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(d) This amendment becomes effective on April 19, 2004.

**Note:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002-622(A), dated December 11, 2002.

Issued in Fort Worth, Texas, on March 3, 2004.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

[FR Doc. 04-5331 Filed 3-12-04; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

[Release No. SAB 105]

#### Staff Accounting Bulletin No. 105

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of staff accounting bulletin.

**SUMMARY:** This staff accounting bulletin summarizes the views of the staff regarding the application of generally accepted accounting principles to loan commitments accounted for as derivative instruments.

**DATES:** Effective March 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** John James, Greg Cross or Eric Schuppenhauer, Office of the Chief Accountant (202) 942-4400, or Louise Dorsey, Division of Corporation Finance (202) 942-2960, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 9, 2004.

**Jill M. Peterson,**

*Assistant Secretary.*

#### PART 211—[AMENDED]

■ Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 105 to the table found in subpart B.

#### Staff Accounting Bulletin No. 105

**Note:** The text of SAB 105 will not appear in the Code of Federal Regulations.

The staff hereby adds Section DD to Topic 5 of the Staff Accounting Bulletin Series. Topic 5:DD provides guidance regarding loan commitments accounted for as derivative instruments.

#### Topic 5: Miscellaneous Accounting

\* \* \* \* \*

#### DD. Loan Commitments Accounted for as Derivative Instruments

**Facts:** Bank A enters into a loan commitment with a customer to extend a mortgage loan at a specified rate. Bank A intends to sell the mortgage loan after it is funded. Under Statement No. 133, such a loan commitment should be accounted for as a derivative instrument and measured at fair value.<sup>1</sup> Bank A expects to receive future cash flows related to servicing rights from servicing fees (included in the loan's interest rate or otherwise), late charges, and other ancillary sources, or from selling the servicing rights into the market.

**Question 1:** In recognizing the loan commitment, may Bank A consider the expected future cash flows related to the associated servicing of the loan?

**Interpretive Response:** No. The staff believes that incorporating expected future cash flows related to the associated servicing of the loan essentially results in the immediate recognition of a servicing asset. However, servicing assets are to be recognized only once the servicing asset has been contractually separated from the underlying loan by sale or securitization of the loan with servicing retained.<sup>2</sup>

Further, no other internally-developed intangible assets (such as customer relationship intangible assets) should be recorded as part of the loan commitment derivative. Recognition of such assets would

<sup>1</sup> Paragraph 3 of FASB Statement No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities*, amended paragraph 6(c) of Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, to add: "\* \* \* loan commitments that relate to the origination of mortgage loans that will be held for sale, as discussed in paragraph 21 of FASB Statement No. 65, *Accounting for Mortgage Banking Activities* (as amended), shall be accounted for as derivative instruments by the issuer of the loan commitment (that is, the potential lender)." Similar guidance is provided in Statement 133 Implementation Issue No. C13, *Scope Exceptions: When a Loan Commitment Is Included in the Scope of Statement 133*.

<sup>2</sup> See paragraph 61 of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*.

only be appropriate in a third-party transaction (for example, the purchase of a loan commitment either individually, in a portfolio, or in a business combination).

**Question 2:** What disclosures should Bank A provide with respect to loan commitments accounted for as derivative instruments?

**Interpretive Response:** Bank A should disclose its accounting policy for loan commitments pursuant to APB Opinion No. 22, *Disclosure of Accounting Policies*. Bank A should provide disclosures related to loan commitments accounted for as derivatives, including methods and assumptions used to estimate fair value and any associated hedging strategies, as required by Statement No. 107,<sup>3</sup> Statement No. 133 and Item 305 of Regulation S-K. Additionally, Bank A should provide disclosures required by Item 303 of Regulation S-K and any related interpretive guidance.

**Question 3:** Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

**Interpretive Response:** The staff will not object if registrants that have not been applying the accounting described in this bulletin continue to use their existing accounting policies for loan commitments accounted for as derivatives entered into on or before March 31, 2004. For loan commitments accounted for as derivatives and entered into subsequent to that date, the staff expects all registrants to apply the accounting described in this bulletin. Financial statements filed with the Commission before applying the guidance in this bulletin should include disclosures similar to those described in SAB Topic 11:M.

[FR Doc. 04-5731 Filed 3-12-04; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

#### New Animal Drugs; Ractopamine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by Elanco Animal Health. One NADA provides for use of ractopamine and monensin Type A medicated articles to make dry and liquid two-way combination Type B and Type C medicated feeds for cattle fed in confinement for slaughter. The other NADA provides for use of ractopamine, monensin, and tylosin Type A

<sup>3</sup> FASB Statement No. 107, *Disclosures about Fair Value of Financial Instruments*.

medicated articles to make dry and liquid three-way combination Type B and Type C medicated feeds for cattle fed in confinement for slaughter.

**DATES:** This rule is effective March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Dubbin, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0232, e-mail: [edubbin@cvm.fda.gov](mailto:edubbin@cvm.fda.gov).

