

REVISED SEC STAFF ANNOUNCEMENT

Topic: *EITF Abstracts*, Topic No. D-86, "Issuance of Financial Statements"

Date Discussed: September 7, 2006

Footnote 4 of Topic D-86 references examples included in previously deleted EITF Issues No. 95-18, "Accounting and Reporting for a Discontinued Business Segment When the Measurement Date Occurs after the Balance Sheet Date but before the Issuance of Financial Statements," and No. 99-11, "Subsequent Events Caused by Year 2000." Since these references were added as examples only and do not contribute to the ultimate conclusion, the SEC staff announced that the footnote would be deleted. For convenience, Topic D-86 is included below in its entirety (additions are underscored and deletions are ~~struck through~~).

Topic No. D-86

Topic: Issuance of Financial Statements

Dates Discussed: January 19–20, 2000; September 7, 2006

The SEC staff has received a number of inquiries regarding when financial statements are considered to have been issued. In considering this issue, the SEC staff observed that Rules 10b-5 and 12b-20 under the Securities Exchange Act of 1934 and General Instruction C(3) to Form 10-K specify that financial statements must not be misleading as of the date they are filed with the Commission. For example, assume that a registrant widely distributes its financial statements but, before filing them with the Commission, the registrant or its auditor becomes aware of an event or transaction that existed at the date of the financial statements that causes those financial statements to be materially misleading. If a registrant does not amend those financial statements so that they are free of material misstatement or omissions when they are filed with the Commission, the registrant will be knowingly filing a false and misleading document. In addition, registrants are reminded of their responsibility to, at a minimum, disclose subsequent events,¹ while independent auditors are reminded of their responsibility to assess subsequent events² and evaluate the impact of the events or transactions on their audit report.³

¹ See AICPA Codification of Statements on Auditing Standards, AU Section 560, *Subsequent Events*, paragraphs 5 and 8.

² See AU 560 and AU Section 561, *Subsequent Discovery of Facts Existing at Date of the Auditor's Report*.

³ See AU Section 530, *Dating of the Independent Auditor's Report*, and AU 560, paragraph 9.

A registrant and its independent auditor have responsibilities with regard to post-balance-sheet-date subsequent events, as well as the application of authoritative literature applicable to such events.⁴ Referring to AICPA Statement on Auditing Standards No. 1, *Subsequent Events* (SAS 1 or AU 560), paragraph 3 states:

The first type [of subsequent event] consists of those events that provide additional evidence with respect to conditions that existed at the date of the balance sheet and affect the estimates inherent in the process of preparing financial statements. All information that becomes available prior to the issuance of the financial statements should be used by management in its evaluation of the conditions on which the estimates were based. The financial statements should be adjusted for any changes in estimates resulting from the use of such evidence.

Generally, the staff believes that financial statements are "issued" as of the date they are distributed for general use and reliance in a form and format that complies with generally accepted accounting principles (GAAP) and, in the case of annual financial statements, that contain an audit report that indicates that the auditors have complied with generally accepted auditing standards (GAAS) in completing their audit. Issuance of financial statements then would generally be the earlier of when the annual or quarterly financial statements are widely distributed to all shareholders and other financial statement users⁴⁵ or filed with the Commission. Furthermore, the issuance of an earnings release does not constitute issuance of financial statements because the earnings release would not be in a form and format that complies with GAAP and GAAS.

⁴ ~~For example, see Issues No. 95-18, "Accounting and Reporting for a Discontinued Business Segment When the Measurement Date Occurs after the Balance Sheet Date but before the Issuance of Financial Statements," and No. 99-11, "Subsequent Events Caused by Year 2000."~~

⁴⁵ Posting financial statements to a registrant's web site would not be considered wide distribution to all shareholders and other financial statement users as not all such parties necessarily have the ability to access a registrant's web site or be aware that such a posting had occurred.