

The SEC logo consists of a blue square with the letters "SEC" in white, bold, sans-serif font. It is flanked by two blue rectangular bars of the same color.

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The PRO GROUP logo features the words "PRO GROUP" in blue, bold, sans-serif font, centered within a yellow banner that has a pointed bottom.

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10-Q and K Disclosure Prep Series

December 7, 2022

Welcome Morgan Witt

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Community Manager, SEC Professionals Group

Webcams

Lauren Uyemura

Slides

Qualifying for CPE

In order to qualify, you must:

- Log in individually
- Attend the full 60-minute duration
- Answer 3 of 4 poll questions

Download your CPE certificate

Questions? Contact info@secprofessionals.org

Speaker Bios

Jonathan Gregory
Director External Reporting & Technical Accounting
The Hershey Company

FAQs

CPE poll question not displaying
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Buffering or playback issues

- Refresh your console by pressing F5 (Command+R on Macs)
- Exit out and re-open the webinar
- Switch browsers (Chrome works best)
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CPE certificates
Certificates are available for download as soon as you meet the qualification requirements. Click the certificate icon to download. Certificates will also be emailed to attendees 1 hour after the webinar concludes.

Please use the Q&A box for additional questions, and we will reply via email.

Resources (open in new tab)

- Today's Slides
- Forum: Weigh in on the best ASC B
- On-demand Webinar: 10-1
- ESG Reporting Committee P
- 6/30 ESG Reporting Committee P

Certification

This webcast allows certification only when viewing live.

Survey

Event Survey

1. Were the stated learning objectives met?

Select a Choice

2. Were the stated prerequisite requirements appropriate and sufficient?

Q&A

Enter your question

Submit

ON24

Webcams

Lauren Uyemura

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Resources (open in new tab)

Today's Slides

Forum: Weigh in on the best ASC 842 software

On-demand Webinar: 10-Q Prep

ESG Reporting Committee Page

6/30 ESG Reporting Committee Kickoff Call

Certification

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Q&A

New question submission has been disabled by the organizer.

Qualifying for CPE

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In order to qualify, you must:



Log in individually
Attend the full duration
Answer 5 of 6 poll questions

Questions? Contact info@secprofessionals.org

Panelists



Alan J. Wilson

Counsel
WilmerHale

Steven Brink

Performance Enablement Manager
Intelligize

Patrick Gilmore

National Office Partner
Deloitte

Steve Soter

Executive Advisor
SEC Professionals Group

CPE Question 1



How challenging has it been to keep your disclosures up to date during the last year due to geopolitical, economic, and other events?

- It has been exceptionally difficult
- It wasn't easy but we managed
- Smoother sailing all the way
- N/A

Learning Objectives

- Our learning objectives for this discussion are to:
 - Analyze recently issued regulatory guidance by the SEC
 - Discuss how companies are addressing emerging trends in disclosures
 - Review disclosure language examples from recently filed 10-Ks and 10-Qs
- Please ask questions!
 - Don't be bashful, all questions are OK!

Today's Agenda



▶ Trending Disclosure Considerations

▶ Selected Developments (SEC, FASB, PCAOB)

▶ Disclosure Hygiene Reminders

▶ Final Takeaways

▶ Other Considerations

▶ Q&A

Trending Disclosure Considerations

- Disclosure topics potentially ripe for review and update:
 - COVID-19
 - Russia/Ukraine war
 - Supply chain, product distribution and logistics challenges
 - Inflation
 - Recession
 - Interest rates
 - Financial market volatility
 - Energy market issues
 - Liquidity and/or capital resources constraints
- Among other disclosure sections, review forward-looking statements disclaimers, MD&A, risk factors and financial statement footnotes
- Assess alignment between 10-Q/10-K and other earnings materials (e.g., earnings releases and conference call scripts)

Trending Disclosure Considerations

Russell 3000	10K YOY	10Q QOQ
COVID-19	32%	5%
Russia/Ukraine war	1388%	9257%
Supply chain, product distribution and logistics challenges	107%	103%
Inflation	-13%	56%
Recession	20%	31%
Interest rates	36%	47%
Financial market volatility	-29%	6%
Energy market issues	41%	76%
Liquidity and/or capital resources constraints	38%	14%

CPE Question 2



How would you describe the SEC's current rulemaking pace and volume?