**SUPPLEMENTARY INFORMATION:** Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141-225 that provides for use of OPTAFLEXX (ractopamine hydrochloride) and RUMENSIN (monensin sodium) Type A medicated articles to make dry and liquid two-way combination Type B and Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* in cattle fed in confinement for slaughter during the last 28 to 42 days on feed. Elanco Animal Health also filed NADA 141-224 that provides for use of OPTAFLEXX, RUMENSIN, and TYLAN (tylosin phosphate) Type A medicated articles to make dry and liquid three-way combination Type B and Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass

leanness; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes* in cattle fed in confinement for slaughter during the last 28 to 42 days on feed. The NADAs are approved as of January 27, 2004, and the regulations are amended in 21 CFR 558.355, 558.500, and 558.625 are to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the

congressional review requirements in 5 U.S.C. 801-808.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.355 is amended by adding paragraph (f)(7)(iii) to read as follows:

**§ 558.355 Monensin.**

\* \* \* \* \*

(f) \* \* \*

(7) \* \* \*

(iii) Ractopamine alone or with tylosin as in § 558.500.

3. Section 558.500 is amended in paragraph (d)(3) after "7.5" by adding "or, if in combination with monensin and/or tylosin, at a pH of 4.5 to 6.0"; and by revising the table in paragraph (e)(2) to read as follows:

**§ 558.500 Ractopamine.**

\* \* \* \* \*

(e) \* \* \*

(2) *Cattle*—

Ractopame in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 8.2 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain and improved feed efficiency during the last 28 to 42 days on feed	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding	000986
(ii) 8.2 to 24.6	Monensin 10 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; and for prevention and control of coccidiosis due to <i>Eimeria bovis</i> and <i>E. zuernii</i>	As in paragraph (e)(2)(i) of this section; see § 558.355(d) of this chapter	000986
(iii) [Reserved]				
(iv) 8.2 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; for prevention and control of coccidiosis due to <i>E. bovis</i> and <i>E. zuernii</i> ; and for reduction of incidence of liver abscesses caused by <i>Fusobacterium necrophorum</i> and <i>Actinomyces (Corynebacterium) pyogenes</i>	As in paragraph (e)(2)(i) of this section; see §§ 558.355(d) and 558.625(c) of this chapter	000986
(v) [Reserved]				
(vi) 9.8 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and increased carcass leanness during the last 28 to 42 days on feed	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding	000986

Ractopame in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(vii) 9.8 to 24.6	Monensin 10 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; and for prevention and control of coccidiosis due to <i>E. bovis</i> and <i>E. zuernii</i>	As in paragraph (e)(2)(vi) of this section; see § 558.355(d) of this chapter	000986
(viii) [Reserved]				
(ix) 9.8 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to <i>E. bovis</i> and <i>E. zuernii</i> ; and for reduction of incidence of liver abscesses caused by <i>Fusobacterium necrophorum</i> and <i>Actinomyces (Corynebacterium) pyogenes</i>	As in paragraph (e)(2)(vi) of this section; see §§ 558.355(d) and 558.625(c) of this chapter	000986
(x) [Reserved]				

■ 4. Section 558.625 is amended by revising paragraph (f)(2)(vii) to read as follows:

**§ 558.625 Tylosin.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(vii) Ractopamine alone or with monensin as in § 558.500.

\* \* \* \* \*

Dated: March 3, 2004.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9117]

RIN 1545-BC96

#### Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary and final regulations.

**SUMMARY:** This document contains temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These regulations affect corporations filing consolidated returns.

**DATES:** *Effective Date:* These regulations are effective March 15, 2004.

*Applicability Dates:* For dates of applicability, see §§ 1.1502-13T(l) and 1.1502-28T(d).

#### FOR FURTHER INFORMATION CONTACT:

Candace Ewell or Marie Milnes-Vasquez at (202) 622-7530 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG-132760-03, 68 FR 52542) and temporary regulations (TD 9089, 68 FR 52487) under section 1502 of the Internal Revenue Code. The temporary regulations added § 1.1502-28T, which provides guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income (excluded COD income) and the method for reducing those attributes. Section 1.1502-28T reflects a consolidated approach that is intended to make available for reduction attributes that are available to the debtor member. The regulations contain a rule governing the order in which attributes are reduced and a look-through rule that provides that when the basis of stock of a member (the lower-tier member) that is owned by another member is reduced, the lower-tier member must reduce its attributes as if it had realized excluded COD income in the amount of the basis reduction.

On December 11, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG-153319-03, 68 FR 69062) and temporary regulations (TD 9098, 68 FR 69024) under section 1502 amending § 1.1502-28T. Those regulations clarify that certain attributes that arise (or are treated as arising) in a separate return year are subject to

reduction when no SRLY limitation applies to the use of such attributes.

The IRS and Treasury Department have received comments regarding certain technical issues that arise under the regulations. The temporary regulations included in this document address certain issues related to the application of section 1245 and the matching rule of § 1.1502-13, and certain issues related to the inclusion of excess loss accounts in cases in which excluded COD income is not fully applied to reduce attributes. The IRS and Treasury Department anticipate that there may be further changes to the regulations but believe that immediate guidance on these issues is desirable. The following sections describe these issues and the manner in which they are addressed in these temporary regulations.

#### A. Application of Section 1245

Under section 108(b), asset basis is an attribute that is subject to reduction in respect of excluded COD income. Under section 108(b)(5), the taxpayer may elect to apply any portion of excluded COD income to reduce basis in depreciable assets under the rules of section 1017 prior to reducing other attributes.

Section 1017 provides rules that apply in cases in which excluded COD income is applied to reduce the basis of property. Under section 1017(d)(1), any property the basis of which is reduced and which is neither section 1245 property nor section 1250 property is treated as section 1245 property and the basis reduction is treated as a deduction allowed for depreciation. Under section 1017(b)(3)(D), if a corporation that has excluded COD income is a member of a consolidated group, it can elect to treat the stock of another member as depreciable property if that other member consents to a corresponding