Division of Corporation Finance

Financial Reporting Manual

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SUMMARY OF CHANGES IN CURRENT UPDATE

Sections of the Financial Reporting Manual have been updated as of November 9, 2016. These sections have been marked with the date tag, "Last updated: 11/9/2016," to identify the changes. Previous updates are marked using the same convention and represent the last revision to that section. We include a date tag when the change is significant. Changes that are administrative in nature (for example, section reference updates or grammatical improvements) are not marked with a date tag.

Below is a summary of changes included in this update and a brief description of the change. Clicking the linked section number will direct you to the location of the change in the document. You may click on the embedded link in the document to return to this page.

Section	Comment
1140.3 and 10220.7	Revisions to clarify guidance on the number of years of financial statements of a target company in a proxy statement when an emerging growth company is involved.
1330.5	Revisions to clarify filings required after effectiveness of Form 10.
5120.1	Revisions to clarify effect of loss of smaller reporting company status on accelerated filer determination and filing due dates.
8110.2	Revisions to reflect May 17, 2016 updates to the Division of Corporation Finance's Compliance and Disclosure Interpretations, *Non-GAAP Financial Measures*.
10220.5	Revisions to clarify emerging growth company guidance on financial statements of entities other than the registrant and pro forma information.
11120.4, Index	Revisions to add guidance relating to the implementation of Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)* (as amended by Accounting Standards Update No. 2015-14) and IFRS 15, *Revenue from Contracts with Customers*.
11200, Index	Revisions to add guidance relating to the implementation of Accounting Standards Update No. 2016-02, *Leases (Topic 842)* and IFRS 16, *Leases*.
11300, Index	Revisions to add guidance relating to the implementation of Accounting Standards Update No. 2015-09, *Disclosures About Short-Duration Contracts (Topic 944)*.

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EXPLANATION OF ABBREVIATIONS

AcSEC	Accounting Standards Executive Committee of the AICPA
ADC	Acquisitions, Development and Construction
AICPA	American Institute of Certified Public Accountants
APB	Accounting Principles Board Opinion
ARB	Accounting Research Bulletin
AS	Public Company Accounting Oversight Board Auditing Standard
ASC	FASB Accounting Standards Codification
ASC-MG	FASB Accounting Standards Codification Master Glossary
ASR	Accounting Series Release
AT	Codification of Statements on Standards for Attestation Engagements
AU	Codification of Statements on Auditing Standards
C&DI	Division of Corporation Finance Compliance and Disclosure Interpretations
CAQ	Center for Audit Quality
CF-OCA	Division of Corporation Finance, Office of Chief Accountant
CF-OCC	Division of Corporation Finance, Office of Chief Counsel
CF-OMA	Division of Corporation Finance, Office of Mergers and Acquisitions
CON	FASB Concepts Statement
COSO	Committee of Sponsoring Organizations of the Treadway Commission
DCP	Disclosure Controls and Procedures
EDGAR	SEC's Electronic Data Gathering, Analysis, and Retrieval system
EGC	Emerging Growth Company
EITF	FASB's Emerging Issue Task Force (by issue #)
EPS	Earnings Per Share
FASB	Financial Accounting Standards Board
FIN	FASB Interpretation
FPI	Foreign Private Issuer
FRC	Codification of Financial Reporting Policies
FRR	SEC Financial Reporting Release
GAAP	Generally Accepted Accounting Principles (in the U.S.)
GAAS	Generally Accepted Auditing Standards (in the U.S.)
IAS	International Accounting Standards
IASB	International Accounting Standards Board
ICFR	Internal Control over Financial Reporting
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
JOBS Act	Jumpstart Our Business Startups Act
LP	Limited Partner(s)
MD&A	Management's Discussion and Analysis
MJDS	Multijurisdictional Disclosure System
OCA	SEC's Office of the Chief Accountant
OCC	Division of Corporation Finance, Office of Chief Counsel
OMA	Division of Corporation Finance, Office of Mergers and Acquisitions

OPEB	Other Post Employment Benefits
PCAOB	Public Company Accounting Oversight Board
PP&E	Property, Plant and Equipment
REIT	Real Estate Investment Trust
SAB	Staff Accounting Bulletin
SAB Topic	Codification of Staff Accounting Bulletins (by topic)
SAS	AICPA Statement of Auditing Standards
SEC	U.S. Securities and Exchange Commission
SFAS	FASB Statements of Financial Accounting Standards
S-K	Regulation S-K
SOP	AICPA Statement of Position
SOX	Sarbanes-Oxley Act of 2002
SRC	Smaller Reporting Company
S-T	Regulation S-T (EDGAR)
S-X	Regulation S-X
WKSI	Well-Known Seasoned Issuer

TOPIC 1

REGISTRANT'S FINANCIAL STATEMENTS

This topic describes the type and age of financial statements and schedules a registrant (or predecessor of the registrant) must include in registration and proxy statements and periodic reports.

1100 FINANCIAL STATEMENTS AND SCHEDULES IN REGISTRATION AND PROXY STATEMENTS

(Last updated: 9/30/2008)

1110 Audited Annual Financial Statements

1110.1 General Requirements for a Domestic Registrant

(Last updated: 6/30/2013)

Required audited financial statements for a domestic registrant, other than an EGC, in registration or proxy statements. See Topic 10 for EGCs.

Statement	Smaller Reporting Companies[1] Reg. S-X [8-02]	Other Reporting Companies Reg. S-X [3-01, 3-02, 3-04]	Notes
Balance Sheet	2 fiscal year-ends	2 fiscal year-ends	
Income Statement[2]	2 years	3 years	Can be presented in a single continuous statement with comprehensive income (see below).
Comprehensive Income	2 years	3 years	Can be presented in a single continuous financial statement with the income statement or in two separate but consecutive financial statements. An entity reporting comprehensive income in a single continuous statement must present its components in two sections, net income and other comprehensive income [ASC 220-10-45-1 and 1A].

[1] See Topic 5 for eligibility criteria of Smaller Reporting Companies.
[2] Requirements to present an income statement shall be interpreted to mean the statement of comprehensive income, presented in one of the two formats discussed in the comprehensive income box.

Statement	Smaller Reporting Companies Reg. S-X [8-02]	Other Reporting Companies Reg. S-X [3-01, 3-02, 3-04]	Notes
Changes in Stockholders' Equity	2 years	3 years	Can be presented in a note to the financial statements.
Cash Flow	2 years	3 years	Presented for same periods as an income statement, as required by ASC 230-10-15-3.

NOTE to SECTION 1110.1

For public entities, the amendments in ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income, and ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05, are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 with early adoption permitted. The guidance must be applied retrospectively for all periods presented in the financial statements. *(Last updated: 12/31/2011)*

1110.2 Exceptions and Special Cases

a. Unaudited fiscal year-end data may be provided under certain circumstances. [SAB Topic 1C]

b. An income statement may be omitted if income and expense through the balance sheet date are nominal, but an audited footnote should summarize any activity.

c. A change in fiscal year requires transition period financial statements. Refer to Section 1360.

1120 Unaudited Interim Period Financial Statements

(Last updated: 12/31/2011)

Required unaudited interim period financial statements [S-X Articles 3 and 10, or S-X 8-03 for Smaller Reporting Companies] for a domestic registrant to be presented in registration or proxy statements:

Statement	Periods Required	Notes
Balance Sheet	As of interim date no more than 134 days (for non-accelerated filers, or 129 days for accelerated and large accelerated filers) before effectiveness or mailing.	See Section 1340 for summary of accelerated filer rule.
Income Statement[3]	For period from the latest fiscal year-end to the interim balance sheet date, and for the corresponding period in the prior fiscal year.	Present in a format similar to that described for annual reporting in Section 1110.1.
Comprehensive Income	Same as income statement.	Present a total for comprehensive income in condensed financial statements of interim periods in a single continuous statement or in two consecutive statements.
Cash Flow	Same as income statement.	Same as income statement.
Changes in Stockholders' Equity	For period from the latest fiscal year-end to the interim balance sheet date.	Can be presented in a note to the financial statements.

[3] Requirements to present an income statement shall be interpreted to mean the statement of comprehensive income, presented in one of the two formats discussed in the comprehensive income box.

NOTE to SECTION 1120
For public entities, the amendments in ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income, and ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05, are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 with early adoption permitted. The guidance must be applied retrospectively for all periods presented in the financial statements. *(Last updated: 12/31/2011)*

1130 Supplemental Schedules [Article 12]

1130.1 General Requirements

Generally required for fiscal years or year-ends as specified by the applicable article of Regulation S-X. Registrants can file their Article 12 financial statement schedules by amendment within 30 days following the due date of their Form 10-K [General Instruction A.4 of Form 10-K]. *(Last updated: 12/31/2010)*

1130.2 Exceptions

Not required

a. for Smaller Reporting Companies.

b. in proxy statements, except certain schedules are required for insurance and real estate companies. [Schedule 14A Item 13 Instruction 3]

1140 Proxy Statements

1140.1 Annual Meeting

An annual report to shareholders containing audited financial statements for the most recently completed year must accompany or precede a proxy statement relating to an annual meeting at which officers and directors will be elected.

1140.2 Other Solicitations

Financial statements may be required where action is taken to authorize, issue, exchange or modify securities, including when the authorization or issuance is in connection with a business combination. However, financial statements are

not required if they would not be material for the exercise of prudent judgment concerning the action. Financial statements usually are considered material to this exercise if the action is the authorization or issuance of a material amount of senior securities or the authorization or issuance of securities related to a business combination. [Instructions to Schedule 14A Item 13]

1140.3 Business Combinations

(Last updated: 11/9/2016)

The requirement for acquirer and target financial statements in proxy statements depends on whose proxies are solicited and the nature of the consideration. See Section 10220.7 for the number of years of target financial statements to be presented when one of the entities is an EGC.

Solicited Shareholders	Consideration	Financial Statements
Acquirer only	Cash only	Financial statements of the **target** are required. • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. A non-reporting **target** may provide only 2 years + interims if it would otherwise meet the definition of a Smaller Reporting Company. Financial statements of the **acquirer** are not required in the proxy statement unless they are material to an informed voting decision (e.g., acquirer financing is not assured) [Instruction 2(a) to Item 14 of Schedule 14A], since shareholders are presumed to have access to information about their company. This presumption is based on the acquirer being current with its 1934 Act reports. If otherwise, consult with CF-OCA. **Pro forma** information is required if it is material to a voting decision.

Solicited Shareholders	Consideration	Financial Statements
Acquirer only	Exempt securities only or a combination of exempt securities and cash	Financial statements of the **target** are required. • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. A non-reporting **target** may provide only 2 years + interims if it would otherwise meet the definition of a Smaller Reporting Company. Financial statements of the **acquirer** are not required in the proxy statement unless they are material to an informed voting decision [Instruction 3 to Item 14 of Schedule 14A], since security holders are presumed to have access to information about their company. This presumption is based on the acquirer being current with its 1934 Act reports. If otherwise, consult with CF-OCA. **Pro forma** information is required if it is material to a voting decision.
Target only	Cash only	Financial statements of the **target** are not required in the proxy statement since security holders are presumed to have access to information about their company, unless it is a going private transaction. See Instruction 2(b) to Item 14 of Schedule 14A. Financial statements of the **acquirer** are not required unless the information is material to an informed voting decision (e.g., acquirer financing is not assured). See Instruction 2(a) to Item 14 of Schedule 14A. ▪ If **acquirer** financial statements are required, need only 2 most recent fiscal years and interim periods. The financial statement requirement of the **acquirer** applies to reporting and non-reporting companies. No **pro forma** information is required.
Target only	Exempt securities only or a combination of exempt securities and cash	Financial statements of the **target** are not required in the proxy statement since security holders are presumed to have access to information about their company, unless it is a going private or a roll-up transaction. See Instruction 3 to Item 14 of Schedule 14A. Financial statements of the **acquirer** are generally required. Need only 2 most recent fiscal years and interim periods. The financial statement requirement of the **acquirer** applies to reporting and non-reporting companies. **Pro forma** information is required, if material.

Solicited Shareholders	Consideration	Financial Statements
Acquirer and target	Cash only	Financial statements of the **target** are required. • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. Financial statements of the **acquirer** are not required unless the information is material to an informed voting decision (e.g., acquirer financing is not assured). See Instruction 2(a) to Item 14 of Schedule 14A. If **acquirer** financial statements are required, only the 2 most recent fiscal years and interim periods need be provided. **Pro forma** information is required if it is material to a voting decision by the acquirer's shareholders.
Acquirer and target	Exempt securities only or a combination of exempt securities and cash	Financial statements of the **target** are required. • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. Financial statements of the **acquirer** are generally required. Only the 2 most recent fiscal years and interim periods need be provided. **Pro forma** information is required, if material.

1140.4 Consideration to be Issued Includes Registered Securities

If the consideration to be issued in the business combination includes registered securities, registrants must comply with the financial statement requirements of Form S-4 or Form F-4. See Topic 2.

1140.5 Audit Requirement for Non-Reporting Target

In connection with proxy statements and registration statements on Form S-4/F-4, financial statements for the latest fiscal year must be audited if practicable. Financial statements for prior years need not be audited if they were not previously audited. The staff will assess the merits of a registrant's assertion that an audit for the latest fiscal year is impracticable based on the particular facts and circumstances, including the specific actions taken by the registrant (acquirer) to obtain a timely audit of the target. For significant acquisitions, registrants will be obligated to file separate audited target financial statements in a Form 8-K. [Instruction 1 to Item 17.b.7 of Form S-4]

1140.6 **Disposal of a Business**
(Last updated: 6/30/2012)

In proxy statements soliciting authorization for the disposal of a significant business (including spin-offs), the registrant (seller) should include its audited financial statements for each of the 2 most recent fiscal years plus unaudited interim periods. Unaudited financial statements of the business to be disposed should be included for the same periods; however, audited financial statements for each of the 2 most recent fiscal years of that business should be provided if they are available. The registrant should include its pro forma financial information giving effect to the disposal for the latest complete fiscal year and subsequent interim period; if the disposal qualifies as a discontinued operation, the pro forma operating information should be presented for each of the past 2 years and interim periods. If three years plus interim historical financial statements are presented, then for discontinued operations, the pro forma financial statements should include three years plus interim periods. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H6. If the registrant (seller) receives consideration for the disposal that includes unregistered securities of the acquirer, the acquirer's audited financial statements may need to be provided for each of the 2 most recent fiscal years plus unaudited interim periods.

1140.7 **Reverse Acquisitions**

The financial statement requirement of Item 14(c) of Schedule 14A follows the legal form of the transaction rather than the accounting form. For example, when a public shell company solicits authorization for the acquisition of a non-reporting operating company that will be accounted for as a recapitalization of the operating company, the "acquiring company" is the public shell and the "acquired company" is the operating company under Item 14(c). As such, the audit relief for non-reporting targets described above applies to the operating company. After consummation of the transaction, the registrant must file in a Form 8-K audited financial statements of the operating company, which will replace the shell's historical financial statements (as predecessor of the registrant) in future filings. See Topic 12.

1140.8 Application of S-X 3-06 to Target Financial Statements

(Last updated: 3/31/2009)

The provision of S-X 3-06(b) permitting the filing of financial statements covering a period of nine to twelve months to satisfy the one-year financial statement requirement for an acquired business does not apply to financial statements of target companies filed under Item 14(c)(2) of Schedule 14A.

NOTE: S-X 3-06 permits a registrant to file financial statements covering a period of nine to twelve months to satisfy a requirement for filing financial statements for a period of one year in the following circumstances:

a) Change in fiscal year
b) Financial statements of an acquired business pursuant to S-X 3-05
c) Unusual circumstances, for which the registrant must request and receive an accommodation from CF-OCA.

Target company financial statements required to be provided in a proxy statement or Form S-4 are not provided pursuant to S-X 3-05. This is true even though the proxy statement and Form S-4 reference S-X 3-05 in some circumstances to determine the number of periods of target company financial statements to provide in the proxy statement or Form S-4. Because target company financial statements are not provided pursuant to S-X 3-05, the exception permitted in S-X 3-06(b) is not available for purposes of providing target company financial statements in a proxy statement or Form S-4. However, the exception in S-X 3-06(a) is available and companies may also make requests under S-X 3-06(c).

1150 Bank Reorganizing under Newly-formed Holding Company

(Last updated: 9/30/2010)

1150.1 S-4 General Instruction G

General Instruction G requires that the transaction being registered involves the organization of a bank or savings and loan holding company for the sole purpose of issuing common stock to acquire all of the common stock of the bank or savings institution that is organizing the holding company. Registrants marking the box on the cover of Form S-4 that are in compliance with General Instruction G to the Form cause the registration statement to become effective automatically 20 days after initial filing. Failure to check the box or to meet all of the conditions of General Instruction G means that the registration statement will not become effective automatically at the end of that period.

1150.2 **Financial Statement Requirements**

Form	Financial Statement Requirements
Form S-4 to register common stock in exchange for all of a bank's common stock in a transaction which satisfies all of the criteria stipulated in SAB Topic 1F [4]	Financial statements may be omitted from a Form S-4, if the bank separately furnished to its shareholders financial statements prepared in accordance with GAAP (that need not be audited) for at least the most recently completed fiscal year. Similarly, Guide 3 data may be omitted from the registration statement.
First Annual Report on Form 10-K	Audited financial statements and Guide 3 data must be filed for at least the two most recent fiscal years.

1160 Recently Organized Registrant

1160.1 **Generally**

In a filing with an effective date before the registrant is capitalized on other than a nominal basis:	Registrant financial statements may be omitted unless the registrant will acquire or otherwise succeed to a business for which financial statements are required to be included. If omitted, the prospectus should include a statement that the entity has not commenced operations and has no (or nominal) assets or liabilities. Contingent liabilities and commitments should be described in sufficient detail.
If the registrant is a "business combination related shell company":	Registrant financial statements may be omitted. Complete audited financial statements of the operating company (as predecessor of the registrant) must be provided. ***Example:*** A company wants to change its state of incorporation in order to facilitate an IPO. To do that, a new corporation incorporated in Delaware (Newco) was formed and all of the shareholders of the company will exchange their equity ownership interests in the company for identical interests in Newco. Separate financial statements of Newco are not required in the registration statement.
If the registrant will succeed to a business in a transaction that is not a reorganization:	Include the financial statements of both the acquired/predecessor business and the registrant in the filing.

[4] Generally, a reorganization with no changes in relative interests, no leverage, and no new classes of stock.

1160.2 **Shell Company**

A “shell” company is an entity other than an asset-backed issuer (See Topic 12) that has no or nominal operations and either:

a. no or nominal assets,

b. assets consisting solely of cash and cash equivalents, or

c. assets consisting of any amount of cash and cash equivalents and nominal other assets. [Regulation C, Rule 405]

1160.3 **Business Combination Related Shell Company**

A shell company that is:

a. formed by an entity (that is not a shell company) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

b. formed by an entity (that is not a shell company) solely for the purpose of completing a business combination transaction among one or more entities other than the shell company none of which is a shell company. [Regulation C, Rule 405]

1170 Predecessor Financial Statements

(Last updated: 3/31/2010)

1170.1 **Predecessor Entity**

The definition of "predecessor" in Regulation C, Rule 405 is very broad. For purposes of financial statements, designation of an acquired business as a predecessor is generally not required except where a registrant succeeds to substantially all of the business (or a separately identifiable line of business) of another entity (or group of entities) and the registrant's own operations before the succession appear insignificant relative to the operations assumed or acquired.

1170.2 **Financial Statement Dates and Periods**

Financial information of a registrant’s predecessor is required for all periods before the succession, with no lapse in audited periods or omission of other information required about the registrant. Financial statements for the registrant and its predecessor should collectively be ‘as of’ all dates and ‘for’ all periods required by S-X Articles 3 and 10 (or Article 8 for SRC). Any interim period of the predecessor before its acquisition by the registrant should be audited when

audited financial statements for the period after the acquisition are presented. Schedules required by S-X Article 12 are required for predecessor entities.

a. After an acquisition, financial statements of the predecessor should be included in Forms 10-K and 10-Q for the required comparative periods before the acquisition, in addition to those of the registrant.

b. After the acquisition of a business by a special-purpose acquisition company registrant (SPAC), the financial statements of the registrant for periods prior to the acquisition may not be required to be included in Forms 10-K and 10-Q once the financial statements include the period in which the acquisition or recapitalization was consummated. Generally, these financial statements would not be required in cases in which the registrant had only nominal income statement activity. *(Last updated: 10/20/2014)*

c. S-X 3-01 and 8-02 do not specifically refer to balance sheets of predecessors. When only one registrant balance sheet would otherwise be included in the filing, a registrant, including a Smaller Reporting Company, must file an audited predecessor balance sheet as of the end of its last fiscal year. *(Last updated: 6/30/2010)*

1170.3 **Partial Year Financial Statements**

When predecessor audited financial statements are provided for part of a fiscal year and successor audited financial statements are provided for the rest of the year, the predecessor is not required to provide comparative financial statements for the prior year partial period.

Example: A shell company formed on January 15, 2009 acquires an operating company, determined to be its predecessor, on June 25, 2009. The Newco subsequently files an IPO registration statement in the third quarter of 2010. The IPO registration statement must include audited financial statements of the predecessor for the two years ended December 31, 2008 and the period from January 1, 2009 to June 25, 2009. The Newco registrant must provide audited financial statements for the period from the inception date through December 31, 2009 (there were no operations from inception date to acquisition date) and unaudited interim financial statements for the periods ending June 30, 2009 and June 30, 2010. Financial statements of the predecessor for the period January 1, 2008 to June 25, 2008 are not required.

1180 [Reserved]

(Last updated: 10/20/2014)

1190 Supplemental and Restated Financial Statements Related to Post-Balance Sheet Events

(Last updated: 3/31/2009)

1190.1 Receipt of Net Assets or Shares from Entity Under Common Control

If a receipt of net assets or shares from an entity under common control that will be accounted for similar to a pooling-of-interests has been consummated by a repeat issuer after the latest balance sheet date, and post-combination operating results have not been published, the issuer should normally not reflect the transaction in its financial statements. However, the issuer may elect to provide, and may be required to provide in connection with registration or proxy statements, supplemental audited combined financial statements giving effect to the transaction. Unusual situations can be discussed with CF-OCA.

1190.2 Generally

See Topic 13 for guidance applicable to supplemental or restated financial statements as a result of post-balance sheet events.

1200 AGE OF FINANCIAL STATEMENTS IN REGISTRATION OR PROXY STATEMENTS [S-X 8-08 FOR SMALLER REPORTING COMPANIES; S-X 3-12 FOR OTHER REPORTING COMPANIES]

(Last updated: 9/30/2008)

1210 Staff Review

The staff may not make a review decision or commence a review of a filing unless the registrant's financial statements comply with the rules for age of financial statements and audit at the date of filing.

1220 Age Requirements

1220.1 General Rule

(Last updated: 9/30/2011)

Latest balance sheet must be as of a date no more than 134 days for non-accelerated filers (or 129 days for accelerated and large accelerated filers) before the effective date of the registration statement (or date the proxy statement is mailed). See Section 1340 for summary of accelerated filer rule.

Example: A Form S-1 of a non-accelerated filer with an audited March 31st balance sheet (March year-end) cannot be declared effective after August 12th without updating.

1220.2 Rule for Initial Filers

The balance sheet date in an initial registration statement must not be more than 134 days old, except that third quarter data is timely through the 45th day after the most recent fiscal year-end for all filers, and except that third quarter data is timely through the 90th day after the most recent fiscal year-end for a Smaller Reporting Company if the SRC expects to report income from continuing operations before taxes in the year just completed and has reported income from continuing operations before taxes in at least one of the two years previous to the year just completed. After the 45th or 90th day, as applicable, audited financial statements for that fiscal year must be included in the registration statement.

Example: A Form S-1 for a registrant with a calendar year-end with an interim balance sheet as of the end of the first quarter (March 31) cannot be declared effective after August 12th without updating to the end of the second quarter (June 30). A Form S-1 for a calendar year-end company other than a Smaller Reporting Company with an interim balance sheet as of September 30 cannot be declared effective after February 14th. *(Last updated: 12/31/2010)*

1220.3 Year-End Rule for Reporting Companies

Reporting companies required to file under Exchange Act Section 13(a) or 15(d) do not need to update third quarter interim financial statements until the 90th day for non-accelerated filers (or 75th day for accelerated filers, and 60th day for large accelerated filers) [5] after their fiscal year-end, if they satisfy the three conditions of S-X 3-01(c) [S-X 8-08(b) for Smaller Reporting Companies]:

a. filed all Exchange Act reports due,

b. expect to report income attributable to the registrant in the year just completed, and

c. reported income attributable to the registrant in at least one of the two previous years.

Unless all three conditions are met, if the staff accelerates the effective date of the registration statement after the 45th day following the fiscal year-end, it will request the company to include audited financial statements for the most recently completed fiscal year. This 45-day rule applies to both Smaller Reporting Companies and Other Reporting Companies.

With respect to condition (a) above:

A reporting company that has not filed its first Exchange Act report since an initial offering has not met condition (a).

With respect to conditions (b) and (c) above:

a. For Smaller Reporting Companies, these conditions are based on income from continuing operations attributable to the registrant before taxes. It correlates to line item 13 in S-X 5-03(b) after adding back tax expense per line 11 and subtracting income attributable to the noncontrolling interest per line 19.

b. For Other Reporting Companies, these conditions are based on income attributable to the registrant after taxes, but before extraordinary items

[5] See Section 1340 for summary of accelerated filer rule.

and cumulative effect of a change in accounting principle. It is income after reported discontinued operations, and correlates to line item 15 in S-X 5-03(b) after subtracting income attributable to the noncontrolling interest per line 19.

If the audited financial statements for the most recently completed fiscal year are available or become available before the effective date of the registration statement or the mailing date of a proxy statement, they must be included in the filing. Availability is determined on a facts and circumstances basis. Financial statements become available no later than when they are "issued" based on the staff guidance in Topic D-86, contained in Appendix D to the EITF Abstracts [ASC 855-10-S99-2]. *(Last updated: 8/25/2015)*

1220.4 Newly Formed Registrant which does not have Predecessor Operations

For a registrant that was not in existence at the end of its most recently completed fiscal year, audited financial statements are required as of a date less than 135 days before the initial filing date of the registration statement. Subsequent updates to comply with the 135 day rule may be made on an unaudited basis, except that audited financial statements are required if the effective date of the registration statement is more than 45 days after the company's fiscal yearend. [S-X 3-01(a)]

1220.5 Accommodation Applicable to Interim Updating for Timely Filers

The staff may accelerate the effective date of a registration statement if:

a. interim financial statements in the filing are at least as recent as the quarterly information that has been filed as required by the Exchange Act at the time of effectiveness, and

b. the issuer has filed all of its Exchange Act reports in the last 12 months in a timely fashion.

However, the staff may ask the registrant to confirm that the quarterly report will be timely filed after effectiveness and that there have been no material trends, events or transactions that arose after the date of the latest balance sheet included in the filing that would materially affect an investor's understanding of the registrant's financial condition and results of operations. A description of these items in the next quarter ordinarily will not suffice.

1220.6 **Continuous and Shelf Offerings**

When a prospectus is used more than nine months after the effective date of the registration statement, the audited financial statements contained in the prospectus must be as of a date not more than sixteen months prior to such use. [Securities Act Section 10(a)(3) and Regulation C, Rule 427] The updated financial statements must comply with the requirements of S-X 3-12 (S-X 8-08 for Smaller Reporting Companies). The registrant may update financial information via post-effective amendment or, if eligible, incorporation by reference; however, filing a post-effective amendment does not start a new nine-month period. The audited financial statements contained in a prospectus used after the effective date of such post-effective amendment must not be more than 16 months old. *(Last updated: 6/30/2011)*

1220.7 **Proxy Statements**

When an issuer's financial statements are included in proxy statements, the same guidance as for registration statements applies, except the date of mailing replaces the effective date.

Reporting and non-reporting domestic target companies must comply with the updating requirements of S-X 3-12, with non-reporting target companies following the requirements for non-accelerated filers. Reporting and non-reporting domestic target companies must update their third quarter interim financial statements to include its year-end financial statements during the intervening period between the 45th day after its year-end and the date its annual report on Form 10-K would be due based on the issuer's (acquirer's) obligation to update during that period.

Reporting and non-reporting foreign business target companies must comply with the updating requirements of Item 8.A of Form 20-F.

1220.8 **Form S-4/Proxy Statement**

(Last updated: 3/31/2009)

Age of financial statements is based on the effective date of the Form S-4 and not the mailing of the proxy statement, unless mailing is delayed beyond the time necessary to prepare the material for mailing (generally no more than a few days after effectiveness of the S-4). Filings on Form F-4 by foreign private issuers are subject to an undertaking with respect to the age of financial statements that is not applicable to domestic registrants. See Section 6230.

1220.9 **Form 10**

Age of financial statements is based on the effective date of the filing. See Section 1310.2 for discussion of automatic effectiveness.

1220.10 **Post-Effective Amendments Generally**

Generally, post-effective amendments that amend the prospectus are considered new filings and, as a result, must include updated financial statements meeting the requirements of Regulation S-X at effectiveness of the amendment.

Amendment of a registration statement to provide an exhibit does not amend the prospectus.

1220.11 **Post-Effective Amendments Consolidating Sticker Supplements for Real Estate**

Post-effective amendments that consolidate supplements are not considered new filings for purposes of updating the registrant's financial statements if the duty to file a post-effective amendment is triggered solely by Undertaking 20.D. of Industry Guide 5. [Securities Act Release No. 6405]

1220.12 **Effect of Holiday or Weekend**

If the last day of the period after which financial statements must be updated (for example, the 134th day after the first, second, or third quarter-end, or the 89th day following a fiscal year-end for a non-accelerated filer) falls on a Saturday, Sunday or holiday, the filing may be made on the next following business day without updating the financial statements [Regulation C, Rule 417].

1300 PERIODIC REPORTING REQUIREMENTS (EXCHANGE ACT FILINGS)

(Last updated: 9/30/2008)

1310 Companies Required to Report

1310.1 Securities Act Registration

If a company has registered an offering of securities under the Securities Act, that company is required to file reports for periods ending after the date of the last balance sheet included in the registration statement. This duty may be suspended after the fiscal year in which the registration statement went effective in certain instances. [Exchange Act Section 15(d)]

1310.2 Exchange Act Registration

a. *Registration and Reporting Requirement*
(Last updated: 3/17/2016)

Exchange Act Section 12(g)

Domestic companies are required to register a class of securities under Section 12(g) of the Exchange Act and file periodic reports if the company had total assets exceeding $10 million as of the last day of its prior fiscal year, and a class of equity security (other than an exempted security) held by:

- for issuers other than banks, bank holding companies and savings and loan holding companies, either: (1) 2,000 or more record holders or (2) 500 or more record holders who are not accredited investors.

- for banks, bank holding companies and savings and loan holding companies, 2,000 or more record holders.

Exchange Act Section 12(b)

Companies seeking to register a security for trading on a national securities exchange must register the class of securities under Section 12(b) of the Exchange Act.

b. *Registration Statement Forms*

A company already reporting under Section 13 or 15(d) may register a class of securities under Section 12 of the Exchange Act by filing a Form 8-A. In addition, the staff generally will not object if a non-

reporting company conducting its IPO files a Form 8-A before the effective date of the Securities Act registration statement relating to the IPO. Other U.S. companies must register on Form 10 (foreign companies register on Form 20-F). A Form 8-A filed concurrently with a Securities Act registration statement becomes effective automatically on the latest of the filing of the Form 8-A, the effective date of the registration statement, or, if the securities will be listed on a U.S. Exchange, receipt by the SEC of certification from the Exchange.

c. *Registration Statement Effectiveness*

Registration statements filed under Section 12 of the Exchange Act are effective as follows *(Last updated: 9/30/2010)*:

If Filed Under:	**Using Form:**	**Registration Statement Effective:**
Section 12(b)	Form 10 or Form 20-F	Automatically 30 days after the staff receives certification by the applicable exchange or earlier if acceleration is requested and granted.
	Form 8-A filed in connection with a 1933 Act registration statement	Automatically on the **latest** of: • the date the company files the Form 8-A • the date the staff receives certification from the exchange; or • the date the 1933 Act registration statement goes effective.
	Form 8-A **not** filed in connection with a 1933 Act registration statement	Automatically on the **later** of: • the date the company files the Form 8-A; or • the date the staff receives certification from the exchange.

If Filed Under:	Using Form:	Registration Statement Effective:
Section 12(g)	Form 10 or Form 20-F	Automatically 60 days after the company files the registration statement, or earlier if acceleration is requested and granted.
	Form 8-A filed in connection with a 1933 Act registration statement	Automatically on the **later** of: • the date the company files the Form 8-A; or • the date the 1933 Act registration statement goes effective; **however**, in no event will the effective date of the Form 8-A be more than 60 days after the company files the Form 8-A.
	Form 8-A **not** filed in connection with a 1933 Act registration statement	Automatically on filing.

1320 Financial Statements Required

1320.1 Generally

(Last updated: 6/30/2013)

Form 10 (for registration under Section 12)	Same as described at Sections 1110 and 1120 for non-EGCs and Section 10220.1d for EGCs.
Form 10-K (Annual Reports)	Same as described at Section 1110 for non-EGCs and Section 10220.1e for EGCs.
Form 10-Q (Quarterly Reports)[6]	Same as described at Section 1120 plus**:** • Balance sheet as of last fiscal year-end; and • Statements of income for most recent quarter alone, and prior comparable quarter alone (a statement of cash flows for these quarters is not required).

[6] Financial statements may be condensed and must be reviewed by an independent accountant before filing as described in S-X Article 10 [S-X 8-03 for Smaller Reporting Companies].

1320.2 **Inactive Registrants**

a. An inactive registrant is one that has gross receipts or expenditures not over $100,000; no purchases, sales or distributions of securities; and no material changes (no bankruptcy, reorganization, etc.). [S-X 3-11]

b. Inactive registrants may provide unaudited annual financial statements in Form 10-K. [S-X 3-11]

c. These annual financial statements do not need to be reviewed by an independent public accountant; however, interim financial statements filed on Form 10-Q by inactive registrants must be reviewed. [S-X 10-01(d), S-X 8-03]

d. When an inactive registrant later becomes active, its unaudited annual financial statements may continue to be included in Form 10-K for those periods during which it met the criteria as an inactive registrant.

1320.3 **[Reserved]**
(Last updated: 8/25/2015)

1320.4 **Delinquent Filers**
(Last updated: 8/25/2015)

Generally, the Division of Corporation Finance will not issue comments asking a delinquent registrant to file separately all of its delinquent filings if the registrant files a comprehensive annual report on Form 10-K that includes all material information that would have been included in those filings.

The Division's decision not to seek the filing of additional reports when a registrant files a comprehensive annual report does not absolve a registrant from any liability under the Exchange Act for failing to file all required reports and would not foreclose enforcement action for the registrant's filing delinquencies. In addition, filing a comprehensive annual report does not result in the registrant being considered "current" for purposes of Regulation S, Rule 144, or Form S-8 registration statements. Also, the registrant would not be eligible to use Form S-3 until it establishes a sufficient history of making timely filings.

1320.5 **Mutual Life Insurance Companies and Certain Mining Companies in the Exploratory Stage**

Exempt from Part I disclosures required by Form 10-Q [Exchange Act Rule 13a-13(b)].

1330 Exchange Act Report Due Dates

1330.1 Generally

Annual reports (Forms 10-K)	90 days after the fiscal year-end for non-accelerated filers. 75 days after the fiscal year-end for accelerated filers. 60 days after the fiscal year-end for large accelerated filers. See Section 1340 for summary of accelerated filer rule.
Quarterly reports (Forms 10-Q)	45 days after the quarter-end for non-accelerated filers. 40 days after the quarter-end for accelerated and large accelerated filers. See Section 1340 for summary of accelerated filer rule.
Other disclosures reportable under Form 8-K	Generally 4 business days after the event, except for certain events as provided in the Form.

1330.2 Weekends and Holidays

A periodic report otherwise due on a weekend or federal holiday is due the next business day (Exchange Act Rule 0-3).

1330.3 Extensions

Automatic extensions of due dates for periodic reports are available (up to 5 calendar days for quarterly reports and 15 calendar days for annual reports) if all or any portion of the report cannot be filed timely without unreasonable effort or expense. A registrant must file Form 12b-25 no later than one day after the due date of the form for which relief is requested. No further extensions are available.

a. *Length*

The extension period begins to run the day the periodic report is due. For example, a Form 10-Q due on a Wednesday must be filed no later than the following Monday to be considered timely assuming the registrant files a Form 12b-25 by Thursday and no federal holidays are involved. The extension period under Rule 12b-25 would start to run on Wednesday, even though the Form 12b-25 may be filed as late as Thursday.

b. *Disclosure of Reasons*

The registrant must disclose in the Form 12b-25 the reason for its inability to file the report timely and, if applicable, that such reason could not be eliminated without unreasonable effort or expense. If the reason relates to the inability of a third party to furnish a required opinion, report or certification, an exhibit must be attached to the Form 12b-25 that includes a statement signed by that third party stating the specific reasons why it was unable to furnish the required opinion, report or certification on or before the due date of the report.

c. *Application to Transition Reports*

The extension period permitted under Rule 12b-25 applies to transition reports (for change in fiscal year-end).

d. *Exclusions*

The extension period permitted under Rule 12b-25 does not apply to any filing on Form 8-K, nor does it apply to an amendment to Form 10-K with respect to filing financial statements under S-X 3-09. See Topic 2 and the Division of Corporation Finance's C&DIs for Exchange Act Rules, Question 135.01.

e. *Application Unrelated to Filer Size*

The extension period provided under Rule 12b-25 is the same for large accelerated, accelerated, and non-accelerated filers.

1330.4 Form 10-Q After First Effective Registration Statement

After a registrant's first registration statement is effective, a Form 10-Q for the quarter following the most recent period included in the registration statement is due the later of 45 days after the effective date or the date the Form 10-Q would otherwise be due. [Exchange Act Rules 13a-13 and 15d-13]

1330.5 Form 10-K After Effectiveness of Initial Registration Statement
(Last updated: 11/9/16)

If the effective date of an initial registration statement was within 45 days (90 days for a Smaller Reporting Company) after the fiscal year-end, but does not include the audited statements of the just recently completed year, the following reporting requirements apply:

If the registrant files a Form 8-A or Form 10 to register under Section 12(b) or 12(g) of the Exchange Act	File an Annual Report on Form 10-K within 90 days after its fiscal year-end.
If the registrant is subject to the Exchange Act reporting requirements by virtue of Section 15(d)	File a Special Report[7] on Form 10-K within 90 days of effectiveness containing audited statements for that year. A complete Annual Report on Form 10-K is not required until the following fiscal year. [Exchange Act Rule 15d-2]

1340 Accelerated and Large Accelerated Filer Status: Entering, Exiting and Implications

1340.1 Entering Accelerated Filer Status

An issuer becomes an accelerated filer if it meets all of the following criteria as assessed at the end of its fiscal year:

a. It has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months;

b. It has filed at least one annual report under Section 13(a) or 15(d) of the Exchange Act;

c. It is not eligible to apply the provisions for Smaller Reporting Companies for its annual and quarterly reports; and

d. The aggregate worldwide market value of its voting and non-voting common equity held by non-affiliates ("public float") was at least $75 million, but less than $700 million, as of the last business day of its most recently completed second fiscal quarter.

1340.2 Entering Large Accelerated Filer Status

An issuer becomes a large accelerated filer if it meets all of the following criteria as assessed at the end of its fiscal year:

a. It has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months;

[7] This Special Report does not need to include MD&A or other narrative disclosures ordinarily required in a Form 10-K, but registrants are encouraged to provide that information. Even if omitted from a special report, MD&A and other omitted information would need to be included in any subsequent registration or proxy statement.

b. It has filed at least one annual report under Section 13(a) or 15(d) of the Exchange Act;

c. It is not eligible to apply the provisions for Smaller Reporting Companies for its annual and quarterly reports; and

d. The aggregate worldwide market value of its voting and non-voting common equity held by non-affiliates ("public float") was at least $700 million as of the last business day of its most recently completed second fiscal quarter.

1340.3 Effect of Status Change on Periodic Filings

(Last updated: 9/30/2012)

As noted in Sections 1340.1 and 1340.2, the determination of filing status occurs at the end of the issuer's fiscal year. Because the determination occurs at the end of the issuer's fiscal year, the first periodic filing affected by a change in status will be the Form 10-K for the fiscal year in which the assessment is made. The Form 10-K is the first periodic filing affected even though the "public float" test is performed as of the last business day of the issuer's most recently completed second quarter.

1340.4 Exiting Status

The rules provide explicit conditions that allow an issuer to exit its accelerated, or large accelerated, filer status. These conditions relate solely to the level of public float as of the end of the issuer's most recently completed second fiscal quarter. The determination as to whether an issuer exits the accelerated or large accelerated filer status is made at the end of the issuer's fiscal year and will govern the deadlines for the annual report to be filed for that fiscal year, and the quarterly and annual reports to be filed subsequently (until the filing status changes). Once an issuer becomes an accelerated filer or large accelerated filer, as the case may be, it will maintain this status until:

a. An accelerated filer with a public float that falls below $50 million as of the last business day of its most recently completed second fiscal quarter becomes a non-accelerated filer.

b. A large accelerated filer with a public float that falls below $500 million, but not below $50 million, as of the last business day of its most recently completed second fiscal quarter becomes an accelerated filer. Also, a large accelerated filer whose public float falls below $50 million as of the last business day of its most recently completed second fiscal quarter becomes a non-accelerated filer.

NOTE to SECTION 1340.4

A registrant no longer qualifies as an EGC the day it becomes a large accelerated filer. See Topic 10 for more information. *(Last Update: 6/30/2013)*

1340.5 Foreign Private Issuer Implications

The definitions of an accelerated filer and large accelerated filer do not exclude companies that qualify as foreign private issuers (FPIs) even though the deadlines for Forms 20-F and 40-F annual reports are not affected by accelerated filer or large accelerated filer status. However, a foreign private issuer electing to file on Forms 10-K and 10-Q is subject to the accelerated filer rules. A company that loses its ability to file on Form 20-F and must begin to file on Forms 10-K and 10-Q becomes subject to the accelerated filer rules, starting with its initial filing on Form 10-K or 10-Q.

1340.6 Periodic Report Cover Page Implications

Cover pages to Forms 10-K, 10-Q, and 20-F include boxes that must be checked to indicate whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. The issuer also must disclose on the cover page to Form 10-K the amount of its public float as of the last business day of its most recently completed second quarter.

1340.7 Transition Report Implications

The accelerated filer rules apply to transition reports (for change in year-end) filed on either Form 10-K or 10-Q. A non-accelerated filer, an accelerated filer, or a large accelerated filer, that changes year-end and files a transition report on Form 10-K or 10-Q must assess its accelerated filer status to determine whether its status has changed. A change in status could accelerate or decelerate the due date for that transition report (and subsequent periodic reports). For example, a non-accelerated filer could become an accelerated filer, or a large accelerated filer could become an accelerated filer. The filer must make this assessment regardless of the length of the transition period, and perform the public float test as of the last business day of what would have been the most recently completed second quarter if the close of the transition period were the end of a full fiscal year (i.e., six-month look back).

1340.8 Current Report Implications

The accelerated filer rules do not affect Form 8-K filing deadlines.

1340.9 **Annual Report Disclosure Implications**

Annual report disclosure obligations affected by non-accelerated, accelerated or large accelerated filer status:

a. *Unresolved staff comment – (Item 1B of Form 10-K; Item 4A of Form 20-F):*

   A registrant that is an accelerated filer or a large accelerated filer, and has received written comments from the staff regarding its periodic or current reports at least 180 days before the end of its fiscal year to which the annual report relates, must disclose the substance of any unresolved comments that the registrant believes are material. The disclosure may include other information, such as the registrant's position with respect to any such comment.

b. *Effectiveness of Internal Control over Financial Reporting Required by SOX Section 404 – (Item 9A of Form 10-K; Item 15 of Form 20-F; General Instruction B.6 of Form 40-F):*

   Application of these disclosure requirements partly depends on the issuer's accelerated filer status:

   - **Management's Report**: Required to be filed in annual reports by all filers. See Section 4310 for information on Management's Annual Report on Internal Control Over Financial Reporting.

   - **Auditor's Attestation**: Required in annual reports of all accelerated filers (except those that qualify as an EGC) and large accelerated filers. See Section 4320 for information on Auditor's Report on ICFR for non-EGCs and Section 10240 for information on EGCs. *(Last updated: 6/30/2013)*

NOTE to SECTION 1340.9

For newly public companies, a phase-in exception applies whereby management's report and the auditor's attestation (if a non-EGC accelerated filer or a large accelerated filer) are not required until the second annual report. For purposes of the phase-in, a Special Financial Report filed pursuant to Rule 15d-2 of the Exchange Act and a Transition Report on Form 10-K for a change in fiscal year are considered to be an "annual report." See Section 4310.6 for more information on this exception. *(Last updated: 6/30/2013)*

1340.10 **Recap of Accelerated Filer Rule: Public Float Tests and Due Dates:**

Category of Filer	Float to Enter Status	Float to Reduce Status	10-K Due	10-Q Due	Interim F/S Updating
Non-Accelerated Filer	< $75 million	N/A	90 days after year-end	45 days after quarter-end	134 days after latest balance sheet filed
Accelerated Filer	≥ $75 million but < $700 million	< $50 million becomes a non-accelerated filer	75 days after year-end	40 days after quarter-end	129 days after latest balance sheet filed
Large Accelerated Filer	≥ $700 million	< $500 million but ≥ $50 million becomes an accelerated filer …….…… < $50 million becomes a non-accelerated filer	60 days after year-end	40 days after quarter-end	129 days after latest balance sheet filed

1350 [Reserved]

1360 Changes in Fiscal Year - General

1360.1 Transition Report Required

When a company changes its fiscal year, it is required to file a report covering the transition period. [Exchange Act Rule 13a-10, 15d-13 & FRC 102.05]

A transition period is the period between the closing of the registrant's most recent fiscal year and the opening date of its newly selected fiscal year.

1360.2 Exchange Act Reporting Requirements for Transition Period

If the transition period is:	File a transition report:
6 months or more	On Form 10-K within 90 days for non-accelerated filers (or 75 days for accelerated filers and 60 days for large accelerated filers) after the later of the election to change the fiscal year or the end of the transition period. The transition period financial statements must be audited. See Section 1340.7 for reassessment of accelerated filer status.
Less than 6 months	On Form 10-K as above, or on Form 10-Q within 45 days for non-accelerated filers (or 40 days for accelerated and large accelerated filers) after the later of the election to change the fiscal year or the end of the transition period. The transition period may be unaudited in Form 10-Q, but the next Form 10-K must contain audited financial statements of the transition period. See Section 1340.7 for reassessment of accelerated filer status.
One month or less	No separate transition report is required. However, if the registrant does not file a transition report on either Form 10-Q or 10-K, transition period financial statements must be included in the next periodic report filed on Form 10-Q. The transition period may be unaudited, but the next Form 10-K must contain audited financial statements of the transition period.

1365 Changes in Fiscal Year - Implementation Guidance

1365.1 Comparable Year Information

Transition reports must include prior year information comparable to the transition period. Comparable year information may be unaudited and may be provided on a condensed basis and in the footnotes to financial statements instead of separate statements. [FRR 35] All information responsive to the textual items of the reporting form (e.g., S-K 101, 103, and 303 for Form 10-K) must be provided in the transition report. [FRR 35]

1365.2 Reg S-X Financial Statement Requirements

A transition report filed on Form 10-K must comply with the financial statement requirements of Regulation S-X, including audited statements of income, cash flows, and owners' equity for each of the three most recent fiscal years (two most recent fiscal years for Smaller Reporting Companies) and audited balance sheets as of the end of each of the two most recent fiscal years. As provided under S-X 3-06, a transition period of nine to twelve months will satisfy the requirement for one fiscal year. For example, a company with a March 31 year-end decides on January 2, 2009 to change its year-end to December 31, 2008. The company must file a transition report on Form 10-K that includes audited

statements of income, cash flows, and owners' equity for the nine-month transition period ended December 31, 2008 and for each of the two years ended March 31, 2008, as well as audited balance sheets as of March 31, 2008 and December 31, 2008.

In contrast, a company with a June 30 year-end decides on January 2, 2009 to change its year-end to December 31, 2008. The company must file a transition report on Form 10-K that includes audited statements of income, cash flows, and owners' equity for the six-month transition period ended December 31, 2008, and for each of the three years ended June 30, 2008. The company must also file audited balance sheets as of December 31, 2008, June 30, 2008 and June 30, 2007.

1365.3 Maximum Audited Reporting Period

No audited reporting period, under any circumstances, may exceed 12 months for domestic issuers.

1365.4 Securities Act Registration Statement

Even though an issuer complies with Exchange Act requirements following an election to change the fiscal year, Securities Act form provisions may require it to provide more current audited financial statements in a Securities Act registration statement. In other words, the requirement to file audited transition-period financial statements may be accelerated when a Securities Act registration statement is filed, with the requirement based on the former fiscal year-end. For example, a company with a September 30 year-end decides on January 2, 2009 to change its year-end to December 31, 2008, and files a transition report on Form 10-Q containing unaudited financial statements for the transition period from October 1, 2008 to December 31, 2008. Under the Exchange Act, audited transition-period financial statements would not need to be filed until the company files its December 31, 2009 Form 10-K. However, a registration statement declared effective after November 14, 2009 (based on the 45-day provision under S-X 3-01) must contain those audited transition-period financial statements.

1365.5 Business Combinations and Change in Fiscal Year

A business combination accounted for as a reverse acquisition may result effectively in a change in fiscal year. See Topic 12.

