FORsights™

Year-End Accounting & Reporting Updates for Banks

This article pulls together important highlights from recent SEC speeches, enforcement actions, and the December American Institute of CPAs and the Chartered Institute of Management Accountants Conference on Current SEC and PCAOB Developments. Consider these accounting and reporting issues as you prepare year-end financial statements and filings. We have included several items most relevant to banks, along with links to our FORsights™ articles and webinars for a deeper dive into these topics. We hope these insights help you navigate the ever-evolving reporting and regulatory landscape.

FASB

ASU 2023-07 Segment Reporting

This Accounting Standards Update (ASU) is effective for 2024 financial statements. In previous statements to representatives of the accounting profession, the SEC has provided the following clarifications:

Non-GAAP Measures

- Additional segment profitability measures that a public entity chooses to disclose that are not determined in accordance with U.S. GAAP would be considered non-GAAP financial measures and subject to the relevant SEC rules and regulations on the use of non-GAAP measures.
- ASU 2023-07 does not prohibit the disclosure of an expense not calculated in accordance with U.S. GAAP. However, SEC guidance in Regulation S-X, Rule 4-01(a) requires that such information not be misleading.

Single Reportable Segment Entities

- If a registrant has a single reportable segment that is managed on a consolidated basis, SEC staff would expect the registrant to conclude that the segment measure of profit or loss required to be disclosed is consolidated net income since Accounting Standards Codification (ASC) 280, *Segment Reporting*, requires disclosure of the measure closest to GAAP.
- An entity should evaluate how it distinguishes the business activities of the single operating segment from the entity's other activities. There should be additional evidence—beyond the profit or loss measure—that the entity is managed on a consolidated basis, *e.g.*, how budgets are prepared, resources are allocated, and performance is assessed. Excluding corporate headquarters or a functional department (IT, treasury) from a measure of profit or loss reviewed by the chief operating decision maker (CODM) is not determinative of whether an entity is managed on a consolidated basis.

Other Clarifications

- SEC staff would generally consider segment operating results that are reviewed by—or provided to—the CODM on a quarterly basis to meet the "regularly reviewed" and "regularly provided" frequency thresholds in ASC 280. A review frequency less than quarterly also could constitute a regular review.
- "Revenues from external customers" is a specified amount that is required to be disclosed under ASC 280 for each reportable segment if it is included in the measure of segment profit or loss reviewed by the

CODM or is otherwise regularly provided to the CODM, even if it is not included in that measure. Such amounts are required to be determined on the basis of the applicable accounting principle, *e.g.*, ASC 606, *Revenue from Contracts with Customers.* SEC staff has objected to the disclosure of amounts that are presented on a different basis.

- An entity could use different measures for different reportable segments if the CODM uses those measures to assess performance and allocate resources.

Recent SEC Clarifications

At the recent conference, panelists from the SEC Division of Corporation Finance (Corp Fin) made the following points:

- If corporate overhead costs are not fully allocated to segments, the voluntary segment measure would not be considered a non-GAAP measure solely because of the allocation methodology.
- An auditor is not required to audit for compliance with the SEC's non-GAAP rules within the segment footnote. Supplemental disclosures required by the SEC non-GAAP rules could be labeled as "unaudited" if included in the footnotes.
- An auditor could choose to include an emphasis of matter in the audit opinion if non-GAAP measures are presented but not audited.
- Noncompliance with ASC 280, *e.g.*, including a measure not reviewed by the CODM, would trigger an error evaluation under ASC 250, *Accounting Changes and Error Corrections*. However, noncompliance with the non-GAAP measure rules would not constitute an error under ASC 250 but could require a subsequent elimination of such a measure from the footnote and cause the registrant to re-evaluate its disclosure controls and procedures.

Resource: Prepared for FASB's New Segment Disclosures?

Forvis Mazars prepares a quarterly update on all FASB standard-setting activity, including upcoming effective dates, outstanding exposure drafts, and ongoing projects that may impact your accounting and financial statement reporting.

