmental accounting standards, while often overlooked, are of significant importance to the U.S. capital markets, to every one of us as hardworking taxpayers, and to the credibility of the accounting profession. The Government Accounting Standards Board, under FAF oversight, plays the often underappreciated role of establishing GAAP for state and local governments.

Identifying and maintaining a stable, long-term independent source of funding for the GASB has been a consistent challenge for the GASB and the FAF. In conjunction with the FAF's 2008 governance review, the trustees stressed the importance of a mandatory stable funding source for the GASB.

I want to highlight the importance to all of us to strive to introduce a more independent and stable source of funding for the GASB. Perhaps equally as important is the need to strive to strengthen the requirements for the use of GASB standards on a more comprehensive basis.

Chairman Schapiro testified before the Congress earlier this year, noting that we are carefully considering whether legislation is needed to fill gaps in regulatory oversight, including those related to municipal securities. She indicated that it is time for those who buy the municipal securities that are critical to state and local funding initiatives to have access to the same quality and quantity of information as those who buy corporate securities.

Concluding Comments

Once again it has been a privilege to be able to share my thoughts with you. Of course in the time I've had this morning, I can't possibly cover all the watershed of issues that we will be facing, and you will hear much more from the SEC and our office over the course of the conference. However, if I haven't covered a topic that is of interest to you, please stop me at a break, send up a question card or give me a call — I'd be happy to talk to you. It has been a pleasure working with so many of you to date and I look forward optimistically to our continued joint efforts to improve upon our world class system of financial reporting going forward.

Thank you.