1365.6 Recasting Prior Period Financial Statements

An issuer is permitted, but not required, to recast its prior period financial statements in subsequent annual reports on Form 10-K or Form 20-F to conform with the issuer's newly adopted fiscal year. [FRR 35, n84]

1365.7 **Change To or From 52-53 Week Fiscal Year**

A change from a fiscal year ending as of the last day of the month to a 52-53 week fiscal year commencing within seven days of the month end (or vice-versa) is not deemed a change in fiscal year-end if the new fiscal year commences with the end of the old fiscal year. A transition report would not be required. [FRR 35, n26] *(Last updated: 9/30/2010)*

1370 Combined Periodic Reporting

(Last updated: 12/31/2010)

1370.1 **Parent/Subsidiary**

(Last updated: 6/30/2011)

The staff would not object to combined periodic reporting for parent and subsidiary registrants in cases where the parent owns substantially all of the stock of the subsidiary, there are no more than nominal differences between the financial statements of the parent and the subsidiary and the non-financial disclosures of the parent and subsidiary are substantially similar, if the following is included in the combined Forms 10-K and the combined Forms 10-Q, as applicable, in addition to the other non-financial disclosures required by the forms:

a. Separate audit reports - materiality considerations should be assessed for each entity

b. Separately reviewed interim financial statements for each entity;

c. Separate reports on disclosure controls and procedures and internal control over financial reporting for each entity;

d. Separate complete sets of financial statements, e.g. balance sheet, statement of operations, statement of comprehensive income, statement of cash flows, and statement of changes in stockholders equity, as applicable for each entity;

e. Separate footnotes for areas that differ between the parent and the subsidiary, such as debt and capital structure, including redemption provisions; and

f. Separate CEO/CFO Certifications for each entity.

With respect to other disclosure items required by the forms, any material differences between the parent and the subsidiary should be discussed separately.

1370.2 Multiple Series Registrants

Multiple series registrants are formed as trusts or partnerships under state law, which establishes the registrant as a legal entity and as an issuer. For purposes of SEC reporting, the trust (or partnership) is the sole registrant, not the individual series. However, separate financial statements of each individual series must be provided because an investor invests in an individual series of the trust (partnership). The staff will accept the filing of one periodic report for the legal registrant/series, but certain separate reporting should be applied at both the legal registrant and the series level. Separately provide, prepare or evaluate as applicable the following for the legal registrant and for each series:

a. Separate financial statements and audit reports - in preparing these reports materiality should also be assessed at the separate series level;

b. Separately reviewed interim financial statements;

c. Separate reports on disclosure controls and procedures and internal control over financial reporting; and

d. Separate assessments of materiality for S-K and S-X purposes, including S-X 3-05, 3-09, and 4-08.

In addition, multiple series registrants should include in the "controls and procedures" disclosure of their periodic reports a statement that the CEO/CFO certifications are applicable to each of the series as well as to the trust (partnership).

See Section 2410.9 for more details regarding the S-X 3-09 significance calculations for multiple series registrants.

1400 GENERAL CONSIDERATIONS (ALL FILINGS)

(Last updated: 9/30/2008)

1410 Basis of Reporting

Regulation S-X and U.S. GAAP must be followed by domestic issuers. Financial statements not prepared in accordance with U.S. GAAP are presumed to be inaccurate or misleading. [S-X 4-01(a)(1)] However, the following situations should be noted:

1410.1 Smaller Reporting Companies

Smaller Reporting Companies may choose to provide disclosures under S-X Article 8 rather than under other S-X Articles applicable to Non-Smaller

Reporting Companies. The principal differences are that Article 8 does not have a requirement to file supplemental schedules, does not designate specific financial statement format, does not stipulate quantitative thresholds for many disclosures, and does not have a requirement to file separate financial statements of investees as would be required under S-X 3-09. However, the auditor reporting and independence requirements of S-X Article 2 and the full cost oil and gas disclosures required by S-X 4-10 apply to Smaller Reporting Companies. With regard to pro forma financial information, Smaller Reporting Companies should comply with the requirements of S-X 8-05, but may wish to consider the guidance in S-X Article 11.

1410.2 Annual Report to Shareholders

The annual report does not need to include the separate financial statements of other entities, pro forma data, or schedules required by Articles 3, 8, 11 and 12 of Regulation S-X, or predecessor audit reports. [Rule 14a-3(b)(1)]

1410.3 Royalty Trusts

May report on a different basis pursuant to SAB Topic 12E.

1410.4 Mutual Life Insurance Companies

May present financial statements on statutory basis [S-X 7-02], which cannot be characterized as being in conformity with GAAP. CF-OCA should be consulted on filings containing such financial statements. A mutual insurance company converting to stock form must follow GAAP for stock companies for all periods presented.

1410.5 Emerging Growth Companies

An EGC is not required to comply with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to comply with such standards, if such standards apply to companies that are not issuers. An EGC that chooses not to take advantage of the extended transition provision must make such choice at the time the company is first required to file a registration statement, periodic report or other report, and must notify the Commission of such choice. Note that the decision to forego the extended transition period is irrevocable. See Topic 10 for additional information. *(Last updated: 6/30/2013)*

1420 [Reserved]

1430 Guaranteed Securities

A guarantee of a security is a security, and the guarantor of a registered security is subject to the reporting and registration requirements applicable to other issuers. Relief from separate reporting and financial statement requirements is available for guarantors in certain circumstances. See Section 2500.

1440 Fiscal Years Differing by 93 Days or Less

Consolidation of a parent and subsidiaries with year-end differences not exceeding 93 days is permissible (accompanied by disclosure of the different closing date and its justification). However, intervening events that materially affect financial position or operating results should be disclosed. [ARB 51 / ASC 810-10-45-12] Where fiscal years differ by more than 93 days, statements of the subsidiary should be adjusted to a period that more nearly corresponds with the fiscal period of the parent. [S-X 3A-02.b.1]

1450 Fiscal Year Presentation

(Last updated: 3/31/2009)

1450.1 Fiscal Year-End

Fiscal year-end is presumed to be calendar year-end if no closing date has been adopted. [S-X 1-02(k)]

1450.2 Ordering of Fiscal Year Data

Consistent chronological order generally should be followed in presentation of financial data throughout the filing to avoid confusion. [SAB Topic 11E]

1450.3 Length of Fiscal Year

Fiscal years may not exceed 12 months**.** Under S-X 3-06, nine to twelve months of audited financial statements will meet the requirement for one year of audited financial statements:

a. when a registrant has changed its fiscal year (see Section 1365.2), or

b. for financial statements of an acquired business required under S-X 3-05.

1450.4 **Unusual Circumstances**

a. *S-X 3-06(b) and Target Company Financials Filed under Item 14(c)(2) of Schedule 14A*

The provision of S-X 3-06(b) permitting the filing of financial statements covering a period of nine to twelve months to satisfy the one-year financial statement requirement for an acquired business does not apply to financial statements of target companies filed under Item 14(c)(2) of Schedule 14A. Unusual situations can be discussed with CF-OCA. See further discussion at Section 1140.8.

b. *S-X 3-06(c)*

A registrant cannot substitute nine months of results in satisfaction of a requirement for one year in other circumstances without prior consultation with CF-OCA.

1500 INTERIM PERIOD REPORTING CONSIDERATIONS (ALL FILINGS)

(Last updated: 6/30/2010)

Interim Period Financial Statement Disclosures upon Adoption of a New Accounting Standard

S-X Article 10 requires disclosures about material matters that were not disclosed in the most recent annual financial statements. Accordingly, when a registrant adopts a new accounting standard in an interim period, the registrant is expected to provide both the annual and the interim period financial statement disclosures prescribed by the new accounting standard, to the extent not duplicative. These disclosures should be included in each quarterly report in the year of adoption.

1600 SELECTED FINANCIAL DATA (ALL FILINGS)

(Last updated: 9/30/2010)

1610 Accounting Basis

(Last updated: 6/30/2013)

1610.1 The staff generally expects all periods presented in selected financial data to be presented on a basis consistent with the annual financial statements. For example, if a company adopts a new accounting standard that requires retrospective application or disposes of a business that is accounted for as a discontinued operation, the staff will expect the years prior to the annual financial statements – generally years 4 and 5 – to be presented on the same basis as the annual financial statements.

1610.2 See Section 10220.2 for selected financial data requirements for EGCs.

1620 Selected Quarterly Financial Data Not Required

1620.1 **Initial Public Offerings**

A company is not required to furnish selected quarterly financial data pursuant to S-K 302(a) in its initial registration statement under the Securities Act if it does not have any securities registered under Section 12(b) or 12(g) of the Exchange Act. A company that has securities registered under the Exchange Act must comply with S-K 302(a) in any Securities Act or Exchange Act document that calls for that disclosure unless it is a Smaller Reporting Company. A Smaller Reporting Company is not subject to S-K 302(a).

1620.2 **Form S-4 for a Private Target Company**

Selected quarterly financial data is not required to be furnished in a Form S-4 for a private target company that is being acquired by a registrant. Since the private company does not have any securities registered under Section 12(b) or 12(g) of the Exchange Act, it is not subject to the disclosure requirements of S-K 302(a).

NOTE to SECTION 1620

The exclusion from the requirement to furnish selected quarterly financial data noted in this section also applies to Exchange Act initial registration statements, as well as proxy materials filed under Item 14(c)(2) of Schedule 14A. *(Last updated: 12/31/2010)*

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TOPIC 2

OTHER FINANCIAL STATEMENTS REQUIRED

This topic identifies circumstances in which financial statements of entities other than the registrant (or predecessor(s) of the registrant) are required to be included in filings. The guidance applicable to financial statements of the registrant (in Topic 1) applies also to financial statements of the other entities, unless specified otherwise in this topic.

NOTE to TOPIC 2

The staff may require other financial statements as necessary for a fair presentation of the financial condition of any entity whose financial statements are either required or otherwise necessary for the protection of investors. [S-X 3-13]

2000 BUSINESSES ACQUIRED OR TO BE ACQUIRED (EXCLUDING TARGET COMPANIES IN FORM S-4) [S-X 3-05, S-X 8-04]

(Last updated: 9/30/2008)

Overview - In general, S-X 3-05 and S-X 8-04 require the filing of separate pre-acquisition historical financial statements when the acquisition of a significant business has occurred or is probable. A flowchart to assist you is located at Section 2060.

Section	Description
2005	Definitions and Requirements
2010	Determination of a Business
2015	Measuring Significance - Basics
2020	Implementation Points - Amounts Used to Measure Significance
2025	Implementation Points - Financial Statements Used to Measure Significance
2030	Financial Statement Periods Required Under S-X 3-05 and S-X 8-04
2035	Individually Insignificant Acquirees
2040	When To Present Financial Statements
2045	Age of Financial Statements - Basics
2050	Age of Financial Statements - Interaction of S-X 3-05(b)(4) and Form 8-K
2055	Foreign Business, Hostile Tender Offers, Troubled Financial Institutions
2060	Flowchart Overview of S-X 3-05
2065	Acquisitions of Selected Parts of an Entity
2070	SAB 80: Application of S-X 3-05 in Initial Registration Statements

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2005 Definitions and Requirements

2005.1 **Financial statements** of the acquired business are generally the same as those as if the acquired company were a registrant as described in Topic 1, except that the number of years of audited financial statements is determined by the level of significance (Section 2030 below). Refer to Sections 2045 and 2050 regarding age of financial statements.

Exceptions: An acquired business that is a *nonpublic entity*, as that term is defined in GAAP, need not include disclosures if specifically excluded from the scope of the FASB standard. Examples include:

a. Segment information under SFAS 131 [SFAS 131, par. 9 / ASC 280-10-15-3],
b. Certain disclosures about employers' pensions and other postretirement benefits [SFAS 132(R), par. 8 / ASC 715-20-50-5]
c. Earnings per share under SFAS 128 [SFAS 128, par. 1 / ASC 260-10-05-1]

2005.2 **Supplemental schedules** (S-X Article 12) are not required to be filed.

2005.3 **"Acquisition" and Equity Method Investee** – Acquisition includes acquisition of an interest in a business that is accounted for under the equity method. Refer to Section 2010 regarding definition of a "business".

2005.4 **"Probable" -** Assessment of **"probability"** requires consideration of all available facts. Acquisition is probable where registrant's financial statements alone would not provide adequate financial information to make an investment decision. [FRC 506.02(c)(ii)]

2005.5 **Acquiree of an Acquiree or Investee of an Acquiree** - The requirements of S-X 3-05 and S-X 8-04 apply to acquisitions made by the registrant or its predecessor(s). Those rules call for financial statements of the acquiree and its predecessor(s), if applicable. Financial statements of recently acquired businesses of the acquiree or equity method investees of the acquiree need not be filed unless their omission would render the acquiree's financial statements misleading or substantially incomplete. *(Last updated: 3/31/2010)*

2005.6 **Acquisition of a "Predecessor"** - S-X 3-05 and S-X 8-04 do **not** apply to the acquisition of a business that is a predecessor of the registrant, as defined in Regulation C, Rule 405. Instead, look to S-X 3-01/3-02 or S-X 8-02/8-03 to determine the financial statement requirements for an acquired business that is a predecessor of the registrant.

2005.7 "**Shell Company" is both Legal and Accounting Acquirer**– If a shell company, other than a "Business Combination Related Shell Company" (both as defined in Exchange Act Rule 12b-2 and Regulation C, Rule 405), acquires an operating entity in a transaction in which the shell company is both the legal and accounting acquirer, the acquired entity will be a predecessor of the shell company and therefore S-X 3-05 and S-X 8-04 do **not** apply. If a shell company acquires an operating entity in a transaction accounted for as the acquisition of the shell company by the operating entity (i.e., shell company is the legal acquirer, but the accounting acquiree) the transaction is a reverse recapitalization of the operating entity and therefore S-X 3-05 and S-X 8-04 do **not** apply. See Topic 12 for further discussion of the reporting requirements for reverse recapitalizations.

2005.8 **Acquisition or Disposition by a Consolidated Variable Interest Entity** - An acquisition or disposition by a variable interest entity that is consolidated in the registrant's financial statements pursuant to ASC 810 is subject to the Form 8-K and S-X reporting requirements even if the consolidated variable interest entity does not meet the S-X 1-02(n) definition of "majority-owned subsidiary." *(Last updated: 6/30/2011)*

NOTE to SECTION 2005.8

Item 2.01 of Form 8-K refers to acquisitions or dispositions by "the registrant or any of its majority-owned subsidiaries." Because this reference preceded the variable interest entity consolidation model, the staff believes the intent of this reference is to require reporting of significant acquisitions and dispositions made by the registrant or its consolidated subsidiaries, regardless of whether the consolidated subsidiaries are voting interest entities or variable interest entities. *(Last updated: 6/30/2011)*

2010 Determination of a Business [S-X 11-01(d)]

2010.1 **Reporting versus Accounting** – The determination of what constitutes a business **for reporting purposes** (e.g., S-X 3-05 and Item 2.01 of Form 8-K) is made by reference to the definition of a "business" in S-X 11-01(d). The determination of what constitutes a business **for accounting purposes** (e.g., whether acquired net assets constitute a business for purposes of determining whether a business combination as defined in SFAS 141R [ASC-MG] has occurred) is made by reference to SFAS 141R paragraph 3d [ASC-MG]. It is possible for the determination to be different under the two requirements. *(Last updated: 12/31/2011)*

2010.2 **A separate entity, subsidiary, division or possibly a separate product line** – A "business" for purposes of S-X 3-05 is identified by evaluating whether there is sufficient continuity of operations so that disclosure of prior financial information is material to an understanding of future operations. There is a presumption in S-X 11-01(d) that a separate entity, subsidiary, or division is a business. A lesser component, such as a product line, also may be considered a business. In evaluating whether a lesser component is a business, S-X 11-01(d) requires registrants to consider the following:

- Will the nature of the revenue producing activity generally remain the same?
- Will the facilities, employee base, distribution system, sales force, customer base, operating rights, production techniques, or trade names remain after the acquisition?

NOTE to SECTION 2010.2

The staff's analysis of whether an acquisition constitutes the acquisition of a business, rather than of assets, focuses primarily on whether the nature of the revenue producing activity previously associated with the acquired assets will remain generally the same after the acquisition. New carrying values of assets, or changes in financing, management, operating procedures, or other aspects of the business are not unusual following a business acquisition. Such changes typically do not eliminate the relevance of historical financial statements. Registrants that have succeeded to a revenue producing activity by merger or acquisition, with at least one of the other factors listed above remaining after the acquisition, are encouraged to obtain concurrence from the staff in advance of a filing if they intend to omit financial statements related to the assets and activity. Registrants may direct requests related to appropriate financial statements of an acquired entity or group of assets to CF-OCA.

2010.3 **An investment accounted for under the equity method –** The staff considers the acquisition of an investment accounted for under the equity method to be a business for reporting purposes.

2010.4 **A working interest in an oil and gas property -** The staff considers the acquisition of a working interest in an oil and gas property to be a business for reporting purposes. Refer to Section 2065.11 "Unique Considerations for Acquisitions of Oil and Gas Properties – General." *(Last updated: 10/20/2014)*

2010.5 **Bank branch acquisitions**- The assumption of customer deposits at bank branches may constitute the acquisition of a business if historical revenue producing activity is reasonably traceable to the management or customer and deposit base of the acquired branches, and that activity will remain generally the same following the acquisition.

2010.6 **Insurance policy acquisitions -** Acquisitions of blocks of insurance policies by an insurance company or the assumption of policy liabilities in reinsurance transactions may also be deemed the acquisition of a business because the right to receive future premiums generally indicates continuity of historical revenues. The degree of continuity between historical investment income streams and the assets acquired to fund the acquired policy liabilities should also be considered.

2015 Measuring Significance – Basics [S-X 3-05(b)(2)]

NOTE to SECTION 2015
Registrants may request CF-OCA interpretation in unusual situations or relief where strict application of the rules and guidelines results in a requirement that is unreasonable under the circumstances.

2015.1 Registrants must measure the significance of an acquired business under S-X 3-05 and S-X 8-04 using three tests, the:

- Asset test,
- Investment test, and
- Income test.

These tests are described in further detail below.

NOTE to SECTION 2015.1
In certain circumstances, registrants preparing an initial registration statement may consider applying SAB 80 instead of S-X 3-05 or S-X 8-04. See further discussion at Section 2070, "SAB 80: Application of S-X 3-05 in Initial Registration Statements (SAB Topic 1J)."

2015.2 **Financial Statements Used to Measure Significance** – Generally, compare the most recent pre-acquisition annual financial statements of the acquired business to the registrant's pre-acquisition consolidated financial statements as of the end of the most recently completed audited fiscal year required to be filed with the SEC. Financial statements of both the acquired business and the registrant used to measure significance must be prepared in accordance with the comprehensive basis of accounting described in Section 2015.3, "Comprehensive Basis of Accounting Used to Measure Significance."

If a change in the reporting entity or a reorganization will occur at or after effectiveness of an initial registration statement but no later than closing of the IPO, the staff will consider requests for relief to use the combined financial statement amounts as the denominator for purposes of significance calculations in determining other financial statement requirements for the filing (e.g., S-X 3-05 and 3-09). *(Last updated: 3/31/2010)*

2015.3 **Comprehensive Basis of Accounting Used to Measure Significance** - A registrant that files its financial statements in accordance with or is required to provide reconciliation to U.S. GAAP should determine significance using amounts for both the acquired business and the registrant determined in accordance with U.S. GAAP; that is, both the numerator and denominator of the significance test would be determined in accordance with U.S. GAAP. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB should determine significance using amounts for both the acquired business and the registrant determined in accordance with IFRS as issued by the IASB; that is both the numerator and denominator of the significance test would be determined in accordance with IFRS as issued by the IASB. To illustrate these requirements, if a registrant that files its financial statements in accordance with U.S. GAAP acquires, both legally and for accounting purposes, a foreign private issuer or a foreign business that files its financial statements in accordance with IFRS as issued by the IASB, significance (both the numerator and denominator) must be determined in accordance with U.S. GAAP. This is true even though the acquired business did not reconcile its financial statements to U.S. GAAP.

2015.4 **Asset Test -** Compare registrant's share of acquired business's total assets to the registrant's consolidated total assets. **Ordinary receivables and other working capital amounts** not acquired should nevertheless be included as part of the assets of the acquired enterprise in tests of significance relative to the registrant's assets because that working capital is expected to be required and funded after the acquisition.

2015.5 **Investment Test - Acquisition Accounting <u>under SFAS 141R [ASC 805] and IFRS 3 (Revised 2008) as issued by the IASB -</u>** Compare the total GAAP purchase price of the acquired business, *as adjusted below*, to the registrant's consolidated total assets.

GAAP purchase price in this context means the "consideration transferred", as that term is used in the applicable accounting standard. Thus, the investment test computed for an acquisition accounted for under SFAS 141R [ASC 805] and IFRS 3 (Revised 2008) as issued by the IASB will differ from the investment test computed for an acquisition accounted for under SFAS 141 and IFRS 3 (prior to the 2008 revision) as issued by the IASB **in part** because it will include the acquisition-date fair value of all contingent consideration and exclude acquisition-related costs.

The adjustment - For purposes of the "investment" test, "consideration transferred" should be adjusted to <u>exclude</u> carrying value of assets transferred by the acquirer to the acquired business that will remain with the combined entity after the business combination.

NOTE to SECTION 2015.5
The numerator of the investment test for the purchase of an equity method investment should include transaction costs, consistent with the accounting under ASC 323-10. The numerator should also include contingent consideration (on a gross basis) if the likelihood of payment is more than remote. *(Last updated: 3/31/2010)*

2015.6 **Investment Test – Purchase Accounting under SFAS 141 and IFRS 3 (prior to the 2008 revision) as issued by the IASB -** Compare total GAAP purchase price of acquired business, as adjusted below, to registrant's consolidated total assets. *GAAP purchase price* in this context means the "cost of the acquired entity", as that phrase is used in SFAS 141, or "cost of the business combination" as that term is used in IFRS 3 (prior to the 2008 revision). For purposes of the "investment" test, "cost of the acquired entity" or "cost of a business combination" should be adjusted to:

- include the liabilities incurred by the acquirer to the former owners of the acquiree, but exclude pre-acquisition debt and other liabilities of the acquired business assumed in the business combination and
- include any contingent consideration that represents additional purchase price as part of the total investment in the acquiree unless the likelihood of its payment is remote.

NOTES to SECTION 2015.6

1. IFRS 3 (prior to the 2008 revision) states in part that the cost of a business combination is the aggregate of the fair values of assets given, liabilities incurred or assumed, and equity instruments issued by the acquirer. As noted above, liabilities incurred to the former owners of the acquiree are included in the investment test, but pre-acquisition liabilities of the acquired business that are assumed in the business combination are excluded from the investment test.

2. Generally, contingencies based on security prices do not change the recorded cost of the acquired company under SFAS 141 or the cost of the business combination under IFRS 3 (prior to the 2008 revision) and therefore should be excluded from the investment test. Generally, contingent consideration based on earnings will either be included as part of the cost of the acquired company or compensation. If it is part of the cost of the acquired company, it should be included in the investment test unless the likelihood of payment is remote. If it is compensation, it may be excluded from the investment test.

3. For U.S. GAAP, see SFAS 141, paragraphs 25-27 for a discussion of the accounting for contingent consideration and EITF 95-8 for determining whether consideration contingent on earnings is part of the cost of an acquired entity or whether it represents compensation.

4. For IFRS as issued by the IASB, see IFRS 3 (prior to the 2008 revision), paragraphs 32-35 for a discussion of the accounting for contingent consideration.

2015.7 **Investment Test - Reorganization of Entities Under Common Control –** Compare the net book value of the acquired business to the registrant's consolidated assets and compare the number of shares exchanged to registrant's outstanding shares at the date the combination is initiated.

2015.8 **Income Test -** Compare registrant's equity in the acquired business's income from continuing operations before taxes, extraordinary items and cumulative effect of a change in accounting principle to that of the registrant.

There are three computational notes to the income test included at S-X 1-02(w). The second computational note indicates that if the registrant's income for the most recent fiscal year is 10% or more lower than the average of the registrant's income for the last five fiscal years, then the average income of the registrant should be used for this computation. This computational note also applies if the registrant reported a loss, rather than income. If the registrant reported a loss, the registrant should compare the absolute value of its reported loss to its average income for the last five fiscal years to determine

if the registrant is required to use average income. In computing the registrant's average income for the last five fiscal years, loss years should be assigned a value of zero in computing the numerator for this average, but the denominator should be "5". Also, the acquiree's income may not be averaged. *(Last updated: 12/31/2010)*

2015.9 **Significance – Absolute Values -** In the case of a single acquisition, if either the registrant or the acquired business reported a pretax loss and the other entity reported pretax income, use the absolute values.

2015.10 **Significance – Denominator** - The acquired business is not considered part of the registrant's denominator in determining significance for purposes of S-X 3-05 [S-X 1-02(w)]

2015.11 **Significance – Intercompany Transactions** - When measuring significance for all three S-X 1-02(w) tests, intercompany transactions between the registrant and acquiree should be eliminated in the same way that would occur if the acquiree were consolidated. See by analogy S-X 1-02(w)(2). *(Last updated: 9/30/2009)*

2015.12 **Significance – "Related Businesses" -** Acquisitions of "**related businesses**" must be treated as a single business acquisition. Businesses are related under S-X 3-05 if:

- they are under common control or management, or
- their acquisitions are dependent on each other or a single common event or condition.

2015.13 **Significance – Rounding** - Do not round the results of the significance tests.

2020 Implementation Points – Amounts used to Measure Significance [S-X 1-02(w)]

2020.1 **Significance Implementation – No <u>Alternative Tests of Significance</u>**
In order to achieve consistent application and fair treatment across all registrants and industries, the staff will <u>not</u> accept alternative significance tests. The tests should be performed based on the requirements of S-X 3-05, 3-09, and 4-08(g), as applicable. If after performing the required significance tests a registrant believes that the tests specify periods beyond those reasonably necessary to inform investors, the registrant may make a written request to CF-OCA to waive one or more years of financial statements. In making this request, registrants should consider all facts and circumstances that provide an indication of the relative size of the acquired business. Historically, such requests have only been granted in highly exceptional circumstances where income has been affected by an unusual and nonrecurring item and the resultant income test is significantly

disproportionate to the asset and investment tests. Even in such highly exceptional circumstances it is unlikely that CF-OCA will waive all audited periods required by S-X 3-05, 3-09, or 4-08(g) when there is continuity of the revenue stream between pre- and post-acquisition periods and the assets continue to be used for the same purpose on a post-acquisition basis as they were on a pre-acquisition basis.

2020.2 **Significance Implementation - Business Combinations - *Measurement Period Adjustments under SFAS 141R [ASC 805] and IFRS 3R***

In some circumstances, SFAS 141R [ASC 805] and IFRS 3R require retrospective adjustment of provisional amounts recognized at the acquisition date and the recognition of additional assets or liabilities that were not recognized at the acquisition date. The pre-acquisition financial statements for the most recently completed fiscal year used to measure significance should include measurement period adjustments for acquisitions completed within the most recently completed fiscal year when new information obtained about facts and circumstances that existed at the acquisition date for those acquisitions is known: (A) prior to effectiveness of an IPO for a new registrant or (B) on or before the date the initial Item 2.01 Form 8-K reporting the acquisition must be filed for an existing registrant. *(Last updated: 9/30/2009)*

2020.3 **Significance Implementation - Business Combination Achieved in Stages or Step Acquisition of a Rule 11-01(d) Business – *General***

If a registrant increases its investment in a business relative to the prior year, base the tests of significance on the increase in the registrant's proportionate interest in assets and net income during the year, rather than the cumulative interest to date. However, step acquisitions which are part of a **single plan to be completed within a twelve month period** should be aggregated.

NOTE to SECTION 2020.3

The guidance to base significance on the increase in the registrant's proportionate interest applies even if the registrant must discontinue applying the cost method and start applying the equity method as a result of the increase in investment.

2020.4 **Significance Implementation - Business Combination Achieved in Stages (a.k.a. Step Acquisition) – *Remeasurement***

Under SFAS 141R [ASC 805] and IFRS 3 (revised 2008) as issued by the IASB, the acquirer's previously held equity interest in the acquiree is remeasured at its acquisition-date fair value with any resulting gain or loss recognized in earnings. The remeasurement of the previously held equity interest is not included in the asset or the investment test and the resulting gain or loss from remeasurement would be excluded from the income test as it is not included in the registrant's most recently completed fiscal year.

2020.5 **Significance Implementation - Acquiring an Additional Interest in a Consolidated Entity**
(Last updated: 9/30/2011)

When a registrant increases its investment in a company that is already reflected as a consolidated subsidiary in the audited financial statements of the registrant for a complete fiscal year, financial statements of the acquired investment are *ordinarily* not required. However, pro forma information may be required.

The staff's view that financial statements are ordinarily not required is premised on S-X 3-05(b)(4)(iii) which states that separate financial statements of the acquired business need not be presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the registrant for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of major significance. Illustrative, but not all-inclusive, examples of when historical financial statements of an acquired business may be required in a step acquisition include:

- acquired business financial statements have not been previously filed for the entire period for which historical financial statements of the acquired entity would be required under S-X 3-05;
- acquired business is of major significance; or
- S-X 3-05 does not apply; such as a proxy statement or Form S-4 requirement to present the target's financial statements for the same periods that would be required in an annual report sent to security holders, if an annual report was required.

Also, note that while S-X 11-01(c) states that pro forma effects of a business combination need not be presented if the acquired business' financial statements are not presented, we believe such pro forma financial statements are required pursuant to S-X 11-01(a)(8) when pro forma financial information giving effect to the step acquisition would be material to investors.

2020.6 **Significance Implementation - Public Offering Proceeds**
Registrant's assets may not be increased for purposes of the significance tests by including the pro forma effect of **public offering proceeds** received after the balance sheet date.

2020.7 **Significance Implementation - Statements of Revenues and Direct Expenses**
A registrant that has received an accommodation from CF-OCA to present a statement of revenue and direct expenses for the acquired business in lieu of full financial statements (See Section 2065) should not adjust the registrant's

pretax income (i.e., the denominator in the income test) to exclude corporate overhead even though the target's pretax revenues less direct expenses (i.e., the numerator) excludes indirect expenses. If after performing the required significance tests using the target's pretax revenues less direct expenses and the registrant's pretax income, a registrant believes that the tests specify periods beyond those reasonably necessary to inform investors, the registrant may make a written request to CF-OCA to waive one or more years of financial statements.

2020.8 **Significance Implementation - Related Businesses – General**
(Last updated: 9/30/2012)

S-X 3-05 requires that related businesses be treated as a single business when measuring significance. Further guidance on this requirement is included below. If S-X 3-05 significance is met, separate financial statements of each of the related businesses are required, except that financial statements of the related businesses that are under common control or management may be, but are not required to be, presented on a combined basis for any annual or interim periods specified in S-X 3-05 for which the businesses are under common control or management. If the registrant believes that application of the significance tests results in a requirement to present financial statements of one or more related businesses that are not reasonably necessary to inform investors, the registrant may make a request to CF-OCA for relief.

NOTES:

1. If related businesses have different fiscal year ends, a registrant should not conform the fiscal year-ends of the related businesses for purposes of the significance tests.

2. The reference to "periods specified in S-X 3-05" is meant to clarify that in order to present financial statements of related businesses on a combined basis for an annual or interim period specified in S-X 3-05, the related businesses must be under common control or management for the entirety of that annual or interim period.

3. S-X 3-05(a)(3) states in part "Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed ***shall be treated under this section*** [emphasis added] as if they are a single business combination." The staff interprets this requirement to mean that S-X 1-02(w) Computational Note 3, which indicates that entities reporting losses should not be aggregated with entities reporting income, does not apply to the calculation of significance for related businesses. *(Last updated: 9/30/2012)*

2020.9 **Significance Implementation - Related Businesses - Asset and Investment Tests**
(Last updated: 9/30/2012)

Both the asset test and the investment test should be performed for each related business using the guidance provided in Section 2015. If either the sum of each related business's asset test significance or the sum of each related business's investment test significance exceeds the S-X 3-05 significance levels (see Section 2030), separate financial statements should be provided for the periods required by S-X 3-05 for each related business, except that financial statements for the related businesses that are under common control or management may be, but are not required to be, presented on a combined basis for any annual or interim periods specified in S-X 3-05 for which the businesses are under common control or management. See the Notes at Section 2020.8 for further guidance.

2020.10 **Significance Implementation - Related Businesses – Income Test**
(Last updated: 9/30/2012)

S-X 3-05 indicates that related businesses should be treated as if they are a single business combination. Therefore, calculate the income test significance using the combined income or loss from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of all of the related businesses. The combined income or loss should be used to measure income test significance irrespective of whether any of the related businesses are under common control or management. If the income test significance exceeds the S-X 3-05 significance levels (see Section 2030), separate financial statements should be provided for the periods required by S-X 3-05 for each related business, except that financial statements of the related businesses that are under common control or management may be, but are not required to be, presented on a combined basis for any annual or interim periods specified in S-X 3-05 for which the businesses are under common control or management. See the Notes at Section 2020.8 for further guidance.

2025 Implementation Points – Financial Statements Used to Measure Significance [S-X 1-02(w)]

2025.1 **Significance Implementation - Discontinued Operations and Changes in Accounting Principle**
Subsequent to filing its Form 10-K, a registrant may be required to include (or incorporate by reference) into a registration statement its audited annual financial statements giving retrospective effect to a discontinued operation or a change in accounting principle that was appropriately not reflected in the audited financial statements for the most recently completed fiscal year included in its Form 10-K. See Topic 13 for a discussion of this requirement.

In these circumstances, we have interpreted the guidance in S-X 3-05 to require registrants to perform significance tests based on the registrant's financial statements that reflect retrospective application for the most recently completed fiscal year for:

- Individual businesses acquired after the date the retrospectively adjusted financial statements are filed;
- Probable acquisitions; and
- Aggregate impact of all individually insignificant businesses that have occurred since the end of the most recently completed fiscal year.

NOTES to SECTION 2025.1

1. Solely for purposes of assessing significance of individual acquisitions completed on or before the date the retrospectively adjusted financial statements are filed (and not, for example, for purposes of assessing the aggregate impact of all individually insignificant businesses that have occurred since the end of the most recently completed fiscal year), significance may be measured based on either (A) the registrant's audited financial statements for its most recently completed fiscal year that were filed prior to the retrospectively adjusted financial statements giving effect to the discontinued operation or (B) the registrant's filed financial statements for the most recently completed fiscal year that reflect retrospective application of the discontinued operation. A registrant must consistently use the financial statements it chooses (i.e., either (A) or (B) above) to measure significance of all individual acquisitions completed on or before the date the retrospectively adjusted financial statements are filed. *(Last updated: 3/31/2009)*

2. The staff's rationale for the position above follows. A registrant must report on Form 8-K an acquisition of a significant individual business. For purposes of measuring significance under S-X 3-05 and S-X 8-04, the staff links the acquisition date for a significant individual business to the date retrospectively adjusted financial statements are filed in order to ensure that an appropriate conclusion that an acquired business was not significant for purposes of Form 8-K will not be changed by a subsequent discontinued operation. Such a link is not necessary for either a probable acquisition or an acquisition of an individually insignificant business because the registrant has no Item 2.01 Form 8-K reporting obligation for these events.

2025.2 **Significance Implementation - <u>Form 10-K Filed Subsequent to Acquisition</u>**
(Last updated: 3/31/2009)

Generally, a registrant measures significance using its **pre-acquisition** consolidated financial statements as of the end of the most recently completed

audited fiscal year required to be filed with the SEC. If the acquisition is made after the registrant's most recent fiscal year end and the registrant files its Form 10-K for the most recent fiscal year before the date financial statements of the acquired business would be required to be filed under Item 9.01 of Form 8-K, the registrant may evaluate significance using the registrant's financial statements for most recent fiscal year reported in its Form 10-K. Alternatively, the registrant may choose to evaluate significance using the registrant's financial statements for the most recently completed audited fiscal year required to be on file with the SEC as of the consummation date.

2025.3 **Significance Implementation - Pro Forma Financial Statements (S-X Article 11) Used to Measure Significance**

If the acquisition is made after reporting a previous significant acquisition or disposition on Form 8-K or non-IPO registration statement that includes all information required by Form 8-K, the registrant may evaluate significance using registrant's pro forma financial information rather than historical pre-acquisition financial statements. For purposes of evaluating significance in this situation:

- ***Income Test*** - Compare income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle for the acquired entity's latest fiscal year to the pro forma income statement for the latest audited annual period provided in the Form 8-K or registration statement.
- ***Investment and Asset Tests*** - Compare the registrant's investment in the acquired entity and the assets of the acquired entity for the latest fiscal year to the pro forma balance sheet comprising the latest audited balance sheet of the registrant. That pro forma balance sheet may or may not have been included in the Form 8-K or registration statement, depending on when the Form 8-K or registration statement was filed.

For example: If a calendar year-end registrant filed a registration statement containing a pro forma balance sheet as of June 30, 2007 giving effect to an acquisition consummated on September 14, 2007 and then made an acquisition on November 30, 2007, the asset and investment test would be based on a pro forma balance sheet as of December 31, 2006 (the last audited balance sheet on file with the SEC).

NOTES to SECTION 2025.3

1. If the registrant chooses to evaluate significance of an acquisition or disposition using the registrant's pro forma financial information, the staff would expect the registrant to consistently apply that methodology for evaluating significance to all subsequent acquisitions or dispositions for the remainder of the fiscal year.

2. If the registrant chooses to compute significance using pro forma information, it must do so for all three significance tests.

3. The acquired entity's total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle should NOT be adjusted for purchase accounting. That is, use the acquired entity's historical amounts and the registrant's pro forma amounts.

4. The registrant's pro forma amounts should only include those pro forma adjustments directly attributable to the transaction (e.g., purchase price allocation, depreciation, and amortization) in the pro forma income statement and balance sheet.

5. Use the registrant's pro forma annual balance sheet to determine significance even if that pro forma annual balance sheet is not presented or required to be presented in the Form 8-K.

6. The registrant's pro forma amounts should not give effect to either probable or insignificant acquisitions. S-X 3-05(b)(3) only permits measuring significance using the registrant's pro forma amounts for (a) **completed** acquisitions that are (b) **significant** and (c) for which historical financial statements have been filed on Form 8-K.

2025.4 **Significance Implementation - <u>Exchange Transaction (Acquisition and Disposition)</u>**

If the transaction is an **exchange transaction** in which the registrant and another party each contribute businesses to a joint venture (or the "Newco") in exchange for an equity interest in the Newco measure the significance of the disposition (registrant's contributed business) and the acquisition (other party's contributed business) separately to determine whether pro forma information about the disposition and receipt of an equity investment is required, and whether audited financial statements of the business contributed by the other party are required.

Significance of the acquisition should be based on the acquired percentage of the other party's business compared to the registrant's historical financial statements (without adjustment for the related disposition of the business

contributed by the registrant to the joint venture). Whether or not the transaction is accounted for at fair value, the investment test should be based on the fair value of the consideration given up or the consideration received, whichever is more reliably determinable.

If reporting of both the disposition and the acquisition are required by Form 8-K, a registrant may be unable to present a pro forma income statement depicting the joint venture formation because financial statements of the business contributed by the other party are not available. Those financial statements and related pro forma financial statements need not be filed until 71 calendar days after the date that the initial report reporting the transactions on Form 8-K **must** be filed (that is, the sum of 4 business days after the transaction is consummated plus 71 calendar days). Pro forma financial statements depicting a significant disposition are ordinarily required to be filed within 4 business days of the disposition. In these circumstances, the initial Form 8-K reporting the transaction should include a narrative description of the effects of the disposition, quantified to the extent practicable, and complete pro forma information depicting the effects of the exchange of interests should be filed at the time that the audited financial statements of the acquired business are filed.

2025.5 **Significance Implementation - <u>In Existence for Less Than One Year</u>**

If the registrant and/or the acquiree has been in existence for less than one year, do not annualize the historical income statement; measure significance using the audited historical income statement that complies with the age of financial statement requirements (see Section 2045 for the acquiree and Section 1200 for the registrant), regardless of the number of months it includes. If the registrant or the acquiree has been in existence for more than one year, measure significance using income for full 12 months; do not adjust the audited income statement to equal the same number of months as acquiree or registrant that has been in existence for less than one year.

NOTE to SECTION 2025.5

Registrants may request a waiver from CF-OCA if they believe S-X 3-05 produces anomalous results.

2025.6 **Significance Implementation - Change in Fiscal Year**
(Last updated: 3/31/2009)

If a registrant or acquiree has changed its fiscal year and the transition period (See definition at Section 1360.1) is less than 9 months, measure significance using either (A) the most recently completed audited fiscal year prior to the change or (B) audited financial statements for the 12 months ending on the last day of the transition period. If both the registrant and the acquiree have changed their fiscal years, registrants should measure significance using a consistent approach [either (A) or (B)] for both the registrant and the acquiree [not (A) for one and (B) for the other]. If the transition period is greater than 9 months, use the audited financial statements for that period.

2025.7 **Significance Implementation - Acquisition after a Reverse Acquisition**
If an acquisition is made after a transaction accounted for as a reverse acquisition of the registrant but before the registrant's audited financial statements for the fiscal year in which the reverse acquisition occurred are filed and the audited financial statements for the accounting acquirer have been filed with the SEC then measure significance against the accounting acquirer's financial statements.

2025.8 **Significance Implementation - Acquisition after a Reverse Recapitalization**
If an acquisition occurs after a reverse recapitalization of the legal target (see Topic 12) but before the registrant's audited financial statements for the fiscal year in which the reverse recapitalization occurred are filed and the audited financial statements for the legal target have been filed with the SEC then measure significance against the legal target's financial statements.

2025.9 **Significance Implementation - Acquisition after Shell Company Acquires Predecessor**
If an acquisition is made subsequent to the acquisition by a shell company, as defined in Exchange Act Rule 12b-2, of an entity deemed the registrant's predecessor (but not accounted for as a reverse acquisition or reverse recapitalization), then measure significance against the historical financial statements of the registrant.

2025.10 **Significance Implementation - Registrant is a Successor to a Predecessor Company**

In certain cases, a registrant that is a successor to a predecessor company may not have a full year of income statement information available to use as the denominator in the calculation of the income test. In these cases, the significant subsidiary income test should be calculated using only the results of operations of the successor company in the denominator.

If the results are anomalous, CF-OCA will consider a request by the registrant to perform the significance test using pro forma amounts determined in accordance with S-X Article 11 as if the predecessor had been acquired at the beginning of the fiscal year being measured. The staff generally believes that combining the historical results of the successor and predecessor without S-X Article 11 pro forma adjustments is not an appropriate surrogate for the significance test. *(Last updated: 3/31/2010)*

2025.11 **Significance Implementation - Acquisition of a Business that is a Successor to a Predecessor Company**

For the acquisition of a business that is the successor to a predecessor company (not the registrant), or when an acquiree's historical financial statements include predecessor and successor periods, the measurement of significance under the income test will depend on the particular facts and circumstances.

If audited successor financial statements of the acquiree include twelve months of successor results, the income test should be applied in the normal fashion.

If audited successor financial statements of the acquiree include less than twelve months of successor results, it will generally be necessary to use pro forma amounts of the successor for the year determined in accordance with S-X Article 11. The objective of this process is to determine a surrogate for the annual historical income statement of the acquired business. Thus, the pro forma amounts would be determined using the basis of the acquired successor business – not the registrant's subsequent new basis. The staff generally believes that combining the historical results of the successor and predecessor without S-X Article 11 pro forma adjustments is not an appropriate surrogate for the significance test. The convention of "9 months equals 12 months" in S-X 3-06 is not applicable in this situation. In these situations, CF-OCA should be consulted prior to filing.

If the most recent audited financial statements of the acquiree include only predecessor results, use the historical predecessor period income statement information as the numerator for calculating the income test. Pro forma information should not be used. *(Last updated: 3/31/2010)*

2025.12 **Significance Implementation - SAB 97 "Put-Together" Transactions**

In transactions in which more than two entities combine concurrent with an IPO, measure significance against the accounting acquirer (regardless of whether or not the accounting acquirer is a Newco). All of the acquired businesses are considered related under S-X 3-05(a)(3) and S-X 8-04(a)(2) and therefore must be grouped and assessed for significance against the accounting acquirer as a single acquisition. See Section 2015.12. Because related businesses must be treated as a single business acquisition under S-X 3-05 and S-X 8-04, SAB 80 may not be applied to SAB 97 "put together" transactions. Upon written request, the staff will consider whether relief from the literal application of S-X 3-05 is appropriate.

2025.13 **Significance Implementation - Tests of significance after a SAB 97 "put-together" IPO**

If a new acquisition takes place after an IPO but before the filing of the registrant's first Form 10-K, measure significance against the audited financial statements of the accounting acquirer for the most recent fiscal year that was included in the IPO registration statement. If a new acquisition takes place after the filing of the registrant's first Form 10-K, measure significance against the audited financial statements of the registrant for the most recent fiscal year in the Form 10-K. In some cases, such as when the IPO occurs close to the registrant's year end, the registrant's financial statements presented in Form 10-K may only include operations for a very short period of time. Upon written request, and depending on the proximity of the SAB 97 transaction to the balance sheet date, the staff will consider whether relief from the literal application of S-X 3-05 is appropriate.

2030 Financial Statement Periods Required Under S-X 3-05 and S-X 8-04

2030.1 See the table below for general requirements. Below the table are exceptions to the general requirements relating to: *(Last updated: 6/30/2013)*

a. Omitting Acquiree Balance Sheet
b. Form 10 and Smaller Reporting Company Registrant
c. Initial Public Offerings – Using Pre-Acquisition and Post-Acquisition Audited Results

If the Greatest of the Three Calculations Described in Section 2015	**S-X 3-05**	**S-X 8-04**
Does not exceed 20%	No financial statements required	No financial statements required
Exceeds 20% but not 40%	Financial statements for the most recent fiscal year (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited)	Financial statements for the most recent fiscal year (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited)
Exceeds 40% but not 50%	Financial statements for the two most recent fiscal years (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited)	Financial statements for the two most recent fiscal years (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited) <u>Exception:</u> See exception at Section 2030.3, "Form 10 and Smaller Reporting Company Registrant."

If the Greatest of the Three Calculations Described in Section 2015	S-X 3-05	S-X 8-04
Exceeds 50%	Financial statements for full three years (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited) Exception: Financial statements for the earliest of the three fiscal years may be omitted if net revenues of the acquired business in its most recent fiscal year are less than $50 million. See also exception for EGCs in Section 10220.5.	Financial statements for the two most recent fiscal years (audited) and the latest required interim period (unaudited) that precedes the acquisition (See FRM 2045), and the corresponding interim period of the preceding year (unaudited). Exception: See exception at Section 2030.3, "Form 10 and Smaller Reporting Company Registrant."

2030.2 **Omitting Acquiree Balance Sheet** - Balance sheet of the acquired company is not required when the audited annual balance sheet of registrant is as of a date after consummation of the acquisition.

2030.3 **Form 10 and Smaller Reporting Company Registrant -** The staff will not object to the following approach, which had previously been permitted under Part F/S of Form 10-SB. Financial statements of a significant business acquired or to be acquired by a smaller reporting company required to be included in Form 10 need only be audited for the most recent fiscal year if audited financial statements for the preceding year are not otherwise available. If this is the case, unaudited financial statements prepared in accordance with GAAP for the preceding year should be included in the filing.

2030.4 **Initial Registration Statements – Using Pre-Acquisition and Post-Acquisition Audited Results** - Registrants filing initial registration statements may apply the period of time in which the operations of an acquired business are included in the *audited* income statement of the acquirer to reduce the number of periods for which pre-acquisition income statements are required. However, registrants applying such an approach can have no gap between the audited pre-acquisition and audited post-acquisition periods. For example, if an acquisition is consummated on April 15, 2007 and the acquiree's highest level of significance was 45%, S-X 3-05 would require the acquiree's audited annual

financial statements to be filed for the two years ended December 31, 2006 (assuming both registrant and acquiree have calendar year-ends). In lieu of financial statements for those periods, the staff will accept audited financial statements of the acquiree for the year ended December 31, 2006 and the period from January 1, 2007 through April 14, 2007 provided that audited financial statements of the registrant for the year ended December 31, 2007 have been filed.

2030.5 **Financial Statements in a Registration Statement of a Non-reporting Business Acquired, or to be Acquired, when One of the Combining Entities Meets the Smaller Reporting Company Criteria and the Other Does Not -** If the registrant/acquirer is subject to S-X 3-05, the non-reporting business' financial statements must comply with S-X reporting requirements applicable to entities that are not smaller reporting companies. If the registrant/acquirer is subject to S-X Rule 8-04, the non-reporting business' financial statements may comply with scaled reporting requirements for a smaller reporting company. These are the same requirements for filing financial statements of an acquired non-reporting business in a Form 8-K (see Section 2200.2), except for reverse acquisitions. There are different requirements for filing financial statements of a non-reporting target in an S-4 registration statement (see Section 2200.2). *(Last updated: 12/31/2011)*

2035 Individually Insignificant Acquirees

2035.1 **Applicability -** The requirement under S-X 3-05 to file financial statements of individually insignificant businesses under certain circumstances is applicable only to registration statements and proxies. Form 8-K does not require audited financial statements of insignificant acquirees unless they are "related businesses" and significant on a combined basis. See Section 2015.12, "Significance – Related Businesses".