- Way too aggressive
- It seems reasonable
- I wish they would do more
- N/A

Accounting and Disclosure Hygiene Reminders...

From SEC Comment Letters and Enforcement



- Backlog
 - Be transparent about backlog changes; do not manage backlog to adjust revenues
- Revenue Recognition
 - Do not “pull forward” orders
 - Consider refreshing discussions with internal audit about evaluating controls around sales processes
- Loss Contingencies
 - Ensure good faith determination made around accrual/disclosure analysis at each reporting period
 - Involve legal, accounting and management as appropriate, particularly for more challenging matters
 - “Cookie jar” accounting is prohibited

Accounting and Disclosure Hygiene Reminders...

From SEC Comment Letters and Enforcement



- MD&A
 - Be transparent about, and quantify, significant components of revenues and expenses that are material to understanding the company's performance, including offsetting drivers
 - Take a fresh look at the disclosure against amended S-K 303 that first took effect with Form 10-K for FY2021 (for calendar year companies), particularly critical accounting estimates and liquidity and capital resources
- Non-GAAP
 - Additional scrutiny being applied around potential individually tailored accounting principles (ITAPs)
 - Beware of adjustments for "normal recurring transactions" that might give rise to ITAPs
- Segment Reporting
 - Assess segment reporting analysis/memo alongside public disclosures and address gaps
 - Be sure all ASC 280 requirements are satisfied in the footnote, including appropriate reconciliations and entity-wide revenue disclosures

Accounting and Disclosure Hygiene Reminders...

From SEC Comment Letters and Enforcement



10-K Items	2022	2021	2020
Item 7. MD&A	84	185	99
Item 1A. Risk Factors	23	98	14
Notes to Financial Statements	13	34	65
Item 8. Financial Statements	10	9	18
Item 9A. Controls and Procedures	8	5	9
Item 1. Business	6	10	14

Accounting and Disclosure Hygiene Reminders...

From SEC Comment Letters and Enforcement



Non-GAAP	2022	2021	2020	2019
Adjusted EBITDA	12	19	8	18
Adjusted Net Income	10	16	9	23
Adjusted Operating Income/Earn...	8	7	7	9
Adjusted EPS	7	11	11	9
Adjusted Net Income Per Share	6	0	1	2
Adjusted Diluted EPS	5	9	8	9
Free Cash Flow	5	8	8	0
Adjusted Free Cash Flow	3	4	10	0
Adjusted Income	3	10	3	5
Adjusted EBITDA Margin	2	7	1	5
EBITDA	0	8	4	7

CPE Question 3



At the Q1 SEC Pro Group meeting, we plan to have a speaker from the SEC. What topic would you like to hear about?

- Climate proposal and other rulemaking
- SEC enforcement
- Non-GAAP
- Comment letters
- Advice for financial reporting teams
- If you don't see your suggestion here, select this option and type it in the Q&A box

Other Accounting and Reporting Considerations



- Impairment Analyses
 - Note impact of interest rate increases on discounting
 - For goodwill, exercise additional caution when fair value is not substantially more than the carrying amount (i.e. a reporting unit may be at risk) and provide disclosures contemplated in FRM 9510.3 – anticipate SEC comment
- ICFR and DCP
 - Ensure documentation is maintained and current
 - Exercise care in regards to control effectiveness when dealing with accounting errors (including those corrected with permissible out-of-period adjustments)
- Errors
 - Anticipate scrutiny in SEC comments around materiality determinations for errors, with particular challenges of overreliance on qualitative factors when concluding that a quantitatively large error is immaterial

Other Accounting and Reporting Considerations

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Goodwill And Other Intangible Assets, Page 45

1 Comment 4 (03/01/2021) [View Similar](#) [View Comment Letter](#)

Your disclosures indicate that you recorded a \$3 million impairment charge related to your SimplyProtein brand intangible asset as a result of your Fiscal 2020 impairment testing. Based on your remaining goodwill and intangible balances, it appears future impairments could be material to your results of operations. Please disclose and discuss the risks associated with possible future impairments and the material assumptions underlying your **impairment analyses**.