SEC

Pay Versus Performance

This rule was effective in December 2022 and requires new narrative and quantitative details on how executive compensation for covered executive officers relates to a registrant's financial performance. Multiple compliance and disclosure interpretations have been issued to provide additional clarity for preparers, but Corp Fin continues to see errors in the following areas:

Net Income

The net income amount in the pay versus performance table must be the net income/loss as required by Regulation S-X to be disclosed in the registrant's audited GAAP financial statements. **Corp Fin has observed instances of**

registrants incorrectly using net income attributable to controlling interests or income from continuing operations.

Non-GAAP Company-Selected Measures

The company-selected measure chosen by the registrant and specific to the registrant that—in the registrant's assessment—represents the most important financial performance measure the registrant uses to link compensation actually paid to covered executives to company performance for the most recently completed fiscal year. A registrant can select a non-GAAP financial measure. This use of a non-GAAP measure will not be subject to Regulation G and Item 10(e) of Regulation S-K; however, disclosure must be provided regarding how the number is calculated from the registrant's audited financial statements. **Corp Fin would like to see registrants provide clearer descriptions of how the measure is calculated and avoid the use of unspecific other adjustments.**

Compensation Actually Paid

Registrants should start with compensation as reported in the Summary Compensation Table and adjust for pension benefits and equity awards. Footnote disclosure is required for amounts adjusted. **Corp Fin noted that for some registrants, narratives lack sufficient detail, making it difficult to determine how the rule requirements have been met and using terminology not used in the rule, further complicating an understanding of the disclosure.**

Executive Pay Clawbacks

Rule 10D-1 under the *Securities Exchange Act of 1934* required exchanges to develop standards for listed companies for the recovery of erroneously awarded compensation to executive officers, known as a clawback policy. The rule was effective in December 2023, but there is continued confusion about the checkboxes on the cover of Forms 10K, 20F, and 40F and the recovery analysis disclosures. The first checkbox indicates if the financial statements reflect a correction of an error to previously issued financial statements, and the second indicates if those corrections are restatements that require a recovery analysis.

Listed issuers must adopt and comply with a written compensation policy that is triggered if the issuer is required to prepare an accounting restatement[1] that corrects an error[2] in previously issued financial statements that is material to the previously issued financial statements (Big R), or that would result in a material misstatement if an error that accumulated over time were to be corrected in the current period or left uncorrected in the current period (little r). A little r restatement differs from a Big R restatement primarily in the reason for the error correction, the form and timing of reporting, and the disclosure required. A Big R restatement requires the issuer to file an Item 4.02 Form 8-K and amend its filings promptly to restate the previously issued financial statements. A little r restatement

[1]A restatement is defined in ASC 250, *Accounting Changes and Error Corrections*, as the process of revising previously issued financial statements to reflect the correction of an error in those financial statements.

[2]An error in previously issued financial statements is defined in ASC 250 as an error in recognition, measurement, presentation, or disclosure in financial statements resulting from mathematical mistakes, mistakes in the application of GAAP, or oversight or misuse of facts that existed at the time the financial statements were prepared. A change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of an error.

generally does not trigger an Item 4.02 Form 8-K, and an issuer may make any corrections the next time the registrant files the prior-year financial statements.

Under GAAP, the following types of changes in an issuer's financial statements do not represent an error correction and would not trigger the application of the compensation recovery policy:

- Retrospective application of a change in accounting principle
- Retrospective revision to reportable segment information due to a change in an issuer's organizational structure
- Retrospective reclassification due to a discontinued operation
- Retrospective application of a change in reporting entity, such as from a reorganization of entities under common control
- Retrospective adjustment to provisional amounts in connection with a prior business combination (International Financial Reporting Standards filers only)
- Retrospective revision for stock splits, reverse stock splits, stock dividends, or other changes in capital structure

Box 1 – Restatements

The first checkbox should be selected for both Big R and little r restatements, as well as any voluntary restatements as communicated by the SEC staff at the conference.