2035.2 **Definition -** The reference in S-X 3-05 to individually insignificant acquisitions includes:

a. any consummated acquisitions whose significance does not exceed 20% that were consummated after the balance sheet date of the most recent annual audited financial statements included in the registration or proxy statement through the effective date of the registration statement or the date the proxy statement is mailed;
b. any probable acquisitions whose significance does not exceed 50%; and
c. any consummated acquisitions whose significance exceeds 20%, but does not exceed 50%, for which financial statements are not yet required because of the 75-day rule in S-X 3-05(b)(4). *(Last updated: 10/20/2014)*

NOTE TO SECTION 2035.2

Why does the staff require the inclusion of significant acquired businesses for which financial statements are not yet required because of the 75-day rule [S-X 3-05(b)(4)] in the test of the aggregate significance of individually insignificant acquired businesses consummated since the most recent audited balance sheet date? [S-X 3-05(b)(2)]

In 1996, S-X 3-05 was amended to permit the exclusion of historical financial statements for certain significant acquisitions which did not exceed 50% significance [S-X 3-05(b)(4)(i)]. However, S-X 3-05(b)(4) was not intended to circumvent the requirement in S-X 3-05(b)(2) to consider the aggregate significance of all acquired businesses which were not yet filed. Therefore, even though a literal read of S-X 3-05(b)(4) might suggest that registrants may omit financial statements of significant businesses for which financial statements are not yet required because of the 75-day rule, the staff believes it is necessary to include those significant businesses in the analysis of the aggregate significance of individually insignificant acquisitions under S-X 3-05(b)(2). To do otherwise could lead to the presentation of financial statements for less than a mathematical majority of businesses acquired since the most recent audited balance sheet that have an aggregate significance in excess of 50%.

2035.3 **Financial Statements Required – Mathematical Majority -** If the aggregate of either the asset, investment or income significance test of all insignificant acquisitions (i.e., (A), (B) and (C) above) exceeds 50%, provide financial statements for the mathematical majority (combined if appropriate) for the most recent fiscal year and the latest interim period preceding the acquisition. For purposes of determining the mathematical majority, audited financial statements should be provided for those probable and acquired entities that constitute more than 50% of the aggregate asset, income, or investment test determined to be the most significant. Consider the following example.

Example:

Example Facts: A registrant with a calendar year end files a registration statement which is effective October 2, 2008. The following individually insignificant business acquisitions, for which no audited financial statements were filed on Form 8-K, and significant businesses for which financial statements are not yet required because of the 75-day rule in S-X 3-05(b)(4) have occurred since the registrant's audited financial statements were filed in its 2007 Form 10-K:

	Date Acquired	***Investment Test %***	***Asset Test %***	***Income Test %***
Business A	1/21/2008	10	19	8
Business B	2/24/2008	10	7	6
Business C	4/11/2008	11	6	5
Business D	7/7/2008	13	11	5
Business E	8/18/2008	17	10	21
Probable F	N/A	9	6	4
Aggregate		70	58	49

Example Analysis: Since the investment test yields the greatest significance on an aggregate basis (70%), financial statements of the businesses adding up to in excess of 35% under the investment test column must be provided. In this case, financial statements for any combination of three businesses that includes Business E or any combination of four businesses would meet the requirement. No combination of three that excludes Business E would meet the requirement. Financial statements of Business E are not yet required to be filed because of S-X 3-05(b)(4); therefore in this fact pattern, it is possible to use a combination of more than three businesses that excludes Business E even though Business E is significant under the income test. As shown in the example above, even though the registrant is not required to file a Form 8-K with audited financial statements of Business E until 11/3/2008, those financial statements may need to be included in the registration statement.

2035.4 **Significance – Financial Statements Used to Measure Significance**

The aggregate significance of the individually insignificant acquisitions described in Section 2035.3 should be measured for each acquisition using the financial statements described in Section 2015.2 at the registration statement **effective date**. Measuring significance using the financial statements described in Section 2015.2 at the registration statement effective date may require the use of either financial statements for a more recent fiscal year than the annual financial statements used to measure significance at the acquisition date, or financial statements for the same fiscal year that have been retrospectively

adjusted after the acquisition date for a change in accounting principle or a discontinued operation (see Section 2025.1). Therefore, the significance of an individually insignificant acquisition measured using the annual financial statements described in Section 2015.2 at the registration statement **effective date** may differ from the significance of that individually insignificant acquisition measured using the annual financial statements described in Section 2015.2 at the acquisition date. *(Last updated: 3/31/2010)*

NOTE TO SECTION 2035.4

An appropriate conclusion that an acquisition was not individually significant at the acquisition date is not changed by the measurement of the aggregate significance of individually insignificant acquisitions. For example, measuring the aggregate significance of individually insignificant acquisitions using the financial statements described in Section 2015.2 at the registration statement effective date may cause an acquisition that was appropriately determined to be individually insignificant at the acquisition date to have significance in excess of 20%. This calculated significance is used only to determine the aggregate significance of the individually insignificant acquisitions in accordance with the guidance in Section 2035.3; it does not change the conclusion of individual insignificance appropriately determined at the acquisition date. *(Last updated: 3/31/2010)*

2035.5 **Significance – Income Test – Entities with Pre-Tax Loss versus Entities with Pre-Tax Income -** For purposes of the income test, S-X 1-02(w) Computational Note 3 indicates that entities reporting losses should not be aggregated with entities reporting income. Therefore, significance must be determined separately for both the group of individually insignificant acquisitions with income and the group of individually insignificant acquisitions with losses. The absolute values of the results of operations of the two groups should not be aggregated for purposes of determining significance. If the income test significance of either the group of individually insignificant acquisitions with income or the group of individually insignificant acquisitions with losses is higher than the significance computed under either the investment or asset tests in S-X 1-02(w), the absolute values of the income test significance of the two groups would be aggregated for purposes of selecting the mathematical majority.

For example: Assume registrant has $100 of income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle for the year ended December 31, 2007. Registrant made the following acquisitions in 2008 and files a registration statement in December 2008.

	Date Acquired	Income (Loss)	Significance	Aggregate Acquirees with Income	Aggregate Acquirees with Loss
Business A	1/18/2008	$ (8)	8%		8%
Business B	2/4/2008	9	9%	9%	
Business C	3/17/2008	(13)	13%		13%
Business D	6/13/2008	16	16%	16%	
Business E	7/3/2008	(11)	11%		11%
Business F	8/4/2008	10	10%	10%	
Probable G	N/A	18	18%	18%	
Aggregate		21	21%	53%	32%

Because some individually insignificant acquirees have income and some have losses, significance must be determined separately for both the group of individually insignificant acquisitions with income and the group of individually insignificant acquisitions with losses. Aggregate significance for purposes of S-X 3-05 is 85% (i.e., the sum of the absolute values of 53% and (32%)). Financial statements of a mathematical majority of all individually insignificant acquisitions, regardless of whether they had income or loss, must be filed. In this example, in order to compute the mathematical majority, the aggregate significance determined on an absolute value basis of the individually insignificant acquisitions filed must be at least 42.6% (i.e.50.1% of the 85% aggregate significance). For example, filing separate financial statements for Business C, Business D and Probable G would satisfy this requirement.

2035.6 **Significance – Using Pro Forma Financial Statements** - S-X 3-05 permits a registrant to evaluate significance of acquirees using the pro forma financial information filed on Form 8-K in connection with a previous significant acquisition. However, a registrant may not circumvent the requirement to file audited data of a majority of individually insignificant acquirees by filing a Form 8-K containing financial statements of one or more insignificant acquirees and testing significance of the remaining unaudited acquirees, against either the historical or resulting pro forma financial statements. If a registrant has filed a Form 8-K for a previous significant acquisition, the 50% aggregation test may be applied against the pro forma financial statements included in that Form 8-K.

For example: A registrant files a registration statement on July 14, 2008 that includes audited financial statements for the year ended December 31, 2007 and interim period statements for the three months ended March 31, 2008. The registrant had total assets of $1,000 at December 31, 2007 and reported income from continuing operations before taxes of $100 for the year then ended. The registrant had, or expects to have, the following acquisitions since December 31, 2007

See computational note below	**Date Acquired**	**Investment**		**Assets**		**Income**		**Highest Significance**
		$	**%**	**$**	**%**	**$**	**%**	
Significant acquisitions:								
Business A*	4/7/2008	210	21	100	10	30	30	30%
Insignificant acquisitions:								
Business B	2/4/2008	40	3	20	2	9	7	N/A
Business C	3/17/2008	60	5	40	3	13	10	N/A
Business D	6/13/2008	160	13	80	7	15	12	N/A
Business E	7/3/2008	50	4	20	2	11	9	N/A
Probable F	N/A	205	17	100	8	18	14	N/A
Aggregate		515	**42**	260	**22**	66	**52**	52%

** Computational note: In this example, audited financial statements and pro forma financial information were filed on Form 8-K for Target A on 6/16/2008. Significance percentages in chart above are based on registrant's election to measure significance using pro forma financial information giving effect to the acquisition of Business A. For purposes of this example, assume the pro forma financial information as of and for the year ended December 31, 2007 reflects purchase accounting as follows:*

	Assets	***Income***
Registrant historical	*$1000*	*$100*
Adjustments	*210*	*25*
Pro forma	***$1210***	***$125***

*In this example, the income test yields the highest aggregate significance test (52%). The registration statement must include financial statements for acquired businesses that total to more than 26% (50% * 52%) to meet the S-X 3-05 requirement. Had the aggregate significance under each test been less than 50% using pro forma information, no financial statements for any of the individual entities would be required in the registration statement.*

2040 When to Present Financial Statements

2040.1 Financial statements of acquired businesses are required as follows:

Form	Financial Statement Requirements
Registration Statements and Proxies	a) If less than or equal to 50% significant, financial statements of a recent or probable acquisition need not be included unless the registration statement (or post-effective amendment) is declared effective (or proxy statement is mailed) 75 days or more after the acquisition is consummated. Refer to Section 2015, "Measuring Significance – Basics [S-X 1-02(w)]," and Sections 2020 and 2025, "Implementation Points" for tests of significance. This rule does not apply to "blank check" issuers. b) If significance exceeds 50%, financial statements of a recent or probable acquisition must be included in a registration statement (or post-effective amendment) at the effective date. c) Major Significance - See Section 2040.2 for requirement to continue to present financial statements if acquisition is of major significance

Form 8-K	a) Item 2.01, Form 8-K reporting the transaction is required within 4 business days of the consummation of any business acquisition exceeding 20% significance or for any asset purchase exceeding 10% significance that does not meet the definition of a business. b) A registrant that was a *shell company*, other than a *business combination related shell company* (both as defined in Exchange Act Rule 12b-2 and Regulation C, Rule 405) immediately before it acquires a business, as defined in S-X 11-01(d), must file the acquired business financial statements and related S-X Article 11 pro forma information required by Item 9.01(c) of Form 8-K with the Item 2.01 Form 8-K reporting the acquisition. The 71 calendar day extension is not available. c) If the required financial statements of the business acquired are not required to be provided with the initial report, they must be filed by amendment within 71 calendar days after the date that the initial report on Form 8-K **must** be filed. **NOTE:** While an Item 2.01 Form 8-K is not required for business acquisitions at or below 20% significance, registrants may elect to report business acquisitions at or below 20% significance pursuant to Item 8.01 of Form 8-K even if financial information is not provided.

2040.2 **"Major Significance" and Previously Filed Acquiree Financial Statements**
Generally, previously filed financial statements of an acquired business need not be presented once the acquired operations are included in at least nine months of post-acquisition audited results unless the acquisition is of major significance [S-X 3-05(b)(4)(iii)]. Although the acquisition may be of major significance at lower thresholds due to factors specific to the registrant, the staff presumes that the acquisition is of such major significance that investors need previously filed financial statements of the acquired company **in a registration or proxy statement** if:

- the acquired business is included in audited results of the registrant for less than 21 months and its significance was equal to or greater than 70% and less than 80%; or
- the acquired business is included in audited results of the registrant for less than 33 months and was significant at the 80% or greater level.

If the acquired business is of major significance, the financial statements of the acquired business should continue to be presented in a registration or proxy statement for the number of periods prior to the acquisition such that the combination of pre- and post-acquisition periods presented cover the equivalent

number of periods specified in S-X 3-02. [S-X 3-05(b)(4)(iii)]. The requirement to present the equivalent number of periods specified in S-X 3-02 does not mean that the audited periods presented must be continuous. Also, registrants should include the complete financial statements of the acquired business notwithstanding the reference to the income statement in the example provided in S-X 3-05(b)(4)(iii); however the balance sheets of the acquired business may be excluded by the registrant if the audited balance sheet of the registrant is as of a date after consummation of the acquisition.

2045 Age of Financial Statements - Basics

2045.1 This section covers three broad components:

1. 1933 Act registration statements,
2. Proxy statements, and
3. Form 8-K.

See Section 2050 for a discussion of "Age of Financial Statements - Interaction of S-X 3-05(b)(4) and Instruction to Item 9.01 of Form 8-K"

2045.2 **1933 Act Registration Statement -** ***Age of Financial Statements – General***
(Last updated: 6/30/2009)

The registrant should comply with age-of-financial-statement rules with respect to itself and all completed and probable acquirees at the effective date. Any updated financial statements required to be included or incorporated by reference as appropriate in the registration statement but which were not required to be filed previously in a specific Exchange Act report may be filed under cover of Form 8-K pursuant to Item 8.01.

> ***For example:*** A registrant files a Form 8-K on August 6 (i.e., the 4th business day subsequent to consummation) reporting the acquisition of a business on July 31 that is not an accelerated filer or a large accelerated filer. That Form 8-K included unaudited financial statements for the 3 months ended March 31. If a registration statement is filed after August 12, the financial statements of the acquired entity must be updated through June 30 so that the acquired entity's financial statements meet the age of financial statement requirements of Regulation S-X. If the acquisition was consummated on or prior to June 30, updated financial statements would not be required.

2045.3 **1933 Act Registration Statement - *Age of Financial Statements – Delayed and Continuous Offerings* -**
(Last updated: 3/31/2009)

After effectiveness, a domestic registrant has no specific obligation to update the prospectus except as stipulated by 1933 Act Section 10(a)(3) and S-K 512(a) with respect to any **fundamental change**. If an acquisition would be significant under S-X 3-05, management should consider whether the probability of consummation of the transaction would represent a fundamental change. It is the responsibility of management to determine what constitutes a fundamental change. The registrant should also consider whether individually insignificant acquisitions occurring subsequent to effectiveness, when combined with individually insignificant acquisitions that occurred after the most recent audited balance sheet in the registration statement but prior to effectiveness, may be of such significance in the aggregate that an amendment is necessary. Notwithstanding the guidance in Section 2045.3, offerings pursuant to effective registration statements cannot proceed if the significance of an acquisition exceeds 50% and financial statements have not been filed. See Section 2050.3.

2045.4 **1933 Act Registration Statement - *Age of Financial Statements – Well-Known Seasoned Issuers* -** "Well-known seasoned issuer" is defined in Regulation C, Rule 405. Automatic shelf registration statements and post-effective amendments of well-known seasoned issuers become effective immediately upon filing [Regulation C, Rule 462(e) and (f)]. Immediate effectiveness does **not** exempt a well-known seasoned issuer from the requirement to comply with the age of financial statement requirements with respect to itself and all completed and probable acquirees at the time of effectiveness. Consider the following examples.

Example 1: *Consummated Acquisition in Excess of 50% Significant; Probable Acquisition in Excess of 50% Significant; or Aggregate of Individually Insignificant Acquisitions since the End of Registrant's Most Recently Completed Fiscal Year is in Excess of 50% Significant*

Financial statements of the acquired or to be acquired businesses for the periods specified by S-X 3-05 must be included or incorporated in the automatic shelf registration statement prior to filing the automatic shelf registration statement or post-effective amendment, even if such financial statements are not yet required to be filed on Form 8-K.

Example 2: *Consummated or Probable Acquisition in Excess of 20% But Not in Excess of 50%*

Financial statements of an acquired or to be acquired business that is significant in excess of 20% but not in excess of 50% need not be filed prior to the effective date (i.e., the filing date) of an automatic shelf registration statement or post-effective amendment filed by a well-known seasoned issuer if the effective

date occurs during the 4 business days plus 71 calendar day period subsequent to consummation.

2045.5 **1933 Act Registration Statement - *Age of ANNUAL Financial Statements* -**

Acquiree's Filing Status	Effective date of Registration Statement	Acquiree Financial Statements
NOT an Accelerated Filer, and NOT a Large Accelerated Filer	Registrant's filing is effective after 45 days but not more than 89 days after the **acquiree's** fiscal year end	Updating requirement dependent on the **registrant's** (not the acquiree's) eligibility for relief under S-X 3-01(c). After a reverse acquisition accounted for as a business combination, consider the accounting acquirer's ability to meet the requirements of S-X 3-01(c) in determining the need to update.
	Filing is effective after 89th day after **acquiree's** fiscal year end	Acquiree's most recent fiscal year must be audited
Accelerated Filer	Registrant's filing is effective after 45 days but not more than 74 days after the **acquiree's** fiscal year end	Updating requirement dependent on the **registrant's** (not the acquiree's) eligibility for relief under S-X 3-01(c). After a reverse acquisition accounted for as a business combination, consider the accounting acquirer's ability to meet the requirements of S-X 3-01(c) in determining the need to update.
	Filing is effective after 74th day after **acquiree's** fiscal year end	Acquiree's most recent fiscal year must be audited

Large Accelerated Filer	Registrant's filing is effective after 45 days but not more than 59 days after the **acquiree's** fiscal year end	Updating requirement dependent on the registrant's (not the acquiree's) eligibility for relief under S-X 3-01(c). After a reverse acquisition accounted for as a business combination, consider the accounting acquirer's ability to meet the requirements of S-X 3-01(c) in determining the need to update.
	Filing is effective after 59th day after **acquiree's** fiscal year end	Acquiree's most recent fiscal year must be audited

NOTE TO SECTION 2045.5

For purposes of evaluating the financial statement updating requirements relating to a significant acquired or probable-to-be-acquired business, the reference in S-X 3-01(c)(2) to the registrant's (or in a reverse acquisition, the accounting acquirer's) "most recent fiscal year for which audited financial statements are not yet available" should be replaced with "the most recently completed fiscal year prior to the acquisition date" irrespective of whether or not those financial statements are available. *(Last updated: 3/31/2010)*

2045.6 **1933 Act Registration Statement Age of Financial Statements-** ***Requirement to File Acquiree's ANNUAL Financial Statements that are More Recent than Registrant's Financial Statements*** - In limited circumstances involving a registrant that would be required to update after the 45th day, applying this rule results in a requirement to file audited financial statements of the acquiree as of a date more recent than is required for the registrant. If the registrant believes providing updated audited financial statements would impose an unreasonable burden under the circumstances, the registrant may request CF-OCA to consider granting relief if the acquiree's financial statements are updated on an unaudited basis through either the registrant's latest balance sheet date or the acquiree's year-end. Requests for relief should be made in writing prior to filing.

For example: A registrant with a December 31, 2007 year end is required under S-X 3-01(c) to update its audited financial statements after February 14, 2008 in a registration statement. The registrant is acquiring a business with a November 30, 2007 year end. The acquired business is neither an accelerated filer nor a large accelerated filer. If the registration statement is effective February 1, 2008, the registration statement would require audited financial statements of the registrant for the year ended December 31, 2006 and unaudited financial statements for the nine months ended September 30, 2007. Unless relief is obtained, the target's audited financial statements would be required for the year ended November 30, 2007 since February 1 is beyond 45 days after target's year end and the registrant is not eligible for relief under S-X 3-01(c).

2045.7 **1933 Act Registration Statement - *Age of INTERIM Financial Statements* -** For interim period financial statements in a 1933 Act registration statement, age requirements are the same as if the acquiree were the registrant (see Section 1200), however the requirement to audit interim period information depends on whether the acquired business is a predecessor and, if not a predecessor, whether the registrant applied S-X 3-05 or SAB 80, which is discussed at Section 2070.

2045.8 **1933 Act Registration Statement Age of INTERIM Financial Statements - *Predecessor* –** If the acquired business is a "predecessor" of the registrant (See Section 1170), and the ***acquisition date is on or before*** the registrant's most recent audited balance sheet required to be included in the registration statement, then interim financial statements of the predecessor should be presented and audited through the date of acquisition. If the acquired business is a "predecessor" of the registrant and the ***acquisition date is after*** the registrant's most recent audited balance sheet required to be included in the registration statement, then interim financial statements of the predecessor should be presented for the same periods as if the predecessor were the registrant and may be unaudited. In this circumstance, the predecessor period between registrant's latest balance sheet and acquisition date would need to be audited in registrant's next Form 10-K.

2045.9 **1933 Act Registration Statement Age of INTERIM Financial Statements – *S-X 3-05 Acquiree*** – If significance is measured using S-X 3-05, interim financial statements of an acquired business need not be audited. Age requirements are the same as if the acquiree were the registrant. See Section 1200. Consequently, financial statements of an acquired business need not be updated if the omitted period is less than a complete quarter. However, disclosure of significant events occurring during the omitted interim period may be necessary.

For example: If an acquisition subject to S-X 3-05 or S-X 8-04 (i.e., not a predecessor) was consummated on September 29, the staff generally would not require that the financial statements of the acquired entity be updated past June 30. However, disclosure of significant events occurring during the omitted interim period may be necessary.

2045.10 **1933 Act Registration Statement Age of INTERIM Financial Statements – *S-X 3-05 Acquiree* and Updating Form 8-K** - In some cases, the financial statements provided in Form 8-K may need to be updated in a registration statement to comply with the 135-day rule (for an acquired business that is neither an accelerated filer nor a large accelerated filer) or the 130 day rule (for an acquired business that is either an accelerated filer or a large accelerated filer). See Section 1200.

For example: A registrant files a Form 8-K reporting an acquisition of a business that is neither an accelerated filer nor a large accelerated filer which occurred on July 10. The registrant and the acquiree have calendar fiscal year ends. The Form 8-K includes the acquiree's interim financial statements as of March 31. The staff is likely to not accelerate the effective date of a registration statement filed in December of the same year unless the acquiree's financial statements are updated through at least June 30.

2045.11 **1933 Act Registration Statement Age of INTERIM Financial Statements - *SAB 80 Acquiree*** - If significance is measured using SAB 80, see Section 2070, "SAB 80: Application of S-X 3-05 in Initial Registration Statements," and the discussion in Section 2070.9, "Interim Financial Statements."

2045.12 **Proxy Statements** - ***Age of Financial Statements*** **-** For purposes of proxy statements, the staff interprets the updating requirements in the same manner as under the 1933 Act.

2045.13 **Form 8-K *Age of Financial Statements – General.*** The staff believes that the age of financial statements in a Form 8-K should be determined by reference to the filing date of the Form 8-K initially reporting consummation of the acquisition. If no filing is made timely (on or prior to the 4th business day following the acquisition date), the age of financial statements required to be filed should be determined by reference to the 4th business day after the consummation of the acquisition. See Section 2045.17 for an exception to this position.

2045.14 **Form 8-K - *Age of ANNUAL Financial Statements* -**

- **Acquired company is NOT an Accelerated Filer or Large Accelerated Filer**: For purposes of Form 8-K, the staff would not require audited statements of the acquiree's most recently completed year unless the Form 8-K reporting the acquisition was filed 90 days or more after the acquired company's fiscal year-end.
- **Acquired company is an Accelerated Filer:** For purposes of Form 8-K, the staff would not require audited statements of the acquiree's most recently completed year unless the Form 8-K reporting the acquisition was filed 75 days or more after the acquired company's fiscal year-end.
- **Acquired Company is a Large Accelerated Filer:** For purposes of Form 8-K, the staff would not require audited statements of the acquiree's most recently completed year unless the Form 8-K reporting the acquisition was filed 60 days or more after the acquired company's fiscal year-end.
- **Acquired Company is a Foreign Private Issuer or a Foreign Business:** For purposes of Form 8-K, the staff would not require audited statements of the acquiree's most recently completed year unless the Form 8-K reporting the acquisition was filed more than three months after the acquired company's fiscal year-end. [S-X 3-01(h), S-X 3-02(d), Item 8.A.4 of Form 20-F] *(Last updated: 12/31/2010)*

2045.15 **Form 8-K - *Age of INTERIM Financial Statements* –**

- **Acquired company is NOT an Accelerated Filer or Large Accelerated Filer**: For purposes of Form 8-K, interim financial statements must be within 135 days of the date that the initial Form 8-K reporting the acquisition is filed, except that a filing with the acquired business's year-to-date interim financial statements that include its third quarter is timely through the 90th day after the acquired business's most recently completed fiscal year end.
- **Acquired company is an Accelerated Filer or a Large Accelerated Filer:** For purposes of Form 8-K, interim financial statements must be within 130 days of the date that the initial Form 8-K reporting the acquisition is filed, except that a filing with the acquired business's year-to-date financial statements that include its third quarter is timely for an acquired business that is an accelerated filer through the 75th day after its most recently completed fiscal year end and for an acquired business that is a large accelerated filer through the 60th day after its most recently completed fiscal year end.
- **Acquired Company is a Foreign Private Issuer or a Foreign Business:** For purposes of Form 8-K, interim financial statements must be filed if the date that the initial Form 8-K reporting the acquisition is

filed is more than nine months after the end of the acquired company's most recently completed year. The interim financial statements must cover at least the first six months of the year. [S-X 3-01(h), S-X 3-02(d), Item 8.A.5 of Form 20-F] *(Last updated: 6/30/2013)*

2045.16 **Form 8-K Age of Financial Statements - *Effect of Previously Filed Financial Statements*** - General Instruction B.3. to Form 8-K states in part: *"If the registrant previously has reported substantially the same information as required by this form, the registrant need not make an additional report of the information on this form."* Financial statements of an acquiree are not required in Form 8-K if they were previously filed by the registrant. Examples of when previously filed acquiree financial statements will **not** be deemed **"substantially the same"** pursuant to this instruction include:

- the previously filed acquiree financial statements would not satisfy the required age of financial statements in the Form 8-K because operating results for two or more interim quarters are omitted. See Example 1 below.
- the previously filed acquiree financial statements are interim financial statements and the Form 8-K requires filing of updated audited annual financial statements of the acquiree. See Example 2 below.
- the previously filed acquiree financial statements were prepared in accordance with the requirements for smaller reporting companies in S-X Article 8, but the registrant is not a smaller reporting company. See Example 3 below.

Example 1: Form S-4 included unaudited financial statements for the three months ended March 31 for a business to be acquired. The business combination was consummated on October 1, and a Form 8-K reporting the acquisition was timely filed. No financial statements are required in the Form 8-K, unless there were significant subsequent events that would materially affect an investor's understanding of the target company. However, if the business combination had been consummated on November 20, the financial statements would have had to be updated through September 30.

Example 2: Form S-4 contained unaudited financial statements of the entity to be acquired for the nine months ended September 30. Updated audited financial statements of the acquired entity are required in a Form 8-K if the business combination is consummated, and the Form 8-K is filed after the 89th day subsequent to December 31. Note that in a registration statement, updated audited financial statements of the acquired entity may be required before the 90th day, if either the acquired business is an accelerated filer or a large accelerated filer or the registrant does not meet the requirements under S-X 3-01(c). Refer to Section 2045.5, "1933 Act Registration Statement - *Age of ANNUAL Financial Statements"* regarding the requirements to provide audited financial statements of an acquired entity.

***Example 3*:** If a registrant included financial statements of a previously nonpublic smaller reporting company-eligible target in a Form S-4 and those financial statements complied with smaller reporting company reporting requirements instead of S-X reporting requirements for companies other than smaller reporting companies (see Section 2200.2), those financial statements would not be deemed "substantially the same" pursuant to Form 8-K; Gen. Instruction B.3. Financial statements that comply with S-X would need to be filed in a Form 8-K if the S-X 3-05 significance threshold is met.

2045.17 **Form 8-K Age of Financial Statements- *EXCEPTION to use of the date Form 8-K must be filed to determine age of acquired business financial statements in a Form 8-K***
(Last updated: 3/31/2009)

When the effective date of a registration statement occurs subsequent to filing the initial Form 8-K reporting the acquisition, but within the 71 calendar day extension to file the acquired business financial statements and the acquired business is significant in excess of 20% but less than 50%, the age of the acquired business financial statements presented in the Form 8-K should be based on the effective date of the registration statement, not the Form 8-K filing date. This is true even though S-X 3-05(b)(4) and S-X 8-04(c)(4) permit a registrant to exclude from its registration statement financial statements of an acquired business if its significance does not exceed 50% and the registration statement is declared effective (or immediately effective for well-known seasoned issuers) not more than 74 days after consummation of the acquisition. S-X 3-05(b)(4) and S-X 8-04(c)(4) were not intended to change the age of financial statements, simply the timing of filing them. Consider the following example.

Example:

Example - Assumptions:

Acquired Business Significance:	21%
Acquired Business Most Recent Year End	12/31/2007
Acquisition consummated:	4/4/2008
Form 8-K reporting acquisition filed:	4/10/2008 (4 business days)
Registration effective date:	5/16/2008
Form 8-K with acquired business financial statements filed:	6/20/2008

Example – Analysis: If the age of financial statements were based on the date the Form 8-K reporting the transaction was filed (i.e., 4/10/2008), acquired business financial statements for the year ended 12/31/2007, but no interim financial statements of the acquired business, would be required. If age of financial statements were based on the effective date of the registration statement, acquired business financial statements for the year ended 12/31/2007 and the three months ended 3/31/2008 and 3/31/2007

would be required. The staff interprets the requirements of S-X 3-05 and S-X 8-04 to mean that the acquired business financial statements for the year ended December 31, 2007 and the three months ended 3/31/2008 and 3/31/2007 would be required in the Form 8-K.

2050 Age of Financial Statements - Interaction of S-X 3-05(b)(4) and Instruction to Item 9.01 of Form 8-K

2050.1 ***Overview***

Item 9.01 of Form 8-K requires a registrant to provide financial statements required by S-X 3-05 for any business acquisition required to be described in answer to Item 2.01 of Form 8-K. These financial statements may be provided in the initial Form 8-K or by amendment not later than 71 calendar days after the date that the initial Form 8-K is required. We refer to this as the "**grace period**."

Item 9.01 of Form 8-K permits certain offerings and sales of securities to occur during the grace period even if the acquiree's financial statements have not been filed. See Sections 2050.2 through 2050.5 for a discussion of the implications of the grace period on securities offerings and Securities Act registration statements.

CF-OCA generally will not waive the requirements of Form 8-K. If the financial statements and pro forma financial information required by Form 8-K are not filed within the grace period, then the filing will be considered deficient and, therefore, not filed in a timely manner for purposes of Form S-3 eligibility. Once the registrant has filed its audited financial statements that include the post-acquisition results of operations of the acquired entity for at least one year, CF-OCA, at the request of the registrant, will consider a request to accept audited financial statements for the acquired entity for a period of time less than that required by S-X 3-05/S-X 8-04. At a minimum, CF-OCA would expect audited pre- and post-acquisition financial statements to equal the periods required under S-X 3-05/S-X -8-04 and to have no break between the pre-acquisition and post-acquisition audited results.

A registrant may be unable to provide the financial statements required by Item 9.01 of Form 8-K. Sections 2050.6 and 2050.7 discuss some of the implications of failing to file the required financial statements during the grace period on securities offerings and Securities Act registration statements.

NOTE to SECTION 2050.1

Is "not more than 74 calendar days" in S-X 3-05(b)(4) the same as not more than 4 business days plus 71 calendar days in Items 2.01/9.01 of Form 8-K?

The filing requirements in Item 2.01/9.01 of Form 8-K are based on 4 business days plus 71 calendar days. The exception in S-X 3-05(b)(4) for financial statements of an acquired business that exceeds 20%, but does not exceed 50% significance relates to registration statements declared effective no more than 74 calendar days after consummation of the acquisition. In some circumstances, the sum of 4 business days plus 71 calendar days may exceed 75 calendar days. Solely for purposes of evaluating whether financial statements of an acquired business for which the registrant timely filed an Item 2.01 Form 8-K are required in a not-yet-effective registration statement or not-yet-effective post-effective amendment, the staff will consider "not more than the sum of 4 business days and 71 calendar days" to be substantially equivalent to "not more than 74 calendar days."

2050.2 **Securities Offerings During the Grace Period Using a Registration Statement that became Effective Prior to Acquisition - *Significance Does Not Exceed 50%***

If significance does not exceed 50% and the financial statements of the acquired business have not been filed, S-X 3-05(b)(4)(i) permits use of effective registration statements during the grace period provided that the offering is not made by a blank check company pursuant to Regulation C, Rule 419.

2050.3 **Securities Offerings During the Grace Period Using a Registration Statement that became Effective Prior to Acquisition – *Significance Exceeds 50%***

If significance exceeds 50% and the financial statements of the acquired business have not been filed, registrants should **not** make offerings pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D if any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; provided however, that the following offerings and sales of securities may proceed during the grace period notwithstanding that the financial statements of the acquired business have not been filed:

a. offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;
b. dividend or interest reinvestment plans;
c. employee benefit plans;
d. transactions involving secondary offerings; and
e. sales of securities pursuant to Rule 144.

2050.4 **New Registration Statements or Post-Effective Amendments Filed During the Grace Period – *Significance Does Not Exceed 50%***

If significance does not exceed 50% and the financial statements of the acquired business have not been filed, then S-X 3-05(b)(4)(i) permits registration statements and post-effective amendments to registration statements, which do not relate to offerings by blank check companies pursuant to Regulation C, Rule 419, to become effective without financial statements of the acquired business.

2050.5 **New Registration Statements or Post-Effective Amendments Filed During the Grace Period – *Significance Exceeds 50%***

If significance exceeds 50% and the financial statements of the acquired business have not been filed, registration statements and post-effective amendments to registration statements will not be declared effective. WKSIs should also not make offerings pursuant to registration statements that became effective during the grace period. See Section 2045.4 which describes a WKSI's obligation to comply with the requirements of S-X 3-05 at the time of filing of an S-3ASR.

2050.6 **New Registration Statements or Post-Effective Amendments Filed After the Grace Period if Required Financial Statements Not Filed**

Securities Act registration statements and post-effective amendments should include audited financial statements reporting on the operations of the acquired business for a time span equal to the periods for which audited financial statements are required by S-X 3-05 and pro forma financial information is required by S-X Article 11 at the effective date. WKSIs should also not make offerings pursuant to registration statements that became effective during the grace period. See Section 2045.4 which describes a WKSI's obligation to comply with the requirements of S-X 3-05 at the time of filing of an S-3ASR.

NOTE to SECTION 2050.6

Under S-X 3-05(b)(4) registration statements may be declared effective during the grace period even if the financial statement of the acquired business have not been filed provided that the significance of the acquired business does not exceed 50%. This accommodation does not apply after this period.

2050.7 **Securities Offerings After the Grace Period Using a Registration Statement that became Effective Prior to Acquisition if Required Financial Statements Not Filed**

After the grace period, registrants should not make offerings pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D if any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; provided, however, that the following offerings and sales of securities made pursuant to registration statements that were effective prior to the acquisition may proceed notwithstanding that the financial statements of the acquired business have not been filed:

a. offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;
b. dividend or interest reinvestment plans;
c. employee benefit plans;
d. transactions involving secondary offerings by parties unrelated to the acquired business for which financial statements are not provided; and
e. sales of securities pursuant to Rule 144.

NOTE to SECTION 2050.7

During the grace period provided by Item 9.01 of Form 8-K certain transactions involving secondary offerings, whether by related or unrelated parties, may proceed notwithstanding that financial statements of the acquired business have not been filed. In evaluating requests to conduct secondary offerings (i.e., pursuant to an effective registration statement) subsequent to the grace period when the acquired business financial statements have not been filed, CF-OCA historically has limited its accommodation to secondary offerings by parties unrelated to the acquired business.

2055 Foreign Business, Hostile Tender Offers, and Troubled Financial Institutions

2055.1 **Foreign Business –** The financial statements of an acquired foreign business [as defined in S-X 1-02(l)] presented to comply with S-X 3-05/S-X 8-04 may be prepared on a comprehensive basis other than U.S. GAAP. If the financial statements of an acquired foreign business are prepared in accordance with IFRS as issued by the IASB, they need not be reconciled to U.S. GAAP. If the financial statements of an acquired foreign business are prepared on a comprehensive basis other than U.S. GAAP or IFRS as issued by the IASB, they must be reconciled to U.S. GAAP only when the significance of the foreign business to the registrant exceeds 30%. The reconciliation need only comply with Item 17 of Form 20-F and is subject to the updating requirements under Item 8 of Form 20-F. Reconciliation and Form 20-F updating requirements are described at Topic 6. Measuring significance of a foreign business is discussed in Section 2015.3, "Comprehensive Basis of Accounting Used to Measure Significance."

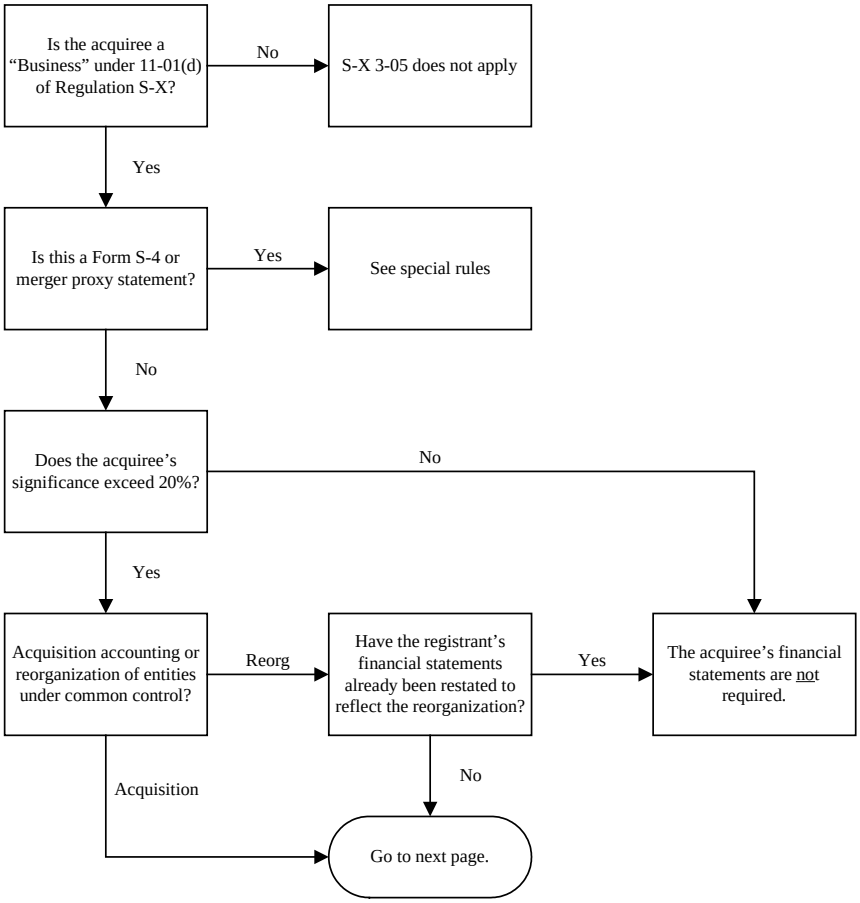
2055.2 **Hostile Tender Offers -** Modified registration statement requirements may apply to some registration statements covering hostile tender offers to shareholders of a company that will not provide its financial statements. However, if the target of the tender offer is a public company, financial statements of the target that are filed with the SEC may be incorporated by reference. A consent of the auditor may be required. Registrants intending to rely on Regulation C, Rule 409 should consider the guidance in SAB Topic 1A. and consult with CF-OMA and CF-OCA as to whether such reliance is appropriate in the circumstances.

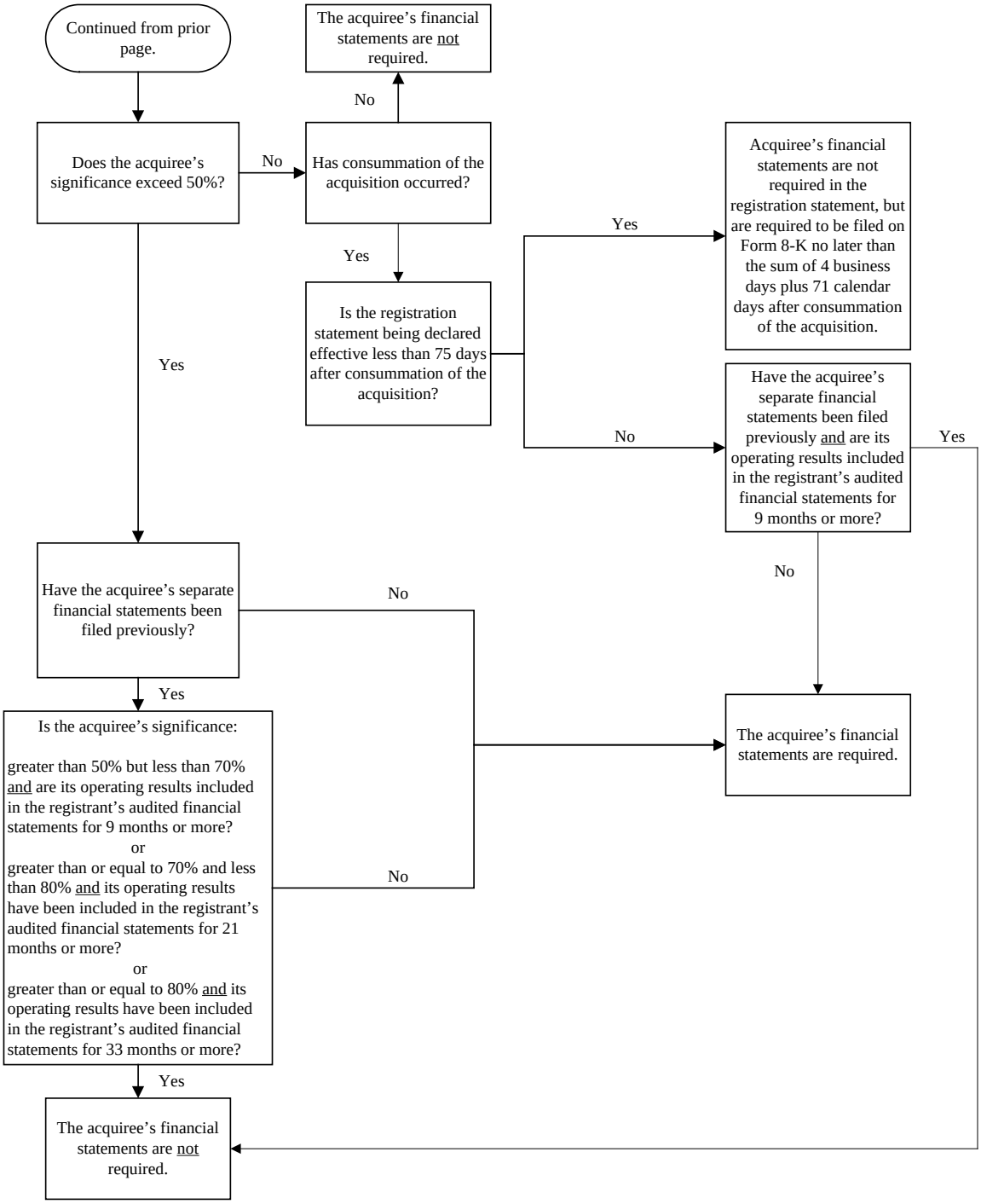
2055.3 **Troubled Financial Institutions -** If a financial institution is acquired in a federally assisted transaction and constitutes a significant business having material continuity of operations, the staff will likely not object to the omission of audited historical financial statements required by S-X 3-05 if the statements are not reasonably available. Requests for waivers should be directed to CF-OCA. If a waiver is granted, an audited statement of assets acquired and liabilities assumed reflecting the purchase basis of accounting as of the acquisition date will be required, as well as Industry Guide 3 data and various additional disclosures. [SAB Topic 1K] *(Last updated: 9/30/2010)*

2060 Flowchart Overview of S-X 3-05

(Last updated: 9/30/2009)

Are S-X 3-05 Financial Statements Required in a Registration Statement for an Acquisition that has Occurred or is Probable? (Excludes S-4 Target Companies)




Continued from prior page.
Does the acquiree's significance exceed 50%?
No
Has consummation of the acquisition occurred?
No
The acquiree's financial statements are not required.
Yes
Is the registration statement being declared effective less than 75 days after consummation of the acquisition?
Yes
Acquiree's financial statements are not required in the registration statement, but are required to be filed on Form 8-K no later than the sum of 4 business days plus 71 calendar days after consummation of the acquisition.
No
Have the acquiree's separate financial statements been filed previously and are its operating results included in the registrant's audited financial statements for 9 months or more?
Yes
No
Yes
Have the acquiree's separate financial statements been filed previously?
No
Yes
Is the acquiree's significance:
greater than 50% but less than 70% and are its operating results included in the registrant's audited financial statements for 9 months or more?
or
greater than or equal to 70% and less than 80% and its operating results have been included in the registrant's audited financial statements for 21 months or more?
or
greater than or equal to 80% and its operating results have been included in the registrant's audited financial statements for 33 months or more?
No
The acquiree's financial statements are required.
Yes
The acquiree's financial statements are not required.

2065 Acquisition of Selected Parts of an Entity may Result in Less than Full Financial Statements.

(Last updated: 6/30/2013)

NOTE to SECTION 2065

S-X 3-05 applies to the acquisition of selected parts of an entity when that acquisition represents the acquisition of a "business" as defined in S-X 11-01(d) and the business acquired does not represent a predecessor of the registrant. As noted at Section 2005.6, S-X 3-05 (and thus the guidance in this Section 2065) does not apply if the business acquired represents a predecessor of the registrant.

Except for acquisitions of certain oil and gas properties discussed in Section 2065.11, requests to substitute statements of assets acquired and liabilities assumed and statements of revenues and direct expenses in lieu of full financial statements or carve-out financial statements should be directed to CF-OCA prior to filing.

2065.1 **Acquire *Substantially All* of an Entity** - If the registrant acquires or succeeds to substantially all of the entity's key operating assets, full audited financial statements of the entity are presumed to be necessary in order to provide investors with the complete and comprehensive financial history of the acquired business. In these circumstances, elimination of specified assets and liabilities not acquired or assumed by the registrant is depicted in pro forma financial statements presenting the effects of the acquisition.

2065.2 **Acquire *Less than Substantially All* of an Entity** - In some circumstances, a registrant does not acquire or succeed to substantially all of the assets and liabilities of another entity. For example, the selling entity may retain significant operating assets, or significant operating assets that comprised the seller may be operated by an entity other than the registrant. In these circumstances, financial statements of the larger entity of which the acquired business was a part may not be informative. In that case, audited financial statements usually should be presented for the acquired component business, excluding the continuing operations retained by the larger entity. Registrants should evaluate their facts and circumstances to determine whether to apply the guidance in Section 2065.3 (carve-out financial statements) or in Sections 2065.4 through Section 2065.12 (abbreviated financial statements).

2065.3 **Carve-out Financial Statements** - ***Applicability*** - The staff will accept carve-out financial statements if it is impracticable to prepare the full financial statements required by Regulation S-X, and explanation of that impracticability is included in the filing. Carve-out financial statements may be appropriate when the acquired business represents a discrete activity of the selling entity for which assets and liabilities are specifically identifiable and a reasonable basis exists to allocate items that are not specifically identifiable to the acquired business, such as debt and indirect expenses not directly involved in the revenue

producing activity. Carve-out financial statements should reflect all assets and liabilities of the acquired business even if they are not acquired/assumed as part of the acquisition. The staff would expect carve-out financial statements to comply with the guidance in SAB Topic 1B.1.

2065.4 **Abbreviated Financial Statements – Statements of Assets Acquired and Liabilities Assumed and Statements of Revenues and Direct Expenses –** ***Applicability*** – The staff may allow audited statements of assets acquired and liabilities assumed and statements of revenues and direct expenses (abbreviated financial statements) if it is impracticable to prepare the full financial statements required by Regulation S-X. For example, it may be impracticable to prepare full financial statements in an acquisition of a product line where the acquired product line is not a stand-alone entity; separate, audited financial statements of the product line have never been prepared; and the seller has not maintained the distinct and separate accounts necessary to present the full financial statements of the product line. Except for acquisitions of certain oil and gas properties discussed in Section 2065.11, requests to substitute abbreviated financial statements in lieu of full financial statements or carve-out financial statements should be directed to CF-OCA prior to filing.

2065.5 **Abbreviated Financial Statements – Statements of Assets Acquired and Liabilities Assumed –** ***General Requirements*** **–** Present a statement of assets acquired and liabilities assumed as of the end of each period required to be provided under S-X 3-05, not just as of the end of the most recent period, on the basis of seller's historical GAAP carrying value. If the registrant is unable to obtain statements of assets acquired and liabilities assumed prepared on the basis of seller's historical GAAP carrying value for each of the reporting dates required by S-X 3-05 (or, if applicable, S-X 8-04), CF-OCA will consider a registrant's request to present a statement of assets acquired and liabilities assumed prepared on the basis of the allocation of the registrant's purchase price as of the acquisition date. Registrants would still need to present the statement of revenues and direct expenses for the periods indicated by S-X 3-05 and S-X 8-04, as applicable.

2065.6 **Abbreviated Financial Statements – Statement of Revenues and Direct Expenses -** ***General Requirements*** -The staff would expect the statement of revenues and direct expenses to exclude only those costs not directly involved in the revenue producing activity, such as corporate overhead, interest and taxes. **All** costs directly associated with producing revenues reflected in the statement, including, but not limited to **all** related costs of sales and other selling, general and administrative, distribution, marketing, and research and development costs, must be included in the statement. The statement should include a reasonable allocation of expenses incurred by the seller on behalf of the business sold. The reasons for omitting any historical corporate overhead, interest, or tax expense should be explained in a note to the statements. If the type and historical amounts of these omitted expenses are known or reasonably

available on an unaudited basis, they should be disclosed in an unaudited footnote. An explanation of the impracticability of preparing the full financial statements required by Regulation S-X should be provided. Also, the notes should describe how the financial statements presented are not indicative of the financial condition or results of operations of the acquired business going forward because of the omission of various operating expenses.

NOTE to SECTION 2065.6
If granted, the accommodation from CF-OCA to present abbreviated financial statements is premised on the registrant's ability to identify all costs directly associated with producing revenues of the acquired product line.