Response 4 (03/12/2021) [View Changes](#) [View Response Letter](#)

In response to the Staff's comment, as discussed above, the Company determined based on the results of its goodwill impairment assessment that goodwill was neither impaired nor was there a material risk for future possible goodwill impairments as of the date of the assessment.

The \$3.0 million impairment related to the SimplyProtein indefinite-lived brand intangible in fiscal 2020 was determined by a quantitative assessment triggered by indicators of impairment, including but not limited to an offer to sell the SimplyProtein brand, that occurred during the fourth fiscal quarter of 2020. For the Company's indefinite-lived brand and trademark intangible related to its Quest brand, the Company elected to qualitatively assess the indefinite-lived intangible for impairment for fiscal 2020. The qualitative assessment performed in accordance with ASC 350-30-35-18 through -18F indicated that it was not more likely than not that the Quest brand and trademark indefinite-lived intangible's fair value was less than its carrying amount, and as a result the Company did not perform a quantitative assessment. For the Company's indefinite-lived brand and trademark intangible related to its Atkins brand, the Company elected to bypass the qualitative assessment and proceed directly to performing the quantitative impairment assessment per ASC 350-30-35-19. The estimated fair value of the Atkins brand and trademark indefinite-lived intangible substantially exceeded its carrying value.

As a result of the impairment assessments performed on the indefinite-lived intangibles discussed above, the Company determined that there was no impairment identified in fiscal 2020 with the exception of the \$3.0 million impairment related to the SimplyProtein brand. Additionally, the Company had not identified indicators of impairment related to its finite-lived intangible assets, which are tested for impairment when events or circumstances indicated that the carrying amount may not be recoverable in accordance with ASC 350-30-35-14. Therefore, the Company determined that there was no material risk for future possible intangible impairments as of the date of the assessment.

As disclosed in the Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies, Judgements and Estimates within the Annual Report, the material inputs and assumptions underlying the Company's goodwill and intangible **impairment analyses** are based on operational forecasts derived from expectations of future operating performance, which require considerable management judgment regarding matters that are uncertain and susceptible to change.

Consolidated Financial Statements 17.

No Further Questions 03/29/2021 [View Final Letter](#)

Other Accounting and Reporting Considerations

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ITEM 9A. Controls And Procedures, Page 28

1 Comment 1 (10/07/2022) [View Similar](#) [View Comment Letter](#)

We note your disclosure that management has determined that your internal control over financial reporting ("ICFR") was not effective as of October 31, 2021 due to certain material weaknesses. However, we also note your disclosure that your President, CEO and CFO concluded that disclosure controls and procedures ("DCP") were effective as of the end of the period covered by this report. Please explain to us why you believe DCP were effective when ICFR was determined not to be effective.

Response 1 (10/17/2022) [View Changes](#) [View Response Letter](#)

The Company's management concluded that that the Company's disclosure controls and procedures were not effective as of October 31, 2021, and the statement to the contrary in the Annual Report was the result of an inadvertent omission of the word "not" in the disclosure. The Company respectfully advises the Staff that the Quarterly Reports on Form 10-Q filed by the Company on March 17, 2022, June 14, 2022 and September 14, 2022 each disclose that the Company's disclosure controls and procedures were not effective at the end of each of the respective reporting periods covered by such reports. The Company hereby undertakes to properly reflect management's conclusions as to internal control over financial reporting in future SEC filings.