Box 2 – Recovery Analysis

A recovery analysis is triggered by both Big R and little r restatements but not voluntary restatements.

Under Item 402(w), the following disclosure is required when an issuer is required to prepare a restatement that triggered a clawback requirement:

- Date the accounting restatement was prepared
- Aggregate dollar amount of erroneously awarded compensation and calculation of that amount
  - Estimates used in determining the erroneously awarded compensation and an explanation of the methodology used for the estimates if the financial reporting measure is related to a stock price or total shareholder return metric
- Aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year
- If any erroneously awarded compensation was not recovered based on the impracticability exception, a brief description—for each individual named executive officer and for all other executive officers as a group—of the forgone recovery amount and the reasons the issuer has not pursued such recovery
- If an issuer filed a restatement and concluded that recovery of erroneously awarded compensation was not required under its recovery policy, a brief explanation of what resulted in this conclusion

Artificial Intelligence (AI)

Corp Fin identified AI as an emerging risk that will be a focus of disclosure reviews this year. Several existing regulations may require disclosure about a company's AI use and related risks, including disclosure in the business

description section, risk factors, management's discussion and analysis, the financial statements, and the board's role in risk oversight. Corp Fin staff will consider how companies are describing these opportunities and risks, including whether the company:

- Clearly defines what it means by AI and how the technology could improve the company's results of operations, financial condition, and future prospects, including risks related to its use of AI
- Provides tailored—rather than boilerplate—disclosures, commensurate with its materiality to the company, about material risks and the impact the technology is reasonably likely to have on its business and financial results
- Focuses on the company's current or proposed use of AI technology rather than generic buzz
- Has a reasonable basis for its claims when discussing AI prospects

Registrants should avoid boilerplate language and provide company-specific details.

Resources:

The Importance of AI Governance

AI Essentials: Prompt Engineering & Use Cases in Financial Services (webinar)

AI & Machine Learning Model Development Considerations

Cybersecurity Reporting Requirements

Forvis Mazars previously highlighted the SEC's comments on how to consider materiality and to report a voluntary disclosure of an incident under Item 8.01 rather than Item 1.05 on Form 8-K when there is a cyber incident.

In addition, this rule requires new disclosure controls and procedures. As highlighted by the recent enforcement action below, charges were brought by the SEC for control failure without underlying misconduct.

In October, the SEC charged four current and former public companies with making materially misleading disclosures on cybersecurity risks and intrusions. The charges stemmed from a March 2020 data breach at a third-party software company. A software update inadvertently introduced a malware virus to more than 18,000 public and private organizations and governments. The virus also spread to the software user's customers and partners.

Once the four companies became aware of the breach, they negligently minimized the cybersecurity incident in public disclosures. One company described its risks from cybersecurity events as hypothetical despite knowing that it had experienced two intrusions from the March 2020 attack. These materially misleading disclosures resulted partly from the company's deficient disclosure controls. The second company noted that a limited number of email messages were impacted when at least 145 files in its cloud file-sharing environment were accessed. The third company knew of the intrusion but described the attack and risks from them in generic terms. The fourth company minimized the attack by failing to disclose the nature of the code the threat actor exfiltrated and the number of encrypted credentials the threat actor accessed.

"Downplaying the extent of a material cybersecurity breach is a bad strategy," said Jorge G. Tenreiro, acting chief of the Crypto Assets and Cyber Unit, in an SEC press release. "In two of these cases, the relevant cybersecurity risk factors were framed hypothetically or generically when the companies knew the warned of risks had already materialized. The federal securities laws prohibit half-truths, and there is no exception for statements in risk-factor disclosures."

Best Practices:

- Have written cybersecurity assessment policy including clearly defined roles and responsibilities and escalation process
- Consider having your chief information security officer on the disclosure committee
- Document discussions on risk assessment
- Consider "tabletop" exercises where key personnel discuss responses to a simulated cyber incident
- In the Form 10K disclosure, do not just say you have a cyber process; describe the process
- Update risk language if an event has occurred, "We have had … and may continue to have …"

Resources:

Details on SEC's New Cybersecurity Disclosures

Urgent Reminders on Required SEC Cyber Disclosures for Registrants

SEC's New Cyber Disclosure Rule: Answering Your Top Questions (Webinar)

Forvis Mazars prepares a quarterly update on recent standard-setting activity by the SEC's Division of Corporation Finance, reminders on newly effective rules, updates on the SEC's regulatory agenda, and recent enforcement actions.