2065.7 [Reserved]

2065.8 **Cash Flows** - When abbreviated financial statements are presented, preparation of full statements of cash flows may not be practicable. However, registrants are required to provide information about the business's operating, investing and financing cash flows, to the extent available, in the notes to the financial statements or in unaudited supplemental disclosures.

2065.9 **Abbreviated Financial Statements – Statements of Assets Acquired and Liabilities Assumed and Statements of Revenues and Direct Expenses -** ***Calculating Significance*** - Registrants should compute all three S-X 3-05 significance tests as written. For the asset test, this will require comparing the book value of the assets acquired to the registrant's total assets. For the income test this will require comparing the excess/deficiency of revenue over direct expenses to the registrant's pre-tax earnings. Historically, some registrants have requested to adjust the S-X 1-02(w) income test denominator (i.e., the registrant's pre-tax earnings) to exclude costs not directly involved in the registrant's revenue producing activity, such as corporate overhead, interest and taxes, when those costs are excluded from the numerator used to calculate income test significance. While such a calculation may help facilitate a registrant's analysis of whether the application of the S-X 3-05 income test produces anomalous results, such a calculation should not be done in lieu of the income test specified in S-X 3-05. If a registrant's management believes the application of the S-X 3-05 tests as written produces anomalous results, CF-OCA will, upon receipt of the registrant's written request and supporting analysis, consider a registrant's request to waive one or more of the periods specified by S-X 3-05. In making this request, registrants should evaluate all relevant facts and circumstances in determining what number of periods are necessary for an investor's understanding of the acquired business. Generally, CF-OCA will not waive all audited periods required by S-X 3-05.

2065.10 **Pro Forma Financial Statements and Forward-Looking Disclosures** – S-X Article 11 applies to the acquisition of selected parts of an entity.

Pro Forma Condensed Balance Sheet Guidance – If the historical financial statements of the acquired business are full financial statements (see Section 2065.1), the pro forma balance sheet should include adjustments to remove assets and liabilities that were not acquired or assumed provided the criteria described in Section 3220.3 are met.

Pro Forma Condensed Income Statement Guidance - The pro forma condensed income statement should comply with the criteria at Section 3230.4 and should not include forward-looking information. If the historical financial statements of the acquired business are abbreviated financial statements, the pro forma footnotes should explain how the pro forma condensed income statements are not indicative of the acquired business's operations going forward because of the changes in the business and the omission of various operating expenses.

Forward-Looking Information - If the registrant includes forward-looking information, it should clearly be identified as forward-looking rather than as pro forma. If the forward-looking information is in the form of an S-X 11-03 forecast, the pro forma condensed income statements may be omitted (see Section 3510). If the forward-looking information provided is not in the form of an S-X 11-03 forecast, it should nonetheless disclose how revenues and operating efficiencies may vary given the assumptions underlying the forward-looking information as if the business had been acquired at the beginning of the periods presented.

2065.11 **Unique Considerations for Acquisitions of Oil and Gas Properties – General** – An acquisition of an interest in a producing oil or natural gas property is considered by the staff to be the acquisition of a business pursuant to S-X 11-01(d) for which pre-acquisition financial statements are required if significant. If the property acquired represents substantially all of the selling entity's key operating assets, see Section 2065.1. If the property acquired represents less than substantially all of the selling entity's key operating assets, the registrant should provide the carve-out financial statements described in Section 2065.3, except that the staff will accept (i.e. pre-clearance with CF-OCA is not required) the abbreviated financial statements described in Sections 2065.4 through 2065.8 and in Section 2065.12 if the following three circumstances exist:

- The interest in the acquired oil or natural gas property constitutes only a portion of the assets of the seller and is not a segment or division of an entity or contained in a separate legal entity.

- Separate financial statements for the acquired business have not previously been prepared, and the seller has not maintained the distinct and separate accounts necessary to present the full financial statements or full carve-out financial statements of the property.

- It is impracticable to prepare the full financial statements required by Regulation S-X.

If abbreviated financial statements are provided, significance should be calculated in accordance with Section 2065.9.

2065.12 **Unique Considerations for Acquisitions of Oil and Gas Properties – Additional Guidance** – Registrants that present abbreviated financial statements in the circumstances described in Section 2065.11:

- May omit the statement of assets acquired and liabilities assumed if the business acquired consists solely of interest(s) in one or more oil or natural gas properties (e.g. working interests, net profit interests, etc.).

- Should include in the statement of revenues and direct expenses, income statement effects of all derivative contracts related to the property that existed during the historical financial statement periods presented if the registrant acquires or assumes any derivative contracts related to the acquired oil and natural gas property.

- Should furnish the supplementary disclosures described in ASC 932-235-50-3 through 50-11 and ASC 932-235-50-29 through 50-36 for each full year of operations presented for the acquired property. If prior year reserve studies were not made, the staff will not object to computing the reserves for prior years using only production and new discovery quantities and valuation, in which case there will be no "revision of prior estimates" amounts. Registrants may develop these disclosures based on a reserve study for the most recent year, computing the changes backward. If disclosures are developed in this manner, the method of computation should be disclosed in a footnote.

- Should consider the guidance in Section 2065.10 regarding pro forma financial statements and forward-looking disclosures.

2070 SAB 80: Application of S-X 3-05 in Initial Registration Statements (SAB Topic 1J)

2070.1 **Background -** S-X 3-05 and S-X 8-04 identify the financial statements of businesses recently acquired and likely to be acquired that must be included in a registration statement. In some cases involving IPOs, strict application of S-X 3-05 or S-X 8-04 can result in provision of financial statements that are clearly not significant. SAB 80 is an interpretation of S-X 3-05 for application in initial registration statements of first-time registrants that have been built by the aggregation of discrete businesses that remain substantially intact after acquisition. First-time registrants that meet the conditions in Section 2070.2 may apply SAB 80 instead of S-X 3-05 or S-X 8-04 in their initial registration

statement. If a registrant chooses to use SAB 80 to measure significance of its acquired and likely to be acquired businesses for purposes of its initial registration statement, it must use SAB 80 for all such acquisitions.

2070.2 **Conditions Precedent to Applying SAB 80 -** A registrant must meet the following conditions in order to apply SAB 80:

- *Condition 1: The acquired and likely to be acquired businesses must be discrete and substantially intact after the acquisition*. Footnote 2 of SAB 80, which is partially reproduced in the notes below, provides an example to clarify. This condition exists because SAB 80 measures significance using the acquired businesses' post-acquisition assets and post-acquisition pretax income.

- *Condition 2: SAB 80 can only be applied by a first-time registrant in its initial registration statement, irrespective of whether that initial registration statement involves a public offering.*

NOTES to SECTION 2070.2

1. Generally, all of the registrant's acquired and likely to be acquired businesses must meet the two conditions above in order to apply SAB 80. However, footnote 2 of SAB 80 states in part that SAB 80 *"does not address all possible cases in which similar relief may be appropriate but, rather, attempts to describe a general framework within which administrative policy has been established. In distinguishable situations, registrants may request relief as appropriate to their individual facts and circumstances."*

2. As noted in Section 2070.1, if a registrant chooses to use SAB 80 to measure significance of its acquired and likely to be acquired businesses for purposes of its initial registration statement, it must use SAB 80 for all such acquisitions.

3. *Condition 1:* When identifying acquired businesses, related businesses should be treated as a single business acquisition. See Section 2015.12.

4. *Condition 1:* Footnote 2 of SAB 80 states in part: *"For example, nursing homes, hospitals, or cable TV systems. [SAB 80] would not apply to businesses for which the relative significance of one portion of the business to the total business may be altered by post-acquisition decisions as to the allocation of incoming orders between plants or locations. …"*

5. *Condition 2:* SAB 80 only references initial public offerings, however the staff will not object to the application of SAB 80 by first-time registrants in an initial registration statement not related to a public offering (e.g., a Form 10), provided Condition 1 above is met.

6. *Condition 2:* A subsidiary is not precluded from applying SAB 80 in its initial registration statement simply because its parent is a public company. *(Last updated: 6/30/2010)*

2070.3 **Significance under SAB 80 - *Basics* -** SAB 80 permits first-time registrants to consider the significance of each acquired and likely to be acquired business based on pro forma financial statements for the registrant's most recently completed fiscal year. The registrant's pro forma financial statements used for purposes of measuring significance under SAB 80 should give effect to all acquisitions that were probable or completed as of the effective date of the registration statement as if they had been acquired at the beginning of the registrant's most recently completed fiscal year for the income test and at the end of the registrant's most recently completed fiscal year for the asset and investment tests.

2070.4 **Significance under SAB 80 -*Asset Test* -**As described in Section 2015, the SX 3-05 and 1-02(w) asset test requires calculation of the ratio of (A) the registrant's and its other subsidiaries' proportionate interest in the total assets of the acquired or likely to be acquired business to (B) the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year. As described in Section 2070.3, under SAB 80 this ratio is calculated separately for each acquired or likely to be acquired business using the registrant's pro forma financial statements.

(A) *Numerator for the Asset test*: Use the pro forma balance sheet for the acquired or likely to be acquired business as of the end of its most recently completed fiscal year that gives effect to any new cost basis arising from acquisition accounting irrespective of whether pushdown accounting is applied. If the fiscal year-end of the acquired or likely to be acquired business differs from the registrant's fiscal year-end by more than 93 days, the acquired or likely to be acquired business's fiscal year-end should be brought up to within 93 days of the registrant's most recent fiscal year-end. [S-X 11-02(c)(3)] *(Last updated: 1/12/2015)*

(B) *Denominator for the Asset test*: Use the registrant's pro forma balance sheet as of the end of the most recently completed fiscal year included in the registration statement. The registrant's pro forma balance sheet should give effect to (A) acquisitions completed after the most recent year end and (B) **probable** acquisitions.

2070.5 **Significance under SAB 80- *Investment Test* -** As described in Section 2015, the S-X 3-05 and 1-02(w) investment test requires calculation of the ratio of (A) the registrant's and its other subsidiaries' investments in and advances to the recently acquired or to be acquired businesses to (B) the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year. As described in Section 2070.3, under SAB 80 this ratio is calculated separately for each acquired or likely to be acquired business using the registrant's pro forma financial statements.

(A) *Numerator for the Investment test*: Use same amount as S-X 3-05 investment test.

(B) *Denominator for the Investment test*: Use the registrant's pro forma balance sheet as of the end of the most recently completed fiscal year included in the registration statement. The registrant's pro forma balance sheet should give effect to (A) acquisitions completed after the most recent year end and (B) **probable** acquisitions.

2070.6 **Significance under SAB 80-*Income Test*** -As described in Section 2015, the S-X 3-05 and 1-02(w) income test requires calculation of the ratio of (A) the registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of accounting changes of the recently acquired or to be acquired businesses to (B) such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year. As described in Section 2070.3, under SAB 80 this ratio is calculated separately for each acquired or likely to be acquired business using the registrant's pro forma financial statements.

(A) *Numerator for the Income test*: Use the pro forma income statement for the acquired or likely to be acquired business for its most recently completed fiscal year that gives effect to any new cost basis arising from acquisition accounting irrespective of whether pushdown accounting is applied. If the fiscal year-end of the acquired or likely to be acquired business differs from the registrant's fiscal year-end by more than 93 days, the acquired business's fiscal year-end should be brought up to within 93 days of the registrant's most recent fiscal year-end. See S-X 11-02(c)(3). *(Last updated: 1/12/2015)*

(B) *Denominator for the Income test*: Use the registrant's pro forma income statement for the most recent fiscal year included in the registration statement. The registrant's pro forma income statement should give effect to (A) acquisitions completed both during and after the most recent year end and (B) **probable** acquisitions.

2070.7 **Financial Statement Requirements - *Initial Registration Statement*** - SAB 80 is intended to ensure that the registration statement includes:

- at least 33 months of audited financial statements of at least 60% of the constituent businesses that will comprise the registrant on an ongoing basis, and
- at least 21 months of audited financial statements of at least 80% of the constituent businesses that will comprise the registrant on an ongoing basis, and

- at least 9 months of audited financial statements of at least 90% of the constituent businesses that will comprise the registrant on an ongoing basis.

NOTES to SECTION 2070.7

1. *Significance Thresholds* - These significance thresholds are lower than those included in S-X 3-05. In 1996, the S-X 3-05 significance thresholds were increased from 10%, 20% and 40% to 20%, 40% and 50%. Similar changes were made to S-X 8-04. However, to ensure sufficient inclusion of constituent business financial statements in initial registration statements, corresponding amendments were NOT made to SAB 80.

2. *Application of S-X 3-06* - SAB 80 incorporates the concept in S-X 3-06 that a registrant may use one 9 to 12 month period to satisfy a requirement to provide annual financial statements. Thus, financial statements will be required for either: at least 9 to 12 months (equivalent of 1 year under S-X 3-06), at least 21 months (equivalent of 2 years under S-X 3-06), or at least 33 months (equivalent of 3 years under S-X 3-06)

3. *Unaudited Interim Financial Statements*- Depending on the acquisition date, unaudited interim financial statements of the acquired or to be acquired business may be required. See Section 2070.9.

2070.8 *Requirement for Continuous Audited Period* - SAB 80 uses a combination of pre-acquisition audited results of the acquired or likely to be acquired business and post-acquisition audited results of the registrant to satisfy the minimum financial statement requirements. Audited financial statements required to be filed to satisfy the requirements of SAB 80 should be for continuous periods, with no gap or overlap between pre-acquisition and post-acquisition audited periods.

2070.9 *Interim Financial Statements* – Whether interim financial statements of an acquired or to be acquired business measured using SAB 80 need to be audited depends on the acquisition date. If the acquisition date is on or before the registrant's most recent audited balance sheet required to be included in the registration statement, the interim financial statements of the acquired or to be acquired business should be presented and audited through the date of acquisition. If the acquisition date is after registrant's most recent audited balance sheet required to be included in the registration statement, then the interim financial statements of the acquired or to be acquired business should be presented for the same periods as if the acquiree were the registrant and may be unaudited.

2070.10 *Determining Number of Pre-Acquisition Historical Financial Statement Periods Required for Completed and Probable Acquisitions:*

a. Identify for **each** completed and probable acquisition the highest level of significance resulting from the asset, investment and income test.
b. Identify for which completed and probable acquisitions financial statements are required and for what number of months by reference to the chart in Section 2070.11 entitled "Minimum Financial Statement Requirement" and the highest level of significance for each acquisition identified in (A) above.
c. As noted in Section 2070.8, SAB 80 uses a combination of pre-acquisition audited results of the acquired or likely to be acquired business and post-acquisition audited results of the registrant to satisfy the minimum financial statement requirements. Determine the number of months of **pre-acquisition** financial statements needed for each completed and probable acquisition identified in (B) above by subtracting (1) the number of months the acquisition is included in the registrant's post-acquisition audited financial statements from (2) the Minimum Financial Statement Requirement described in Section 2070.11.
d. File pre-acquisition audited financial statements for each completed and probable acquisition for at least the number of months that the acquisition is not included in the registrant's audited financial statements with no gap or overlap between pre-acquisition and post-acquisition audited periods.

2070.11 **Financial Statement Requirements – *Initial Registration Statement***

Minimum Financial Statement Requirement	**Minimum Financial Statement Requirement**
Year 1 (most recent fiscal year) Businesses not included for at least 9 months in the registrant's financial statements:	**Year 1 (most recent fiscal year)** May exclude pre-acquisition financial statements to the extent that the sum of their highest significance levels does not exceed 10%. Thus, identify completed and probable acquisitions whose highest level of significance sums to 10% or less. If there is more than one combination of entities whose highest level of significance sums to 10% or less, the registrant may choose one combination. Financial statements for this combination may

Minimum Financial Statement Requirement	Minimum Financial Statement Requirement
	be omitted. For all other completed and probable acquisitions, the registrant must present at least 9 months of audited financial statements for each acquisition with no gap or overlap between the acquired business' pre-acquisition audited periods and the registrant's post-acquisition audited periods.
Year 2 (preceding fiscal year) Businesses not included for at least 21 months in the registrant's financial statements:	**Year 2 (preceding fiscal year)** May exclude pre-acquisition financial statements to the extent that the sum of their highest significance levels does not exceed 20%. Add to combination of acquisitions selected by the registrant that had a combined highest level of significance of 10% or less additional completed and probable acquisitions such that the combined highest level of significance sums to 20% or less. For all other completed and probable acquisitions that were not included in the registrant's combination of completed and probable acquisitions whose highest level of significance sums to 20% or less, present at least 21 months of audited financial statements for each acquisition with no gap or overlap between the acquired business' pre-acquisition audited periods and the registrant's post-acquisition audited periods.

Minimum Financial Statement Requirement	Minimum Financial Statement Requirement
Year 3 (second preceding fiscal year) Businesses not included for at least 33 months in the registrant's financial statements:	**Year 3 (second preceding fiscal year)** May exclude pre-acquisition financial statements to the extent that the sum of their highest significance levels does not exceed 40% Add to the registrant's combination of acquisitions that had a combined highest level of significance of 20% or less additional completed and probable acquisitions such that the combined highest level of significance sums to 40% or less. For all other completed and probable acquisitions that were not included in the registrant's combination of completed and probable acquisitions whose highest level of significance sums to 40% or less, present at least 33 months of audited financial statements for each acquisition with no gap or overlap between the acquired business' pre-acquisition audited periods and the registrant's post-acquisition audited periods.

2070.12 **Age of Financial Statements** - ***Subsequent registration statements*** - The updating requirements of S-X 3-05 (and S-X 8-04 for a smaller reporting company) should be followed in subsequent registration statements. No updating is required for 1934 Act periodic reporting. Consider the following example.

Example:

Example Facts - A calendar year-end registrant has an IPO Form S-1 registration statement which will be effective February 1, 2008 that includes the registrant's audited financial statements for the three years ended December 31, 2006 and the registrant's unaudited interim financial statements for the nine months ended September 30, 2007 and September 30, 2006. The registrant acquired the businesses identified in the chart below during 2006 and 2007.

Registrant chose to evaluate the need to include historical financial statements for the businesses it acquired using SAB 80 and appropriately concluded that the following annual and interim period financial statements of the acquired businesses must be included in the IPO Form S-1 at the February 1, 2008 effective date:

Entity	Fiscal Year End	Date Acquired	Audited Annual Financial Statements	Unaudited Interim Financial Statements	Audited Interim Financial Statements
Registrant	12/31	N/A	12/31/2006	1/1/2007 – 9/30/2007	N/A
Target A	6/30	12/15/2006	6/30/2006	N/A	7/1/2006 - 12/14/2006
Target B	6/30	1/31/2007	6/30/2006	7/1/2006-1/30/2007	N/A
Target C	12/31	3/1/2007	12/31/2006	N/A	N/A
Target D	1/31	2/8/2008	1/31/2007	2/1/2007-10/31/2007	N/A

Example Analysis - In a subsequent registration statement declared effective June 16, 2008, the following financial statements related to the same entities would be required for the most recent fiscal year and interim period:

	Fiscal Year End	Date Acquired	Audited Annual Financial Statements	Unaudited Interim Financial Statements	Audited Interim Financial Statements
Registrant	12/31	N/A	12/31/2007	1/1/2008 - 3/31/2008	N/A
Target A	6/30	12/15/2006	6/30/2006	N/A	7/1/2006 - 12/14/2006
Target B	6/30	1/31/2007	6/30/2006	N/A	7/1/2006 - 1/30/2007
Target C	12/31	3/1/2007	12/31/2006	N/A	1/1/2007 – 2/28/2007
Target D	1/31	2/8/2008	1/31/2008	N/A	N/A

2070.13 **Tests of Significance After an Initial Registration Statement in which SAB 80 was Applied** – SAB 80 can only be used in an initial registration statement of a first-time registrant. It is not used to evaluate significance for acquisitions that occur after the effective date of the initial registration statement. However, if the provisions of SAB 80 were used in an initial registration statement to obtain relief from the reporting requirements of S-X 3-05, the staff would allow that registrant to separately evaluate the significance of each acquisition that occurs after the effective date of the initial registration statement using the pro forma financial statements that were used to evaluate significance under SAB 80 in the initial registration statement. However, those pro forma financial statements should be adjusted to eliminate:

- pro forma effects of acquisitions for which no audited financial statements are presented in the initial registration statement,
- the pro forma effects of acquisitions that were probable at the time the initial registration statement was declared effective but which have yet to be consummated, and
- pro forma adjustments not directly attributable to the acquisitions.

Once the registrant files audited annual financial statements (either in a Securities Act or Exchange Act filing) for the fiscal year following the audited fiscal year presented in the initial registration statement on which pro forma financial statements were based, the registrant should measure significance of acquisitions using the audited financial statements of the registrant as required by S-X 3-05. Upon written request, the staff will consider whether relief from the literal application of S-X 3-05 is appropriate.

Financial statements of an individually insignificant business acquired subsequent to the effective date of an initial registration statement (but prior to filing audited annual financial statements for the fiscal year following the audited fiscal year presented in the initial registration statement) may also be required in a subsequent registration statement if the significance of that acquisition, plus other acquisitions for which no audited financial statements were provided in the initial registration statements, aggregate 50% or more of adjusted pro forma financial statements described above. See Section 2035 which describes how to measure aggregate significance for individually insignificant businesses.

2100 DISPOSITION OF A BUSINESS

(Last updated: 3/31/2010)

2110 Definitions

2110.1 *"Disposition"* – See Instruction 2 of Item 2.01, Form 8-K for the definition of "disposition." Under this definition, a disposition would include, but not be limited to, a requirement to deconsolidate a subsidiary.

2110.2 *"Business"* – See S-X 11-01(d) for the definition of a "business."

2120 When are Financial Statements Required?

2120.1 **Form 8-K** - Item 2.01, Form 8-K reporting the disposition is required to be filed within four business days if either an asset disposition or a business disposition exceeds 10% significance. (See Section 2130 for guidance on measuring significance.) Historical financial statements of the disposed business are not required in the Item 2.01 Form 8-K, but may be required in proxy statements as described in Section 2120.2. Pro forma financial statements depicting the

disposition are required to be included in the Item 2.01 Form 8-K filed within four business days of the disposition. The 71 calendar day grace period described in Item 9.01 of Form 8-K does not apply to business dispositions. [Instruction 4(ii) to Item 2.01 Form 8-K and S-X 11-01(b)(2) and C&DI for Exchange Act Form 8-K, Question 129.01] *(Last updated: 6/30/2013)*

2120.2 **Proxy and Information Statements -** If authorization is sought from shareholders for disposition of a significant business (including spin-offs), unaudited financial statements of that business should be provided in the proxy statements for the same periods as are required for the registrant (along with pro forma information); however, audited financial statements for each of the 2 most recent fiscal years of that business should be provided if they are available. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H6. Also, see related discussion in Section 1140.6.

The same financial statement content described above for proxy statements also applies to Schedule 14C Information Statements. *(Last updated: 6/30/2012)*

2120.3 **Registering Shares of Disposed Business** - If disposition of a business is being accomplished through the registrant's distribution to shareholders of its ownership interests in that business, audited financial statements of the separate legal "spinee" (which may not be the spinee for accounting purposes) for the same periods required for the registrant are required in a Form 10 or 1933 Act registration statement filed in connection with the spin-off.

2130 Form 8-K - Measuring Significance of a Disposed Business

NOTES to SECTION 2130

1. See Section 2120 for a discussion of the Form 8-K reporting requirements when a disposed business is significant.

2. Registrants may request CF-OCA interpretation or relief in unusual situations where strict application of the rules and guidelines results in a requirement that is unreasonable under the circumstances.

2130.1 **General** – Measure significance of a disposed business using the three significance tests in S-X 1-02(w). If any of the three tests exceeds 10%, the business is significant. [Instruction 4(ii) Item 2.01, Form 8-K and S-X 11-01(b)(2)]

2130.2 **Implementation Point – Investment Test [S-X 1-02(w)(1)]**

a. *Numerator of the Investment Test*:
Use the **greater of**:

1. The carrying value of the disposed business (or if a portion of the business is disposed, the carrying value of the portion disposed) as of the end of the registrant's most recently completed fiscal year prior to the disposal date; or

2. The fair value of the consideration received for the portion of the business disposed.

b. *Denominator of the Investment Test*:
Use the registrant's consolidated total assets as of the end of the registrant's most recently completed fiscal year prior to the disposal date.

NOTES to SECTION 2130.2

1. *Numerator of the Investment Test – Impact of Noncontrolling Interest* - The numerator of the investment test should not be impacted by the existence of or accounting for noncontrolling interest.

2. *Numerator of the Investment Test – Registrant Retains either a Controlling or a Noncontrolling Investment in Disposed Business -* Because the numerator includes only the portion of the business disposed, the numerator should not include either the carrying value or the fair value of the registrant's retained investment in the disposed business.

3. *Numerator of the Investment Test - Nonreciprocal Transfers to Owners -* In a nonreciprocal transfer to owners, whether accounted for at fair value or based on recorded amounts, the registrant does not receive consideration; therefore the numerator equals the carrying value of the disposed business (or if a portion of the business is disposed, the carrying value of the portion disposed) as of the end of the registrant's most recently completed fiscal year prior to the disposal date.

4. *Denominator of the Investment Test* – Because the denominator of the investment test includes the registrant's consolidated total assets for its most recently completed fiscal year prior to the disposal date, the accounting for the disposition does not affect the denominator of the investment test.

2130.3 **Implementation Point – Asset Test [S-X 1-02(w)(2) and Income Test [S-X 1-02(w)(3)]**
(Last updated: 9/30/2010)

Asset Test - The numerator of the asset test should be the total assets of the disposed business as of the end of its most recently completed fiscal year prior to disposal. The denominator of the asset test should be the registrant's total assets as of the end of its most recently completed fiscal year prior to disposal. A registrant's total assets as of the end of its most recently completed fiscal year will include assets related to both its continuing operations and its discontinued operations.

Income Test - The numerator of the income test should be the pre-tax income or loss from continuing operations of the disposed business for its most recently completed fiscal year prior to disposal. The denominator of the income test should be the historical pre-tax income or loss from continuing operations of the registrant for its most recently completed fiscal year prior to disposal. Because S-X 1-02(w) specifies that the denominator equals the registrant's pre-tax income or loss from *continuing operations*, the denominator will not include the results of a disposed business which was previously appropriately reported as a discontinued operation.

Because the asset test and the income test include only amounts reflected in both the disposed business's and the registrant's consolidated financial statements for their most recently completed fiscal year prior to the disposal date, the accounting in the period of disposal does not affect either the asset test or the income test.

2200 FINANCIAL STATEMENTS OF TARGET COMPANIES IN FORM S-4

(Last updated: 6/30/2013)

2200.1 **Form S-4 - General -** Form S-4 registers securities being offered to security holders of a business to be acquired. The Form S-4 requirements for target company financial statements vary based on a number of facts and circumstances, as summarized below. The **determination of the target company** should be based on the legal form of the transaction. The fact that the target company may be the acquiring company for accounting purposes does not change that analysis. For example, in both a reverse acquisition between two operating companies and the acquisition by a *shell company*, as defined in Exchange Act Rule 12b-2 and Regulation C, Rule 405, of an operating company, the target company financial statements for purposes of Form S-4 are those of the legal target, which in these cases is also the accounting acquirer.

As described in Sections 2200.4 and 2200.5, the target company financial statement **periods to present** depend on whether the:

- target is a reporting company;
- target is a non-reporting company and the issuer's shareholders are voting; or
- target is a non-reporting company and the issuer's shareholders are **not** voting.
- target is a smaller reporting company.
- acquirer is an EGC.
- acquirer is a shell company.

As described in Sections 2200.6 and 2200.7, the **need to audit** target company financial statements depends on whether the:

- target is a reporting company or the
- target is a non-reporting company (irrespective of whether the issuer's shareholders' are voting)

2200.2 Form S-4 - How Financial Statement Requirements Differ from Form 8-K

The form and number of periods of a target's financial statements required in a Form S-4 may differ from the form and number of periods of a target's financial statements required in a Form 8-K reporting consummation of the business combination.

Item 17 of Form S-4 requires inclusion of the target's financial statements that would be required in an annual report sent to security holders if an annual report was required. A non-reporting target that would meet the S-K 10(f) requirements to be a smaller reporting company if it were an issuer (i.e., applying the revenue test) may apply the scaled reporting requirements for a smaller reporting company (i.e., S-X Article 8) in the Form S-4 even if the registrant is not a smaller reporting company. Similarly, a non-reporting target that would not meet the S-K 10(f) requirements to be a smaller reporting company if it were an issuer may not apply the scaled reporting for a smaller reporting company in the Form S-4, but instead must comply with S-X reporting requirements applicable to entities that are not smaller reporting companies, even if the registrant is a smaller reporting company. See Section 10220.6 regarding financial statement requirements in a Form S-4 when the transaction involves an EGC.

Form 8-K requires the registrant to file the acquired business' financial statements required by S-X 3-05 or, if the registrant is a smaller reporting company, S-X 8-04. If the registrant is subject to S-X 3-05, the non-reporting acquired business' financial statements must comply with S-X reporting requirements applicable to entities that are not smaller reporting companies in a subsequent Form 8-K reporting the business combination. If the registrant is

subject to S-X 8-04, the non-reporting acquired business' financial statements may comply with scaled reporting requirements for a smaller reporting company. [Form 8-K, Item 9.01] Registrants that qualify as EGCs may be able to present fewer periods than those required by S-X 3-05 in the circumstances described in Section 10220.5.

2200.3 **Form S-4 - Periods to be Presented *General***

The determination of the number of periods for which target company financial statements need be included in the Form S-4 should be made by reference to the requirements of Form S-4, not S-X 3-05 or S-X 8-04. See 2200.7 below for audit requirements.

2200.4 **Form S-4 - Periods to be Presented – *Reporting Target OR Non-Reporting Target with Issuer's Shareholders Voting***

If the **target is a reporting company** (whether or not the issuer's shareholders are voting), or the **target is a non-reporting company** and the **issuer's shareholders are voting**, the registration statement must include:

a. Balance sheets as of the two most recent fiscal years.
b. Statements of income and cash flows for each of the three most recent fiscal years (two most recent fiscal years for a smaller reporting company target (see S-K 10(f) and S-X Article 8) or a non-reporting target who would meet the smaller reporting company requirements if they were an issuer). See Section 10220.6 regarding financial statement requirements in a Form S-4 when the transaction involves an EGC.
c. Interim financial statement requirements differ depending on whether the target is a reporting company or a non-reporting company. See Items 15, 16, 17(a) and 17(b) of Form S-4.
d. Financial statements of a business recently acquired or probable of being acquired by a reporting target under S-X 3-05. This requirement is included in Form S-4 Item 15, which cross-references Form S-4 Item 10(b)(1); Form S-4 Item 16, which cross-references Form S-4 Item 12(a)(3); and Form S-4, Item 17(a), which cross-references Form S-4, Item 14(e). See also 10220.5.
e. Financial statements of a business recently acquired or probable of being acquired by a non-reporting target under S-X 3-05 if the omission of those financial statements renders the target company's financial statements substantially incomplete or misleading. See also 10220.5.

2200.5 **Form S-4 - Periods to be Presented – *Non-Reporting Target with Issuer's Shareholders NOT Voting***

If the **target is a non-reporting company** and the **issuer's shareholders are not voting** and:

Significance	Financial Statement Requirement
Significance of target under S-X 3-05 or S-X 8-04 does **not** exceed 20%	No target financial statements required in the registration statement, subject to the following: Registrants continue to have the obligation under S-X 3-05 to evaluate the individually insignificant acquisitions in the aggregate, including the insignificant target. If, in the aggregate, the 50% significance level is reached, the registrant must present audited GAAP financial statements for a mathematical majority of those acquisitions for the most recently completed fiscal year and interim period.
Significance of target under S-X 3-05 or S-X 8-04 exceeds 20% level **AND** S-4 to be used for resales to the public by any person who is deemed an underwriter within the meaning of Securities Act Rule 145(c) with respect to the securities being reoffered.	GAAP financial statements for the periods required by S-X 3-05(b)(2) or S-X 8-04(b), as applicable [Instruction 3 to Item 17(b)(7) of Form S-4]. See Section 10220.6 regarding financial statement requirements in a Form S-4 when the transaction involves an EGC. **Note**: Instruction 3 to Item 17(b)(7) of Form S-4 only references S-X 3-05, however a non-reporting target who would meet the smaller reporting company requirements (i.e., S-K 10(f)) if they were an issuer may provide the financial statements required by S-X 8-04(b).

Significance of target under S-X 3-05 or S-X 8-04 exceeds 20% level **AND** S-4 NOT to be used for resales to the public by any person who is deemed an underwriter within the meaning of Securities Act Rule 145(c) with respect to the securities being reoffered.	GAAP financial statements for the latest fiscal year and interim information as recent as would have been filed on Form 10-Q had the target company been subject to the Exchange Act, except that interim information need include only cumulative year-to-date interim information of the target for the latest and comparable interim periods. [Item 17(b)(7)(i) of Form S-4] Prior years' financial statements are also required if the target's GAAP financial statements were previously furnished to its security holders. [Item 17(b)(7)(i) of Form S-4]. See also Section 10220.6 regarding prior year financial statement requirements in a Form S-4 when the transaction involves an EGC. Example 1: Target's latest fiscal year ended 12/31/07. Target previously furnished 2006, but not 2005, GAAP financial statements to its security holders. Target's 2006 and 2007 annual financial statements are required in the Form S-4 Example 2: Target's latest fiscal year ended 12/31/07. Target previously furnished 2005, but not 2006, GAAP financial statements to its security holders. Only Target's 2007 annual financial statements are required in the Form S-4.

2200.6 **Form S-4 - Audit Requirements** - ***Target is a reporting company*** (whether or not the issuer's shareholders are voting) - All target company fiscal years presented must be audited.

2200.7 **Form S-4 Audit Requirements - *Target is a non-reporting company*** (whether or not the issuer's shareholders are voting) - The requirement to audit depends on whether or not the Form S-4 is to be used for resales by persons considered underwriters under Securities Act Rule 145(c). See Item 17(b) of Form S-4.

S-4 to be used for resales	S-4 not to be used for resales
Required to be audited for the periods specified in S-X 3-05(b)(2) or S-X 8-04(b), as applicable.	**Latest Fiscal Year** Need be audited only if practicable to do so. To determine whether an audit is practicable, consider the feasibility of completing the audit on a timely basis. Since the target's **audited** financial statements will be required to be included in a Form 8-K filed 71 calendar days after the 4th business day following consummation of the acquisition, the registrant should be able to explain why audited financial statements cannot be completed in time for the Form S-4, but can be completed in time to meet the Form 8-K requirements. **Fiscal years before the latest fiscal year** Need not be audited if they were not previously audited.

NOTES to SECTION 2200.7

1. The relief from the audit requirement for a target company's financial statements applies only to merger proxies and transactions registered on Form S-4. It is not applicable to other forms. If the acquisition is significant, audited financial statements will ordinarily be required in a Form 8-K after consummation.

2. Although relief from obtaining an audit of financial statements may be available as described above, the registrant would still be required to include all financial statements specified by Item 17 of Form S-4 on an unaudited basis.

3. If financial statements are not audited for the periods required by S-X 3-05 /S-X 8-04, the registrant should supplementally provide to the staff representation that the Form S-4 will not be used for resales by underwriters.

2200.8 **Form S-4 - Updating Target Company Financial Statements**

The requirement to update target company financial statements (both reporting and non-reporting target companies) is based on the registrant's obligation to update under S-X 3-12 (or S-X 8-08 for a smaller reporting company). See Section 2045.5 for target updating requirements.

2200.9 **Form S- 4 – Target Company is a Foreign Business - *Reconciliation Requirement***

If the foreign business is a non-reporting company and its financial statements are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, the reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F is not required if it is unavailable or not obtainable without unreasonable cost or expense. If a reconciliation is not available, the filing should contain, at a minimum, a narrative description of all material variations in accounting principles, practices, and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. This guidance also applies to smaller reporting companies. Registrants should consider all relevant facts and circumstances in determining whether the U.S. GAAP reconciliation is unavailable or not obtainable without unreasonable cost or expense. For example, the staff has objected to the omission of the U.S. GAAP reconciliation in circumstances where the non-reporting target company was a subsidiary (or investee) of a larger reporting company, and considerable reconciling information for the subsidiary would have already been necessary to prepare the parent company's U.S. GAAP reconciliation. Registrants are encouraged to consult with CF-OCA in advance of filing if they intend to omit the U.S. GAAP reconciliation on the basis of unavailability or unreasonable cost.
(Last updated: 12/31/2010)

2200.10 **Form S-4 - Pro forma financial information** depicting the acquisition(s) is only required if the acquisition is significant under S-X 3-05 or S-X 8-04 individually or in the aggregate.

2300 REAL ESTATE ACQUISITIONS AND PROPERTIES SECURING MORTGAGES

(Last updated: 9/30/2008)

Section	Description
2305	Real Estate Operations – Overview
2310	Real Estate Operations - When to Present Financial Statements
2315	Real Estate Operations – Measuring Significance
2320	Real Estate Operations - Individually Insignificant Acquisitions
2325	Real Estate Operations - Special Requirements for "Blind Pool" Offerings
2330	Real Estate Operations - Required Financial Statements
2335	REIT Formation Transactions
2340	Properties Subject to Triple Net Lease
2345	Properties Securing Loans, which in Economic Substance Represent an Investment in Real Estate, including Acquisition Development and Construction (ADC) Arrangements
2350	Properties Securing Loans that Represent an Asset Concentration [SAB Topic1I]
2355	Gains/Losses on Sales or Disposals by Real Estate Investment Trusts
2360	Proxy Statements for Acquisitions of Real Estate Operating Properties

2305 Real Estate Operations - Overview [S-X 3-14]

(Last updated: 3/31/2013)

2305.1 **Applicability of S-X 3-14** - Application of S-X 3-14 is limited to the acquisition or probable acquisition of real estate operations.

2305.2 **Nature of Real Estate Operations**

S-X 3-14, which is premised on the continuity and predictability of cash flows ordinarily associated with leasing real property, applies to the acquisition or probable acquisition of real estate operations. For purposes of S-X 3-14, the term “real estate operations” refers to properties that generate revenues solely through leasing. Examples include office, apartment and industrial buildings as well as shopping centers and malls. “Real estate operations” excludes the acquisition of properties that generate revenues from operations other than leasing real property, such as nursing homes, hotels, motels, golf courses, auto dealerships, and equipment rental operations, which are more susceptible to variations in costs and revenues over shorter periods due to market and managerial factors. S-X 3-05 rather than S-X 3-14 is applicable to the acquisition of these types of businesses. Acquired properties subject to triple net leases, whether involving leasing or other activities, should be evaluated under Section 2340.

2305.3 **Investment in a Pre-Existing Legal Entity**

When a registrant acquires an equity interest in a pre-existing legal entity (such as a partnership, LLC or corporation) that only holds real estate under lease and related debt, financial statements of the underlying property meeting the requirements of S-X 3-14 should be provided instead of S-X 3-05 financial statements, if the acquisition is significant. When a registrant acquires an equity interest in a pre-existing legal entity that engages in other activities, such as property management or development, financial statements of that entity meeting the requirements of S-X 3-05 generally are required if the acquisition is significant. A registrant should consult with CF-OCA to the extent it believes S-X 3-14 financial statements are more appropriate than S-X 3-05 financial statements due to the limited degree of operations other than leasing real estate. If S-X 3-14 financial statements are more appropriate due to the limited degree of operations other than leasing real estate, financial statements are required if the 10% or more significance level applicable to S-X 3-14 financial statements is met. *(Last updated: 10/20/2014)*

2305.4 **Investment in a Newly Formed Partnership or Corporation**

For purposes of applying S-X 3-14, the staff views an investment in a newly formed partnership or corporation (either consolidated or accounted for using the equity method) that will acquire properties under lease simultaneous with or soon after its formation as, in substance, the acquisition of properties by the registrant. In these circumstances, the staff will require S-X 3-14 financial statements of the underlying property being acquired instead of S-X 3-05 financial statements of the newly formed entity. This assumes that the new entity has no other activities besides leasing real property.

2305.5 Summary - 1933 Act Real Estate Financial Statements and Significance Thresholds

The following table summarizes general financial statement requirements in 1933 Act registration statements with respect to the acquisition of real estate operations. Refer to the sections below the summary for details in applying these requirements:

Acquisition Type	Significance Threshold %	Significance Measured Against
General Rule:		
Regular Property Acquisition and Probable Acquisitions	3-14s required at 10% or more (also significant in aggregate test triggers)	Registrant's assets as of last audited balance sheet
Triple Net Leased	See Section 2340	
Blind Pool Offerings Subject to Guide 5 (During Distribution Period):		
Regular Property Acquisition	3-14s required at 10% or more	Registrant's assets as of the date of the acquisition plus the proceeds (net of commissions) in good faith expected to be raised in the registered offering over the next 12 months
Triple Net Leased	See Section 2340	

2310 Real Estate Operations - When to Present S-X 3-14 Financial Statements

(Last updated: 3/31/2013)

Sections 2310-2320 do not apply to "blind pool" offerings subject to Industry Guide 5, Item 20.D Undertakings. See Section 2325 for guidance related to "blind pool" offerings.

2310.1 Registration Statements and Proxy Statements – ***Requirement***

(Last updated: 3/31/2013)

Financial statements of each operating real estate property (or group of related properties) **acquired or probable of acquisition** that is significant individually or in the aggregate at the 10% level or higher are required to be filed in all transactional filings (i.e., proxy statements requiring financial information, 1934 Act registration statements, 1933 Act registration statements (except registration statements filed under Rule 462(b)) and post-effective amendments filed to reflect a fundamental change). The filing of a Rule 424 prospectus is not a transactional filing. S-X 3-14 financial statements must be provided for:

a. each completed purchase of an individually significant property made during each year presented and subsequent to the end of the most recently completed fiscal year for which the registrant's financial statements have been filed, or
b. any probable acquisition of an individually significant property, or
c. completed and probable acquisitions of individually insignificant properties that are significant in the aggregate, made or to be made subsequent to the end of the most recently completed fiscal year for which the registrant's financial statements have been filed.

NOTE 1 to SECTION 2310.1

A registrant (including a WKSI) must either provide these financial statements in the registration statement or, if permitted by the form, in a previously filed Form 8-K that is incorporated by reference into the registration statement. *(Last updated: 3/31/2010)*

NOTE 2 to SECTION 2310.1

"Related" Properties - Properties are related if they are under common control or management, the acquisition of one property is conditioned on the acquisition of each other property, or each acquisition is conditioned on a single common event. *(Last updated: 3/31/2013)*

2310.2 **Registration Statements and Proxy Statements - *S-X 3-05 Exception Does Not Apply***
(Last updated: 3/31/2013)

For registration and proxy statements, the 74-day rule in S-X 3-05(b)(4) does not apply to S-X 3-14 financial statements. However, see Section 2325.2 for special provisions applicable to "blind pool" registration statements during the distribution period.

2310.3 **Form 8-K**
Financial statements of each operating real estate property (or group of related properties) acquired that is individually significant at the 10% level or higher are required to be filed in a Form 8-K.

NOTE to SECTION 2310.3
The purchase of real estate by companies engaged in real estate activities is not considered to be an acquisition in the ordinary course of business. Item 2.01 Form 8-Ks are required to report these transactions.

2315 Real Estate Operations - Measuring Significance

2315.1 **Significance - *General***
Compare the registrant's investment in the property to the registrant's total assets at the latest audited fiscal year end filed with the SEC (except as noted in Section 2320 for individually insignificant acquisitions and Section 2335 for REIT formation transactions). The investment includes any debt secured by the property that is assumed by the purchaser.

2315.2 **Significance Implementation - *In Existence for Less Than One Year***
If the company has not completed its first fiscal year, use the most recent audited balance sheet filed with the SEC.

2315.3 **Significance Implementation - *Form 10-K Filed Subsequent to Acquisition***
If the acquisition was made after the most recent fiscal year and the registrant files its Form 10-K for that year before the due date of the Form 8-K (including the 71 calendar day extension), the staff has not objected if significance is evaluated relative to the most recently completed fiscal year.

2315.4 **Significance Implementation – *Using Pro Forma Financial Statements***
(Last updated: 3/31/2013)

If the acquisition was made after reporting an individually significant acquisition in an Item 2.01 Form 8-K that included historical audited S-X 3-14 financial statements, the registrant may evaluate significance using the registrant's pro forma financial information included in that Form 8-K for the acquisition rather than historical pre-acquisition financial statements. The pro

forma effects of any other transaction should be excluded. If the registrant chooses to compute significance using pro forma information, the staff would expect the registrant to consistently apply that methodology for evaluating all subsequent acquisitions for the remainder of the fiscal year.

2320 Real Estate Operations - Individually Insignificant Acquisitions

(Last updated: 3/31/2013)

2320.1 **Individually Insignificant Acquisitions - *Applicability***

The requirement under S-X 3-14 to file financial statements of individually insignificant properties that are significant in the aggregate is applicable only to registration and proxy statements. Form 8-K does not require audited financial statements of insignificant properties unless they are "related properties" and significant on a combined basis. See Note 2 to Section 2310.1.

2320.2 **Individually Insignificant Acquisitions - *Measuring Significance***

To compute significance, combine individually insignificant properties acquired subsequent to the end of the most recently completed fiscal year for which the registrant's financial statements have been filed and probable acquisitions. Property acquisitions which would not require S-X 3-14 financial statements even if individually significant, such as triple net leased properties covered by Section 2340 and newly constructed properties covered by Section 2330.10, should be excluded from this calculation. Compute significance based on the registrant's total assets as of the latest audited fiscal year balance sheet date preceding the acquisition except when Section 2315.4 is applicable.

2320.3 **Individually Insignificant Acquisitions - *Financial Statements Required***

If the aggregate of all insignificant real estate properties described in Section 2320.2 exceeds 10% of the registrant's total assets, financial statements are required for certain of these properties. Determine what financial statements to provide as follows:

a. The registrant should provide S-X 3-14 financial statements for each property acquisition that is 5% or more significant.
b. Then it should assess whether it has provided financial statements for the majority (> 50%) of the aggregated property acquisitions based on the purchase price. If it has provided over 50% of the aggregate purchase price, it need not provide additional financial statements. If it has not provided financial statements for over 50% of the aggregate purchase price, it should provide the S-X 3-14 financial statements of other acquired properties below the 5% level in order to provide financial statements for over 50% of the aggregate purchase price.
c. If the registrant is unable to obtain audited financial statements of a property that is 5% or more significant or of properties sufficient to provide financial statements for over 50% of the aggregate purchase price, it should request relief from CF-OCA in writing.

2325 Real Estate Operations - Special Requirements for "Blind Pool" Offerings

2325.1 **"Blind Pool" Offerings – *Overview***

"Blind Pool" offerings subject to Industry Guide 5 have different 1933 and 1934 Act reporting requirements with respect to real estate acquisitions both during and after the distribution period.

NOTE to SECTION 2325.1

Distribution Period - The distribution period is the period during which the registrant is conducting a continuous 1933 Act registered offering through a registration statement subject to Industry Guide 5. *(Last updated: 3/31/2013)*

2325.2 **"Blind Pool" Offerings – During the Distribution Period - *Undertakings***

(Last updated: 6/30/2010)

Registration statements for "blind pool" offerings by real estate companies subject to Industry Guide 5 are required to include undertakings to:

a. file a sticker supplement during the distribution period describing each significant property that has not been identified in the prospectus whenever a reasonable probability arises that a property will be acquired (the disclosure should include the information required for significant properties in Items 14 and 15 of Form S-11), and

b. consolidate all stickers in a post-effective amendment filed at least once every 3 months during the distribution period. The post-effective amendment must include or incorporate by reference audited financial statements in the format described in S-X 3-14 that have been filed or should have been filed on Form 8-K for all significant property acquisitions that have been consummated. Pro forma information is also required. [Guide 5, Item 20.D. Undertakings]

A post-effective amendment filed to consolidate stickers or to update the financial statements under Section 10(a)(3) of the Exchange Act does not need to include financial statements for significant property acquisitions during the 71-day extension period allowed by Item 9.01 of Form 8-K.
(Last updated: 6/30/2010)

A post-effective amendment filed for a fundamental change, pursuant to the registrant's undertakings under Item 512(a)(1) of Regulation S-K, should include financial statements for all significant acquisitions, including any financial statements not yet filed during the 71-day extension period provided by Item 9.01 of Form 8-K.
(Last updated: 6/30/2010)

Post-effective amendments that consolidate supplements are not considered new filings for purposes of updating the registrant's financial statements if the duty to file a post-effective amendment is triggered solely by the Item 20.D undertakings.

The prospectus updating regime in the Item 20.D undertakings is intended solely for real estate companies and not for other types of companies that may be subject to other parts of Industry Guide 5. If a real estate company subject to the Item 20.D undertakings acquires a significant property that generates revenues from operations other than leasing rental property, such as a hotel, motel, nursing home or medical office facility, the company should follow the Item 20.D updating regime discussed in Section 2325, except that the significance tests and required financial statements should be those specified in S-X 3-05. If a real estate company subject to the Item 20.D undertakings acquires a triple net leased property, the company should follow the Item 20.D updating regime discussed in this Section 2325, except that the significance threshold applied and financial information provided should be those as described in Section 2340. *(Last updated: 3/31/2013)*

2325.3 **"Blind Pool" Offerings – <u>During the Distribution Period – *Significance*</u>**

(Last updated: 3/31/2013)

An **individual property** is **significant** if it:

a. exceeds the 10% significance level, or
b. is one of a group of properties that together aggregate more than 10% **and** are either:

    - acquired from a single seller, or
    - are related.

See Note 2 to Section 2310.1 regarding related properties.