Securities and Exchange Commission Division of Corporation Finance October 17, 2022 Page 2 Statement of Operations, page F-6

No Further Questions 10/20/2022 [View Final Letter](#)

CPE Question 4

How comfortable would you feel in SEC pre-clearance or consultation on a potentially sensitive accounting or disclosure issue?

- I would feel very comfortable
- I would feel slightly uncomfortable
- I would only do so under advice of counsel or my auditors
- I would not do this under any circumstances
- N/A

Selected Development - SEC

- Pay Versus Performance
 - Begin preparing before proxy season
- Incentive Compensation Clawbacks
 - Requires adoption and disclosure of incentive comp clawback policies
 - Applies to restatements and revisions (both "big R" and "little R")
- ESG Disclosures
 - Climate proposal*
 - Settled and ongoing enforcement actions relating to inaccuracies in ESG reports
 - Comment letters continue to push for disclosure enhancements around climate, leveraging 2010 SEC guidance

*Among the proposals for which the comment period was extended due to SEC technological error.

Selected Development - SEC

- Share Repurchases
 - Inflation Reduction Act of 2022
 - SEC rule proposal re share repurchase disclosures*
- Cybersecurity
 - SEC enforcement sweep about disclosures related to SolarWinds remains ongoing
 - SEC rule proposal re cybersecurity*

*Among the proposals for which the comment period was extended due to SEC technological error.

CPE Question 5

How prepared are you feeling for your year-end close and financial reporting processes?

- I am ready NOW
- We are nearly there
- We have a ways to go
- I'm staring at the abyss and hopelessness is settling in
- N/A

Selected Development - FASB

- Supplier finance programs
 - ASU 2022-04 (Liabilities – Supplier Finance Programs) affects buyer companies that use supplier finance programs in connection with buying goods or services
 - Requires quantitative and qualitative disclosures of sufficient information about the program to describe the program's nature, activity during the period, changes from period to period, and potential magnitude
- Segment reporting changes
 - Exposure draft released in October 2022, reflecting most significant change to segment reporting since 1997
 - Adds new segment footnote disclosures, including of (i) significant segment expenses regularly provided to the CODM and included in each reported measure of segment profit or loss, (ii) all annual disclosures about a reportable segment's profit or loss and assets currently required by Topic 280, Segment Reporting, in interim periods, and (iii) others

Selected Development - PCAOB

- Anticipate enhanced auditor focus and/or audit procedures around the following:
 - Going concern conclusions
 - Impairment analyses
 - Revenue recognition
 - Loan loss allowances
 - Company-specific risks of material misstatement (e.g., significant M&A, supply chain disruptions, market volatility)
 - Auditor independence (e.g., related party transactions)
 - Management's cybersecurity risk assessment approach
 - Digital assets

CPE Question 6



Would you like more information about Intelligize?