SEC Regulatory Outlook

Both SEC Chair Gary Gensler and Democratic Commissioner Jaime Lizárraga have announced their intent to step down in January 2025. President-elect Donald Trump has announced Paul Atkins as his nominee for the SEC chair.[3] Atkins previously served as a commissioner from 2002 to 2008. Atkins will require Senate approval and based on prior administrative turnovers, this could happen as soon as April or May 2025. Under SEC quorum rules, a three-member commission can only advance a regulation if all the commissioners participate in a vote.

In presidential election years, regulations passed within the previous 60 legislative days are subject to the *Congressional Review Act* (CRA) and could be overturned. Although other divisions within the SEC have issued final rules throughout the year, Corp Fin has not issued any final rules for registrants since the climate disclosure rule in March 2024, which has already been stayed. Unraveling existing rules outside the CRA is not a fast process.

[3] "Trump nominates cryptocurrency advocate Paul Atkins as SEC chair," apnews.com, December 4, 2024.

Once a new chair is named and confirmed, a majority of the commission is required for any proposal and final rules, which also are subject to the *Administrative Procedure Act*. The Chevron ruling and litigation underway are likely to impact the drafting and delay the issuance of future regulations. The SEC chair sets the enforcement agenda and could instruct SEC staff not to pursue cases for certain rules. The SEC chair can also stop agency lawyers from defending existing legal challenges in court. In addition, Congress could attach a rider to legislative funding to the SEC prohibiting the agency from enforcing certain rules.

The SEC's Enforcement, Trading and Markets, and Corporation Finance directors have announced their resignations. The customary process is for interim acting directors to serve until the incoming SEC chair names new directors in 2025. Enforcement actions are likely to continue in the short term since the vast majority of cases are related to fraud. By mid-2025, with a new chair and directors in place, it is anticipated there could be a change in the size of corporate penalties, and enforcement actions for compliance, control, and record-keeping failures in the absence of fraud. Corp Fin's disclosure review program is unlikely to change in the middle of 10-K preparation and proxy season. However, there is likely to be a slowdown in no-action letters and exemptive orders.

Three commissioners are required to vote on proposals and final roles; however, under the *Sunshine Act*, the two Republican commissioners could meet (being less than a majority of a full commission) and begin planning a new regulatory agenda even before a new chair is confirmed. Commissioners Hester Peirce and Mark Uyeda worked with Atkins at the SEC during his previous tenure, which could fast track an updated regulatory agenda once confirmation is complete.

Crypto

Uyeda noted he would like to bring regulatory clarity to the crypto market and move away from setting policy through enforcement actions. Actions could include withdrawing Staff Accounting Bulletin (SAB) 121, which was never subject to thorough due process (no notice, no comment period, and no vote) as it was not a formal rule.

Resource: SEC Update on Crypto-Asset Safeguarding & Custody

Sustainability

Uyeda also expressed his concerns about the now-stayed climate rule. That rule set a 1% disclosure threshold and defined materiality as whether "a reasonable investor would consider information important when deciding to buy or sell securities." He noted that retail and institutional investors have very different motives for investment decisions and the SEC should "not be using a disclosure regime for special interests."

European initiatives and implementation dates for California rules are still in effect, so companies should continue to plan accordingly.

Resources:

Updated SEC Expectations on Climate Disclosures

The 1-2-3s of the GHG Protocol: Tips for California Climate Reporting

Identifying Internal Controls for SEC Climate GHG Reporting

SEC's Climate Disclosure Rule (Stayed)

Preparing for Action: Understanding California’s Climate Rules (webinar)

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