Significance for purposes of the Guide 5 distribution period is computed by comparing the registrant's investment in the property to the registrant's total assets as of the date of the acquisition plus the proceeds (net of commissions) in good faith expected to be raised in the registered offering over the next 12 months. The investment includes any debt secured by the property that is assumed by the purchaser. In estimating the offering proceeds, the registrant should consider the pace of fundraising as of the measurement date, the sponsor or dealer-manager's prior public fundraising experience and offerings by similar companies. This alternative measurement is only available during the distribution period.

2325.4 **"Blind Pool" Offerings – During the Distribution Period – *Form 8-K Reporting Requirement***

Registrants are required to file a current report on Form 8-K that includes S-X 3-14 financial statements and the related pro forma information for each property acquired during the distribution period that exceeds the 10% significance level as measured in Section 2325.3.

2325.5 **"Blind Pool" Offerings – After the Distribution Period**
(Last updated: 3/31/2013)

While companies do not undertake to file sticker supplements after the distribution period is completed, they undertake to file on Form 8-K audited financial statements of properties, in the format described in S-X 3-14, after this period is completed. Until a company files its first annual report after the distribution period ends, the company should file a Form 8-K with the required S-X 3-14 financial statements for every significant property it purchases that represents 10% or more of the company's total assets as of the acquisition date. The staff has not objected to the view that the undertaking to provide audited financial statements is not applicable to individually insignificant properties. S-X 3-14 financial statements may be omitted for individually insignificant properties.

A registrant may continue to use this modified method of measuring significance until it files its first annual report after the distribution period ends. After that, it would measure significance in the normal manner described in Section 2315.

2330 Real Estate Operations - Required Financial Statements

2330.1 **Abbreviated Financial Statements**
(Last updated: 3/31/2013)

S-X 3-14 financial statements may exclude items (such as historical mortgage interest and depreciation) which are not comparable to the proposed future operations of the property. (Where items are excluded, auditors ordinarily will issue a report such as that at AU 623.15 and 623.18). Registrants may request relief from the audit requirement for financial statements of properties with a rental history of less than one year.

2330.2 **Periods to be Presented – *Properties Acquired from Related Parties***
Audited three years (two years for acquisitions by certain issuers, such as smaller reporting companies), plus the latest unaudited interim period based on the property's fiscal periods are required for properties acquired from a related party. For properties held by the related party for less than three years, financial statements are required for the greater of the period held by the related party or

one year. See Section 2330.4 "Periods to be Presented Implementation – *Pre-Acquisition Using Fiscal Year-End*." *(Last updated: 6/30/2013)*

2330.3 **Periods to be Presented – *Properties Acquired from Third Parties***
Only the most recent year and most recent interim period are required if the property was acquired from a third party. See Section 2330.4 "Periods to be Presented Implementation – *Pre-Acquisition Using Fiscal Year-End*."

2330.4 **Periods to be Presented - Implementation - *Pre-Acquisition Using Fiscal Year-End***
It is not appropriate to provide audited financial statements for a rolling 12-month period prior to the acquisition in lieu of audited financial statements for the latest fiscal year end of the property. Also, pre- and post-acquisition periods should not be combined to produce a year's financial statements. Only pre-acquisition financial statements satisfy S-X 3-14.

2330.5 **Periods to Be Presented - Implementation - *Application of S-X 3-06(b)***
S-X 3-06(b) does not apply to financial statements of real estate properties. *(Last updated: 10/20/2014*)

2330.6 **Updating Requirements**
The same rules for updating S-X 3-05 financial statements apply to S-X 3-14 financial statements. See Section 2045.

2330.7 **Other Required Disclosure**
The registrant should describe any material factors which would cause the reported financial information not to be indicative of future operating results, such as a change in how the property will be used, an expected material modification to the property or a material change in property tax assessment.

2330.8 **Rental History of Less Than Nine Months**
(Last updated: 3/31/2013)

If a registrant acquires an operating property with a rental history of more than three months but less than nine months, the financial statements may be presented on an unaudited basis.

2330.9 **Exception for Demolition**
(Last updated: 3/31/2013)

If a registrant acquires an operating property which it will demolish and build a new rental property, the staff would not object to the omission of the S-X 3-14 financial statements of the acquired property if the prior rental revenues and operating costs of the property are not representative of the new property to be built. The registrant should explain the basis for omission of the financial

statements in the filing. In other cases where the registrant believes the leasing history is not representative, it may request relief from CF-OCA in writing.

2330.10 Exception for Properties with No or Nominal Leasing History

(Last updated: 3/31/2013)

Where a registrant acquires a property that does not have a leasing history, such as a previously owner-occupied or newly constructed property, financial statements of the property are not required. Where the leasing history is less than three months, financial statements of the property are not required. See Section 2340 with respect to triple net leased properties.

2335 REIT Formation Transactions

(Last updated: 3/31/2013)

2335.1 Test of Significance in an IPO

A newly-formed REIT having no significant operations may acquire operating properties immediately prior to filing an IPO, or may identify properties to be acquired upon closing the IPO. In addition, the REIT may identify properties that it will probably acquire soon after the IPO. The staff recognizes in these circumstances that the literal application of S-X 3-14 could result in the registrant providing financial statements of properties that are clearly insignificant to investors. In identifying the financial statements required to be included in the initial registration statement, the staff has allowed registrants to compute significance using a denominator equal to the total cost of the properties acquired immediately prior to filing an initial registration statement, properties to be acquired upon closing the IPO, and properties identified as probable future acquisitions.

2335.2 Tests of Significance After an IPO

In computing significance of any future property acquisition until the time the registrant files its Form 10-K covering the year the IPO is consummated, the registrant can use the same base as was used in the initial registration statement. However, that base should be reduced for any property not acquired or no longer probable. That base should not be reduced for probable acquisitions for which audited financial statements were included in the registration statement and the acquisition remains probable.

2340 Properties Subject to Triple Net Lease

(Last updated: 10/20/2014)

Financial Statements of Significant Lessees

A triple net lease typically requires the lessee to pay costs normally associated with ownership of the property such as property taxes, insurance, utilities and maintenance costs. Based on these attributes, the leasing arrangement is similar to a financing arrangement for the lessee. When a registrant has triple net leased one or more real estate properties to a single lessee/tenant (including in the capacity as co-lessee or guarantor), and such properties represent a "significant" portion of the registrant's assets, an investor may need to consider the lessee's financial statements or other financial information in order to evaluate the risk to the registrant from this asset concentration. An asset concentration is generally considered "significant" if it exceeds 20% of the registrant's assets as of its most recent balance sheet.

In circumstances where a registrant acquires a property resulting in a significant asset concentration, the registrant should generally provide full audited financial statements of the lessee or guarantor for the periods required by S-X 3-01 and 3-02 / S-X 8-02 and 8-03. If the lessee is a public company subject to the periodic reporting obligations of the Exchange Act, the registrant may instead include in the filing a statement referring investors to a publicly-available website with the lessee's SEC filed financial information. If a registrant with an asset concentration related to a lessee believes that less detailed financial information is appropriate based on the registrant's particular facts and circumstances or the lessee financial statements are not available, the registrant should consult with CF-OCA on a pre-filing basis.

In an annual report, registrants may provide the lessee financial statements based on the due dates for financial statements of a significant equity method investee under S-X 3-09 by analogy. Refer to Section 2405.7 – 2405.11.

Registrants should consider significant asset concentrations when preparing a Securities Act registration statement, or an Exchange Act registration statement, annual report, or current report on Form 8-K filed in connection with a property acquisition. If a registrant acquires a property subject to a triple net lease and there is a rental history, the registrant should apply S-X 3-14 in situations where there is not a significant asset concentration.

2345 Properties Securing Loans, which in Economic Substance Represent an Investment in Real Estate, including Acquisition Development and Construction ("ADC") Arrangements [SAB Topic 1I]

2345.1 Overview

A registrant may make a loan that is secured by a real estate operating property. SAB Topic1I provides that financial statements for such properties may be required where the economic substance of the loan represents an investment in real estate, such as in an *"ADC arrangement"* as defined in AICPA's 2/10/86 Notice to Practitioners in the CPA Letter. The characteristics of these loans are found in Exhibit I to Practice Bulletin 1. In these arrangements, a lender participates in the expected residual profit and shares in the risk and rewards of the owner.

2345.2 Financial Statement Requirements in 1933 Act filings

a. Financial statements of operating properties securing such loans are required for any single property for which 10% of offering proceeds (or total assets at the latest audited year-end balance sheet date, if greater) has been or will be loaned. The information required by Items 14 & 15 of Form S-11 also is required.

b. Where no single loan exceeds 10%, but the aggregate of such loans exceeds 20%, a narrative description of the properties and arrangements is required in a footnote to the financial statements.

2345.3 Financial Statement Requirements in 1934 Act Filings

a. If over 20% of the registrant's total assets are invested in a single loan, financial statements of the underlying operating property are required (except in Annual Reports to Shareholders where only summary data is required).

b. If over 10%, but less than 20%, of the registrant's total assets is invested in a single loan, summarized financial information of the operating property is required.

c. Where individual loans are not significant but in the aggregate exceed 20% of the registrant's total assets, narrative description of the properties and arrangements is required in a footnote to the financial statements.

2350 Properties Securing Loans that Represent an Asset Concentration [SAB Topic 1I]

2350.1 **Asset Concentration and Required Financial Statements** - If over 20% of offering proceeds (or total assets at the latest audited year-end balance sheet date, if greater) have been or will be invested in a single loan (or in several loans on related properties to the same or affiliated borrowers), financial statements of the property securing the loan are required in both 1933 and 1934 Act filings.

2350.2 **"Related" Properties** - Properties are related, for example, if they are subject to cross default or collateralization agreements.

2355 Gains/Losses on Sales or Disposals by Real Estate Investment Trusts [S-X 3-15]

2355.1 **Income Statement Classification**
Gain or loss on a sale or disposal by a REIT that qualifies as a discontinued operation under SFAS 144 [ASC 205-20] is reported as part of discontinued operations.

Gain or loss on a sale or disposal by a REIT that does **not** qualify as a discontinued operation is reported below Income from Discontinued Operations in accordance with S-X 3-15, but should be included in the numerator for the computation of EPS for Income from Continuing Operations. Also, the results of operations should remain in their original revenue and expense line items in continuing operations.

2360 Proxy Statements for Acquisitions of Real Estate Operating Properties

2360.1 **Proxy Statements - Applicability**
The staff applies the requirements of Item 14 of Schedule 14A to the Proxy Rules to the acquisition of real estate operating properties. S-X 3-14 financial statements of the properties should be provided in lieu of S-X 3-05 financial statements. In addition, registrants should comply with all of the disclosure requirements of Item 14 of Schedule 14A in a proxy statement related to the acquisition of real estate operating properties.

2360.2 **Proxy Statements - Management's Discussion and Analysis** is required under Item 14(c)(2). The staff expects registrants to:

a. discuss operating trends depicted by the properties' historical financial statements and selected financial data presented; and

b. provide applicable property information that is described under Items 14 and 15 of Form S-11, to the extent that information is not provided elsewhere in the proxy statements.

2360.3 **Proxy Statements - Roll-up Transactions** - Proxy statements related to roll-up transactions should also comply with the applicable roll-up provisions of Regulation S-K, Items 901-915.

2360.4 **Proxy Statements – Selected Financial Data**
Item 14(c)(2) requires five years of selected financial data with respect to the properties that are the subject of the shareholder vote. The staff will consider granting relief to registrants on a case-by-case basis in circumstances where that information is unavailable or not obtainable without unreasonable cost or expense. Registrants may consult with CF-OCA to request this relief.

In addition, EGCs may present fewer than five years of selected financial data in certain circumstances. See Section 10220.2. *(Last updated: 6/30/2013)*

2400 EQUITY METHOD INVESTMENTS, INCLUDING FAIR VALUE OPTION

[S-X 3-09, S-X 4-08(g), S-X 8-03, S-X 10-01(b)(1), and SAB Topic 6K.4.b.]
(Last updated: 9/30/2008)

Summary

(Last updated: 3/31/2009)

2400.1 S-X 3-09 and S-X 4-08(g) use the terms "subsidiaries not consolidated" and "50% or less-owned persons." As discussed in Section 2405.1, since the issuance of S-X 3-09 and S-X4-08(g), U.S. GAAP has been revised to require consolidation by a parent of all of its subsidiaries. Therefore, the remaining discussion in Section 2400 relates to "50% or less-owned persons," which the staff interprets to refer to an investment accounted for using the equity method (even if voting ownership exceeds 50%).

2400.2 S-X 3-09 requires separate annual financial statements of equity method investees if certain significance thresholds are met for any of the registrant's fiscal years required to be presented in the filing using the investment and income significance tests, which are two of the three tests described in S-X 1-02(w). As described in Section 2410, the significance thresholds in S-X 3-09 differ from those stated in S-X 1-02(w). S-X 3-09 does not require separate interim financial statements. Instead, S-X 10-01(b)(1) requires certain summarized interim income statement information of the investee if it is significant. S-X 3-09 does not apply to smaller reporting companies.
(Last updated: 6/30/2010)

2400.3 S-X 4-08(g) applies to annual financial statements and requires summarized annual balance sheet and income statement information of equity method investees if certain significance thresholds are met using all three tests (the asset, investment, and income significance tests) described in S-X 1-02(w). As described in Section 2420, the significance thresholds in S-X 4-08(g) are the same as those stated in S-X 1-02(w) (i.e., 10%). We look to S-X 8-03 by analogy (see Note 1 to Section 2420.9) for the requirements for smaller reporting companies to provide summarized financial data of equity method investees in annual financial statements. The S-X 8-03 significance threshold is 20%. The summarized financial data requirements for interim financial statements differ in some respects from those for annual financial statements. See the overview at Section 2420.1.

2400.4 A registrant that accounts for an equity method investment using fair value in accordance with SFAS 159, "*Fair Value Option for Financial Assets and Liabilities*" [ASC 825] must disclose the information required by APB Opinion 18, paragraph 20d [ASC 323-10-50-3c] (i.e., summarized financial information or separate financial statements). As described more fully in Section 2435, the staff believes that the significance tests in S-X 3-09 and S-X 4-08(g), with the modifications described in Section 2435, should be used by analogy as presumptive thresholds for when the disclosures in APB Opinion 18, paragraph 20d [ASC 323-10-50-3c] should be provided for an equity method investment accounted for using fair value in accordance with SFAS 159 [ASC 825].

2400.5 **Financial statements** required for the equity method investee are generally the same as those that would be required if the equity method investee were a registrant as described in Topic 1, except as noted in Section 2405.4, which relates to the effect of commencing or ceasing use of the equity method, and Section 10220.5, which relates to registrants that are EGCs. Refer to Section 2405.11 regarding age of financial statements and Section 2405.3for audit requirements.

Exceptions: An equity method investee that is a *nonpublic entity*, as that term is defined in GAAP, need not include certain disclosures if specifically excluded from the scope of the related FASB standard. Examples include:

a. Segment information under SFAS 131 [SFAS 131, par. 9 / ASC 280-10-15-3]

b. Certain disclosures about employers' pensions and other postretirement benefits [SFAS 132(R), par. 8 / ASC 715-20-50-5]

c. Earnings per share under SFAS 128 [SFAS 128, par. 1 / ASC 260-10-05-1] *(Last updated: 6/30/2013)*

Section	Description
2405	Required Financial Statements of Equity Method Investees [S-X 3-09]
2410	Measuring Significance of Equity Method Investees Under S-X 3-09
2415	Combined/Consolidated Financial Statements of Equity Method Investees [S-X 3-09]
2420	Summarized Financial Data of Equity Method Investees [S-X 4-08(g), 8-03, 10-01(b)(1)]
2425	"Foreign Business" Investees [S-X 3-09]
2430	Relief
2435	SFAS 159 [ASC 825] Fair Value Option for an Equity Method Investment and S-X 3-09/4-08(g)

2405 Required Separate Financial Statements of Equity Method Investees [S-X 3-09]

2405.1 **Applicability of S-X 3-09 to Smaller Reporting Company Registrants -** S-X 3-09 does **not** apply to smaller reporting company registrants [as defined in S-K 10(f)]. However, S-X 8-03 contains requirements for smaller reporting company registrants to provide summarized financial data of equity method investees. See Section 2420.

2405.2 "**Subsidiaries not consolidated" -** ***Separate Financial Statements***
S-X 3-09 requires that if any of the conditions set forth in S-X 1-02(w) exceed 20 percent, separate annual financial statements for each subsidiary not consolidated should be provided. Since the issuance of S-X 3-09 and S-X 4-08(g), U.S. GAAP has been revised to require consolidation by a parent of a "subsidiary." Therefore, the requirement in S-X 3-09 related to "subsidiaries not consolidated" no longer has practical application. The remaining discussion in this Section 2400 "Equity Method Investments, including Fair Value Option" relates to "50% or less-owned persons," which are discussed in Section 2405.3.

NOTES to SECTION 2405.2

1. ***Background -*** Prior to the issuance of SFAS 94, ARB 51 permitted the exclusion from consolidation of certain non-homogenous subsidiaries (e.g., a finance company of a manufacturer) even though the parent controlled such subsidiaries. In these circumstances, ARB 51, paragraph 21 indicated that summarized information or separate statements of the controlled, but unconsolidated subsidiary may be necessary. S-X 4-08(g) and S-X 3-09 provided presumptive disclosure thresholds for these circumstances. SFAS 94 amended ARB 51 to remove the provision permitting non-consolidation on the basis of non-homogeneity.

2. ***"Subsidiary"-*** is defined in S-X 1-02(x) as follows: a "subsidiary of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries."

2405.3 **"50% or less-owned persons" -** ***Separate Financial Statements of Equity Investments Accounted for using the Equity Method***
(Last updated: 6/30/2013)

- The staff interprets "50% or less-owned persons" to refer to an investment accounted for using the equity method (even if voting ownership exceeds 50%).
- S-X 3-09 requires the registrant to file separate **annual** financial statements for each significant equity method investee for which either the income or the investment test set forth in S-X 1-02(w) exceeds 20 percent for any of the registrant's fiscal years required to be presented in the filing. See Section 2410 for implementation points on measuring significance.
- If significance is met for any fiscal year presented, the registrant should file the investee's separate **annual** financial statements for the same periods that would be required under S-X 3-01 and 3-02 if the investee were a registrant, except as noted in Section 2405.4, which relates to the effect of commencing or ceasing use of the equity method, and Section 10220.5, which relates to registrants that are EGCs. The investee's separate **annual** financial statements must be audited for those periods where either the income or the investment test in S-X 1-02(w) exceeds 20 percent. Other periods presented may be unaudited. For example, if the highest significance of an equity method investment was 15% in 2004, 30% in 2005, and 19% in 2006, the investee's financial statements must be audited for 2005, but may be unaudited for 2004 and 2006 (assuming that the two exceptions noted above do not apply such that three years of the investee's financial statements are required).
- S-X 3-09 does <u>not</u> require separate <u>interim</u> financial statements. Instead, S-X 10-01(b)(1) requires certain summarized interim income statement information of the investee if it is significant. See Section 2420.

NOTES to SECTION 2405.3

1. ***Definition*** **-** The term "50 percent-owned person" is defined in S-X 1-02(j) in relation to ownership of outstanding voting shares and therefore suggests that the literal meaning of "50% or less-owned person" used in S-X 3-09 and S-X 4-08(g) is also premised on ownership of outstanding voting shares. Since the issuance of S-X 3-09 and S-X 4-08(g), the U.S. GAAP consolidation model has changed such that it is possible to own more than 50% of the outstanding voting shares of a person, as defined in S-X 1-02(q), and still account for that investment using the equity method. The staff believes interpreting the phrase "50% or less-owned persons" as an investment accounted for using the equity method is consistent with the type of investment to which S-X 3-09 and S-X 4-08(g) were originally intended to apply.

2. ***Measuring Significance*** – Significance should be measured for each fiscal year presented. The staff believes that the purpose of the S-X 3-09 reference to S-X 1-02(w) is to describe the mechanics of the significance tests, not to limit application of the tests to the most recently completed fiscal year. The asset test in S-X 1-02(w) does not apply. See Section 2410 for implementation points on measuring significance. *(Last updated: 6/30/2010)*

3. ***Interim Financial Statements*** **-** The basis for our conclusion that S-X 3-09 does not require interim financial statements is contained in S-X 3-09(b), which indicates that S-X 3-09 financial statements "shall be as of the same dates and for the same periods as the **audited** [emphasis added] consolidated financial statements required by S-X 3-01 and S-X 3-02." S-X 3-01 and S-X 3-02 do not require interim financial statements to be audited.

4. ***Effect of Different Fiscal Years and One Quarter (or Less) Lag*** – See Section 2410.7.

2405.4 ***Effect of Commencing or Ceasing Use of Equity Method on S-X 3-09 Financial Statements***

(Last updated: 6/30/2010)

For purposes of S-X 3-09, the investee's separate annual financial statements should only depict the period of the fiscal year in which it was accounted for by the equity method. However, CF-OCA will, upon a written request, consider accepting the investee's financial statements for the whole year, if the registrant demonstrates that it is an undue hardship to obtain investee's financial statements through the date it ceases to be accounted for under the equity method.

NOTE to SECTION 2405.4
As noted in Section 2010.3, the acquisition of an investment accounted for using the equity method represents the acquisition of a business for reporting purposes. Consequently, the acquisition is subject to S-X 3-05. Under S-X 3-05, the investee's financial statements would be required for periods prior to the acquisition if S-X 3-05 significance is met. *(Last updated: 6/30/2010)*

2405.5 **Change from Cost Method to Equity Method** - If a registrant's **financial statements are retroactively adjusted** in accordance with APB 18, paragraph 19m [ASC 323-10-35-33] to reflect equity method accounting for an investment previously accounted for under the cost method, S-X 3-09 financial statements, or summarized financial information required by S-X 4-08(g), S-X 8-03, or S-X 10-01(b)(1), may be required for periods in which the cost method was previously used if the significance tests are met.

2405.6 **Lower Tier Investees -** S-X 3-09 applies to an investee accounted for by the equity method by an investee of the registrant. To determine whether separate financial statements of an investee accounted for by the equity method by an investee of the registrant are required, the significance test should be computed based on the materiality of the lower tier investee to the registrant consolidated. [SAB Topic 6K.4.a.]

2405.7 **S-X 3-09 Financial Statement Due Date - Annual Reports - *General***
The filing date for S-X 3-09 financial statements differs depending primarily on four factors:

a. whether the registrant is a domestic issuer or a foreign private issuer;
b. the investee's fiscal year end;
c. both the investee's and the registrant's filing status (e.g., non-accelerated filer, accelerated filer or large accelerated filer), and
d. whether or not the investee is a foreign business. See definition in S-X 1-02(l).

2405.8 **S-X 3-09 Financial Statement Due Date - Annual Reports – *Domestic Issuer AND Domestic Investee***
The financial statements required by S-X 3-09 must be filed within the following number of days after the **investee's** fiscal year-end:

- 60 days if the investee is a large accelerated filer
- 75 days if the investee is an accelerated filer; or
- 90 days for all other investees.

However, if the number of days after the investee's fiscal year-end is before the due date of the registrant's Form 10-K, then the S-X 3-09 financial statements need not be filed prior to the due date of the registrant's Form 10-K. Also, if the

investee's financial statements are due after the registrant's Form 10-K is required to be filed (e.g., registrant is an accelerated filer, but investee is non-accelerated and both have the same year end), the financial statements required by S-X 3-09 should be filed in an amendment to the registrant's Form 10-K.

NOTE to SECTION 2405.8
Exchange Act Rule 12b-25(f) indicates that the 15 calendar day extension provided for the registrant to file its Form 10-K is not applicable to S-X 3-09 financial statements to be filed by amendment to a Form 10-K. See the Division of Corporation Finance's C&DIs for Exchange Act Rules, Question 135.01.

2405.9 **S-X 3-09 Financial Statement Due Date - Annual Reports –**
Foreign Private Issuer AND Domestic Investee
Financial statements required by S-X 3-09 may be filed in an amendment to the Form 20-F within the following number of days after the **investee's** fiscal year end: [S-X 3-09(b)(2)]

- 60 days if the investee is a large accelerated filer
- 75 days if the investee is an accelerated filer; or
- 90 days for all other investees.

However, if the number of days after the investee's year-end noted above is before the due date of the Form 20-F, then the S-X 3-09 financial statements need not be filed prior to the due date of the Form 20-F.

NOTE to SECTION 2405.9
The 15 calendar day extension provided for the registrant to file its Form 20-F is not applicable to S-X 3-09 financial statements to be filed by amendment to a Form 20-F. See the analogous guidance in Exchange Act Rule 12b-25(f).

2405.10 **S-X 3-09 Financial Statement Due Date - Annual Reports –**
Investee is a Foreign Business
(*Last updated: 3/31/2009)*

S-X 3-09 financial statements of a foreign business must be filed within six months after the **investee's** year-end, but in no event earlier than the due date of the registrant's annual report (i.e., Form 10-K or 20-F). [S-X 3-09(b)(1) and (b)(2)] If the investee's financial statements are due after the registrant's annual report is required to be filed, the financial statements required by S-X 3-09 should be filed in an amendment to the registrant's annual report.

NOTES to SECTION 2405.10

1. The 15 calendar day extension provided for the registrant to file its Form 10-K/20-F is not applicable to S-X 3-09 financial statements to be filed by amendment to a Form 10-K/20-F. [Exchange Act Rule 12b-25(f) for Form 10-K and by analogy for Form 20-F]

2. In 2008, the SEC adopted revisions to Form 20-F. See Section 6000. As part of those revisions, effective for fiscal years ending on or after December 15, 2011, annual reports on Form 20-F will be required to be filed within four months after a foreign private issuer's fiscal year end rather than six months after fiscal year end. [General Instruction A to Form 20-F] This revision to the annual report deadline does not change the requirement to file S-X 3-09 financial statements of a foreign business within six months after the investee's fiscal year end in annual reports of domestic issuers and foreign private issuers. If the investee's financial statements are due after the registrant's annual report is required to be filed, the S-X 3-09 financial statements may continue to be filed by amendment to the registrant's annual report on Form 20-F.

2405.11 **Updating S-X 3-09 Financial Statements - Registration or Proxy Statement**

If the investee is a foreign business, S-X 3-09 financial statements may not be older than 15 months. [S-X 3-12(f) references Item 8.A.4. Form 20-F] If the investee is not a foreign business, S-X 3-09 financial statements must be updated within the following number of days after the investee's fiscal year end: [S-X 3-09(b) references S-X 3-01 and S-X 3-02]

- 60 days if the investee is a large accelerated filer
- 75 days if the investee is an accelerated filer; or
- 90 days for all other investees.

NOTES to SECTION 2405.11

1. As noted in Section 2405.3, interim financial statements are not required under S-X 3-09 (although S-X4-08(g) information may be required). Therefore the updating requirements relate to annual financial statements.

2. The discussion in S-X 3-09(b) cited above relates to registration and proxy statements. The discussion in S-X 3-09(b)(1) and (b)(2) only relate to annual reports.

3. "Foreign business" is defined in S-X 1-02(l).

2410 Measuring Significance of Equity Method Investees Under S-X 3-09

NOTE to SECTION 2410

With the exception of Section 2410.1, the guidance in Section 2410 also applies to calculating S-X 4-08(g) significance. Section 2410.1 does not apply to S-X 4-08(g) significance because the number of significance tests and the significance thresholds used under S-X 4-08(g) can differ from the number of significance tests and the significance thresholds used under S-X 3-09. See Section 2420.1. *(Last updated: 6/30/2010)*

2410.1 **General -** As noted in Section 2405.3, S-X 3-09 requires the registrant to file separate **annual** financial statements for each significant equity method investee for which either the income or the investment test set forth in S-X 1-02(w) exceeds 20% for any of the registrant's fiscal years required to be presented in the filing (see Note 2 to Section 2405.3). The asset test in S-X 1-02(w) does not apply. *(Last updated: 6/30/2010)*

2410.2 **Amounts Used to Measure Significance Under S-X 3-09**
(Last updated: 9/30/2010)

The S-X 1-02(w) income test is based on the registrant's "equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests" (i.e., the numerator) compared to "such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year" (i.e., the denominator). Such equity in an investee's pretax earnings or loss is not required to be shown or disclosed in the registrant's financial statements, so the amount to be used as the numerator and denominator in the income test must be calculated.

NOTE to SECTION 2410.2

Significance should be measured for each fiscal year presented. The staff believes that the purpose of the S-X 3-09 reference to S-X 1-02(w) is to describe the mechanics of the significance tests, not to limit application of the tests to the most recently completed fiscal year. *(Last updated: 9/30/2010)*

2410.3 **Income Test – Implementation Point 1 – *Calculating the Numerator***

(Last updated: 9/30/2010)

The numerator is calculated based on the registrant's proportionate share of the pre-tax income from continuing operations reflected in the separate financial statements of the investee prepared in accordance with U.S. GAAP for the period in which the registrant recognizes income or loss from the investee under the equity method adjusted for any basis differences. In determining the basis differences that should be included for this test, the registrant should consider ASC 323-10-35-34 and ASC 323-10-35-32A. While not an exclusive list, items impacting net income of the registrant that should be excluded from the test are: impairment charges at the investor level, gains/losses from stock sales by the registrant; dilution gains/losses from stock sales by the investee, preferred dividends.

See the related discussion about the effect of different fiscal year ends and one quarter (or less) lags at Section 2410.7. Foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB should use IFRS as issued by the IASB in performing this analysis. The aforementioned guidance does not apply if the registrant elected to use the fair value option. See Section 2435.

NOTES to SECTION 2410.3

1. ***Numerator*** **-** ASC 323-10-45-2 states that the investor's share of extraordinary items and its share of accounting changes reported in the financial statements of the investee shall be classified separately. Such amounts are not included in the numerator of the income test.

2. ***Numerator*** **-** In the year significant influence is either attained or lost, the registrant's equity in the income or loss of the investee presented in the registrant's income statement will only include results of the investee for the portion of the year during which the investment was accounted for using the equity method. Do not annualize these amounts when calculating S-X 3-09 significance. *(Last updated: 9/30/2010)*

2410.4 **Income Test – Implementation Point 2 – *Calculating the Denominator***
(Last updated: 9/30/2010)

Using the income statement presentation depicted in S-X Article 5 as an example, the calculation of the denominator of the income test should begin with the amount identified at S-X 5-03(b)10 (i.e., the registrant's income or loss before income tax expenses and other items) adjusted to:

a. **Include** the registrant's equity in the earnings (or loss) of the investee from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any noncontrolling interests of the investee.

b. **Exclude** the portion of the registrant's income or loss before income tax expenses and other items identified at S-X 5-03(b)10 attributable to any non-controlling interests in the registrant's subsidiaries.

2410.5 **Income Test – Implementation Point 3 – *Income Averaging***
The registrant should **not** exclude its equity in the income or loss of the investee when determining whether the registrant qualifies for income averaging under computational note 2 to S-X 1-02(w). If a registrant qualifies to use income averaging and the tested equity method investee incurred a loss, then, pursuant to computational note 1 to S-X 1-02(w), the registrant's equity in the income or loss of the investee should be excluded from the income of the registrant when computing the registrant's average income.

2410.6 **Income Test – Implementation Point 4 - *Intercompany Transactions***
(Last updated: 3/31/2009)

Because an equity method investee is not consolidated, intercompany transactions should **not** be eliminated when measuring significance of an equity method investee.

2410.7 **Income Test – Implementation Point 5 - *Effect of Different Fiscal Years and One Quarter (or Less) Lag***
(Last updated: 6/30/2010)

The investee's financial statements a registrant is required to file under S-X 3-09 may differ from the investee's financial results used by the registrant to calculate the registrant's equity in the income or loss of the investee presented in the registrant's financial statements. This may occur when a registrant and an investee have different fiscal years or when they have the same fiscal year, but the registrant computes its equity in the income or loss of the investee on a consistent one quarter (or less) lag basis. In these circumstances, the S-X 3-09 significance tests should be determined using the investee's financial results used by the registrant to calculate the registrant's equity in the income or loss of the investee presented in the registrant's financial statements, not amounts

derived from the investee's financial statements required to be filed under S-X 3-09. For example, consider a registrant with a December 31 year end and an investee with a June 30 year end. Assume the registrant consistently recognizes its equity in the income of the investee using the investee's twelve months ended September 30. In this case, the registrant calculates the S-X 3-09 significance tests consistent with FRM 2410.2 using the investee's results for the twelve months ended September 30. If the investee is significant, the investee's financial statements for the twelve months ended June 30 would satisfy the requirements of S-X 3-09 because those are the annual financial statements the investee would be required to present pursuant to S-X 3-01 and 3-02 if the investee were a registrant.

2410.8 Income Test – Implementation Point 6 - Effect of Discontinued Operations or Retrospectively Applied Change in Accounting Principle

(Last updated: 3/17/2016)

If a registrant has a discontinued operation or a retrospectively applied change in accounting principle subsequent to the registrant's filing of its Form 10-K, the staff will not object if a registrant uses its historical financial statements in its most recent Form 10-K to determine whether S-X 3-09 financial statements and S-X 4-08(g) financial information is required. In other words, the registrant need not recompute significance using the financial statements that give retrospective effect to the discontinued operation or change in accounting principle and are included or incorporated into the registration or proxy statement. In addition, the staff will not object if a registrant, when filing a subsequent Form 10-K, does not recompute S-X 3-09 and S-X 4-08(g) significance for periods earlier than the one during which a retrospectively applied change in accounting principle occurred. However, for a discontinued operation, a registrant must recompute S-X 3-09 and S-X 4-08(g) significance for all periods presented. As a result, a previously insignificant investee may become significant as a result of a discontinued operation.

Discontinued Operation and Change in Accounting Principle Exception for Form 10-K for the Year of Disposal

S-X 3-09 financial statements and S-X 4-08(g) financial information for a disposed equity method investment will not be required in the Form 10-K for the year of disposal if (A) in the year an equity method investment is disposed, either a different event occurs after the disposal requiring a component of the registrant to be reported as a discontinued operation or a change in accounting principle is adopted by the registrant in the year of the disposal; and (B) the equity method investment is not significant for any of the registrant's fiscal years required to be presented in the Form 10-K, including the year of disposal, based on the historical financial statements of the registrant that have not been retrospectively adjusted to give effect to the discontinued operation or change in accounting principle.

2410.9 **Multiple Series Registrants - S-X 3-09 Significance Calculations**
(Last updated: 9/30/2009)

a. Multiple series registrants are formed as trusts or partnerships under state law, which establishes the registrant as a legal entity and as an issuer. As an issuer, the registrant may conduct offerings of interests in different series where such series are not considered registrants or even legal entities. However, each series is considered a security. Typically, investors will invest in one or more individual series being offered by a registrant, and the capital raised by a particular series is invested separately from the capital of any other series of the registrant. For purposes of SEC reporting, the trust (or partnership) is the sole registrant, not the individual series. However, separate financial statements of each individual series must be provided because an investor invests in an individual series.

b. Significance must be assessed at the individual series level for purposes of S-X 3-09 and 4-08(g) to determine if separate financial statements or summarized financial data of any investments made by an individual series must be provided. Even though the trust or partnership is the issuer, that issuer status does not negate the requirement for series level disclosure and the provision of series level financial statements under S-X 3-09 and 4-08(g).

   For example: Series A is one of 5 series within a registrant and the registrant's Form 10-K includes the financial statements of all such series. Series A made an investment which has a greater than 20% significance level to Series A (but represents only 5% significance to the registrant overall). Separate financial statements for the investment must be provided in the registrant's 10-K under the provisions of S-X 3-09.

For further discussion about multiple series registrants, see the Division of Corporation Finance's C&DIs for Securities Act Sections, Question 104.01.

2415 Combined/Consolidated Financial Statements of Equity Method Investees

S-X 3-09 allows for the presentation of combined or consolidated financial statements (where appropriate) if financial statements are required for two or more investees. Combined financial statements generally are appropriate only for entities under common control or common management, and then only for periods in which that condition existed. [ARB 51 paragraphs 22 and 23 / ASC 810-10-55-1B and ASC 810-10-45-10]

2420 Summarized Financial Data of Equity Method Investees
[S-X 4-08(g), S-X 8-03, S-X 10-01(b)(1), and SAB Topic 6K.4.b.]

2420.1 Overview
(Last updated: 3/31/2009)

NOTE to SECTION 2420.1
With the exception of Section 2410.1, the guidance in Section 2410 also applies to calculating S-X 4-08(g) significance. Section 2410 includes important clarifying points, which may not be reproduced below, related to measuring S-X 4-08(g) significance. Therefore, you should refer to Section 2410 (except Section 2410.1) as well as Section 2420 when seeking guidance on calculating S-X 4-08(g) significance. Section 2410.1 does not apply to S-X 4-08(g) significance because the number of significance tests and the significance thresholds used under S-X 4-08(g) can differ from the number of significance tests and the significance thresholds used under S-X 3-09. See further discussion in the chart below and Note 3 to Section 2420.3.
(Last updated: 6/30/2010)

The requirements to present summarized financial data of the registrant's equity method investees in a footnote to the registrant's financial statements apply to all registrants. The significance tests and thresholds used to determine whether such disclosure is required as well as the level of disclosure may differ depending on whether:

a. The registrant is a smaller reporting company and
b. The registrant's financial statements are for an annual or interim period.

The following table includes an overview of the sources of these requirements as well as the number of significance tests that must be computed and the significance thresholds. See the Sections noted in the chart for further detail.

Registrant	Annual Financial Statements	Interim Financial Statements
Other Reporting Companies *Source:* *Number of Significance Tests:* *Significance Threshold*:	 S-X 4-08(g) 3 Exceeds 10% See Sections 2420.3 to 2420.5	 S-X 10-01(b)(1) 2 Exceeds 20% See Sections 2420.6 to 2420.8
Smaller Reporting Companies *Source:* *Number of Significance Tests:* *Significance Threshold*:	 S-X 8-03 3 Exceeds 20% See Section 2420.9	 S-X 8-03 3 Exceeds 20% See Section 2420.9

2420.2 **Definitions** – The summarized financial data requirements apply to "Subsidiaries Not Consolidated" and "50% or Less-owned Persons." See Sections 2405.2 and 2405.3 for definitions of these terms.

2420.3 **Other Reporting Companies - Annual Financial Statements - *Overview* [S-X 4-08(g)]**
(Last updated: 3/31/2013)

Determine significance of each investee for each of the registrant's fiscal years required to be presented in the filing using all 3 tests in S-X 1-02(w) (investment, asset and income tests). Present summarized financial data described in Section 2420.4 in the registrant's financial statement footnotes for **all** investees (not just the investee that is significant) if significance of any individual or any combination of investee(s) exceeds 10%. See exception below at Section 2420.5 *Interaction of S-X 4-08(g) with S-X 3-09.*

NOTES to SECTION 2420.3

1. ***De Minimis Exception - Annual Financial Statements*** - SAB Topic 6K.4.b. notes that the staff recognizes that exclusion of summarized information for certain, but not all, investees may be appropriate in some circumstances where it is impracticable to accumulate and the summarized information to be excluded is *de minimis.*

2. ***Significance – Number of Tests*** - The requirement to determine significance for purposes of S-X 4-08(g) using all 3 tests in S-X 1-02(w) differs from S-X 3-09, which only requires significance to be determined based on 2 tests (investment and income tests). In 1994, S-X 3-09 was revised to delete the asset test; however the asset test was retained for S-X 4-08(g) to ensure a minimum level of financial information about an investee when the investment test significance was small, but the registrant's proportionate interest in the

investee's assets was material, as might be the case for a highly leveraged investee.

3. ***Significance – Number of Periods*** - Significance should be measured for each fiscal year presented. The staff believes that the purpose of the S-X 4-08(g) reference to S-X 1-02(w) is to describe the mechanics of the significance tests, not to limit application of the tests to the most recently completed fiscal year. *(Last updated: 6/30/2010)*

2420.4 **Other Reporting Companies - Annual Financial Statements – *Minimum Disclosure*** [S-X 4-08(g) references S-X 1-02(bb)]
(Last updated: 6/30/2010)
If S-X 4-08(g) significance is met in **any** fiscal year presented, the registrant's financial statement footnotes for each of the registrant's fiscal years presented should include, at a minimum, the following summarized financial data for **all** investees (not just the investees that are significant): current and noncurrent assets and liabilities; redeemable stock and noncontrolling interests; revenues; gross profit; income from continuing operations; and net income). The summarized annual financial data for each investee may be aggregated, but it should not be labeled "unaudited."

2420.5 **Other Reporting Companies - Annual Financial Statements – *Interaction of S-X 4-08(g) with S-X 3-09*** [S-X 4-08(g) and SAB Topic 6K.4.b.]
SAB Topic 6K.4.b. notes that if a registrant includes separate financial statements (i.e., S-X 3-09 financial statements) for an investee in its annual report, then it need not include the summarized financial information required by S-X 4-08(g) for that investee. The reason for this conclusion is that separate financial statements of an investee would include the minimum information required by S-X 4-08(g) and therefore such information need not be repeated in the registrant's financial statement footnotes. As noted in Section 2405, in certain circumstances S-X 3-09 financial statements may be filed after the original due date of the registrant's Form 10-K. If S-X 3-09 financial statements are not filed at the same time as the Form 10-K, the registrant must include S-X 4-08(g) summarized financial information in its audited financial statements included in the Form 10-K.

NOTE to SECTION 2420.5
SAB Topic 6K.4.b. discusses the Annual Report to Shareholders. The Annual Report to Shareholders differs from the Annual Report on Form 10-K in certain significant respects. See Proxy Rules 14a-3 for a discussion of the Annual Report to Shareholders. However, CF-OCA applies the rationale in SAB Topic 6K.4.b. to the Annual Report on Form 10-K.

2420.6 **Other Reporting Companies - Interim Financial Statements – *Overview*** [S-X 10-01(b)(1)]
(Last updated: 3/31/2009)

Present summarized income statement information for each investee for which both:

a. Investee is significant, measured using either the income or investment tests described in S-X 1-02(w) substituting 20% for 10%; and

b. Form 10-Q financial information (i.e., Part 1 of Form 10-Q) would be required if investee was a registrant. Examples of registrants that do not need to file Form 10-Q Part 1 include foreign private issuers, asset-backed issuers, mutual life insurance companies and certain mining companies. See Exchange Act Rule 13a-13 and Exchange Act Rule 15d-13 for a complete list and explanation.

NOTE to SECTION 2420.6
Measuring Significance – See Implementation points in Section 2420.7.

2420.7 **Other Reporting Companies - Interim Financial Statements – *Significance Tests Implementation Points*** [S-X 10-01(b)(1)]

a. *Income Test:* Use the year-to-date interim period income statement for the current year in lieu of either the quarterly financial statements or the financial statements for the most recently completed fiscal year (except the first quarter where the quarterly and year-to-date period are the same); and
b. *Income Test*: Omit income averaging [i.e., computational note 2 of S-X 1-02(w)].
c. *Investment Test*: Use both the most recent balance sheet, which should correspond to the end of the year-to-date (cumulative) interim period used to measure significance under the income test, and the balance sheet as of the end of the most recently completed fiscal year that is included in the quarterly report.

NOTE to SECTION 2420.7
Investment Test – It is important to use the balance sheet as of the end of the most recently completed fiscal year that is included in the quarterly report as it may differ from the corresponding balance sheet included in the most recently filed Form 10-K if a transaction or event has occurred since filing the Form 10-K that requires retrospective application in the subsequently filed Form 10-Q, such as a change in accounting principle.

2420.8 **Other Reporting Companies - Interim Financial Statements – *Minimum Disclosure*** [S-X 10-01(b)(1)]

(Last updated: 6/30/2010)

When interim summarized income statement information is required, it need only be provided for investees that are significant. Minimum disclosure for each significant investee, which may be aggregated with such minimum disclosure for other significant investees, must include: revenues; gross profit; income from continuing operations; and net income. If S-X 10-01(b)(1) significance is met for any year-to-date (cumulative) interim period included in a quarterly report (See Sections 2420.6 and 2420.7), then the registrant should present the minimum disclosure for both the current and prior year comparative year-to-date periods included in that quarterly report.

2420.9 **Smaller Reporting Companies – Annual and Interim Financial Statements [S-X 8-03]**

(Last updated: 6/30/2010)

Determine significance of each investee for any of the registrant's fiscal years required to be presented in the filing using all 3 tests in S-X 1-02(w) (investment, asset and income tests), substituting 20% for 10%. If significance of any individual or any combination of investee(s) exceeds 20%, include in the registrant's financial statement footnotes summarized financial data for **all** investees for each period presented. Summarized annual financial data should not be labeled "unaudited." Interim financial statements need only include summarized financial data for each investee that is significant. Summarized financial data should quantify at a minimum the investee's: revenues; gross profit; income from continuing operations; and net income.

NOTES to SECTION 2420.9

1. ***Source of Requirement*** - The smaller reporting company requirement for summarized financial information is located within the S-X 8-03 requirements for interim financial statements. Notwithstanding the location of this requirement, the staff applies the S-X 8-03 requirement for summarized financial information to both annual and interim financial statements.

2. ***Significance*** - S-X 8-03(b)(3) states that significance should be determined based on "a registrant's consolidated assets, equity or income from continuing operations." Comparing a registrant's investment to its equity, rather than its total assets as required in S-X 4-08(g) and S-X 10-01(b)(1), would likely have the unintended consequence of requiring a smaller reporting company registrant [as defined in S-K 10(f)] to disclose summarized financial information more often than a registrant that is not a smaller reporting company. The staff did not intend for the disclosure requirements for a smaller reporting company to be more onerous than those for a registrant that is not a smaller reporting company. Therefore, the staff determines significance for purposes of reporting

summarized financial information by smaller reporting companies in a manner consistent with S-X 1-02(w), substituting 20% for 10%.

3. ***De Minimis Exception - Annual Financial Statements*** - SAB Topic 6K.4.b. notes that the staff recognizes that exclusion of summarized information for certain, but not all, investees may be appropriate in some circumstances where it is impracticable to accumulate and the summarized information to be excluded is *de minimis.*

2420.10 **Change from Cost Method to Equity Method** - If a registrant's **financial statements are retroactively adjusted** in accordance with APB 18, paragraph 19m [ASC 323-10-35-33] to reflect equity method accounting for an investment previously accounted for under the cost method, S-X 3-09 financial statements, or summarized financial information required by S-X 4-08(g), S-X 8-03, or S-X 10-01(b)(1), may be required for periods in which the cost method was previously used if the significance tests are met.

2420.11 **Multiple Series Registrants** - Information required by S-X 4-08(g) must be provided on an individual series level. See Section 2410.9 for more information. *(Last updated: 9/30/2009)*

2425 "Foreign Business" Investees

Financial statements required by S-X 3-09 for an investee that meets the definition of a foreign business [see S-X 1-02(l)] need only comply with the reporting requirements of Item 17 of Form 20-F and are subject to the updating requirements of Item 8.A.4 of Form 20-F. Reconciliation requirements are described at Topic 6.

2430 Relief

Registrants may request that CF-OCA grant relief in unusual situations where strict application of the rules and guidelines results in a requirement that is unreasonable under the circumstances. Favorable requests for relief from S-X 3-09 often do not provide a sufficient basis for also granting relief from the disclosure required by S-X 4-08(g).

2435 SFAS 159 [ASC 825] Fair Value Option for an Equity Method Investment and S-X 3-09 and S-X 4-08(g)

2435.1 **SFAS 159 [ASC 825] Fair Value Option** - ***Background*** - S-X 3-09 and S-X 4-08(g) did not contemplate the fair value option. Those rules were put in place to provide presumptive disclosure thresholds for separate financial statements and/or summarized financial information of entities accounted for using the equity method, consistent with the requirements of APB Opinion 18, paragraph 20d [ASC 323-10-50-3c]. SFAS 159 [ASC 825] requires, in part, that companies

electing the fair value option for an investee comply with the disclosure requirements in APB Opinion 18, paragraph 20d [ASC 323-10-50-3c].

2435.2 **SFAS 159 [ASC 825] Fair Value Option – *Presumptive Disclosure Thresholds for Summarized Financial Information and Separate Financial Statements of Investees* -** The staff believes that the significance tests in S-X 3-09 and S-X 4-08(g), as modified below, provide analogous guidance for the SFAS 159 [ASC 825] requirement to comply with the disclosure requirements in APB Opinion 18, paragraph 20d [ASC 323-10-50-3c]. In applying the S-X 3-09 and S-X 4-08(g) disclosure thresholds to investments that would have been accounted for under the equity method had the fair value option not been elected by the registrant, the staff believes that the income test should be computed using as the numerator the change in the fair value reflected in the registrant's income statement rather than the registrant's equity in the earnings of the investee computed as if the equity method had been applied. If a registrant believes that applying the guidance in S-X 3-09 and S-X 4-08(g) by analogy as described above results in a requirement to provide more information than is reasonably necessary to inform investors, the registrant is encouraged to consult with CF-OCA.

2435.3 **SFAS 159 [ASC 825] Fair Value Option – *MD&A Disclosure of Methods and Assumptions Used to Determine Fair Value* -** The staff also cautions registrants that investees accounted for using the fair value option may be material at levels below the disclosure thresholds in S-X 3-09 and S-X 4-08(g). When investees accounted for using the fair value option are material to an understanding of results of operations, financial position, or cash flows, registrants should consider whether qualitative and quantitative analysis in MD&A is required by S-K 303, whether or not the investee's separate financial statements are provided and/or the registrant's financial statement footnotes include the investee's summarized financial information. Specifically, registrants should consider describing in MD&A the methods and underlying assumptions used in determining fair value, and analyzing the effects of any changes therein from the previous period(s). Registrants should be mindful that such an analysis may be necessary even when material changes in significant assumptions have offsetting effects.