- Yes
- No

Final Takeaways

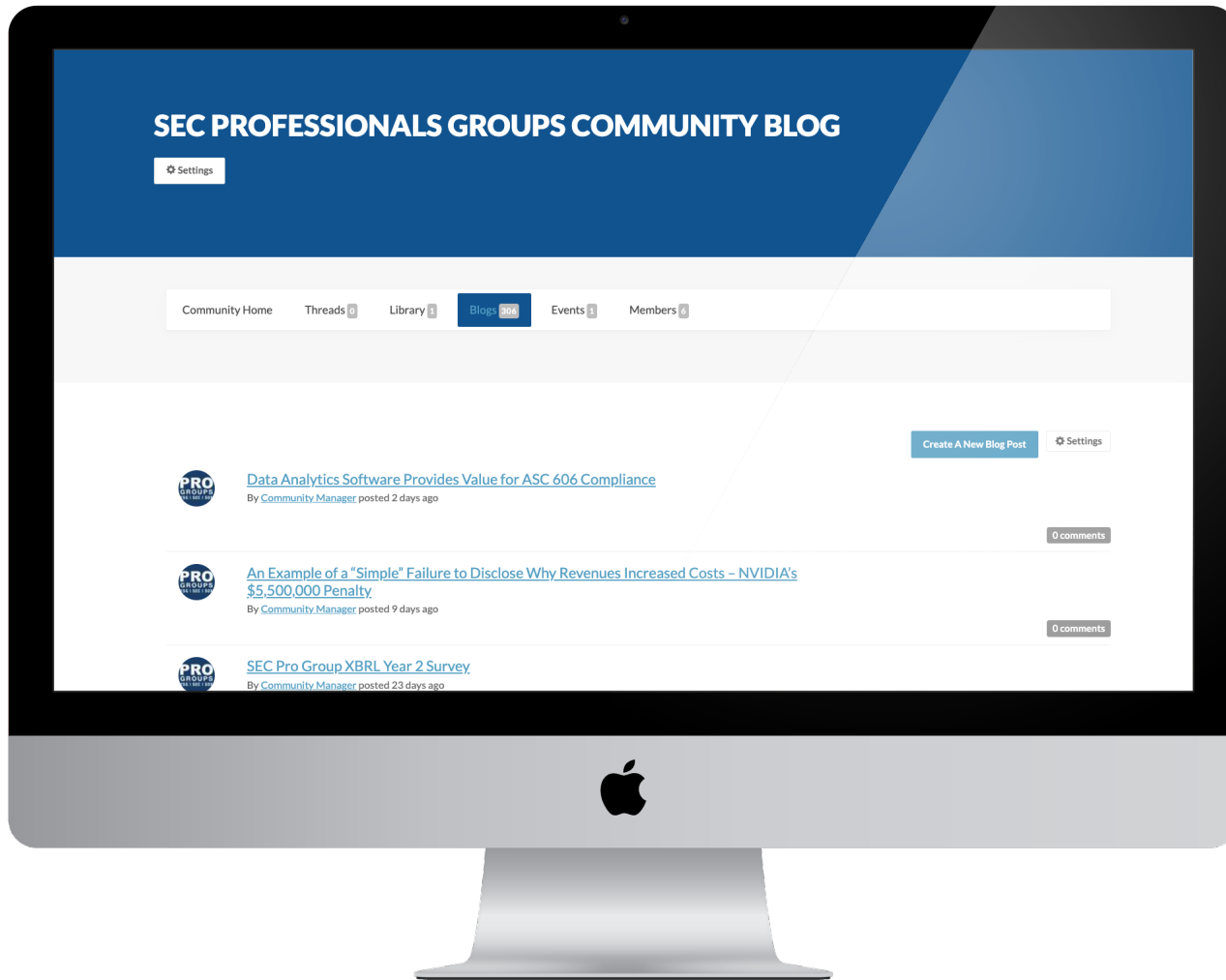
- Ensure good hygiene remains in place around “the basics”
- Anticipate more challenging SEC comments and enforcement
- Stay alert for trends in disclosure topics of particular significance to your company
- Monitor for evolving SEC regulatory developments, particularly around ESG disclosures

