

Haynes, Lanea

From: Storm, Evan
Sent: Wednesday, February 08, 2017 2:59 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Interpretation Question re "Regularly Prepared" Financials

[REDACTED]
We agree with your analysis.
Evan

From: [REDACTED]
Sent: Wednesday, February 08, 2017 1:45 PM
To: Storm, Evan
Cc: [REDACTED]
Subject: Interpretation Question re "Regularly Prepared" Financials

Greetings again Evan. Another question for you:

We would like to confirm our understanding of the PNO's interpretation of Rule 801.11 as it relates to a person's "regularly prepared" annual statement of income or balance sheet.

When determining whether a transaction is reportable under the Act's size of the person test, we understand that parties must rely on the person's annual net sales and total assets as stated on its last regularly prepared annual statement of income or last regularly prepared balance sheet. We are considering a transaction in which one of the parties to the transaction, Company A, would fall under the relevant size-of-the-person thresholds if its most recent unaudited 2016 end-of-year balance sheet is used, but above those thresholds if the most recent audited financial statements are instead viewed as the most recent regularly prepared balance sheet under Rule 801.11.

Company A regularly prepares monthly income statements and balance sheets using the company's standard accounting procedures. These financials are relied on by management in the ordinary course of business. The last such report, which is considered final by Company A and not subject to adjustment, was created in January 2017 and reflects Company A's annual net sales and total assets for 2016. Company A's last audited financial statements covering the year ended December 31, 2015 and were prepared in March 2016.

According 16 C.F.R. 801.11 and Interpretation 81 of the ABA Premerger Notification Practice Manual (5th ed.), financial statements are considered to be "regularly prepared" if they are prepared at a normal time, according to the company's normal accounting procedures, and are considered to be final by the company's management. This interpretation has been applied in several prior PNO informal interpretations. For example, in February 1993, the PNO advised that a "[t]rial balance sheet with errors is not a regularly prepared balance sheet but is in the process of being prepared. Once prepared without errors and if prepared on a monthly basis it becomes the last regularly prepared balance sheet and supplants the previously issued 10-Q of an earlier date." (Informal Interpretation 9302004)

Because Company A's 2016 financials were prepared by the company in the ordinary course using the company's customary accounting standards, are relied on by company management and are viewed as final by the company, our understanding is that they should be regarded as the most recently prepared financial statement for the purposes of Rule 801.11 rather than the audited 2015 financials. Please advise whether the PNO agrees with this interpretation.

Many thanks,

[Redacted]

[Redacted]

[Redacted]

[Redacted]