2500 GUARANTORS OF SECURITIES

[S-X 3-10 and S-X 8-01 Note 3]

(Last updated: 6/30/2011)

Section	Description
2500	Guarantors of Securities
2510	Exceptions to the General Rule
2515	Condensed Consolidating Financial Information
2520	Implementation Issues

2530 Recently Acquired Guarantor Subsidiaries
2540 Periodic Reporting by Subsidiary Issuers and Guarantors

2500.1 **Requirement for Full and Complete Disclosure -** Debt or preferred stock registered under the Securities Act may be guaranteed by one or more affiliates of the issuer. As described in Section 2500.2, S-X 3-10 and S-X 8-01 Note 3 require financial statements of guarantors of registered securities to be included in registration statements and Exchange Act reports. In certain circumstances described in Section 2510.1, S-X 3-10 and S-X 8-01 Note 3 provide relief from the requirement to provide full financial statements for each guarantor. Qualification for such relief does not relieve the issuer of its responsibility to provide full and complete disclosure of:

a. the legal aspects of the guarantee arrangement that would be material for an investor to evaluate the sufficiency of the guarantee,
b. financial information in sufficient detail to allow investors to determine the nature of the assets held by, and the operations and cash flows of, each of the guarantors, including the investors' priority position in the event of a default by the issuer, and
c. any significant restrictions on the issuer's ability to obtain funds from its guarantors by dividend, loan, or other means.

2500.2 **General Rule**
Unless an exception applies (see Section 2510.1), each issuer of a guaranteed security and each guarantor of that security must file the financial statements specified by Regulation S-X for a registrant. [S-X 3-10(a)]

NOTES to SECTION 2500.2

1. The exceptions involve, in lieu of a subsidiary issuer's or subsidiary guarantor's full financial statements, financial and/or narrative disclosures about the subsidiary issuer or guarantor in the financial statements of the parent company that issued or guaranteed the registered security.
(Last updated: 6/30/2010)

2. The financial statements of an entity that is not an issuer or guarantor may not be substituted for the financial statements of the parent company even if the financial statements would be virtually identical to those of the parent company. [Note to S-X 3-10(a)(2)]

2510 Exceptions to the General Rule

(Last updated: 6/30/2010)

2510.1 The exceptions in the table below relate to the structure of the guaranteed transaction. The exceptions apply only when:

- each subsidiary issuer/guarantor is 100% owned and
- each guarantee of the security being registered is full, unconditional, and joint and several with all other subsidiary guarantees.

These terms are defined in S-X 3-10(h) and are included below in Sections 2510.3 and 2510.4.

Also, the exceptions are available only for guaranteed securities that are "debt or debt-like." The characteristics that identify a security as debt or debt-like are

- the issuer has a contractual obligation to pay a fixed sum at a fixed time; and
- where the obligation to make such payments is cumulative, a set amount of interest must be paid.

NOTE TO SECTION 2510.1
Further discussion of the meaning of debt or debt-like is provided in Release No. 33-7878.

If an exception applies, the parent company may provide the disclosure specified in the following table instead of full financial statements of the subsidiary issuer or guarantor. Relief from providing full financial statements of the subsidiary issuer or guarantor does not relieve the parent company of its obligation to provide the disclosure described in Section 2500.1. In certain exceptions described in the table below, the disclosure required for relief includes condensed consolidating financial information. See Section 2515 for a description of condensed consolidating financial information.

Exceptions	Disclosure Required for Relief
Finance subsidiary issues securities guaranteed by its parent company; no other subsidiary guarantees	Narrative disclosure about the guarantee in a note to the parent company's financial statements [S-X 3-10(b)]
Operating subsidiary issues securities guaranteed by its parent company; no other subsidiary guarantees	Condensed consolidating financial information in a note to the parent company's financial statements [S-X 3-10(c)]
Finance or operating subsidiary issues	Condensed consolidating financial

Exceptions	Disclosure Required for Relief
securities guaranteed by its parent company; one or more other subsidiary guarantees	information in a note to the parent company's financial statements [S-X 3-10(d)]
One finance or operating subsidiary guarantees securities issued by its parent company	Condensed consolidating financial information in a note to the parent company's financial statements [S-X 3-10(e)]
More than one finance or operating subsidiary guarantees securities issued by its parent company	Condensed consolidating financial information in a note to the parent company's financial statements [S-X 3-10(f)]
All subsidiaries guarantee securities issued by their parent company and the parent company has no independent assets or operations. This condition is also met when any non-guarantor subsidiaries are minor (their total assets, stockholders' equity, revenues, income from continuing operations, and cash flows from operating activities, individually and in the aggregate, are less than 3% of the parent company's consolidated totals).	Narrative disclosure about the guarantee in a note to the parent company's financial statements [S-X 3-10(c),(e),(f)]

NOTE to SECTION 2510.1

If one or more of the guarantor subsidiaries is **not** 100% owned, or if one or more of the guarantees is not full and unconditional, the issuer must file full audited financial statements of those guarantor subsidiaries pursuant to S-X 3-10(a). Unaudited interim financial statements of those guarantor subsidiaries would also be required in a registration statement or Form 10-Q. MD&A and selected financial data for any guarantor subsidiary that is **not** 100% owned should also be provided if required for the parent. If full audited financial statements are required for a 100% owned guarantor (e.g., because one or more of the guarantees is not full and unconditional), provide management's narrative analysis of the material changes between the most recent fiscal year presented and the fiscal year immediately preceding it. See General Instruction I of Form 10-K. *(Last updated: 3/31/2009)*

2510.2 **Applicability to Co-Issuers -** The exceptions in Section 2510.1 also apply to subsidiaries that co-issue, rather than guarantee, securities issued by their parent company.

2510.3 **Definition – 100%-owned** - A subsidiary is 100% owned if all of its outstanding voting shares are owned, either directly or indirectly, by the parent company [S-X 3-10(h)]. For a non-corporate subsidiary, all interests must be owned by the parent company. Registrants with questions about these definitions should contact CF-OCC.

2510.4 **Definition – Full and Unconditional** - A guarantee is full and unconditional if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable [S-X 3-10(h)]. Registrants with questions about this definition should contact CF-OCC.

An arrangement that permits a guarantor to opt out of its obligation prior to or during the term of the debt is not a full and unconditional guarantee. *(Last updated: 12/31/2010)*

See discussion at Section 2510.5 regarding the availability of S-X 3-10 notwithstanding the existence of arrangements that provide for the release of subsidiary guarantees. *(Last updated: 6/30/2011)*

2510.5 **Subsidiary Guarantee Release Provisions** – A subsidiary that guarantees its parent's debt securities pursuant to an indenture that provides for the subsidiary's guarantee to be released automatically under customary circumstances may rely on S-X 3-10, provided the other requirements of S-X 3-10 are met. These customary circumstances include, for example, when:

- the subsidiary is sold or sells all of its assets;
- the subsidiary is declared "unrestricted" for covenant purposes;
- the subsidiary's guarantee of other indebtedness is terminated or released;
- the requirements for legal defeasance or covenant defeasance or to discharge the indenture have been satisfied;
- the rating on the parent's debt securities is changed to investment grade; or
- the parent's debt securities are converted or exchanged into equity securities.

Registrants with questions about these and other types of customary circumstances in which S-X 3-10 may be available notwithstanding the existence of arrangements that provide for the release of subsidiary guarantees should contact CF-OCC. Registrants should not characterize subsidiary guarantees as full and unconditional without disclosure describing any

qualifications to the subsidiary guarantees (e.g., the circumstances in which they could be released). *(Last updated: 9/30/2011)*

2515 Condensed Consolidating Financial Information [S-X 3-10(i)]

(Last updated: 6/30/2011)

2515.1 ***Which Filings***

Inclusion of the disclosure outlined below is a condition to relief from the full financial statement requirement. The disclosure must be provided in the registration statement that registers the guaranteed securities and in the parent company's subsequent annual reports on Form 10-K and quarterly reports on Form 10-Q.

2515.2 ***Form and Content - General***

Condensed consolidating financial information should follow the general guidance in S-X 10-01 concerning form and content. However, the condensed consolidating financial information should be in sufficient detail to allow investors to determine the nature of the assets held by, and the operations and cash flows of, each of the consolidating groups and include a discussion of any significant restrictions on the parent's and the guarantors' ability to obtain funds from their subsidiaries by dividend or loan. Additional financial and narrative information about individual guarantors should be disclosed if the information would be material for an investor to evaluate the sufficiency of the guarantee. In addition, condensed consolidating information presented in accordance with the general guidance on form and content in S-X 10-01 should include a total for comprehensive income presented in either a single continuous statement or in two separate but consecutive statements. See footnote 2 to Section 1110.1. *(Last updated: 12/31/2011)*

NOTE to SECTION 2515.2

For public entities, the amendments in ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income, and ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05, are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 with early adoption permitted. The guidance must be applied retrospectively for all periods presented in the financial statements. *(Last updated: 12/31/2011)*

2515.3 ***Form and Content - Columnar Presentation***

Condensed consolidating financial information must be provided in a note to the parent company's consolidated financial statements. Where the parent

company's financial statements are audited, the condensed consolidating financial information must be audited. Separate columns should depict:

a. the parent company,
b. the subsidiary issuer(s),
c. the subsidiary guarantor(s), on a combined basis,
d. the non-guarantor subsidiar(ies), on a combined basis,
e. consolidating adjustments, and
f. total consolidated amounts.

Additional columns may be necessary for:

- each subsidiary issuer or guarantor not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries (inclusion of a separate column does not relieve that subsidiary of its separate requirement to file full financial statements)
- each subsidiary issuer or guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees.

NOTE to SECTION 2515.3

The non-guarantor column may be eliminated if the non-guarantor subsidiaries, individually and in the aggregate, are minor. S-X 3-10(h)(6) states that a subsidiary is *minor* if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount.

The "minor" definition applies to both direct and indirect subsidiaries of the parent. That is, non-guarantor subsidiaries that are more than minor prevent the use of the narrative approach, whether owned directly by the parent or indirectly through another subsidiary.

For a registration statement, "minor" subsidiary status is determined as of the end of the most recent annual period included in the financial statements. For periodic reporting, it is determined at the end of each annual and quarterly reporting period. Changes in columnar presentation as a result of changes in the "minor" status of subsidiaries should ordinarily be reflected prospectively beginning with the period of the change in status. *(Last updated: 12/31/2010)*

2515.4 ***Reconciliation Requirement***

Where the parent company's consolidated financial statements are prepared on a comprehensive basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, reconcile the information in each column of the condensed consolidating financial information to U.S. GAAP to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation

may be limited to the information required by Item 17 of Form 20-F. The reconciling information need not duplicate information elsewhere in the reconciliation of the consolidated financial statements.

2515.5 **No Relief for Summarized Financial Information -** Inclusion of summarized financial information of subsidiary issuers and guarantors does not provide relief from the full financial statement requirements of S-X 3-10(a).

2520 Implementation Issues

(Last updated: 6/30/2010)

Subsidiaries That File Full Financial Statements Under S-X 3-10(a) – Such subsidiaries must comply with all reporting obligations of an issuer. For example, they must provide all applicable S-K disclosures, ICFR assessments, reports and disclosures, financial statements of acquired businesses and equity method investees under S-X 3-05 and 3-09, etc.

2530 Recently Acquired Guarantor Subsidiaries [S-X 3-10(g)]

2530.1 ***General*** - If historical operations for a significant recently acquired subsidiary issuer or guarantor are not included in the audited consolidated financial statements of the parent company for at least nine months, separate pre-acquisition financial statements of the recently acquired subsidiary are required.

2530.2 ***Significance Test***

If the net book value or purchase price, whichever is greater, of the subsidiary is 20% or more of the principal amount of the securities being registered, financial statements are required. Acquisitions of a group of related subsidiary issuers or guarantors are aggregated for purposes of applying this test. "Related" has the same meaning as in S-X 3-05. "Purchase Price" should be determined in the same manner as the numerator of the investment test under S-X 3-05. See discussions at Section 2015.15 for "related" and Sections 2015.5 and 2015.6 for "purchase price."

2530.3 ***Periods to be Filed***

(Last updated: 3/31/2009)

Audited financial statements for the most recent fiscal year preceding the acquisition and unaudited interim financial statements for the periods specified by S-X 3-01 and 3-02. If the subsidiary is a foreign business, the financial statements may be presented in conformity with Item 17 of Form 20-F and Item 8.A of Form 20-F.

NOTES to SECTION 2530.3

1. Pre-acquisition financial statements of a foreign business filed pursuant to S-X 3-10(g) may continue to be presented in conformity with Item 17 even after certain revisions to Form 20-F take effect in fiscal 2011. See Section 6500.

2. S-X 3-10(g) applies only to registration statements. S-X 3-10(g), Instruction 2 indicates that financial statements of recently acquired subsidiary issuers and guarantors are not required in periodic reports under the Exchange Act. However, the separate requirements of S-X 3-05 may apply in other filings such as a Form 8-K or a subsequent registration statement.

2540 Periodic Reporting by Subsidiary Issuers and Guarantors

(Last updated: 6/30/2010)

2540.1 Subsidiary issuers and guarantors that are permitted by S-X 3-10 to omit separate financial statements are exempt from the periodic reporting requirements of Sections 13(a) and 15(d) of the Exchange Act. Subsidiary issuers and guarantors that file separate financial statements solely because they were recently acquired are also exempt. [Exchange Act Rule 12h-5]

The conditions in S-X 3-10(b) through (f), as applicable, for use of the Rule 12h-5 exemption must be met at the end of each annual and quarterly reporting period.

NOTE to SECTION 2540.1

As a result of Rule 12h-5, subsidiary issuers or guarantors are no longer required to request the exemptive or no-action relief from their periodic reporting obligations under the Exchange Act previously specified in SAB 53. Further, CF-OCC does not intend to process no-action requests regarding subsidiary issuers or guarantors except those that involve novel facts or interpretive issues.

2540.2 As a condition to the use of the Rule 12h-5 exemption by the subsidiary issuers and guarantors, condensed consolidating financial information is required in the parent's financial statements for as long as the registered security is outstanding. [Release No. 33-7878] This is true even if a subsidiary issuer or guarantor properly suspends its reporting obligation with respect to the security and/or the guarantees under Section 15(d) of the Exchange Act. By contrast, subsidiary guarantors that fully report under S-X 3-10(a) may discontinue filing financial statements if their reporting obligation is properly suspended.

2540.3 S-X 3-10 applies to a registrant that acquires the issuer or guarantor of a registered debt security and assumes or guarantees the obligation. Assuming the conditions in S-X 3-10(b) through (f), as applicable, are met, condensed consolidating financial information is required in order for any pre-existing

subsidiary issuers and guarantors as well as any newly added subsidiary issuers and guarantors to qualify for the Rule 12h-5 exemption.

2540.4 Condensed consolidating financial information of the new parent (acquirer) is required for all periods for which financial statements are required by Regulation S-X, based on the status of the subsidiaries as issuers, guarantors, or non-guarantors as of the end of the most recent period presented. Amounts related to the acquiree and its subsidiaries are included in the new parent's condensed consolidating financial information only for periods for which they are consolidated by the new parent (i.e., subsequent to the date of acquisition).

2540.5 A parent company that files annual reports on Form 20-F is not required to provide quarterly condensed consolidating financial information about its subsidiary issuers and guarantors, even if those subsidiaries are incorporated in the U.S. However, in a registration statement under the Securities Act, a parent company that is a foreign private issuer is required to include condensed consolidating financial information about its subsidiary issuers and guarantors for all required annual and interim periods. The periods to be presented are determined by reference to Item 8.A of Form 20-F.
(Last updated: 9/30/2009)

2600 COLLATERALIZATIONS

(Last updated: 6/30/2010)

2600.1 **Background -** S-X 3-16 and S-X 8-01 Note 4 require registrants to file financial statements of each affiliate whose securities constitute a substantial portion of the collateral for any class of security that is registered or being registered. S-X 3-16 and S-X 8-01 view guarantees and collateralizations as two separate disclosure matters. S-X 3-10 applies only to guarantors (see Section 2500) and does not apply to collateral situations, as the concepts of full, unconditional, and joint and several obligation do not apply to collateralizations. Unlike guarantees, enforcement of collateral provisions would result in the debt holder becoming an equity security holder of the affiliate. Therefore, full audited financial statements of each affiliate whose securities constitute a substantial portion of the collateral of a security that is registered or being registered are required by S-X 3-16. *(Last updated 12/31/2009)*

2600.2 **Financial statements** required for the affiliate whose securities constitute a substantial portion of collateral for any class of securities that is registered or being registered are generally the same as those that would be required if such an affiliate were a registrant as described in Topic 1.

Generally, the staff will not require SFAS 131 [ASC 280] segment information in S-X 3-16 financial statements. Such affiliates are typically subsidiaries of the

registrant and the affiliates' assets and operations are included in the registrant's segment reporting. *(Last updated: 9/30/2010)*

2600.3 Unusual situations regarding the financial statements that should be filed under S-X 3-16 may be discussed with CF-OCA. *(Last updated: 9/30/2010)*

2610 Measuring "Substantial Portion of the Collateral"

(Last updated: 6/30/2010)

2610.1 Securities constitute a substantial portion of collateral if the greatest of the aggregate principal amount, par value, book value, or market value of the securities equals 20% or more of the principal amount of the secured class of securities.

NOTE to SECTION 2610.1

The term "market value" should be read as "fair value." This is true even if the securities that serve as collateral for a class of registered securities are not traded on an exchange or in an over-the-counter market. From an investor's perspective the fact that the affiliate's securities are not traded on an exchange or in an over-the-counter market does not change the fact that the affiliate may constitute a substantial portion of the collateral because of its significant market value.

2610.2 The "substantial portion of the collateral" test described in 2610.1 above should be performed using information as of the end of the most recent fiscal year for which audited financial statements would be required in the filing.

2610.3 The "substantial portion of the collateral" test described in 2610.1 above should be performed at the time of effectiveness of a registration statement, and subsequently as of the end of each fiscal year for which an annual report on Form 10-K or 20-F is required.

2610.4 The denominator of the test should be based on the outstanding principal balance of the registered debt as of the date being tested, as described in 2610.2 and 2610.3 above. In circumstances where the principal balance is being reduced over time, the tested significance of affiliates will tend to increase over time. Registrants who believe that the test produces an anomalous result may request relief from CF-OCA.

2610.5 A registrant may issue multiple series of debt instruments under the same indenture. If all terms of the securities are identical, including interest rates, repayment terms, maturity dates and collateral arrangements, the series may be tested as one class of securities. If all terms are not identical, each series should be tested as a separate class.

2620 When Financial Statements are Required

2620.1 ***1933 and 1934 Act Registration Statements***

S-X 3-16 financial statements are only required in 1933 Act registration statements that register securities for which the affiliate's securities represent a substantial portion of the collateral for the registered securities. S-X 3-16 financial statements are not required in registration statements that register securities that are not collateralized by an affiliate's shares, even if another collateralized registered security of the registrant is outstanding.

2620.2 ***Periodic Reports***

Financial statements are required under S-X 3-16 in Form 10-K, but not in Form 10-Q.

NOTE to SECTION 2620.2

Interim financial statements of an affiliate that meets S-X 3-16 significance are required in both 1933 Act and 1934 Act registration statements, including Form 10, even though interim financial statements of an affiliate that meets S-X 3-16 are not required in Form 10-Q.

Rationale: S-X 3-16 states that the financial statement requirements for an affiliate that meet S-X 3-16 significance are those financial statements that would be required if the affiliate were a registrant and required to file financial statements. As a result of this requirement, both annual and interim financial statements of an affiliate that meets S-X 3-16 significance would be required in a registration statement, notwithstanding the fact that interim financial statements of that affiliate are not required in Forms 10-Q. The exclusion of S-X 3-16 financial statements from Form 10-Q is primarily a consequence of (A) Form 10-Q only requires financial information specified in S-X Article 10 and (B) S-X 10-01(a)(1), which states in part "*Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated ...*", only requires interim financial statements for registrants. The staff believes the requirement to provide interim financial statements of an affiliate that meets S-X 3-16 significance also applies to a smaller reporting company notwithstanding the fact that S-X 8-01, Note 4 only references S-X 8-02 – Annual Financial Statements.

2630 Implementation Issues

(Last updated: 6/30/2010)

2630.1 **Shelf Registration Statements** – An issuer of registered debt may determine whether financial statements are required under S-X 3-16 at the time a takedown is contemplated, rather than when the original registration statement is filed. Any financial statements required by S-X 3-16 at the time of takedown may be filed via inclusion in a post-effective amendment to the registration

statement, in an Exchange Act report that is incorporated by reference into the registration statement, or in a prospectus supplement.

2630.2 **Multiple Affiliates** – The significance of a particular affiliate may change over time. In some cases, affiliates whose financial statements were not required at the time of the registration statement may be required in subsequent annual reports, and in other cases affiliates whose financial statements were required at the time of the registration statement may no longer be required in subsequent annual reports. When an affiliate subsequently becomes significant, its financial statements must be presented for all periods for which a registrant's financial statements are required. When an affiliate subsequently ceases to be significant, its financial statements are not required for any periods.

2630.3 [Reserved]

2630.4 **Financial Statements of Other Entities –** S-X 3-16 requires the same financial statements of an affiliate that would be filed if the affiliate was a registrant. Accordingly**,** financial statements of other entities such as acquired businesses under S-X 3-05 (for registration statements only) and equity method investees under S-X 3-09 must be filed with respect to the affiliate. The reporting for these entities is limited to these financial statement requirements and other filing and disclosure obligations do not apply (e.g., S-K disclosures, filing of periodic reports, etc.).

2630.5 **Suspension of Reporting Obligation -** A registrant that properly suspends its reporting obligation with respect to registered collateralized debt under Section 15(d) of the Exchange Act is no longer required to file financial statements under S-X 3-16. Unlike condensed consolidating information with respect to subsidiary issuers and guarantors that are exempt from periodic reporting under Rule 12h-5, there is no requirement to file S-X 3-16 financial statements "for as long as the debt is outstanding."

2630.6 **Termination of Collateral Arrangement –** If the pledged securities cease to be pledged as collateral (either by operation of the underlying indenture or by consent of the debt holders) prior to the end of the most recent period for which S-X 3-16 financial statements would be required, S-X 3-16 financial statements are not required. Ordinarily, this will also be the case if pledged securities cease to be pledged as collateral after the end of the most recent reporting period, but before the corresponding annual report is due. However, there may be situations involving adverse credit events occurring after the end of the most recent period that warrant presentation of S-X 3-16 financial statements with full disclosure of the circumstances and current status of the collateral.

2700 CREDIT – THIRD PARTY FINANCIAL STATEMENTS

(Last updated: 9/30/2008)

Section	Description
2705	Asset-Backed Securities - Presentation of Certain Third Party Financial Information
2710	Third Party Credit Enhancements for Securities that are NOT "Asset-backed Securities"

2705 Asset-Backed Securities – Presentation of Certain Third Party Financial Information [S-K 1100]

2705.1 **Regulation AB - *Background*** - Regulation AB is the source of various disclosure items and requirements for "asset-backed securities" filings under the Securities Act of 1933 and the Securities Exchange Act of 1934. "Asset-backed security" is defined in S-K 1101(c)(1) as a security that is primarily serviced by cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of physical property underlying such leases. The definition of "asset-backed security" has a number of additional conditions listed at S-K 1101(c)(2) which must be met in order for a security to be considered an "asset-backed security."

2705.2 **Regulation AB – *Requirement for Certain Third Party Financial Information***
Regulation AB requires certain third party financial information for:

a. "Significant Obligors" (defined at S-K 1101(k)) of Pool of Assets [S-K 1112(b)]
b. Credit enhancement and other support, except for certain derivative instruments [S-K 1114(b)(2)]
c. Certain Derivative Instruments [S-K 1115(b)]

2705.3 **Regulation AB - Certain Third Party Financial Information for *"Significant Obligors" (defined at S-K 1101(k)) of Pool of Assets [S-K 1112(b)]***

- If pool assets relating to a significant obligor represent 10% or more, but less than 20% of the asset pool, then depending on type of significant obligor, provide either selected financial data required by S-K 301 or net operating income only for the most recent fiscal year and interim period. See S-K 1112(b).

- If pool assets relating to a significant obligor represent 20% or more of the asset pool, provide financial statements of the significant obligor meeting the requirements of Regulation S-X (S-X 1–01 through S-X 12–29), except S-X 3–05 and S-X Article 11. Financial statements of such obligor and its subsidiaries consolidated [as required by Proxy Rules 14a–3(b)] shall be filed. See details and exceptions at S-K 1112(b).

NOTE to SECTION 2705.3
Financial statements meeting all of the requirements of Regulation S-X (S-X 1-01 through S-X 12-29) are required notwithstanding the reference to Proxy Rules 14a-3(b), which might be read to suggest certain components of Regulation S-X, such as financial statement schedules, need not be provided.

2705.4 **Regulation AB - Certain Third Party Financial Information for *Credit Enhancement and Other Support, except for certain derivative instruments [S-K 1114(b)(2)]***

- If any entity or group of affiliated entities providing enhancement or other support described in S-K 1114(a) is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any offered class of the asset-backed securities, provide financial data required by Item 301 of Regulation S-K for each such entity or group of affiliated entities.
- If any entity or group of affiliated entities providing enhancement or other support described in S-K 1114(a) of this section is liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any offered class of the asset-backed securities, provide financial statements meeting the requirements of Regulation S-X (S-X 1–01 through S-X 12–29), except S-X 3–05 and S-X Article 11, of such entity or group of affiliated entities. Financial statements of such enhancement provider and its subsidiaries consolidated (as required by Proxy Rules 14a–3(b)) shall be filed under this item. See details and exceptions at S-K 1114(b)(2).

2705.5 **Regulation AB - Certain Third Party Financial Information for *Certain Derivative Instruments [S-K 1115(b)]***

- If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by S-K 1115 is 10% or more, but less than 20%, provide financial data required by Item 301 of Regulation S-K for such entity or group of affiliated entities.
- If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by S-K 1115 is 20% or more, provide financial statements meeting the requirements of Regulation S-X (S-X 1–01 through S-X 12–29), except S-

X 3–05 and S-X Article 11, of such entity or group of affiliated entities. Financial statements of such entity and its subsidiaries consolidated (as required by Proxy Rules 14a–3(b)) shall be filed under this item. See details and exceptions at S-K 1115(b).

2710 Third Party Credit Enhancements for Securities that are NOT "Asset-backed Securities"

2710.1 Third party credit enhancements differ from guarantees. A guarantee running directly to the security holder is a security within Section 2(1) of the Securities Act and must be covered by a Securities Act registration statement filed by the guarantor, as issuer. A third party credit enhancement is an agreement between a third party and the issuer or a trustee that does not run directly to the security holders. A party providing credit enhancement generally is not a co-issuer. However, if an investor's return is materially dependent upon the third party credit enhancement, the staff requires additional disclosure about the credit enhancer. The disclosure must provide sufficient information about the third party to permit an investor to determine the ability of the third party to fund the credit enhancement. In most cases, the disclosure of the third party's audited financial statements presented in accordance with generally accepted accounting principles would be required. Proposed exceptions should be discussed with CF-OCA prior to filing.

2710.2 The staff considers the following factors in assessing the sufficiency of the disclosure in this area:

a. the amount of the credit enhancement in relation to the issuer's income and cash flows;

b. the duration of the credit enhancement;

c. conditions precedent to the application of the credit enhancement; and

d. other factors that indicate a material relationship between the credit enhancer and the purchaser's anticipated return.

2710.3 Financial information of a third party credit enhancement may also be required if an investor is reasonably likely to rely on a material credit enhancement in place for other debt (including nonpublic debt), even though the credit enhancement does not run directly to the debt being registered.

2800 OTHER FINANCIAL STATEMENTS

(Last updated: 9/30/2008)

Section	Description
2805	General Partner, Where Registrant is a Limited Partnership
2810	Parent-Only Financial Statements (Condensed)
2815	Financial Statements of a Significant Customer
2820	Substantial Asset Concentration

2805 General Partner, Where Registrant is a Limited Partnership

(Last updated: 3/31/2010)

Historically, in certain situations the structure and relationship between the general partner and limited partnership resulted in the staff requesting under S-X 3-13 a balance sheet of the general partner to be filed. SAB Topic 12.A.3.d, which indicated that the staff required that a registration statement relating to an offering of limited partnership interests include the most recent year-end balance sheet of the general partner, was removed by SAB 113, *Interpretations of Accounting Rules on Oil and Gas Producing Activities*. The following is a summary of the staff's views with respect to providing a balance sheet of the general partner.

Smaller Reporting Companies:

S-X 8-07 requires the balance sheet of the general partner under certain circumstances. SAB 113 did not change S-X 8-07. Registrants should comply with this rule or, if they believe that there is a basis, request relief in writing from CF-OCA.

Registrants other than Smaller Reporting Companies:

a. Oil and gas companies can rely on SAB 113 and do not need to request the staff's concurrence to exclude the balance sheet of the general partner; and

b. Likewise, non oil and gas companies do not need to request the staff's concurrence to exclude the balance sheet of the general partner. However, there can be situations in which the relationship between the limited partnership and the general partner can be relevant to an investor. In these situations, the staff believes there needs to be clear disclosure about this relationship. For example, registrants should disclose the following about the general partner relationship:

- Any material transactions with the general partner, such as a substantial receivable from or payable to a general partner, or any affiliate of the general partner. Disclose the pertinent terms of any material transactions.

- When there is a commitment, intent or reasonable possibility that the general partner(s) will fund cash flow deficits or provide other direct or indirect financial assistance to the registrant. Describe the nature and extent of the any funding or financial support arrangement.

- When an affiliate of the general partner has committed itself to increase or maintain the general partner's capital, if the commitment could reasonably be expected to impact the registrant. For example, disclose when an affiliate has committed to maintain the general partner's capital when there is a commitment, intent or reasonable possibility that the general partner will provide financial support to the registrant. Describe the nature and extent of the affiliate's commitment to the general partner.

2810 Parent-only Financial Statements (Condensed) [S-X 5-04] [S-X 9-06]

2810.1 **Parent-only Financial Statements – *Requirement***

GAAP requires parent-only financial statements as a supplement to the consolidated financial statements where material. [ARB 51, paragraph 24 / ASC 810-10-45-11] S-X 5-04 and 9-06 include a presumption that parent-only financial statements are material when the restricted net assets of consolidated subsidiaries exceed 25% of consolidated net assets at most recent fiscal year-end, although it may be material at lower levels. When significance is met or the parent-only financial statements are otherwise material, registrants should present the information required by S-X 12-04 as an S-X schedule, except bank holding companies, which must present the S-X 12-04 information in the financial statement footnotes. Because bank holding companies must include the S-X 12-04 information in their financial statement footnotes, they do not have the additional 30 days provided by Form 10-K General Instruction A(4) to file this information.

S-X 12-04 indicates the required condensed financial information need not be presented in greater detail than is required for condensed statements by S-X 10-01(a)(2), (3), and (4). The condensed financial information presented should include a total for comprehensive income presented in either a single continuous statement or in two separate but consecutive statements. See footnote 2 to Section 1110.1. *(Last updated: 12/31/2011)*

NOTE to SECTION 2810.1
For public entities, the amendments in ASU 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income, and ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05, are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 with early adoption permitted. The guidance must be applied retrospectively for all periods presented in the financial statements. *(Last updated: 12/31/2011)*

NOTE to SECTION 2810.1
S-X 4-08(e)(3) outlines additional disclosures related to restricted net assets required in financial statement footnotes of all registrants subject to S-X. See Section 2810.3.

2810.2 **Parent-only Financial Statements *- Restricted net assets Defined***
Restricted net assets is the amount of the registrant's share of subsidiaries' net assets (assets less the sum of liabilities, redeemable preferred stock, and noncontrolling interests) that may not be transferred to the parent in the form of loans, dividends, etc., without a third party's consent. [S-X 4-08(e)(3) and SAB Topic 6K.2] Also, in certain circumstances, registrants must compute "subsidiary adjusted net assets". See SAB Topic 6K.2 for further discussion.

2810.3 **Interaction of Restricted Net Asset Footnote Disclosures S-X 4-08(e)(3)] and Parent-only Financial Statements [S-X 5-04/9-06]**

In certain circumstances, S-X 4-08(e)(3) requires footnote disclosure in the consolidated financial statements about the nature and amount of significant restrictions on the ability of subsidiaries to transfer funds to the parent through intercompany loans, advances or cash dividends. To determine which disclosures, if any, are required, a registrant must compute its proportionate share of the net assets of its consolidated subsidiaries and its proportionate share of the net assets of its unconsolidated subsidiaries as of the end of the most recent fiscal year which are restricted as to transfer to the parent company because the consent of a third party (a lender, regulatory agency, foreign government, etc.) is required.

If the registrant's proportionate share of the restricted net assets of consolidated subsidiaries exceeds 25% of the registrant's consolidated net assets, then both the S-X 4-08(e)(3) footnote disclosure and the schedule information required by S-X 5-04 (or footnote disclosure required by S-X 9-06 if the registrant is a bank holding company) are required. If the registrant's proportionate share of the

restricted net assets of consolidated subsidiaries is less than or equal to 25% the schedule information required by S-X 5-04 (or footnote disclosure required by S-X 9-06 if the registrant is a bank holding company) is not required, but an additional calculation must be made to determine if the S-X 4-08(e)(3) footnote disclosure is required. If the sum of (A) the registrant's proportionate share of the restricted net assets of consolidated subsidiaries, (B) the amount of the registrant's proportionate share of restricted net assets of unconsolidated subsidiaries and (C) the registrant's equity in the undistributed earnings since the date of acquisition of the 50% or less owned persons accounted for by the equity method exceed 25% of consolidated net assets, the S-X 4-08(e)(3)footnote disclosure is required. See SAB Topic 6K.2. Also, note that SAB Topic 6K.3. clarifies that (C) in the calculation above - *the registrant's equity in the undistributed earnings since the date of acquisition of 50% or less owned persons accounted for by the equity method* - is the same amount required to be disclosed in financial statement footnotes pursuant to S-X 4-08(e)(2).

2810.4 **Parent Company Financial Information when the Registrant has a Consolidated Shareholders' Deficit**
(Last updated: 6/30/2010)

A registrant with a consolidated shareholders' deficit is considered to have a net asset base of zero for the purpose of computing its proportionate share of the restricted net assets of consolidated subsidiaries. As a result, any restrictions placed on the net assets of subsidiaries with positive equity would result in the 25% threshold being met and a corresponding requirement to provide parent company financial information. This is viewed by the staff as consistent with the guidance in SAB Topic 6K2.b (Question 3), which states that a subsidiary with an excess of liabilities over assets has no restricted assets. Anomalous results can be discussed with CF-OCA.

2815 Financial Statements of a Significant Customer

2815.1 Financial statements of a significant customer, whether affiliated or unaffiliated, may be necessary to reasonably inform investors about the registrant's financial position, results of operations and/or cash flows. For example, historically registration statements have been filed by issuers controlled by a foreign parent who will also be the source of a substantial portion of the company's revenues. In some circumstances, financial statements of the parent company were publicly available, but were not filed with the SEC and were not reconciled to U.S. GAAP. Registrant should provide such financial statements reconciled to U.S. GAAP if they are necessary to reasonably inform an investor about the registrant's financial position, results of operations and/or cash flows.

2815.2 In addition, registrants should also consider whether financial or other information about the significant customer is necessary under other disclosure requirements. Generally, known trends, demands, commitments, events and uncertainties related to customers, whether affiliated or unaffiliated, that are reasonably likely to have a material effect on the registrant should be identified, quantified and analyzed by the registrant's management in its MD&A in accordance with Item 303 of Regulation S-K. Also, SFAS 131, paragraph 39 [ASC 280-10-50-42] requires certain financial statement footnote disclosures about major customers and SOP 94-6, *Disclosure of Risks and Uncertainties* [ASC 275-10-50-18], requires certain financial statement footnote disclosures about current vulnerabilities due to concentrations in the volume of business transacted with a particular customer. For affiliated customers/related party transactions, SFAS 57 [ASC 850-10-50] and S-X 4-08(k) provide additional disclosure requirements.

2820 Substantial Asset Concentration

Financial and other information may be necessary by analogy to SAB Topic 1I where the registrant has investment risk due to substantial asset concentration.

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TOPIC 3

PRO FORMA FINANCIAL INFORMATION
Regulation S-X Article 11

This Topic describes the circumstances in which pro forma financial statements should be presented in filings, the form of their presentation, and guidance to be considered in their preparation. Although the specific rules of S-X Article 11 do not apply to smaller reporting companies, those registrants can consult S-X Article 11 for guidance when preparing pro forma financial statements required by S-X 8-05 for business acquisitions. Smaller reporting companies should present pro forma information for other current or probable transactions if that presentation would be material to investors.

3100 CIRCUMSTANCES REQUIRING PRO FORMA PRESENTATIONS

(Last updated: 9/30/2008)

3110 Significant Business Combination

3110.1 Pro forma financial information is required if a significant business combination has occurred in the latest fiscal year or subsequent interim period, or is probable (see Section 2005.4). This includes any transaction or event that results in the registrant obtaining control over another entity. See Topic 2 for definition of a business and tests of significance. Pro forma presentation is not required if the transaction is already fully reflected in historical statements as a reorganization.

> **NOTE**: While the acquisition of an investment to be accounted for under the equity method meets the definition of a business for purposes of S-X 3-05 financial statements and S-X Article 11, full pro forma financial information prepared under Article 11 generally is not required if the registrant elects the fair value option for the investment under SFAS 159 [ASC 825]. In this situation, we expect registrants to include a narrative discussion explaining how the application of SFAS 159 [ASC 825] for this investment will impact the results of operations and balance sheet in future periods.

3110.2 Additional pro forma information also may be appropriate if an acquiree of the registrant consummated a significant business combination of its own during the year, if that information would be material to an understanding of the registrant or a vote on a transaction.

3110.3 Pro forma financial statements are not required for individually insignificant businesses unless they are significant in the aggregate at over the 50% level. If certain financial statements are included in the filing under S-X 3-05(b)(2)(i), registrants should consider whether the pro forma financial information would be misleading without giving effect to *all* individually insignificant acquisitions. Also, if a registrant presents the financial statements of an individually insignificant business, the staff encourages the registrant to also include S-X Article 11 pro forma financial information in the filing.

3110.4 Pro forma information required by S-X Article 11 should be filed at the same time the audited financial statements of the acquired business are filed. Presentation of the acquiree's financial statements without accompanying pro forma information can be misleading, and there is an expectation that the information required by Item 9.01 of Form 8-K will be filed as promptly as feasible. The pro forma information presented in connection with a Form 8-K reporting consummation of an acquisition is not expected to reflect definitive conclusions regarding allocation of the purchase price or other effects. However, uncertainties affecting the pro forma presentation and the possible consequences when they are resolved, if material, should be highlighted.

3120 Disposition of a Significant Portion of a Business

3120.1 Pro forma financial information is required if a disposition either by sale, abandonment or distribution to shareholders has occurred or is probable, and is not fully reflected in the historical financial statements. Pro forma data may be necessary, if the disposition is material, even if disposed operations do not satisfy the SFAS 144 [ASC 205-20] criteria of a discontinued operation.

3120.2 Audited financial statements of the disposed entity generally are not required in the Form 8-K reporting the disposition, however, Item 9.01(b) requires pro forma information to be filed within 4 days after the disposition. The 71-day extension set forth in Item 9.01(a)(4) for filing financial statements and pro forma information for acquisitions is not available for dispositions. See the Division of Corporation Finance's C&DIs for Exchange Act Form 8-K, Question 129.01.

3130 Acquisition of One or More Real Estate Operations

Pro forma financial information is required if acquisitions which are in the aggregate significant have occurred in the latest fiscal year or subsequent interim period, or are probable. See Section 2320 for guidance related to aggregate significance tests for real estate acquisitions.

3140 Roll-Up Transaction [S-K 914]

3140.1 In connection with a transaction subject to S-K 914, pro forma financial information should be presented showing the effect on the successor entity assuming (1) that all combining entities participate and (2) participation is limited to those having the lowest combined net cash provided by operating activities for the last fiscal year of such entities. Consideration should be given to the need to present other variations of participation that are permitted by the terms of the roll-up. The following pro forma information should be presented:

a. Balance sheet as of the later of the end of the most recent fiscal year or latest interim period;

b. Statements of income with separate line items to reflect income (loss) excluding and including roll-up expenses and payments, earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

c. Statements of cash flows for the most recent fiscal year and the latest interim period;

d. Book value per share as of the later of the end of the most recent fiscal year or the latest interim period; and

e. Pro forma oil and gas reserve data, if applicable.

3150 Registrant Previously was Part of Another Entity

Pro forma presentation may be necessary to reflect operations and financial position of the registrant as a stand-alone entity.

NOTE: Consider whether forward-looking information should be presented instead of or along with pro forma information, particularly in cases where a full set of audited financial statements of an acquired entity is not provided (e.g., audited statement of revenues and direct expenses). See Section 3290 below.

3160 Other

(Last updated: 12/31/2010)

3160.1 Pro forma financial information is required if events or transactions have occurred or are probable for which disclosure of pro forma financial information would be material to investors, such as:

a. Termination or revision of tax or other cost sharing agreements and other significant changes that render the registrant's historical financial statements not indicative of the ongoing entity. [SAB Topic 1B.2]

b. Declaration of dividends by a subsidiary subsequent to the balance sheet. [SAB Topic 1B.3]

c. Changes in capitalization at the effectiveness or the close of an IPO.

d. Receipt or application of offering proceeds under certain circumstances. See Sections 3230, 3320 and 3420 for further discussion.

e. Other events and transactions which have had or will have a discrete material impact on a registrant's financial statements. Possible examples include:

- the repayment of debt
- emerging from bankruptcy and registering securities under the 1934 Act coupled with fresh start accounting, reorganization, changes in capital structure, or other events and transactions.

3200 PREPARATION REQUIREMENTS – FORM AND CONTENT

(Last updated: 9/30/2008)

3210 Objective

3210.1 S-X Article 11 pro forma financial information is intended to provide investors with information about the continuing impact of a transaction by showing how a specific transaction or group of transactions might have affected historical financial statements, illustrating the scope of the change in the registrant's financial position and results of operations.

3210.2 The pro forma financial information should illustrate only the isolated and objectively measurable (based on historically determined amounts) effects of a particular transaction, while excluding effects that rely on highly judgmental estimates of how historical management practices and operating decisions may or may not have changed as a result of that transaction. Information about the possible or expected impact of current actions taken by management in response to the pro forma transaction, as if management's actions were carried out in previous reporting periods, is considered a projection and not an objective of S-X Article 11. Presentation of forward looking and projected information should be confined to supplemental information separately identified as such (information that is not required or contemplated by Article 11) and in MD&A.

NOTE: Domestic registrants should prepare their pro forma financial statements in accordance with U.S. GAAP. Foreign private issuers should prepare their pro formas in accordance with U.S. GAAP, IFRS as issued by the IASB, or home-country GAAP reconciled to U.S. GAAP depending on the basis of accounting in the primary financial statements. See Topic 6.

3220 Pro Forma Condensed Balance Sheet

3220.1 Pro forma presentation should be based on the latest balance sheet included in the filing. A pro forma balance sheet is not required if the acquisition or disposal is already reflected in a historical balance sheet.

3220.2 Pro forma adjustments should be computed assuming the transaction was consummated on the date of the latest balance sheet included in the filing.

3220.3 Adjustments reflected in the pro forma adjustments column should give effect to events that are directly attributable to each specific transaction and factually supportable. Adjustments should include those items that have a continuing impact and also those that are nonrecurring.

3230 Pro Forma Condensed Income Statement

3230.1 Pro forma presentation should be based on the latest fiscal year and interim period included in the filing, unless the transaction is already reflected in the audited historical statements for the most recent full fiscal year. Unless the pro forma information gives effect to one of the two items (in Section 3230.2) below, a pro forma income statement should not be presented for more than one complete fiscal year. In addition to the required latest fiscal year and interim period, the staff generally does not object to a registrant providing a pro forma income statement for the corresponding prior interim period.
(*Last updated: 3/31/2009)*

NOTE: After a change in fiscal year end in which the transition report has been filed on Form 10-K, the registrant may present pro forma information for the transition period *and* most recent fiscal year (and interim period). Alternatively, the registrant may present a pro forma income statement for the most recent annual period (9 to 12 months under S-X 3-06). In either case, the length of the period used for the target should be identical to the period of the registrant.
(Last updated: 3/31/2010)

3230.2 Pro forma presentation of all periods is required:

a. For a business combination to be accounted for as a reorganization of entities under common control; or

***For example**:* A registrant files a registration or proxy statement that includes financial statements that do not yet reflect a combination to be accounted for as a reorganization of entities under common control. Pro forma income statements are typically required for each fiscal year for which the registrant's historical financial statements are provided and the subsequent interim period. *(Last updated: 10/20/2014)*

b. For discontinued operations (SFAS 144 [ASC 205-20]) that are not yet reflected in the annual historical statements.

***For example**:* A non-SRC non-EGC registrant files a Form 8-K to report a significant disposition that has occurred, but has not yet been reflected in the registrant's historical statements as a discontinued operation under SFAS 144 [ASC 205-20] for the three years presented in the registrant's most recent Form 10-K. Pro forma income statements are typically required for these three most recent fiscal years and subsequent interim period.
(Last updated: 6/30/2013)

NOTE: The staff generally objects to retroactive pro forma presentation of transactions for periods other than the latest year and interim period, except in the circumstances described here. In some cases, retroactive presentations of revenues and costs of revenues may be meaningful for discussion of trends in MD&A, but more comprehensive presentations (through operating income, for example) can be misleading because they cannot meaningfully or accurately depict what operating results would have been had the transaction occurred at the earlier date. *(Last updated 3/31/2009)*

3230.3 Pro forma adjustments should be computed assuming the transaction occurred at the beginning of the fiscal year presented and carried forward through any interim period presented.

3230.4 Adjustments shall give effect to events that are:

a. directly attributable to each specific transaction,
b. factually supportable, and
c. expected to have a continuing impact.

Nature of Item	Treatment in Pro Forma Financial Information
1. Material **nonrecurring** charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the registrant within the 12 months following the transaction	• Do not include in pro forma income statements. • Disclose these items in a note and clearly indicate that they were not included.
2. Infrequent or nonrecurring items included in the underlying historical financial statements of the registrant or other combining entities and that are not directly affected by the transaction	Do not eliminate in arriving at pro forma results.
3. Conforming change in accounting principles adopted by registrant	Pro forma information should consistently apply the newly adopted accounting principles to all periods presented.

4. Discontinued operations, or extraordinary items	If included in historical financial statements, present only the portion of the income statement through "income from continuing operations."
5. Earnings per share	• Present historical basic and diluted per share data based on continuing operations and pro forma basic and diluted per share data on the face of the pro forma statement of operations. • Also present the number of shares used to compute per share data if outstanding shares used in the calculation are affected by the transactions included in the pro forma financial statements.
6. Use of proceeds and earnings per share	• The denominator in computing pro forma EPS should include only those common shares whose proceeds are being reflected in pro forma adjustments in the income statements, such as proceeds used for debt repayment or business acquisitions. • Common shares whose proceeds will be used for general corporate purposes, for example, should not be used in computing EPS. A company may present "additional" EPS data reflecting the issuance of all shares if it considers this information meaningful. If this additional EPS is shown on the face of the pro forma income statement, it should be labeled appropriately. • The footnotes to the pro formas should make the computation(s) of pro forma EPS transparent to investors.

3240 Form

3240.1 Financial information should be presented in columnar form, with separate columns presenting historical results, pro forma adjustments, and pro forma results. In limited cases, (where there are only a few easily understood adjustments) a narrative description of the effects of the transaction may suffice.

3240.2 Financial information should be preceded by an introductory paragraph which briefly describes:

a. each transaction for which pro forma effects are presented,

b. the entities involved,

c. the periods presented, and

d. an explanation of what the pro forma presentation shows.

3240.3 Pro forma adjustments should be referenced to footnotes which clearly explain the assumptions involved.

3240.4 Pro forma information may be in condensed form (similar to interim financial statements required in Form 10-Q) which reflects only those numbered captions of Regulation S-X. Any balance sheet caption less than 10% of total assets may be combined with others; any income statement caption less than 15% of average net income of the registrant for the last three years (excluding loss years) may be combined with others. See S-X Article 11.

3240.5 If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations should be made that give effect to the range of possible results. The additional results may be of equal prominence or lesser, depending on the facts and circumstances. Additional presentations might include the following:

a. Pro forma financial statements depicting minimum required issuances of securities or acceptance of offers along with separate pro forma depiction of maximum issuance or acceptance.

1. If the minimum or maximum outcome will only affect the balance sheet, the registrant need only present an additional pro forma balance sheet.

2. If the outcome of minimum or maximum participation does not have a pervasive impact on the financial statements, possible outcomes and their impacts may be discussed in a note to the pro forma financial statements.

3. If the number of offer acceptances in a proposed business combination may determine the accounting to be applied to

the transaction and the only factor influencing the appropriate accounting is the number of acceptances, full pro forma financial information should be presented assuming each accounting method. For example, if the minimum number of acceptances would result in application of the equity method of accounting while the maximum number of acceptances would result in consolidation of the target, full pro forma financial information should be presented assuming each accounting method. If other factors may influence the accounting, pro formas should be based on the most likely accounting to be applied to the transaction based on due diligence performed by the registrant and its financial advisors. *(Last updated: 6/30/2009)*

b. Sensitivity analysis for a change in one variable which may produce different outcomes. Also see Section 3260 for guidance regarding changes in interest rates.

For example: A registrant files a proxy statement requesting shareholder approval of an acquisition. The registrant will issue a certain number of common shares in the acquisition, the number of which will be determined by a formula such that the total dollar amount of the acquisition is subject to change. The registrant may present the pro forma effects of the acquisition using a purchase price calculated as if the acquisition was consummated at the date of filing (by using the most current trading price of the common shares). If the range of possible outcomes may have a material impact on the amount of goodwill to be recorded in the financial statements, the registrant should disclose the impact on the balance sheet of increases or decreases in the common share trading price.