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Q&A

Introducing: New SEC Pro

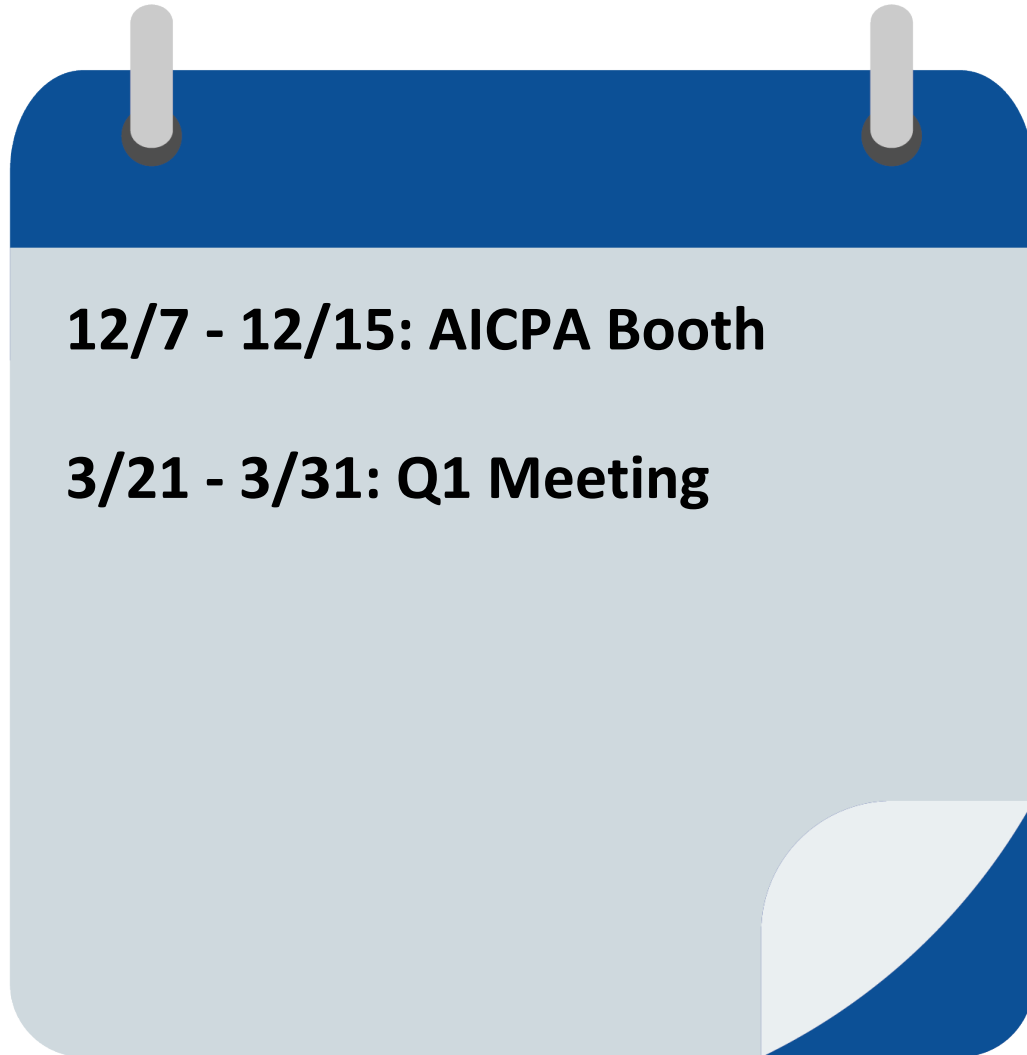


The new website features:

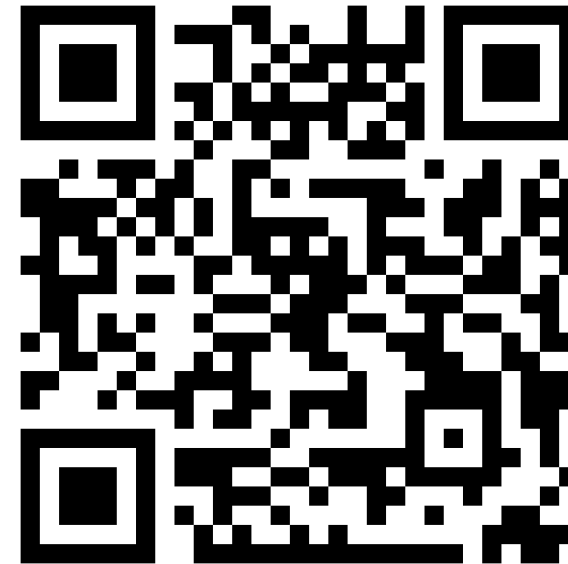
- ▶ One login to access ESG Pro, SEC Pro, and SOX Pro Group websites
- ▶ Discussion forum
- ▶ Events
- ▶ Exclusive content

Make sure to login and set up your account!

Coming Up



Become a
member



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Thank you for joining today's meeting!

CPE certificates will be emailed to you later today.