3240.6 Pro forma information for a particular acquisition or other transaction usually should be presented separately from pro forma information for unrelated transactions for which pro forma information may be required if:

a. The proceeds of an offering will be used to fund that acquisition,

b. Shareholders are being asked to vote on that acquisition or other transaction, or

c. A Form 8-K is required to be filed for that acquisition or transaction.

Other transactions appropriate for inclusion in a pro forma presentation should be accumulated in a separate column. Otherwise, if consummation of more than one transaction has occurred or is probable, pro forma information may be presented on either a combined or separate basis. If combined, footnote explanation should disaggregate the various transactions in a reasonable fashion.

3240.7 Generally, pro forma adjustments should be presented gross on the face of the pro forma statements. Alternatively, a more detailed explanation of the components of the adjustments may be presented in the notes to the pro forma statements.

3240.8 An auditor's report on pro forma financial information is not required. However, any auditor report provided on pro forma financial information must comply with AICPA's guidelines as set forth in the Statement on Standards for Attestation Engagements; Reporting on Pro Forma Financial Information (as adopted by the PCAOB pursuant to Rule 3300T as Interim Attestation Standards). See AT Section 401. *(Last updated: 6/30/2009)*

3250 In Business Combinations

3250.1 Purchase Accounting

a. Pro forma statements that give effect to a business combination using the purchase method of accounting generally require only two pro forma adjustments:

   1. The allocation of the purchase price, including adjusting assets and liabilities to fair value and recognizing intangibles, with related changes in depreciation and amortization expense; and
   2. The effects of additional financing necessary to complete the acquisition. However, other related adjustments may be necessary.

b. Contractual terms of the combination such as major new compensation contracts with management would require pro forma adjustment if the new contracts are entered into as part of the acquisition agreement.

c. Transaction costs should be recognized in the pro forma statements as follows:

   i. *Direct, incremental costs of the specific acquisition which are not yet reflected in the historical financial statements of either the target or acquirer*—No adjustment should be reflected in the pro forma income statement, but the pro forma balance sheet should reflect an adjustment (as the costs are non-recurring and directly related to the transaction)

   ii. *Direct, incremental costs of the specific acquisition which are reflected in the historical financial statements of either the target or acquirer*— An adjustment should remove those costs from the

pro forma income statement (as a non-recurring charge directly related to the transaction)

iii. *Direct, incremental costs related to one or more other acquisitions that are reflected in the historical financial statements of either the target or acquirer*— An adjustment should remove those costs from the pro forma income statement only if pro forma effect is given to the other acquisition as well *(Last updated: 3/31/2010)*

d. Actions to be taken by management subsequent to a business combination, as reflected in liabilities recorded in accordance with EITF 95-3, may relate to the planned disposal or termination of revenue producing activities, as well as other business integration activities. It is appropriate to present pro forma adjustments depicting the recurring effects of exiting revenue producing activities. That type of pro forma adjustment is consistent with the requirement to provide pro forma information depicting material dispositions as discussed in Section 3120. Only revenues and costs specifically identifiable with that revenue-producing activity may be included in the pro forma adjustments. Allocations of corporate costs should not be adjusted for the disposition.

NOTE: Even though SFAS 141(R) [ASC 805] will nullify EITF 95-3, it would still be appropriate to depict the recurring effects of exiting revenue producing activities based upon the guidance in Section 3120.

e. Termination of employees and closing facilities are typical actions taken in connection with business combinations to eliminate costs perceived by management as redundant. The timing and effects of these actions are generally too uncertain to meet the S-X Article 11 criteria for pro forma adjustments. Management's estimate of how these actions (and other business integration activities not specifically associated with the disposition of a business) are expected to impact the operations and liquidity of the newly combined companies going forward should be discussed in MD&A and in supplemental information clearly identified as forward-looking information.

f. A schedule showing the calculation of the purchase price (including the value assigned to non-cash portions) should be provided in a note, if not otherwise reasonably apparent.

NOTE: Under SFAS 141(R) [ASC 805], registrants should use the most recent stock price at the time of filing for determining the value of stock to be issued in a transaction that has not yet consummated. In addition, the notes to the pro forma balance sheet should include a disclosure of the date at which the stock price was determined and a sensitivity analysis for the range of possible outcomes based upon percentage increases and decreases in the recent stock price. The appropriate percentages should be reasonable in light of acquirer's volatility.

g. The purchase price should be allocated to specific identifiable tangible and intangible assets (such as customer lists, contracts acquired, trademarks and patents, in-process research and development) and liabilities. If the allocation is preliminary/provisional, significant liabilities and tangible and intangible assets likely to be recognized should be identified and uncertainties regarding the effects of amortization periods assigned to the assets should be highlighted.

NOTE: No adjustment should be made to the amounts of research and development expenses historically incurred by the target.
(*Last updated: 3/31/2010)*

h. If the registrant is awaiting additional information that may impact the measurement of a contingency of the acquired company during the allocation period specified by SFAS 141 or SFAS 141(R) [ASC 805], the registrant should disclose prominently that the purchase price allocation is preliminary/provisional. In this circumstance, the registrant should:

1. Describe clearly the nature of the contingency;
2. Discuss the reasons why the allocation is preliminary/provisional (e.g., identify the information that the registrant has arranged to obtain);
3. Indicate when the allocation is expected to be finalized; and
4. Furnish other available information which will enable a reader to understand the magnitude of any potential adjustment.

In the absence of such disclosure, investors may assume reasonably that the purchase price allocation is final and that all future revisions of estimated fair values of assets and liabilities acquired will be reflected in income. [SAB Topic 2A.7]

i. If contingent consideration is issuable (see ASC 805-30-20), the registrant should disclose the terms of the contingent consideration and the potential impact on future earnings.

   Contingent consideration classified as an asset or liability is remeasured to fair value at each reporting date until the contingency is resolved, and these changes in fair value are generally recognized in earnings. Updated pro forma income statements filed with a new or amended registration statement should not reflect any pro forma adjustments to give effect to changes in the fair value of contingent consideration in periods different than those in which such changes were recognized in the acquirer's post-acquisition financial statements. Pro forma financial information should include transparent disclosure about the contingent consideration arrangement and known changes in fair value. *(Last updated: 9/30/2010)*

NOTE: Paragraph 3250.1(h) will no longer apply under SFAS 141(R) [ASC 805] because contingent consideration will be recognized at the time of the transaction.

j. The expected useful lives or amortization periods of significant assets acquired in a purchase business combination, including identified intangibles, should be disclosed in a note to the pro forma financial statements.

k. If amortization of purchase adjustments is not straight-line, the effect on operating results for the five years following the acquisition should be disclosed in a note, if material.

l. Either the registrant or its target may expect to dispose of certain operations in order for a merger to gain the approval of one or more U.S. regulatory agencies. Pro forma recognition should be given to the impact of those disposals to the extent they are identifiable at the time the pro formas are prepared. If operations to be disposed of are not identifiable with any reasonable certainty at that time, the notes to the pro forma financial information should disclose any contingencies and the reasonably possible impact on the financial statements. Pro forma financial information giving effect to the disposals should be filed on Form 8-K when the disposals occur if the disposition is significant under Item 2.01 of Form 8-K.

3260 Pro Forma Presentations Reflecting Debt Financing

3260.1 Generally should be based on either the current interest rate or the interest rate for which the registrant has a commitment. If actual interest rates in the transaction can vary from those depicted, disclosures of the effect on income of a 1/8 percent variance in interest rates should be disclosed.

3260.2 Although use of current or committed interest rates is appropriate in most cases, careful consideration should be given to the facts and circumstances specific to each presentation to determine whether the interest rate used is reasonable. Certain limited circumstances may warrant the use of an interest rate other than the current or committed rate. In some instances, the staff believes that the registrant should use the interest rates that were prevailing during the period covered by the pro forma information.

For example: If a registrant purchases a business whose assets comprise variable rate interest earning assets financed by variable rate debt, it may be inappropriate to use current interest rates for purposes of computing pro forma interest expense if historical income amounts related to interest earning assets are reflected using interest rates significantly different from current or committed rates.

When a rate other than the current or committed rate is used, prominent disclosure of the basis of presentation and the anticipated effects of the current interest rate environment should appear in the introduction to the pro forma financial statements and wherever pro forma information is provided.

3270 Tax Effects

Normally, tax effects should be calculated with reference to the statutory rate in effect during the periods for which the pro forma income statements are presented. If taxes are not calculated on that basis, or if unusual effects of loss carryforwards or other aspects of tax accounting are depicted, an explanation should be provided in a note to the pro forma financial statements.

Companies are allowed to use different rates if they are factually supportable and disclosed.

3280 Effects of New Contractual Arrangements

Effects of new major distribution, cost sharing, or management agreements, and compensation or benefit plans may be reflected only if amounts are factually supportable, directly attributable to the transaction, and expected to have a continuing impact on the statement of operations.

For example: In connection with a spin-off of a subsidiary, a formal management agreement between a registrant or target subsidiary and its parent that provides for payments intended to cover administrative costs incurred by the parent on behalf of the subsidiary may be terminated or modified. If a new agreement is executed with different terms or the old agreement is terminated and no new agreement is entered into because the subsidiary or its new parent will now perform the activities covered by the previous management agreement, pro forma adjustment for the contractually modified fee may be made.

3290 "Carved Out" Businesses

3290.1 A forecast about post-acquisition results of operations may be meaningful when provided with a pro forma statement of operations prepared in accordance with S-X Article 11 when historical financial statements of the acquiree are not indicative of future financial condition or results of operations because of changes in the business and the omission of various operating expenses in the financial statements of businesses carved out of larger entities. If a forecast is presented, management should clearly identify it as forward-looking. If the forward-looking information provided is not in the form of a comprehensive forecast of revenue and net earnings, disclosure of how revenue and operating efficiencies may vary given the assumptions underlying the forward-looking information that is provided should be included.

3290.2 If a pro forma statement of operations is presented, management should limit it to information that is reliably determinable and not include forward-looking information within the pro forma statement of operation. Management also should disclose how the pro forma statement of operations is not indicative of operations going forward because it necessarily excludes various operating expenses. Material assumptions also should be fully explained in a note. If factually supportable, certain adjustments may demonstrate the effects of the changes in operations that may have affected historical revenues or operating expenses had they been implemented at the beginning of the historical period. [Instruction 4 to S-X Article 11] See Section 2065 for guidance about form and content of carve out financial statements. The limitations of the pro forma information should be explained clearly.

3300 SPECIAL PROBLEMS AND ISSUES

(Last updated: 9/30/2008)

3310 Common Pro Forma Preparation Problems

The following adjustments generally are <u>not appropriate on the face</u> of the respective pro forma financial statements, <u>but could be disclosed in the footnotes</u> thereto.

3310.1 Interest income from the use of proceeds from an offering or asset sale.

3310.2 Income statement presentation of gains and losses directly attributable to the transaction. However, such amounts should be presented as an adjustment to pro forma retained earnings with an appropriate explanation in the notes.

3310.3 Pro forma adjustments that give effect to actions taken by management or expected to occur after a business combination, including termination of employees, closure of facilities, and other restructuring charges. Forecasts or projections may be the most appropriate way to depict the effect of such actions.

3310.4 Alternative measures of performance or liquidity and the effect of pro forma adjustments thereon, provided the requirements of S-K 10(e) are met.

3320 Prohibition on Assuming Offering Proceeds

3320.1 Pro forma financial statements may not reflect the receipt or application of offering proceeds, except as follows:

a. To the extent of a firm commitment from underwriter;
b. To the extent of the minimum in a best-efforts minimum/maximum offering;
c. In a best-efforts all-or-none offering; and
d. Certain exceptions for savings and loan conversions.

3320.2 A similar prohibition applies to pro forma capitalization tables, although the staff has allowed the following:

a. In a minimum/maximum offering, presentation of both minimum and maximum; and
b. In a rights offering or offerings of securities upon the exercise of outstanding warrants, may reflect proceeds to the extent exercise is likely in view of the current market price.

3330 Combining Entities with Different Fiscal Years

3330.1 An acquired entity's income statement should be brought up to within 93 days of the registrant's fiscal year, if practicable, by adding subsequent interim results to the fiscal year's data and deducting the comparable preceding year's interim results, with appropriate disclosure. [S-X 11-02(c)(3)]

3330.2 Additional quantitative and narrative disclosure about gross profit, selling and marketing expenses, and operating income of any period excluded from or

included more than once may be necessary to inform readers about the effects of unusual charges or adjustment in the omitted or double-counted period.

3330.3 If a domestic registrant files a Form 8-K or registration statement for a business combination transaction and the target company is a foreign private issuer, the age of the pro forma information must be determined by reference to S-X 3-12. Depending on the fiscal year ends of the domestic registrant and the foreign target company, application of the age of financial statement rules may require the foreign target company to include a period in the pro forma information that would be more current than its separate historical financial statements. S-X Article 11 permits the ending date of the periods included for the target company to differ from those of the registrant by up to 93 days and may provide sufficient relief. The staff also may consider combinations of periods that involve overlaps or gaps in the information of the target company of up to 93 days, provided that the resulting annual and interim periods are of the same length required for the registrant, and there are no overlaps or gaps in the registrant's information. However, the staff would not permit a registrant to omit an interim pro forma presentation because of different fiscal periods. *(Last updated: 3/31/2011)*

3340 Historical Results Include Unusual Events [S-X 11-02(c)(4)]

If unusual events enter into the determination of operating results presented for the most recently completed fiscal year, the effect of such unusual events should be disclosed and the registrant should consider presenting an additional pro forma statement of operations for the most recent 12-month period. The effects of the unusual events ordinarily should not be eliminated from pro forma data. The registrant may wish to consider furnishing a forecast in lieu of pro forma data.

3400 SPECIAL APPLICATIONS

(Last updated: 9/30/2008)

3410 Sub-Chapter S Corporations and Partnerships

3410.1 If the issuer was formerly a Sub-Chapter S corporation ("Sub-S"), partnership or similar tax exempt enterprise, pro forma tax and EPS data should be presented on the face of historical statements for the periods identified below:

a. If necessary adjustments include more than adjustments for taxes, limit pro forma presentation to latest fiscal year and interim period

b. If necessary adjustments include only taxes, pro forma presentation for all periods presented is encouraged, but not required.

3410.2 In filings for periods subsequent to becoming taxable, pro forma presentations reflecting tax expense for earlier comparable periods should continue to be presented for periods prior to becoming taxable and for the period of change if the registrant elects to present pro forma information for all periods pursuant to 3410.1(b). Such pro forma presentations should continue to calculate the pro forma tax expense based on statutory rates in effect for the earlier period.

3410.3 Undistributed earnings or losses of a Sub-S registrant should be reclassified to paid-in capital in the pro forma statements. [SAB Topic 4B] Similarly, undistributed earnings or losses of partnerships should be reclassified to paid-in capital in the pro forma statements. That presentation assumes a constructive distribution to the owners followed by a contribution to the capital of the corporate entity.

3410.4 Sub-S registrants or partnerships that pay distributions to promoter-owners at the close or effectiveness with proceeds of the offering (rather than out of retained earnings) should consider the pro forma presentations specified in Section 3430.3.

3420 Distributions to Promoters/Owners At or Prior to Closing of an IPO [SAB Topic 1B.3]

3420.1 If a planned distribution to owners, regardless of whether it has been declared or whether it will be paid from proceeds, is not reflected in the latest balance sheet but would be significant relative to reported equity, a pro forma balance sheet reflecting the distribution accrual (but not giving effect to the offering proceeds) should be presented alongside the historical balance sheet in the filing.

3420.2 If a distribution to owners, regardless of whether it is declared or whether it is reflected already in the balance sheet, is to be paid out of proceeds of the offering rather than from the current year's earnings, pro forma per share data should be presented (for the latest year and interim period only) giving effect to the number of shares whose proceeds would be necessary to pay the dividend (but only the amount that exceeds current year's earnings) in addition to historical EPS. The number of shares to be added to the denominator for purposes of pro forma per share data should not exceed the total number of shares to be issued in the offering. For purposes of this interpretation, a dividend declared in the latest year would be deemed to be in contemplation of the offering with the intention of repayment out of offering proceeds to the extent that the dividend exceeded earnings during the previous twelve months.

3430 Other Changes in Capitalization At or Prior to Closing of an IPO

3430.1 Generally, the historical balance sheet and statement of operations (including EPS) should not be revised to reflect modifications of the terms of outstanding securities that become effective after the latest balance sheet date, although pro forma data may be necessary. Depending on the facts and circumstances, the staff may not object if the registrant and its independent accountants elect to present retroactively a conversion of securities as if it had occurred at the date of the latest balance sheet included in the filing (with no adjustment of earlier statements). However, if the original instrument accrues interest or accretes toward redemption value after the balance sheet date until the conversion actually occurs, or if the terms of the conversion do not confirm the carrying value, only pro forma presentation would be deemed appropriate.

3430.2 If terms of outstanding equity securities will change subsequent to the date of the latest balance sheet and the new terms result in a material reduction of permanent equity or, if redemption of a material amount of equity securities will occur in conjunction with the offering, the filing should include a pro forma balance sheet (excluding effects of offering proceeds) presented alongside of the historical balance sheet giving effect to the change in capitalization.

3430.3 If the conversion of outstanding securities will occur subsequent to the latest balance sheet date and the conversion will result in a material reduction of earnings per share (excluding effects of offering), pro forma EPS for the latest year and interim period should be presented giving effect to the conversion (but not the offering).

3440 Pro Forma Requirements for Real Estate and Leasing Operations

3440.1 Statements of estimated taxable operating results and cash to be made available by operations are required in pro forma statements for real estate and leasing operations. These should be pro forma statements of the registrant, rather than of the property, giving effect to the acquisition.

a. If the property is to be operated by the registrant, the presentation should be based on the most recent 12 month period and include only those adjustments which are factually supportable. Annualized results for a period less than twelve months is not appropriate.

b. If the property to be acquired is subject to one or more leases, the presentation should be based on the rents to be paid in the first year of those leases. Material changes in the terms that will occur pursuant to the terms of the leases subsequent to the first year should be prominently disclosed.

c. Registrants that are partnerships or REITs may present in tabular form for a limited number of years, typically one year, the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion thereof that is a return of capital. If taxable net income will be greater than the cash available for distribution per unit, this should be disclosed.

3440.2 To the extent applicable, pro forma information required by S-X Article 11 is also required.

3440.3 Pro forma presentations should not include the effects of real estate properties for periods prior to actual construction since that type of adjustment would be a forecast or projection.

3440.4 The provision of S-X 3-14 which permits estimated taxable operating results of real estate companies to include annualization of existing lease contracts is not applicable to equipment leasing companies or other businesses that generate income through leases.

3500 PROJECTIONS AND FINANCIAL FORECASTS

(Last updated: 6/30/2009)

3510 Alternative to Pro Forma Statements

Financial forecasts may be presented in lieu of pro forma condensed statements of income. [S-X 11-03]

3520 Presentation Requirements

3520.1 All projections and forecasts must comply with the guidelines for projections in S-K 10. S-K 10 requires that management have a reasonable basis for the assumptions underlying their prospective financial statements. Similarly, the AICPA's guide, *Prospective Financial Information*, requires these assumptions to be reasonable and suitably supported. The level of support should be persuasive. [See section 6.32] Support for assumptions may include market surveys, general economic indicators, trends and patterns developed from the entity's operating history (e.g., historical sales trends), internal data and analyses (e.g., obligations under union contracts for labor rates), etc. An absence of adequate support may preclude a registrant's ability to include prospective financial statements in the filing. Additionally, a company with a limited operating history may not have a reasonable basis to present a financial forecast beyond one year.

3520.2 Forecasts presented in lieu of pro forma financial statements must be presented in accordance with AICPA guidelines and the following guidance:

a. Forecasts should cover a period of at least 12 months from the later of

1. the latest historical balance sheet in the filing, or
2. the date of the event.

b. Forecasts should include the same degree of detail as that required in pro forma data and should clearly set forth any assumptions used.

c. Historical information of the registrant and business to be acquired (if applicable) should be presented for a recent 12 month period in parallel columns with the forecast.

3600 OTHER

(Last updated: 9/30/2008)

3610 Pro Forma Disclosures Required by GAAP

Certain pro forma disclosures are required by GAAP (e.g., SFAS 141R [ASC 805] and certain EITF consensuses) and should be provided where applicable. Those presentations may differ in style and content from the requirements of S-X Article 11.

3620 Filings Subsequent to an IPO

Pro forma basic EPS reflecting the conversion of preferred stock into common stock at the IPO date should not be presented in financial statements issued subsequent to the IPO.

* * * * *

TOPIC 4

INDEPENDENT ACCOUNTANTS' INVOLVEMENT

4100 QUALIFICATIONS OF ACCOUNTANTS

(Last updated: 6/30/2009)

4110 PCAOB Registration

4110.1 PCAOB Rule 2100 requires each firm (domestic or foreign) to register with the PCAOB that:

a. prepares or issues any audit report with respect to any issuer; or

b. plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer.

4110.2 A public accounting firm not registered with the PCAOB may be able to perform some audit services for an issuer if the firm does not play a substantial role in the preparation or furnishing of the audit report as defined by PCAOB Rule 1001(p)(ii).

4110.3 In accordance with PCAOB Rule 2107(b)(1), a firm that was once registered and then later withdrew may reissue or give consent to the use of a prior report that it issued while registered. However, the firm cannot update or dual-date a previously issued report after the firm is no longer registered, as that involves additional audit work.

4110.4 Issuer financial statements audited by a nonregistered firm are considered to be "not audited," and any 10-K, proxy statement, or registration statement containing or incorporating by reference such financial statements is deemed substantially deficient. In addition, the 10-K is deemed not timely filed. The 10-K or filing should be amended immediately to remove the nonregistered auditor's report and label the columns of the financial statements as "not audited." The issuer would then need to file another amendment to file financial statements audited by a registered firm.

4110.5 The following chart outlines the application of certain PCAOB requirements in various filings with the SEC. *(Last updated: 9/30/2012)*

	Entities for which an audit report on the financial statements is included in the document filed with SEC [1]:	**Auditor's report on financial statements in current filing must be issued by a public accounting firm registered with the PCAOB?**	**Auditor's report on financial statements must refer to PCAOB standards?**
1	Issuer [2] and its predecessor	Yes	Yes
2	Entity that has filed an initial registration statement	Yes	Yes
3a	Operating company (predecessor) whose financial statements are filed by a special purpose acquisition company	Yes	Yes
3b	Operating company (predecessor) whose pre-acquisition financial statements are filed by an issuer that at the time the reverse merger is consummated is a public "shell company" (See Section 12250.1)	Yes	Yes
3c	Operating company (predecessor) whose pre-acquisition financial statements are filed by an issuer that at the time the reverse merger is consummated is not a public "shell company" (See Section 12250.2)	No, but see Section 12250.2	No, but see Section 12250.2
3d	Operating company (predecessor) whose post-acquisition audited financial statements are filed by the issuer after consummation of a reverse merger	Yes	Yes
4	Non-issuer subsidiary, division, branch, component or investment for which an audit report is filed under S-X 2-05	See footnote 3	Yes [4]
5	Non-issuer entity whose financial statements are filed to satisfy S-X 3-05 or 3-14	No	No
6	Non-issuer entity whose financial statements are included in proxy statement or Form S-4/F-4 as target	No	No
7	Non-issuer entity whose financial statements are filed to satisfy S-X 3-09 or 3-16	See footnote 3	See footnote 5
8	Subsidiary–guarantor whose separate financial statements are filed to satisfy S-X 3-10 (a) or 3-10(g)	Yes [6]	Yes
9	Employee benefit plan filing Form 11-K	Yes [6]	Yes

[1] This table describes the staff's application of PCAOB registration requirements for an auditor whose report is included in a filing with the SEC. There are instances, not included in the table, when a principal auditor will use the work of another auditor and take responsibility for the other auditor's work. In these instances, the other auditor's report is not included in the filing with the SEC. The determination of whether the other auditor must be registered with the PCAOB is made by reference to the Sarbanes-Oxley Act and the PCAOB's rules. In all such instances the principal auditor is responsible for performing the audit in accordance with PCAOB standards.
[2] The term 'issuer' means an issuer (as defined in Section 3 of the 1934 Act), the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the 1933 Act, and that it has not withdrawn. See Section 2(a)(7) of the Sarbanes Oxley Act and PCAOB Rule 1001.
[3] The auditor of the financial statements of the non-issuer entity must be registered if, in performing the audit, the auditor played a "substantial role" in the audit of the issuer, as that term is defined in PCAOB Rule 1001(p)(ii). If the "substantial role" test is not met, the firm is not required to be registered. The inclusion or exclusion of such a report under S-X 2-05 does not affect this determination.
[4] S-X 2-02 requires that the auditor's report state whether the audit was conducted in accordance with GAAS. In Release No. 34-49708, the SEC stated that "references in Commission rules…to GAAS or to specific standards under GAAS, *as they relate to issuers*, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission" (emphasis added). In the situation identified in the chart above, the view of the SEC staff is that the reference to GAAS in S-X 2-02, as applied to the other auditor's report, does "relate to an issuer" for purposes of Release No. 34-49708 and that, therefore, the other auditor's report must refer to the standards of the PCAOB.
[5] If a principal auditor is making reference to another auditor's report on the financial statements of the non-issuer entity, the other auditor's report must refer to the standards of the PCAOB. See footnote 4 above. If a principal auditor does not make reference to another auditor's report on the financial statements of the non-issuer entity, the other auditor's report need not refer to the standards of the PCAOB.
[6] The entity is itself an issuer and so must comply with the rules applicable to issuers.

4110.6 For purposes of Item 5 of the table above, a non-issuer entity could also be a bidder in a Schedule TO or an acquirer in a proxy statement.

4110.7 As noted in the table above, subsidiary guarantors are considered issuers whose financial statements filed under S-X 3-10 must be audited by a PCAOB-registered firm using PCAOB standards. However, relief from these requirements may be available for recently-acquired subsidiary guarantors in certain circumstances. Registrants should consult with CF-OCA prior to filing any S-X 3-10(g) financial statements that are not audited by a PCAOB-registered firm. *(Last updated: 3/31/2011)*

4110.8 The audited balance sheet of a non-issuer general partner that is included in a transactional filing or registration statement of a limited partnership issuer is not required to be audited by a PCAOB registered firm. The audit report also is not required to refer to PCAOB standards.

4115 Involuntary PCAOB Deregistration

(Last updated: 9/30/2009)

4115.1 If the PCAOB revokes the registration of an audit firm, audit reports issued by that firm may no longer be included in a registrant's filings made on or after the date the firm's registration is revoked, even if the report was previously issued before the date of revocation. Financial statements previously audited by a firm whose registration has been revoked would generally need to be reaudited by a PCAOB registered firm prior to inclusion in future filings or if included in a registration statement that has not yet been declared effective.
(Last updated: 6/30/2011)

4115.2 In providing the information that Item 304 of Regulation S-K requires regarding a change in accountants for a firm whose registration is revoked by the PCAOB, a company should indicate that the PCAOB has revoked the registration of its prior auditor. If a company previously explained the PCAOB registration revocation in its Item 4.01 Form 8-K, it need not repeat this disclosure in its Form 10-K.

4120 Duly Registered and in Good Standing Under the Laws of the Accountant's Place of Residence or Principal Office [S-X 2-01]

(Last updated: 9/30/2011)

4120.1 The SEC will not recognize any person as a certified public accountant unless duly registered (licensed to practice) and in good standing under the laws of the place of the accountant's residence or principal office. [S-X 2-01(a)] However, S-X 2-01(a) does not affect the applicability of any other registration, licensing or qualification requirements that may apply in any State or competent jurisdiction.

4120.2 The staff may question the location from which the audit report was rendered if there does not appear to be a logical relationship between that location and the location of the registrant's corporate offices, its principal operations, its principal assets, or where the audit work was principally conducted. The staff will consider all relevant factors in questioning the location from which the audit report was rendered.

4120.3 An auditor whose report is included in a domestic registrant's filings should be an expert in U.S. GAAP and the standards of the PCAOB (U.S. GAAS for non-issuers).

4130 Independence [S-X 2-01(b) and (c), SOX 201]

4130.1 Questions regarding independence should be directed to OCA. Auditor reports on financial statements that refer to PCAOB standards must comply with the independence rules of both the SEC and the PCAOB. The SEC's independence rules are promulgated in S-X 2-01. The PCAOB has also issued certain independence and ethics rules, which are part of its adopted standards. See http://www.pcaobus.org/. Compliance with these rules is required to issue a PCAOB opinion.

4130.2 S-X 2-01 is designed to ensure that auditors are qualified and independent both in fact and in appearance. Accordingly, the rule sets forth restrictions, including but not limited to, on financial, employment, and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client. These restrictions are prescribed in paragraphs (c)(1) to (c)(8) of S-X 2-01. The general standard of independence

is set forth in S-X 2-01(b). The rule does not purport to, and the SEC could not, consider all the circumstances that raise independence concerns, and these are subject to the general standard in paragraph 2-01(b). In considering this standard, the SEC looks in the first instance to whether a relationship or the provision of a service: (a) creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in a position of being an advocate for the audit client.

4130.3 SEC Independence rules also apply to Regulation A and Regulation D filings. [FRC 602.02(a)]

4140 Principal Auditor [S-X 2-05, PCAOB AU Secs. 543 and 9543]

4140.1 When an independent auditor uses the work and reports of other independent auditors to audit the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the financial statements presented, such independent auditor must decide whether it may serve as the principal auditor. Generally, the principal auditor is expected to have audited or assumed responsibility for reporting on at least 50% of the assets and revenues of the consolidated entity. If it is impracticable for a principal auditor to assume that extent of responsibility for one or more of the periods presented, the staff will evaluate whether to accept the audit reports as sufficient for reliance in filings with the SEC depending on the facts and circumstances.

4140.2 A principal auditor must decide whether to make reference in its report to the audit performed by another auditor. If the principal auditor decides to assume responsibility for the work of the other auditor insofar as that work relates to the principal auditor's expression of an opinion on the financial statements taken as a whole, no reference should be made to the other auditor's work or report.

4140.3 If a principal auditor decides not to assume responsibility for the work of the other auditor insofar as that work relates to the principal auditor's expression of an opinion on the financial statements taken as a whole, the principal auditor's report should make reference to the audit of the other auditor and should indicate clearly the division of responsibility between the principal auditor and the other auditor in expressing his opinion on the financial statements. Regardless of the principal auditor's decision, the other auditor remains responsible for the performance of its own work and for its own report.

4140.4 If a principal auditor makes reference to the work of the other auditor in the principal auditor's report on either the financial statements or ICFR, the separate report of the other auditor shall be filed. [S-X 2-05] *(Last updated: 9/30/2012)*

4140.5 If a principal auditor makes reference to the work of the other auditor in the principal auditor's report, the other auditor must comply with all requirements with which the principal auditor must comply, with the exception of PCAOB registration when the other auditor does not meet the "substantial role" threshold defined in PCAOB Rule 1001(p)(ii) in the audit of the issuer. The other auditor must register with the PCAOB if it meets the "substantial role" threshold defined in PCAOB Rule 1001(p)(ii) in the audit of the issuer, regardless of whether the principal auditor refers to the work of the other auditor. *(Last updated: 9/30/2012)*

4200 ACCOUNTANTS' REPORTS [S-X 2-02]

(Last updated: 6/30/2009)

4210 General – Audit Reports

4210.1 The accountant's report must be dated, electronically signed [S-T 302(a)], indicate the city and state where issued, and identify the financial statements covered.

4210.2 The report should refer to any supplemental schedules presented pursuant to S-X Article 12 (or a separate report on those schedules may be included with the schedules).

4210.3 The report must contain clear statements as to the scope of the audit. It must include representations that the audit is conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States) for issuers or U.S. GAAS for non-issuers (with certain exceptions noted in Section 4210.4).

4210.4 Audit reports on non-issuer financial statements may, but are not required to, refer to PCAOB standards, except in certain cases. An audit of non-issuer financial statements must be conducted in accordance with PCAOB standards if the issuer's principal auditor makes reference to the work performed by the non-issuer auditor. *(Last updated: 9/30/2012)*

4210.5 The report must contain a clear statement as to the auditor's opinion that the financial statements are presented in conformity with GAAP, and any exceptions taken. All financial statements must be prepared in accordance with U.S. GAAP for domestic issuers. Foreign private issuers may present their financial statements in accordance with IFRS as issued by the IASB without a reconciliation to U.S. GAAP, or in accordance with non-IFRS home-country GAAP reconciled to U.S. GAAP as permitted by Form 20-F.

4210.6 Auditors' reports must refer to each period for which audited financial statements are required, except that audit reports opining on only the most recently completed fiscal year are permitted in an annual report to shareholders. Including an audit report on only the current period precludes the incorporation by reference of those financial statements into the Form 10-K or other filings unless the audit reports for previous years are separately included or incorporated by reference from another document. [Proxy Rules 14a-3(b)(1), Note 1]

4210.7 See Section 4320 for further requirements regarding ICFR audit reports, including PCAOB standard requirements.

4220 Qualified Audit Reports

The audit report that an independent auditor issues under PCAOB standards (or U.S. GAAS for non-issuers) may indicate that the financial statements do not satisfy the requirements of the SEC's rules or the audit procedures applied omitted certain procedures deemed necessary by the auditor. There may be rare instances when the staff will not object to an audit report on the financial statements that contains a qualification. However, a waiver from CF-OCA would need to be requested and obtained before filing. Examples of audit reports on the financial statements that represent a substantial deficiency in the filing are set forth in 4220.1 through 4220.4.

4220.1 Disclaimer of Opinion

S-X Article 2 requires the clear expression of an opinion on the financial statements. A report that states that the auditor is disclaiming an opinion on the financial statements for any reason does not satisfy the requirements of S-X Article 2.

4220.2 Adverse Opinion

An audit report that states that the financial statements taken as a whole are not presented fairly in conformity with GAAP does not satisfy the requirements of S-X Article 2.

4220.3 Scope Qualifications [SAB Topic 1E.2]

a. A qualification with respect to the scope of the audit of the financial statements results in a finding by the staff that the audit of the financial statements required by SEC rules has not been performed.

b. Sometimes an auditor is not present for observation of inventory. In that case, the auditor must be able to satisfy himself or herself through alternative procedures. No language in the report should imply a qualification as to scope or conclusions. [FRC 607.01]

4220.4 Qualifications as to Accounting Principles or Disclosures [SAB Topic 1E.2]

Audit reports that express a qualified or "except for" opinion due to a departure from GAAP do not meet the requirements of S-X Article 2. Financial statements not in conformity with GAAP are presumed to be inaccurate or misleading, notwithstanding explanatory disclosures in footnotes or in the accountant's report. [FRC 607.01]

4220.5 In the case of an auditor's issuance of an adverse opinion on a company's ICFR, the auditor should determine the effect an adverse opinion on ICFR has on the auditor's opinion on the financial statements. An auditor should disclose whether or not an adverse opinion on ICFR affected its audit opinion on the financial statements. [AS 5, paragraph 92]

4230 Other Report Modifications

4230.1 Going Concern Modifications [AU 341]

a. Going concern modifications are required by PCAOB standards/U.S. GAAS in certain circumstances.

b. Filings that include reports having going concern modifications must also include appropriate and prominent disclosure of the financial difficulties giving rise to that uncertainty. Discussion of a viable plan that has the capability of removing the threat to the continuation of the business must be included. The plan may include a "best efforts" offering so long as the amount of minimum proceeds necessary to remove the threat is disclosed. The plan should enable the issuer to remain viable for at least the 12 months following the date of the financial statements being reported on. If management has no viable plan, the use of going concern financial statements may be inappropriate and liquidation-basis financial statements may be necessary or the classification and amounts of assets and liabilities may need to be adjusted. [FRC 607.02] AU 341 does not apply to an audit of financial statements based on the assumption of liquidation.

c. Going concern opinions that do not use the words "substantial doubt" when referencing a going concern matter do not comply with PCAOB standards/U.S. GAAS.

d. Going concern opinions that use conditional language in expressing a conclusion concerning the existence of substantial doubt about the entity's ability to continue as a going concern are not appropriate.

e. A disclaimer of opinion, "except for" opinion, or an adverse opinion resulting from going concern matters is permitted by AU 341 (SAS 59), but none of these types of opinion comply with the requirements of S-X Article 2.

4230.2 Changes in Accounting Principles [SFAS 154 /ASC 250, AS 6, S-X 10-01]

a. A change in accounting principle that has a material effect on the financial statements should be recognized in the auditor's report. [AS 6, paragraph 8]

b. The correction of a material misstatement in previously issued financial statements should be recognized in the auditor's report on the audited financial statements through the addition of an explanatory paragraph. [AS 6, paragraph 9]

c. Preferability Letters

The presumption that an entity should not, in the absence of the issuance of a new accounting standard, change an accounting principle may be overcome only if the enterprise justifies the use of an alternative acceptable accounting principle on the basis that it is preferable. [SFAS 154, paragraph 13 / ASC 250-10-45-12] The registrant is required to file a letter from its independent accountant concurring with its conclusion as to the new method's preferability. [S-X 10-01; SAB Topic 6G.2.b]

1. Preferability letters must be included in Form 10-Q or Form 10-K as Exhibit 18 and need only be filed once in the first applicable 1934 Act filing following the change. Preferability letters are not required in 1933 Act filings. A preferability letter generally is required in Form 10-K only when a change in accounting occurs in the fourth quarter. Even though the independent accountant referred to the change in its audit report as required by PCAOB standards/U.S. GAAS and concluded as to the preferability of the change, S-K 601 requires that a preferability letter be included as an exhibit to the Form 10-K (unless it was previously filed).

2. The staff has objected to the change from one acceptable method to another acceptable method if the registrant and its independent accountants cannot demonstrate that the new method is preferable. Conforming to industry practice may not justify a change if industry practice is not the preferable method.

3. Preferability letters are not required after a business combination where changes in the acquired entity's accounting are made to conform to those of the acquiring entity.

4. A preferability letter is not required for a change in estimate effected by a change in accounting principle.

5. A preferability letter is not required for changes that are mandatory or will be mandatory.

4230.3 Clarification in Audit Report Regarding No Audit of Internal Control Over Financial Reporting [SOX 404(b), S-K 308(b), AU 508, AS 5]

In a financial statement audit of an issuer or non-issuer that has determined it is not yet required to obtain, nor did it request the auditor to perform, an audit of internal control over financial reporting under SOX 404(b) and S-K 308(b), a firm may, but is not required to, expand its audit report to clarify this fact. A firm may include a statement that the purpose and extent of the auditor's consideration of internal control over financial reporting was to determine that the nature, timing, and extent of tests to be performed are appropriate in the circumstances, but was not sufficient to express an opinion on the effectiveness of internal control over financial reporting. If a firm chooses to expand its report to clarify this point, the scope paragraph in the audit report should follow the suggested language in AU 9550.07 to .11.

4300 REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING [SOX 404, AS 5 and S-K 308, SEC Interpretive Guidance, ICFR FAQs, PCAOB Staff Guidance]

(Last updated: 6/30/2009)

4310 Management's Annual Report on Internal Control Over Financial Reporting [S-K 308]

4310.1 S-K 308(a) requires management to provide its report on ICFR containing its assessment of the effectiveness of ICFR as of the end of the most recent fiscal year in its annual report on Form 10-K, 20-F, or 40-F (including transition reports filed on such forms upon a change in fiscal year-end). If the registrant is a non-EGC accelerated filer or a large accelerated filer, S-K 308(b) requires management to provide the registered public accounting firm's attestation report on the registrant's ICFR. Filings without the required report or reports are deficient and considered not timely, except for the limited situation described in Section 4310.6 below. Non-accelerated filers (both domestic and foreign) and EGCs (both domestic and foreign) are not required to include an auditor attestation report under S-K 308(b).

NOTE: Management's report on ICFR and the accompanying attestation report are not required in registration statements (whether under the 1933 Act or 1934 Act) or Forms 11-K. *(Last updated: 6/30/2013)*

4310.2 A non-EGC that enters accelerated filer status at the end of a fiscal year (based upon its public float as of the end of its second fiscal quarter) is required to include an auditor attestation report in the Form 10-K for that year. Similarly, a company that exits accelerated filer status at the end of its fiscal year (based upon its public float as of the end of its second fiscal quarter) would not be required to include an auditor attestation report in the Form 10-K for that year. *(Last updated: 6/30/2013)*

4310.3 The staff's *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Frequently Asked Questions* ("ICFR FAQs") is available at http://www.sec.gov/info/accountants/controlfaq.htm.

4310.4 [Reserved]

4310.5 [Reserved]

4310.6 Pursuant to S-K 308, a newly public company need not provide management's report on ICFR until it either had been required to file or had filed a Form 10-K with the Commission for the prior fiscal year. A company that historically reported under the Exchange Act as a voluntary filer or because of registered debt, and therefore filed annual reports up to and through the date of its IPO, in which it was required to comply with the disclosures required by Item 308(a) of Regulation S-K, is therefore required to provide management's report on ICFR in its first annual report following the IPO.

Only "accelerated filers" that are not EGCs and "large accelerated filers" are required to provide an auditor's attestation report on ICFR under Item 308(b) of Regulation S-K. The definitions of "accelerated filer" and "large accelerated filer" require that the issuer has been subject to reporting under Section 13(a) or 15(d) and has filed at least one annual report. Newly public companies and companies that historically reported under the Exchange Act as voluntary filers or because of registered debt do not satisfy the definitions of "accelerated filer" or "large accelerated filer" for purposes of their first annual report following their IPO, and therefore are not required to include an auditor's attestation report on ICFR under S-K 308(b) in that first annual report.

A registrant should include a statement in its first annual report in substantially the following form:

"This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of

the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies." [Instruction 1 to S-K 308] *(Last updated: 6/30/2013)*

4310.7 The framework on which management bases its evaluation of ICFR must be a suitable, recognized control framework. Many companies follow the COSO framework, but other frameworks are also acceptable. In assessing effectiveness, management evaluates whether its ICFR system addresses the elements of internal control that its chosen framework describes as necessary for an internal control system to be effective. There are no specifically required methods or procedures for evaluating ICFR, so it will vary from company to company. Management will have to use its best judgment. The evaluation must be based on procedures sufficient to evaluate both the design and operating effectiveness of ICFR. In June 2007, the SEC issued interpretative guidance regarding management's report on ICFR. [Release No. 33-8810] An evaluation following this interpretative guidance is one way to satisfy the evaluation requirements of ICFR.

Under any method of evaluating ICFR, management must attain a level of "reasonable assurance" when making conclusions about the effectiveness of ICFR. While "reasonable assurance" is a high level of assurance, it does not mean absolute assurance. The term "reasonable assurance" relates to similar language in the Foreign Corrupt Practices Act. 1934 Act Section 13(b)(7) defines "reasonable assurance" as the degree of assurance that would satisfy prudent officials in the conduct of their own affairs. There is a range of judgments that an issuer might make as to what is reasonable in implementing SOX 404 and the SEC's rules.

4310.8 S-K 308 does not specify the exact content of management's annual report on ICFR. Management should tailor the wording of the report to fit its company's particular circumstances. However, management's annual report on ICFR must state or disclose the following:

a. Management's responsibility for establishing and maintaining adequate ICFR for the company.

b. The framework used by management as criteria for evaluating the effectiveness of ICFR.

c. Management's assessment of the effectiveness of the company's ICFR at year end, including a statement as to whether or not ICFR is effective.

d. Any material weaknesses in the company's ICFR identified by management (See Section 4320.8 for definition of material weakness).

e. The fact that the company's independent public accountant, who audited the financial statements included in the annual report, has issued an attestation report on the company's ICFR (if applicable).

4310.9 Management must reach one of two conclusions for its assessment of ICFR – ICFR is either effective or not effective. Management cannot conclude that its ICFR is effective if there are one or more material weaknesses. Additionally, management cannot qualify its conclusion by stating that its ICFR is effective with certain qualifications or exceptions. However, management may state that its controls are ineffective for specific reasons. Because of the substantial overlap between ICFR and DCP, if management concludes that ICFR is ineffective, it must also consider the impact of the material weakness on its conclusions related to DCP. *(Last updated: 9/30/2010)*

4310.10 In certain circumstances, management may encounter difficulty in assessing certain aspects of ICFR. Management must still conclude whether ICFR is effective or not since management is not permitted to issue a report with a scope limitation (except under the limited circumstances described in Section 4310.11). Therefore, management must determine whether an inability to assess certain aspects of ICFR is significant enough to conclude that ICFR is not effective.

4310.11 If management does not have the ability to assess certain aspects of ICFR, management must conclude whether ICFR is effective or not, taking into consideration any scope limitation. Scope limitations are <u>not</u> permitted in management's report, except for the following limited exceptions:

a. A variable interest entity in existence prior to December 15, 2003 that is consolidated AND the registrant does not have the right or authority to assess the internal controls of the consolidated variable-interest entity and also lacks the ability, in practice, to make that assessment. A similar exception is available for an entity accounted for via proportionate consolidation in accordance with EITF 00-1 [ASC 810-10-45-14] if management does not have the ability to assess ICFR. [ICFR FAQ 1]

b. Equity method investments. [ICFR FAQ 2]

c. A current year acquisition (includes initial consolidation resulting from becoming the primary beneficiary of a variable interest entity) when it is not possible to conduct an assessment of the acquired business's ICFR in the period between the consummation date and the date of management's assessment. The exclusion may not extend beyond one year from the date of the acquisition nor may it be omitted from more than one annual management report on ICFR. [ICFR FAQ 3] *(Last updated: 9/30/2010)*

d. A reverse acquisition between an issuer and a private operating company when it is not possible to conduct an assessment of the private operating company or accounting acquirer's ICFR in the period between the consummation date of a reverse acquisition and the date of management's assessment of ICFR. See the Division of Corporation Finance's C&DIs for Regulation S-K, Question 215.02.

For foreign private issuers who file their financial statements in their home country GAAP, management's evaluation of ICFR should consider, in addition to controls related to preparation of the primary financial statements, controls related to the preparation of the U.S. GAAP reconciliation because the reconciliation is a required element of the financial statements. [ICFR FAQ 12] *(Last updated: 9/30/2010)*

4310.12 Management should consider disclosing the following with respect to a material weakness:

a. Describe the nature of the material weakness;

b. Describe its impact on the financial reporting and ICFR, if any; and

c. Describe management's current plans or action already undertaken, if any, for remediating the material weakness.

4310.13 Management must communicate all significant deficiencies and material weaknesses it detects to the audit committee and external auditor. The SOX 302 certifications include an affirmative statement to this effect. Management must also provide written representations to the auditor regarding its internal controls.

4310.14 S-K 308 does not specify where management's internal control report must appear in the annual report on Form 10-K, but it should be located in close proximity to the corresponding attestation report issued by the company's auditor. [Release No. 33-8238] Management's report is not required to have a title. Management's report does not need to be dated or signed, but may include the date and/or the names or signatures of management.

4310.15 Our rules do not address whether the assessment of ICFR covers supplementary financial information, Regulation S-X schedules, or SFAS 69 [ASC 932] oil and gas disclosures. Internal controls over supplementary information do not need to be included in an assessment of ICFR, although adequate internal controls over the preparation of supplementary information are required. [ICFR FAQ 11]

4310.16 There is no requirement for a company to reevaluate the effectiveness of its internal controls and/or reissue a revised management's report on ICFR when a company restates its financial statements to correct errors in the financial

statements. However, a company may need to consider whether or not its original disclosures in management's report continue to be appropriate in light of these errors, and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the restatement. The company should also disclose any material changes to ICFR, as required by S-K 308(c).

4310.17 If a company's management concludes that its original assessment of ICFR was incorrect, it should consider whether or not to revise its original report on ICFR. A company should also reevaluate the appropriateness of its prior disclosures regarding the effectiveness of the company's DCP and make any necessary revisions. For example, a company disclosed that its Chief Financial Officer and Chief Executive Officer concluded its DCP were effective in its original Form 10-K. Subsequently, the company filed a Form 10-K/A to restate its financial statements for errors. In the Form 10-K/A, the company revised its disclosures to state that the Chief Financial Officer and Chief Executive Officer concluded its DCP were not effective, and the reasons why they were not effective.

4320 Auditor's Report on ICFR [AS 5, S-X 2-02(f)]

4320.1 AS 5 requires an auditor to perform an audit of a company's ICFR that is integrated with an audit of the financial statements. A report on the audit of ICFR, which may be combined with or separate from the report on the financial statements, must include the following:

a. A title that includes the word *independent*;

b. A statement that management is responsible for maintaining effective internal control over financial reporting and for assessing the effectiveness of internal control over financial reporting;

c. An identification of management's report on internal control;

d. A statement that the auditor's responsibility is to express an opinion on the company's internal control over financial reporting based on his or her audit;

e. A definition of internal control over financial reporting as stated in AS 5, paragraph A5;

f. A statement that the audit was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States);

g. A statement that the standards of the Public Company Accounting Oversight Board require that the auditor plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects;

h. A statement that an audit includes obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal controls based on the assessed risk and performing such other procedures as the auditor considered necessary in the circumstances;

i. A statement that the auditor believes the audit provides a reasonable basis for his or her opinion;

j. A paragraph stating that, because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements and that projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate;

k. The auditor's opinion on whether the company maintained, in all material respects, effective internal control over financial reporting as of the specified date, based on the control criteria;

l. The manual or printed signature of the auditor's firm;

m. The city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's report has been issued; and

n. The date of the audit report.

4320.2 In addition, S-X 2-02(f) requires the audit report on ICFR to identify the period covered by the report.

4320.3 If the audit report on ICFR is separate from the audit report on the financial statements, both reports must be dated the same. See paragraphs 87-88 of AS 5 for sample Illustrative Reports on Internal Control Over Financial Reporting.

4320.4 AS 5 requires the auditor to modify its report on ICFR if any one of the following five conditions exists:

a. Elements of management's annual report on internal control are incomplete or improperly presented;

b. There is a restriction on the scope of the engagement;

c. The auditor decides to refer to the report of other auditors as the basis, in part, for the auditor's own report;

d. There is other information contained in management's annual report on internal control over financial reporting; or

e. Management's annual certification pursuant to SOX 302 is misstated. [AS 5, paragraphs C1-C15]

The report modification may be in one of the following forms, depending on the condition:

- an explanatory paragraph;
- an adverse opinion; or
- a disclaimer of opinion.

4320.5 The auditor's report on ICFR should clearly state whether or not it is the auditor's opinion that a company maintained, in all material respects, effective ICFR at year end. It is not appropriate for the report to state that ICFR is effective with certain qualifications or exceptions. For example, language indicating that the company maintained effective ICFR, except for a certain weakness in a control, is not acceptable. Language indicating that the company maintained ICFR that are "sufficiently effective" or "adequate" is also not appropriate.

4320.6 The auditor must express an adverse opinion on the company's ICFR when one or more material weaknesses in ICFR exist, unless there is a restriction on the scope of the engagement. See Section 4320.12. An adverse opinion on ICFR must include:

a. The definition of a material weakness; and

b. A statement that a material weakness has been identified and an identification of the material weakness described in management's assessment.

4320.7 The auditor should determine the effect an adverse opinion on ICFR has on the auditor's opinion on the financial statements. Also, the auditor should disclose whether or not the adverse opinion on ICFR affected its audit opinion on the financial statements. [AS 5, paragraph 92]

4320.8 A material weakness is a deficiency, or combination of deficiencies, in ICFR such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. [S-X 1-02(a)(4); AS 5, paragraph A7]

4320.9 A deficiency or combination of deficiencies is an indicator of a material weakness if the auditor determines that the deficiency or combination of deficiencies might prevent prudent officials in the conduct of their own affairs from concluding that they have reasonable assurance that transactions are recorded as necessary to permit the preparation of the financial statements in conformity with GAAP. [AS 5, paragraph 70]

4320.10 AS 5 lists four indicators of a material weakness in ICFR, which are:

a. Identification of fraud, whether or not material, on the part of senior management;

b. Restatement of previously issued financial statements to reflect the correction of a material misstatement;

c. Identification by the auditor of a material misstatement of financial statements in the current period in circumstances that indicate that the misstatement would not have been detected by the company's internal control over financial reporting; and

d. Ineffective oversight of the company's external financial reporting and internal control over financial reporting by the company's audit committee. [AS 5, paragraph 69]

4320.11 If the material weakness was not included in management's assessment, the auditor's report on ICFR should be modified to state that a material weakness has been identified but not included in management's assessment. Also, the auditor's report should include a description of the material weakness, which should provide the users of the audit report with specific information about the nature of the material weakness and its actual and potential effect on the presentation of the company's financial statements issued during the existence of the weakness. If the material weakness was included in management's assessment but the auditor concludes that management's disclosure of the material weakness is not fairly presented in all material respects, the auditor's report should describe this conclusion as well as the information necessary to fairly describe the material weakness. [AS 5, paragraph 91]

4320.12 Any report modification due to a scope limitation would result in a disclaimer of opinion on the audit of ICFR. Reports that result in a disclaimer of opinion are expected to be rare. [S-X 2-02(f)] Reports on audits of ICFR that disclaim an opinion due to a scope limitation should be discussed with CF-OCA in advance of filing. *(Last updated: 9/30/2011)*

4320.13 When disclaiming an opinion due to a scope limitation, the auditor must state that the scope of the audit was not sufficient to warrant the expression of an opinion. Also, the auditor's report on ICFR should provide the substantive reasons for the disclaimer in a separate paragraph. [AS 5, paragraph C4]

4320.14 When the auditor plans to disclaim an opinion on the audit of ICFR due to a scope limitation and the limited procedures performed by the auditor cause the auditor to conclude that a material weakness existed, the auditor's report on ICFR should include the definition of a material weakness and a description of any material weakness identified, as described in 4320.6. [AS 5, paragraph C5]

4320.15 If management discloses additional information in the report (e.g., its plans to implement new controls, corrective actions taken after the date of assessment, or a statement that management believes the cost of correcting a material weakness would exceed the benefits to be derived from implementing new controls), the auditor is required to modify its report regarding any additional information and disclaim this information. [AS 5, paragraphs C1 and C12-14]

4320.16 The auditor should inquire about and examine relevant documents for events which occurred subsequent to the date as of which ICFR is being audited but before the date of the auditor's report. Such subsequent events could include changes in internal controls or other factors. If the auditor obtains knowledge about subsequent events that materially and adversely affect the effectiveness of the company's ICFR as of the date specified in the assessment, the auditor should issue an adverse opinion on ICFR. If the auditor is unable to determine the effect of the subsequent event on the effectiveness of ICFR, the auditor should disclaim an opinion. [AS 5, paragraphs 93-96]

4320.17 The auditor may obtain knowledge about subsequent events with respect to conditions that did not exist at the date specified in the assessment but arose subsequent to that date and before issuance of the auditor's report. If a subsequent event of this type has a material effect on the company's ICFR, the auditor should include an explanatory paragraph in its report on ICFR describing the event and its effects or directing the reader to the event and its effects as disclosed in management's report on ICFR. [AS 5, paragraph 97]

4320.18 An audit report on ICFR may be based, in part, on the work of another auditor when another auditor has audited the financial statements and ICFR of a subsidiary, division, branch or component of a company. The principal auditor should determine whether or not it will make reference in its report on ICFR to the audit of ICFR performed by another auditor. The auditor's decision to make reference or not is based on factors analogous to those in AU 543 when a principal auditor decides to make reference to the report of another auditor when reporting on a company's financial statements. As a result, the decision to make reference to another auditor's report on ICFR may differ from the decision to make reference to another auditor in the principal auditor's report on the financial statements. When the auditor decides to make reference to the report of the other auditor in its report on ICFR, the principal auditor's report on ICFR should refer to the report of the other auditor when describing the scope of the audit and expressing an opinion on ICFR. [AS 5, paragraphs C8-C11]

4320.19 If the auditor makes reference to another auditor's report on ICFR, the separate report of the other auditor on ICFR must also be included in the filing. [S-X 2-05]

4320.20 AS 4 establishes requirements and provides guidance that apply when an auditor is engaged to report on whether a previously reported material weakness in internal control over financial reporting continues to exist as of a date specified by management.

4320.21 The auditor's objective in an engagement to report on whether a previously reported material weakness continues to exist is to obtain reasonable assurance about whether the previously reported material weakness exists as of a date specified by management and to express an opinion thereon. The auditor's opinion relates to the existence of a specifically identified material weakness as of a specified date and does not relate to the effectiveness of the company's ICFR overall.

4400 REVIEW AND COMPILATION REPORTS

(Last updated: 6/30/2009)

4410 Review Reports on Interim or Pro Forma Data [SAS 100]

4410.1 Prior to filing, interim financial statements included in quarterly or transition reports on Form 10-Q must be reviewed by an independent registered public accountant using PCAOB standards and procedures for conducting such reviews, as may be modified or supplemented by the SEC. If the company states in any filing that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. [S-X 10-01(d)] Otherwise, the report is not required to be included in Form 10-Q.

4410.2 If a Form 10-Q that contains a review report on pro forma data or interim financial statements is incorporated by reference into a registration statement, the auditor must acknowledge use of its review report in a letter filed as Exhibit 15 to the registration statement. [S-K 601]

4410.3 If the review was not performed by a registered public accounting firm, the Form 10-Q is considered substantially deficient and not timely filed. In addition, the Form 10-Q must include the following disclosures:

a. Identify the report as deficient;

b. Label the columns of the financial statements as "not reviewed"; and

c. Describe how the registrant will remedy the deficiency.

When the review is completed by a registered accounting firm, the registrant must file an amendment to remove the references to the deficiency and the financial statements as "not reviewed."

4420 Selected Quarterly Financial Data [AU 722/SAS 100]

4420.1 Selected quarterly financial data is required for all registrants except foreign private issuers, mutual life insurance companies, and smaller reporting companies, and in initial registration statements. If it is required to be presented, it must be reviewed by the independent registered accountant. [S-K 302]

4420.2 No reference in the audit report to the quarterly data accompanying the annual financial statements is necessary if the auditor's review conformed with applicable standards and the auditor is not aware that the interim information is materially affected by a departure from GAAP. Otherwise, the auditor must discuss the departures that exist.

4430 Compilation Reports

Compilation reports are not appropriate in any filings, including Regulation A filings, because the association of the accountant provides no basis for reliance. In addition, the presence of a compilation report may indicate a violation of SEC independence standards under S-X 2-01(c)(4)(i)(B).

4500 CHANGE IN ACCOUNTANTS [S-K 304, ITEM 4.01 FORM 8-K]

(Last updated: 6/30/2009)

4510 Change in Accountants

4510.1 If a change in accountant for a registrant or a significant subsidiary on whose report the principal accountant relied occurred within 24 months prior to or in any period subsequent to the date of the most recent financial statements, the registrant should provide the required information in:

a. An Item 4.01 Form 8-K within 4 business days of the change;

b. Proxy statements, even though previously disclosed in Form 8-K, if required by Item 9 of Schedule 14A; and

c. Forms 10-K and 20-F, and registration statements, unless the change was previously disclosed.

NOTE: The disclosures about disagreements required by S-K 304(b) must always be provided, where required, even if previously disclosed. [Instruction 1 to S-K 304; Instruction 2 to Item 16F of Form 20-F for registrants with fiscal years ending on or after December 15, 2009]

4510.2 Disclosure of the following items should be provided:

a. Whether the accountant resigned, declined to stand for reelection or was discharged (one of these must be specifically stated in the filing);

b. The date of resignation or discharge;

c. Whether the decision was recommended or approved by the Board of Directors or a committee thereof;

d. Whether the accountant had issued a report in the last two fiscal years containing a disclaimer or adverse opinion, or that was qualified or modified. A modified opinion includes an opinion that expresses substantial doubt about a company's ability to continue as a going concern;

e. Whether in connection with audits of the two most recent years through the date of resignation or discharge there were any disagreements with the former accountant on any matter which, if not resolved to the satisfaction of the accountant, would have caused the accountant to make reference in its report to the matter. Among other items specified in S-K 304(a)(1)(iv), the filing should describe the subject matter of any such disagreement. Disagreements required to be reported include both those resolved to the satisfaction of the accountant and those not resolved to the satisfaction of the accountant.

f. If there were any reportable events described under S-K 304(a)(1)(v) during the two most recent years and any interim period preceding the former accountant's resignation or discharge, provide the disclosures required by S-K 304(a)(1)(iv). If the event led to a disagreement, then it should be reported as described under Section 4510.2(e) and need not be repeated.

4510.3 If the registrant amends the Item 4.01 Form 8-K disclosures for any reason, it must also file an updated letter from the auditor addressing the revised disclosures as Exhibit 16.

4520 Unusual Issues Involving Changes in Accountants

4520.1 [Reserved]

4520.2 Predecessor Auditor Refuses to Furnish Exhibit 16 Letter

If the predecessor auditor refuses to furnish an Exhibit 16 letter stating whether it agrees with the registrant's statements, the registrant should indicate that fact in the Item 4.01 Form 8-K or by amendment to the original Form 8-K. See the Division of Corporation Finance's C&DIs for Exchange Act Form 8-K, Question 214.01.

4520.3 Reverse Acquisition

a. Unless the same accountant reported on the most recent financial statements of both the registrant and the accounting acquirer, a reverse acquisition always results in a change in accountants. An Item 4.01 Form 8-K should be filed within four business days of the change in accountants, which often occurs on the date the reverse merger is consummated. The accountant that will no longer be associated with the registrant's financial statements is the predecessor accountant. If a decision has not been made as to which accountant will continue as the successor auditor as of the date of filing the Item 2.01 Form 8-K, an Item 4.01 Form 8-K must be filed within four business days of the date the decision is made.

b. The disclosures required by S-K 304 with respect to any changes in the accounting acquirer's auditor which occurred within 24 months prior to, or in any period subsequent to, the date of the acquirer's financial statements must be provided in the filing. See Section 12230.

4520.4 Form 11-K Plans

Staff practice is not to object if a change in accountants for an employee stock purchase plan or similar plan filing a Form 11-K does not result in the filing of an Item 4.01 Form 8-K.

4530 Additional Guidance

(*Last updated: 12/31/2010)*

4530.1 Guidance regarding changes in accountants can be found in the Division of Corporation Finance's Compliance and Disclosure Interpretations. Questions are grouped into the following categories and sections:

a. *Regulation S-K*, Sections 111 and 211 - Item 304 Changes in and Disagreements with Accountants on Accounting and Financial Disclosure
    - Subsequent interim period
    - No reportable events
    - Remediation of internal control deficiencies
    - Material weakness or significant deficiency in ICFR
    - Going concern

- Explanatory paragraph in report on ICFR
- Revocation of accountant's PCAOB registration
- Time period preceding resignation, declination or dismissal

b. *Exchange Act Form 8-K*, Section 114 and 214 - Item 4.01 Changes in Registrant's Certifying Accountant

- Revocation of accountant's PCAOB registration
- New principal accountant related to former principal accountant
- Business combination between principal accountant and another accounting firm
- Former accountant declines to provide agreement letter
- Requirement to use Form 8-K

4600 NON-RELIANCE ON PREVIOUSLY ISSUED FINANCIAL STATEMENTS OR RELATED AUDIT REPORT OR COMPLETED INTERIM REVIEW [ITEM 4.02 FORM 8-K]

(Last updated: 6/30/2009)

4610 Non-Reliance on Previously Issued Financial Statements [Item 4.02(a) Form 8-K]

4610.1 An Item 4.02(a) Form 8-K should be filed when a registrant's board of directors, committee of the board, or board authorized officer(s) concludes any previously issued financial statements should no longer be relied upon due to an accounting error.

4610.2 [Reserved]

4610.3 The staff believes that filing an Item 4.02(a) Form 8-K without also filing an Item 4.02(b) Form 8-K would be acceptable unless the auditor's conclusion that the financial statements can no longer be relied on relates to a different error or matter from that which triggered the registrant's filing under Item 4.02(a) Form 8-K. See the Division of Corporation Finance's C&DIs for Exchange Act Form 8-K, Question 115.01.

4610.4 The Form 8-K should disclose:

a. The date that the registrant concluded the financial statements should no longer be relied upon and identify the financial statements and years or periods covered that should no longer be relied upon;

b. A description of the facts underlying the conclusion to the extent known to the registrant at the time of filing; and

c. Whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer(s), discussed the disclosed matters with the registrant's independent accountant.

4620 Non-Reliance on Previously Issued Audit Report or Completed Interim Review [Item 4.02(b) Form 8-K]

4620.1 An Item 4.02(b) Form 8-K should be filed if the registrant's current or former independent accountant advises or notifies it must disclose or take action to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements.

4620.2 The filing of an Item 4.02(b) Form 8-K may, but does not necessarily, result in non-reliance on previously issued financial statements, and require the filing of an Item 4.02(a) Form 8-K. It would depend upon the underlying reasons that the accountant advised a registrant that its audit report or completed interim review should no longer be relied on.

4620.3 [Reserved]

4620.4 The Form 8-K should disclose:

a. The date on which the accountant advised or notified the registrant;

b. The specific financial statements that should no longer be relied upon;

c. A brief description of the information provided by the accountant; and

d. A statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed the matters disclosed in the filing under Item 4.02(b) of Form 8-K with the accountant.

4620.5 The Form 8-K should include any written notice received from the accountant as Exhibit 7.

4620.6 A registrant should provide the accountant with a copy of the disclosures the registrant is making in response to the Item 4.02(b) Form 8-K no later than the day that the disclosures are filed with the SEC.

4620.7 A registrant should request the accountant furnish the registrant as promptly as possible a letter addressed to the SEC stating whether the independent accountant agrees with the statements made by the registrant in response to the Item 4.02(b) Form 8-K and, if not, stating with what it does not agree. If the letter is not available on the date the 8-K is filed, a company should amend its

previously filed Form 8-K to file the independent accountant's letter as Exhibit 7 no later than two business days after the registrant's receipt of the letter.

4630 Other – Prior Disclosures Regarding Disclosure Controls and Procedures

A registrant should consider whether the disclosures provided under S-K 307 in prior filings need to be modified, supplemented or corrected in order to explain whether management's previously discussed conclusions regarding the effectiveness of DCP continue to be appropriate in light of the restated financial statements or non-reliance on a previously issued audit report or completed interim review. [Release No. 33-8810]

4700 "TO BE ISSUED" ACCOUNTANT'S REPORTS

(Last updated: 6/30/2009)

4710 Contingent Upon Future Event or Transaction

(Last updated: 6/30/2011)

If audited financial statements are required in a filing, the audit report should be signed and unrestricted. Generally, the staff will not make a review determination on or commence a review of a filing that does not meet that requirement. In some circumstances, however, a transaction that will occur at or immediately before the effectiveness of a registration statement is retrospectively reflected in the annual financial statements. If the transaction prevents the auditor from expressing an opinion on the financial statements at the time of filing, the staff has accepted the filing of a "draft report" in the form that it will be expressed at effectiveness. Such transactions may include, but are not limited to:

- stock splits, and
- reorganizations in which the entities comprising an IPO registrant will not be legally transferred to the registrant until immediately before effectiveness.

In these cases, the draft report should be accompanied by a signed preface of the auditor stating that it expects to be in a position to issue the report in the form presented at effectiveness. No registration statement can be declared effective until the preface is removed and the accountant's report finalized.

4720 Contingent upon Future Underwriting Agreement

(Last updated: 6/30/2010)

An auditor may conclude that it is appropriate to include an explanatory paragraph about the registrant's ability to continue as a going concern in the auditor's report. The auditor may believe that upon the receipt of the proceeds from the offering that the explanatory paragraph could be removed. As the receipt of the proceeds occurs upon closing - not at effectiveness – the auditor's report should include the explanatory paragraph that the auditor believed was appropriate at the time of effectiveness. It would not be appropriate for the report to indicate that the explanatory paragraph would be removed at closing as that event takes place after effectiveness.

4800 OTHER MATTERS

(Last updated: 6/30/2009)

4810 Consents to the Use of Audit Reports

4810.1 Registrants must file a copy of the auditor's consent to the use of its audit report or an acknowledgement letter regarding the use of its review report in any filing under the 1933 Act as an exhibit. The primary purpose of obtaining a consent or acknowledgement letter is to assure that the auditor is aware of the use of its report and the context in which it is used.

4810.2 The consent or acknowledgement letter must indicate the date and a conformed EDGAR signature. A manually signed consent or acknowledgement letter must be kept on file by the registrant.

4810.3 A new consent or acknowledgement letter is required:

a. Whenever any change, other than typographical, is made to the financial statements;

b. For an amendment if there have been intervening events since the prior filing that are material to the company; and

c. Prior to the effectiveness of a registration statement if an extended period of time passes since the last filing. An extended time is generally any period which is more than 30 days.
(Last updated: 12/31/2010)

4810.4 1934 Act Reports

a. Filing of a consent to the use of an audit report (or acknowledgment letter) is not required in 1934 Act reports, other than an annual report on Form 40-F, unless the 1934 Act report is automatically incorporated by reference into a previously filed 1933 Act filing, such as a Form S-3 or Form S-8. In addition, a consent is required in a registration statement on Form 20-F [Item 10.G of 20-F] and in registration statements and annual reports on Form 40-F.
(Last updated: 12/31/2010)

b. Periodic reports on Forms 10-K and 20-F, and 1934 Act registration statements on Form 10 or Form 20-F must include a signed audit report. The signature must be a conformed EDGAR signature. [S-T 302] The original manually signed report must be kept on file by the registrant.

c. Definitive proxy statements that include financial statements must have a manually signed audit report.

d. A reissuance of the auditor's report is required when a previously filed 1934 Act filing is amended to include restated financial statements or retrospectively adjusted financial statements.

e. A registrant need not file an updated consent on the annual financial statements when the registrant forward incorporates a Form 10-Q into a pre-effective Form S-3. However, the auditor's Section 11 liability extends through the effective date of the registration statement regardless of the inclusion of the updated consent.
(Last updated: 9/30/2009)

4810.5 Waivers [Regulation C, Rule 437]

a. In rare circumstances, such as situations involving hostile takeover attempts, a consent may be waived if the registrant submits a request to CF-OCA for a waiver and provides an affidavit complying with Rule 437 of Regulation C.

b. Hostile takeovers

1. A registrant offering its own securities in a hostile exchange offer for a target's stock may seek and not be able to obtain the target's cooperation in providing either its audited financial statements or the target auditor's consent to the use of its report in the required registration statement. The acquirer/registrant should use its best efforts to obtain the

target's permission and cooperation for the filing or incorporation by reference of the target's financial statements and the target auditor's consent to the inclusion of its report on the financial statements. At a minimum, a registrant is expected to write to the target requesting these items and to allow a reasonable amount of time for a response prior to effectiveness of the filing.

2. If a registrant uses its best efforts but is unsuccessful in obtaining the target's permission and cooperation for the filing or incorporation by reference of its financial statements and its auditor's consent to the inclusion of its report on the financial statements, the registrant may request a waiver of the consent. The affidavit included in the request should document the specific actions taken by the registrant to obtain the cooperation of the other party for the filing as well as the efforts to obtain the auditor's consent. Correspondence evidencing the registrant's request for these items should accompany the affidavit.

3. Depending on the facts and circumstances, the staff may agree to waive the requirement to include or incorporate by reference the target auditor's audit report in the event the target is unwilling to cooperate. In that situation, disclosure should be made that, although an audit report was issued on the target's financial statements and is included in the target's filings, the auditor has not permitted use of its report in the registrant's registration statement. The auditor should not be named. Any legal or practical implication for shareholders of the registrant and the target resulting from the inability to obtain the cooperation of the target or consent of the target's auditor should be explained. No disclosure in the registration statement should expressly or implicitly disclaim the registrant's liability for the target's financial statements. In the event that circumstances change, the registration statement should be amended to include the audited financial statements and the auditor's consent required by the form.

4810.6 The consent of the independent accountant is not required for a report on financial statements which is not a part of a 1933 Act registration statement under Rule 412(c) of Regulation C, like superseded financial statements.

4820 Accountant's Inability to Reissue Reports [AU 9508, Interpretation 15; Regulation C, Rule 437]

4820.1 When an accounting firm ceases operations, it may be unable to reissue a prior report or give consent to the use of a prior report. A company should submit a consent waiver request under Regulation C, Rule 437 with CF-OCA if the auditor does not reissue or give consent to the use of its prior report. The guidance in Section 4810.5 regarding consent waiver requests should be followed. If the firm still exists, although it is not practicing public accounting, and has the ability to reissue or give consent to the use its prior report, a waiver may not be granted.

NOTE: The footnote to Interpretation 15 of AU 9508 states a firm is considered to have ceased operations when it no longer issues audit opinions either in its own name or in the name of a successor firm. A firm may cease operations with respect to public entities and still issue audit opinions with respect to non-public entities.

4820.2 If the waiver request is granted, certain disclosures should be made in any filings or reports that include the ceased firm's audit report. The predecessor auditor's latest signed and dated report on the financial statements should be reprinted with a legend indicating that the report is a copy of the previously issued report and that the ceased firm has not reissued the report. [AU 9508.65]

4830 Successor Auditor Reports [AU 508, AU 9508]

4830.1 If the prior period financial statements audited by the predecessor auditor are unchanged, the successor auditor should indicate in the introductory paragraph of his or her report that the financial statements of the prior period were audited by another auditor, the date of the predecessor auditor's report, the type of report issued by the predecessor auditor, and if the report was other than a standard report, the substantive reasons for it. The successor auditor ordinarily should indicate in its report that the other auditor has ceased operations. The successor auditor should not name the predecessor auditor in the report. [AU 9508.61]

4830.2 If the financial statements audited by the ceased firm are restated, the successor auditor will need to either reaudit the financial statements, or in certain cases, audit only the restatement adjustments. The successor's auditor's report should state that the predecessor auditor reported on the prior financial statements before restatement. [AU 9508.66]

4830.3 A full reaudit generally is necessary when the restatement adjustments include, but are not limited to:

a. Corrections of an error;

b. Reflection of a change in reporting entity;

c. Retrospective application of change in accounting principle:

1. with significant impact on previously reported amounts, or

2. that affect previously reported net income or net assets;

d. Reporting discontinued operations; and

e. Changes affecting previously reported net income or net assets. [AU 9508.70]

4830.4 If the successor auditor is engaged to audit only the restatement adjustments to the prior period financial statements that were audited by a predecessor auditor, the successor auditor must be able to form an opinion that the adjustments are appropriate and have been properly applied. In determining whether he or she can form such an opinion, the successor auditor should consider the extent of the adjustments, the reason for the adjustments, and the cooperation of the predecessor auditor. [PCAOB Staff Questions and Answers, "Adjustments to Prior-Period Financial Statements Audited by a Predecessor Auditor", Question 4]

4830.5 If the successor auditor is able to satisfy him or herself as to the appropriateness of the restatement adjustments, he or she may report on the restatement adjustments pursuant to the guidance in AU 508.74. [AU 9508.71]

4830.6 A successor auditor may audit the restatement adjustments in prior period financial statements audited by a predecessor auditor that has not ceased operations, so long as the auditor is independent and registered with the PCAOB.

4830.7 An auditor that is subsequently determined to be no longer independent of its client may reissue previously issued reports and consents to the use of those previously issued reports, as long as it was independent at the time of original issuance of the report. An auditor may perform the normal subsequent events procedures required by AU 711 prior to reissuing a report. Situations in which other audit work would be necessary to reissue the report should be discussed with OCA prior to filing.

4840 Accountant's Refusal to Reissue Reports

4840.1 The staff is not in a position to evaluate the reasons for an accountant's refusal to reissue its report and will not intervene in disputes between registrants and their auditors. Moreover, the staff will not waive the requirements for the audit report, the accountant's consent to the use of its audit report, or the naming of the accountant as an expert in filings. If a registrant is unable to reuse the previously issued audit report in a current filing, the registrant must engage another accountant to reaudit those financial statements.

4850 Illegal Acts

Section 10A of the 1934 Act requires that auditors report in a timely manner certain uncorrected illegal acts to a registrant's board of directors. It further requires the registrant, or the auditor if the registrant fails to do so, to provide information regarding the illegal act to OCA.

4860 Signatures

Wherever a signature is required, typed signatures or duplicated or facsimile versions of the manually signed document may be used. In any of these cases, each signatory must manually sign the document authenticating, acknowledging or otherwise adopting the signature that appears in the filing before or at the time that the filing is made, and the manually signed document must be retained by the filer for five years. A copy of this document must be furnished to the SEC upon request. [S-T 302] In certain instances, an auditor may reissue its audit report. If the reissued report is included in a filing, it must be manually signed as described above. *(Last updated: 12/31/2010)*

4870 Selected Financial Data

4870.1 An auditor may be engaged to report on selected financial data using the guidance of AU 552. Unless the auditor reports on selected financial data using the guidelines in AU 552, the information should not be labeled or described as audited. However, it would be acceptable to state that the information is derived from audited financial statements.

4870.2 If an auditor was engaged to report on the selected financial data, the form of report specified by AU 552 should be included in the filing and the auditor's consent to the report should make reference to its applicability to the selected financial data.

* * * * *

TOPIC 5

SMALLER REPORTING COMPANIES

Title I of the JOBS Act, which was effective as of April 5, 2012, created a new category of issuers called "emerging growth companies," whose financial reporting and disclosure requirements in certain areas differ from other categories of issuers. A Smaller Reporting Company ("SRC") can also be eligible to be an EGC. See Topic 10. *(Last updated: 6/30/2013)*

5100 DEFINITION AND ELIGIBILITY

(Last updated: 9/30/2008)

5110 Eligibility as a Smaller Reporting Company [S-K 10(f)(1)]

5110.1 Public float less than $75 million. An entity is a smaller reporting company if it has a public float (the aggregate market value of the issuer's outstanding voting and non-voting common stock held by non-affiliates) of less than $75 million and it is not an investment company, asset-backed issuer or majority-owned subsidiary of a parent that is not a smaller reporting company. Apply the public float test as follows:

a. Reporting company [S-K 10(f)(1)(i)]

The public float test of a reporting company is computed as of the last business day of its most recently completed second fiscal quarter by multiplying the aggregate worldwide number of voting and non-voting common shares held by non-affiliates by the price at which the common shares were last sold, or the average of the bid and asked prices, in their principal market.

b. Initial Registration Statement - Securities Act and Exchange Act [S-K 10(f)(1)(ii)]

The public float of a company filing an initial registration statement for shares of its common equity shall be determined as of a date within 30 days of the date the registration statement is filed. Float shall be computed by multiplying the sum of the (A) aggregate worldwide number of all shares outstanding held by non-affiliates prior to the filing of the registration statement and, in the case of a Securities Act registration statement, (B) the number of such shares included in the registration statement, by the estimated public offering price of the shares.

5110.2 If the public float of the issuer is zero because the issuer had no public equity outstanding or no market for its equity existed, the issuer must have annual revenues of less than $50 million, as reported in its most recent fiscal year (12 months) for which audited financial statements are available. [S-K 10(f)(1)(iii)]

a. New reporting companies

A company that has not previously reported to the SEC must meet the revenues test based on the most recent fiscal year for which audited financial statements are included in the initial registration statement. However, if, consideration of the **pro forma effect of (1) businesses acquired during the latest fiscal year, and (2) consummation of business combinations identified as probable** at the time of filing the initial registration statement would result in the issuer exceeding the revenue limit, the issuer would not qualify as a smaller reporting company.

b. Previously reporting companies

A previously reporting company must meet the revenues test based on its annual audited financial statements as originally filed with the SEC (not restated for subsequent discontinued operations) for its most recent fiscal year.

c. Banks and similar financial institutions

For purposes of the test, a bank must include all gross revenues from traditional banking activities. Banking activity revenues include interest on loans and investments, dividends on investments, fees from loan origination, fees from trust and investment services, commissions, brokerage fees, mortgage servicing revenues, and any other fees or income from banking or related services. Revenues do not include gains and losses on dispositions of investment portfolio securities (although it may include gains on trading account activity if that is a regular part of the institution's activities).

5110.3 An issuer that becomes an investment company or qualifies as an asset-backed issuer is disqualified from being considered a smaller reporting company for its next filing.

5110.4 If the issuer is a majority-owned subsidiary, the parent entity also must be a smaller reporting company. An entity that is to be spun off from its parent coincident with or prior to its initial registration may register as a smaller reporting company if it will otherwise qualify as a smaller reporting company upon consummation of the spin-off.

5110.5 Foreign companies are eligible to qualify as smaller reporting companies and use the scaled disclosure if they file on domestic forms and provide financial statements in accordance with U.S. GAAP.

5120 Determination

(Last Updated: 11/9/16)

5120.1 Status as a smaller reporting company is determined on an annual basis based upon the definitions above for reporting companies.

a. New issuers must make the determination at the time the initial registration statement is filed and have the option to redetermine based upon the actual offering price and, in the case of a determination based on an initial Securities Act registration statement, the number of shares included in the registration statement at the conclusion of the offering. [S-K 10(f)(2)(ii)]

b. Once an issuer fails to qualify for smaller reporting company status, it remains unqualified until its public float falls below $50 million as of the last business day of its second fiscal quarter. If the public float is zero because the issuer had no public equity outstanding or no market for its equity existed, revenues must fall below $40 million for the most recent fiscal year-end in order to qualify as a smaller reporting company.

c. An issuer that no longer qualifies as a smaller reporting company at the determination date may continue to use the scaled disclosures permitted for a smaller reporting company through its annual report on Form 10-K and begin providing non-scaled larger company disclosure in the first Form 10-Q of the next fiscal year.

NOTE: Although the annual report may continue to include scaled smaller reporting company disclosure, the due date for the annual report will be based on the registrant's filing status as of the last day of the fiscal year. Division of Corporation Finance's C&DIs for Exchange Act Rules, Question 130.04, clarifies that although the transition period for a company moving to the larger reporting system includes the end of the fiscal year, the company is no longer considered "eligible to use the requirements of smaller reporting companies" for purposes of determining its filing status under Exchange Act Rules 12b-2(1)(iv) and 12b-2(2)(iv).

d. An issuer newly qualifying as a smaller reporting company as of the last business day of the second quarter may choose to reflect this change in status in its quarterly report for that second quarter. See the Division of Corporation Finance's C&DIs for Regulation S-K, Question 102.01.

5130 Shell Company

5130.1 A reporting company that meets the definition of a shell company as defined in Rule 12b-2 of the Exchange Act and Regulation C, Rule 405 also will generally qualify as a smaller reporting company and be eligible to use the scaled disclosure. Upon a transaction that causes the reporting entity to lose its shell company status (typically a reverse merger), the surviving entity must file a Form 8-K. The information that must be provided is what would be required if the registrant were filing a general form for registration of securities under Form 10. Scaled disclosure would be appropriate only if the surviving entity qualifies as a smaller reporting company. This Form 8-K, including the financial statements of the accounting acquirer, is due within four business days of the completion of the transaction. Exchange Act Rule 12b-25 does not permit an extension of the due date for filing this Form 8-K.

5130.2 Shell companies are not eligible to use Form S-8 to register offerings of securities in connection with employee benefit plans. A shell company that ceases to be a shell is eligible to use Form S-8 sixty (60) days after it ceases to be a shell company and files the information that is equivalent to the information contained in an Exchange Act registration statement on Form 10. See General Instruction A. to Form S-8.

5200 OTHER ELIGIBILITY ISSUES

(Last updated: 9/30/2008)

5210 Financial Statements Required Pursuant to S-X 3-05 or 3-09

(Last updated: 9/30/2009)

5210.1 A non-SRC reporting company registrant who is required to present financial statements under S-X 3-05 or S-X 3-09 may not rely on accommodations available to smaller reporting companies with respect to the acquired business or investee even though that business would satisfy the tests as a smaller reporting company (or is currently a reporting SRC) or investee.

5210.2 Financial statements of a non-reporting target company that meets the conditions to be a smaller reporting company, or of a currently reporting SRC target, may be filed in accordance with S-X Article 8 in a registration statement on Form S-4 and in proxy statements. Nevertheless, the financial statements must comply with the other S-X reporting requirements in a subsequent Form 8-K reporting the business acquisition unless the acquirer is a currently reporting SRC. For example, the Form 8-K could potentially require three years of financial statements for the target company if revenues at the target company are greater than $50 million in order to comply with other S-X reporting requirements.

5220 Business Acquisitions

5220.1 A smaller reporting company continues to qualify for smaller reporting requirements after the acquisition in a merger accounted for as a purchase of another company that is not a smaller reporting company until the next determination date.

5220.2 If a registrant/acquirer is subject to S-X 8-04, the financial statements of a non-reporting business acquired or to be acquired may comply with scaled reporting requirements for a smaller reporting company. There are different requirements for filing financial statements of a non-reporting target in an S-4 registration statement (see Section 2200.2). *(Last updated: 12/31/2011)*

5230 Reverse Acquisitions

5230.1 In SEC Release No. 33-8587, the SEC determined that investors in operating businesses newly merged with shell companies should obtain the same level of information as provided for reporting companies that did not originate as shell companies. Therefore, they are required to include equivalent information as if they were registering under the Exchange Act. Accordingly, the staff looks to the accounting acquirer's eligibility as a smaller reporting company at the time of the reverse acquisition for purposes of the disclosures to be provided in the Form 8-K.

5230.2 If a reverse acquisition occurs in which a non-public operating company is the accounting acquirer of a smaller reporting operating company (registrant), the registrant (the legal acquirer) would continue to qualify as a smaller reporting company until the next determination date. *(Last updated: 6/30/2011)*

5230.3 In a reverse acquisition in which the registrant (legal acquirer) is a smaller reporting shell company, the registrant would continue to qualify as a smaller reporting company until the next determination date even if the Form 8-K disclosure was not scaled because the non-public accounting acquirer was not eligible at the time of the transaction as described in Section 5230.1. *(Last updated: 6/30/2011)*

5230.4 If the accounting acquirer is a public operating company that is not a smaller reporting company, the registrant will no longer be a smaller reporting company upon consummation of the transaction. Also, scaled disclosure is not permitted in the Form 8-K reporting the transaction because the accounting acquirer was not eligible at the time of the transaction. *(Last updated: 12/31/2011)*

5240 Other Financial Statements May Be Required [S-X 8-01, Note 5]

A primary goal of the smaller reporting company system is to reduce the impediments to small business financing in the securities markets without compromising the basic protection of investors. Where consistent with the protection of investors, the staff may request the filing of other financial statements where necessary or appropriate. In situations where a smaller reporting company acquires a company reporting under the Exchange Act that is not a smaller reporting company, the staff may request three years of audited financial statements for the acquired entity, since those financial statements are already required to be on file.

5300 FORM AND CONTENT DISCLOSURE REQUIRED BY REGULATION S-X ARE NOT APPLICABLE

(Last updated: 9/30/2008)

5310 General

5310.1 Smaller reporting companies typically need not comply with the disclosure requirements of Regulation S-X in its entirety, except as indicated under the Notes to S-X Article 8. The "Notes" require that:

a. The report and qualifications of the independent accountant must comply with S-X Article 2.

b. The description of accounting policies must comply with S-X 4-08(n).

c. Issuers engaged in oil and gas producing activities must follow the financial accounting and reporting standards of S-X 4-10.

d. Financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company must be presented as required by S-X 3-10, except the periods presented are based on S-X 8-02.

e. Financial statements for a smaller reporting company's affiliate whose securities constitute a substantial portion of the collateral for any class of securities registered must be presented as required by S-X 3-16, except the periods presented are based on S-X 8-02.

5310.2 Smaller reporting companies should provide all information required by the Industry Guides, and real estate companies should also refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S-11.

5320 Pro Forma Information

(Last updated: 3/31/2009)

Pro forma financial statements are required in transactional filings whenever a significant business combination has occurred or is probable, and the transaction has not been reflected in the historical audited financial statements of the issuer for the most recent full fiscal year. In addition, pro forma financial information should be presented whenever consummation of an event or transaction has occurred or is probable for which disclosure of pro forma information would be material to investors. Smaller reporting companies should consider the guidance in S-X Article 11.

5330 Significant Equity Investees

5330.1 The disclosure about significant equity investees cited under S-X 8-03(b)(3) is required in both interim and annual financial statements.

5330.2 There is no equivalent to S-X 3-09 in S-X Article 8 for the provision of separate financial statements for significant equity investees. However, when material to investors, equity method investee financial statements should be provided.

5340 A la Carte Approach to Disclosure

5340.1 Smaller reporting companies may choose compliance with either the smaller reporting company scaled disclosure requirements or the larger company disclosure requirements on an item-by-item or "a la carte" basis for each filing. Disclosures should be provided consistently and should be consistent with the legal requirements under the federal securities laws, including Regulation C, Rule 408 and Exchange Act Rule 12b-20. It is also important that disclosures permit investors to make period-to-period comparisons.

5340.2 To the extent the smaller reporting company scaled item requirement is more rigorous than the same larger company item requirement, smaller reporting companies are required to comply with the more rigorous, smaller reporting company disclosure.

5350 Restricted Net Assets

(Last updated: 9/30/2009)

Companies that qualify as smaller reporting companies are not subject to S-X 5-04 or 4-08(e), even when the restricted net assets of a registrant's consolidated subsidiaries exceed 25% of consolidated net assets as of the most recently completed fiscal year-end. However, when the restricted net assets of a smaller reporting company's consolidated subsidiaries are a significant proportion of consolidated net assets (not necessarily applying the 25% threshold test) as of the most recently completed fiscal year end, the amount and nature of those

restrictions may be important to understanding the smaller reporting company's liquidity and its ability to pay interest and principal on debt or dividends. In these circumstances, the smaller reporting company should fully discuss, in MD&A, the nature of the restrictions on its subsidiaries net assets, the amount of those net assets, and the potential impact on the company's liquidity (see S-K 303(a) and Instruction 5). Disclosures within MD&A similar to the parent company condensed financial information specified by S-X 5-04 and 4-08(e) may be necessary to facilitate this discussion.

* * * * *

TOPIC 6

FOREIGN PRIVATE ISSUERS & FOREIGN BUSINESSES

Title I of the JOBS Act, which was effective as of April 5, 2012, created a new category of issuers called "emerging growth companies," whose financial reporting and disclosure requirements in certain areas differ from other categories of issuers. A Foreign Private Issuer can also be eligible to be an EGC. See Topic 10. *(Last updated: 6/30/2013)*

6000 [RESERVED]

(Last updated: 9/30/2011)

6100 DEFINITIONS AND BASIC RULES

(Last updated: 9/30/2008)

6110 Definitions

6110.1 *Foreign Issuer* [Regulation C, Rule 405 and Exchange Act Rule 3b-4]: An issuer which is a foreign government, a foreign national or a corporation or other organization that is incorporated or organized under the laws of any foreign country.

6110.2 *Foreign Private Issuer* [Regulation C, Rule 405 and Exchange Act Rule 3b-4]: The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

a. More than 50% of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and
b. Any of the following:

    1. The majority of the executive officers or directors are United States citizens or residents;
    2. More than 50% of the assets of the issuer are located in the United States; or
    3. The business of the issuer is administered principally in the United States. *(Last updated: 9/30/2011)*

6110.3 Registrants may test for compliance with the foreign private issuer definition once per year. The test is required to be performed as of the last business day of the registrant's most recently completed second fiscal quarter. [Release No. 33-

8959] Consequences of failing to meet the foreign private issuer definition are described in Section 6120.2. *(Last updated: 9/30/2011)*

6110.4 *Foreign Business* [S-X 1-02(l)]: A foreign business is not organized under the laws of the U.S. or any state thereof, is majority owned by persons who are not U.S. citizens or residents and:

a. More than 50% of its assets are located outside the U.S. or
b. A majority of its executive officers and directors are not U.S. citizens or residents.

NOTE: In its determination of the majority ownership of a business, the staff will consider the ultimate parent entity that would consolidate the business under U.S. GAAP (IFRS for IFRS-IASB issuers) and that parent's controlling shareholders.

6120 Basic Rules

(Last updated: 3/31/2009)

6120.1 Foreign private issuers are eligible to use Form 20-F and Forms F-1, F-3, and F-4 which provide certain financial statement and disclosure accommodations.

Question: Can a foreign private issuer elect to use the registration and reporting forms that domestic companies use?

Answer: Yes. However, if it elects to do so, it must comply with all of the requirements of the "domestic company" forms.

6120.2 A foreign issuer - other than a foreign government - that does not meet the definition of a foreign private issuer must use the same registration and reporting forms as a domestic registrant. A foreign issuer that ceases to meet the foreign private issuer definition becomes subject to the reporting requirements for a domestic registrant. The test for compliance with the foreign private issuer definition is required to be performed as of the last business day of the registrant's most recently completed second fiscal quarter (the determination date). Reports filed or furnished during the remainder of the fiscal year in which the registrant ceased to meet the definition may continue to be made using forms and requirements applicable to foreign private issuers. Beginning on the first day of the fiscal year following the determination date, the registrant must use the forms and follow the requirements prescribed for domestic registrants. [Release No. 33-8959] For example, if a calendar fiscal year registrant determines on June 30, 2009 that it is no longer a foreign private issuer, it would become subject to domestic reporting requirements on January 1, 2010. It would not be required to file Forms 8-K or 10-Q during the period from June 30, 2009 through December 31, 2009. However, it would be required to file reports on Form 8-K for events occurring on or after January 1, 2010, file

quarterly reports on Form 10-Q for quarters ended after January 1, 2010, and file its annual report for the year ended December 31, 2009 on Form 10-K rather than Form 20-F. The financial statements in the Forms 10-Q and 10-K would need to be presented in conformity with U.S. GAAP for all required periods. The due dates of the Forms 10-Q and 10-K would be based on the issuer's status as a large accelerated filer, accelerated filer, or non-accelerated filer, tested as of the determination date described above. See Section 1330 for the due dates applicable to each category of filer.

6120.3 [Reserved]

6120.4 If the registrant is no longer eligible to file as a foreign private issuer, the financial statements and selected financial data should be recast into U.S. GAAP for all periods presented in the financial statements. Consideration should be given as to the appropriate currency in which the registrant should report. These registrants must use the U.S. dollar as their reporting currency, unless another reporting currency is more appropriate (e.g., where substantially all of the registrant's operations are conducted in a single foreign currency).

6120.5 With respect to Canadian registrants, IFRS has been incorporated into Canadian GAAP for publicly accountable enterprises for fiscal years beginning on or after January 1, 2011. *(Last updated: 9/30/2010)*

a. As with all foreign private issuers, Canadian foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB need not reconcile to U.S. GAAP. Similarly, as with all foreign private issuers, compliance with IFRS as issued by the IASB must be unreservedly and explicitly stated in the notes to the financial statements and in the auditor's report. [Item 17(c) of Form 20-F] *(Last updated: 9/30/2011)*

b. A Canadian company that is not a foreign private issuer that has historically used Canadian GAAP and Canadian dollars in filings with the SEC may continue to do so for fiscal years prior to 2011. It must file on domestic forms and provide a reconciliation to U.S. GAAP under Item 18 of Form 20-F.

c. Beginning with fiscal year 2011, a Canadian company that is not a foreign private issuer must use U.S. GAAP in filings with the SEC. The financial statements and selected financial data should be recast into U.S. GAAP for all periods presented in the financial statements. *(Last updated: 9/30/2009)*

6120.6 Foreign private issuers that voluntarily file on domestic forms may file financial statements prepared under home-country GAAP and provide a reconciliation to U.S. GAAP under Item 18 of Form 20-F. Foreign private issuers that

voluntarily file on domestic forms may file financial statements prepared under IFRS as issued by the IASB without reconciliation to U.S. GAAP. [S-X 4-01(a)(2)] In both cases the filings should prominently disclose that the company meets the foreign private issuer definition but is voluntarily filing on domestic forms. (*Last updated: 9/30/2009)*

6120.7 Canadian and other foreign private issuers must provide financial statements prepared according to U.S. GAAP in order to use scaled rules available to smaller reporting companies. [S-X 8-01] Note that scaled disclosure rules may be used only if the issuers file on a form available to U.S. domestic companies (e.g., Form 10-K). [S-X 8-01, Note 1]

6120.8 Reincorporation of a foreign private issuer as a U.S. entity generally will require a Securities Act registration statement on a domestic form (S-4) for the exchange of shares with the new domestic issuer. All periods must be restated to U.S. GAAP and U.S. dollars.

6120.9 Deregistration rules differ for foreign private issuers versus domestic issuers. Generally, foreign private issuers are permitted to deregister when trading volume in the U.S., rather than number of U.S. shareholders, falls below specified levels. Refer to Exchange Act Rule 12h-6.

6120.10 Foreign private issuers that file on Form 20-F and foreign private issuers who voluntarily file on Form 10-K are not subject to executive compensation disclosures required by S-K 402, and may, instead, follow Form 20-F executive compensation disclosures. However, a foreign-domiciled registrant that does not meet the foreign private issuer definition *must* file on 10-K and is required to comply with S-K 402.

6200 GENERAL FINANCIAL STATEMENT REQUIREMENTS FOR FOREIGN PRIVATE ISSUERS

(Last updated: 9/30/2008)

6210 Periods for which Financial Statements are Required [Item 8 of Form 20-F]

(Last updated: 6/30/2011)

6210.1 Audited Financial Statements Required in a Registration Statement or Annual Report:

Balance Sheet	Income Statement	Comprehensive Income	Shareholders' Equity	Cash Flow Statement
2 years	3 years	3 years	3 years	3 years

NOTE: See Section 6410.2(c) and 10220 regarding audited periods required for foreign issuers who have elected to provide U.S. GAAP financial statements in their initial registration statement.

See Section 6300, 10220, and 10320 regarding audited periods required for IFRS issuers. *(Last updated: 6/30/2013)*

6210.2 Unaudited Interim Financial Statements Required:
(Last updated: 12/31/2011)

a. Registration statement

General Rule - Interim financial statements are required in a registration statement if the effective date of the registration statement is more than nine months after the end of the last audited financial year. In this circumstance the registration statement should contain consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. See exceptions to this general rule in Section 6220.

Financial Statement	Period Required
Balance Sheet	As of an interim date that complies with the requirements described in the paragraph preceding this table.
Income Statement, Statement of Comprehensive Income, and Cash Flow Statement	For the period from the latest fiscal year end to the interim balance sheet date and corresponding period in the prior year.
Shareholders' Equity	For the period from the latest fiscal year end to the interim balance sheet. Presentation of the corresponding period in the prior year is not required.

b. Periodic Interim Reports: Foreign private issuers are not subject to the quarterly reporting requirements of Exchange Act Rules 13a-13 and 15d-13. Foreign private issuers that file annual reports on Form 20-F are required only to furnish promptly, in a Form 6-K, material information:

1. Distributed to stockholders or to a national exchange, if made public by that exchange, or

2. Required to be made public by its domestic laws. [Exchange Act Rules 15d-13(b) and 13a-13(b)]

6220 Age of Financial Statements in a Registration Statement [Item 8 of Form 20-F]

6220.1 Financial statements of a foreign private issuer must be as of a date within nine months of the effective date of a registration statement. Audited financial statements for the most recently completed fiscal year must be included in registration statements declared effective three months or more after fiscal year-end. Under the rule, a registration statement of a foreign private issuer may become effective with audited financial statements as old as 15 months, with the most recent interim statements as old as nine months. If interim statements are required, they must cover a period of at least six months.

NOTE: Foreign private issuers use Form 20-F as both an Exchange Act registration statement and an annual report form. The age of financial statement requirements under Item 8 of Form 20-F applies when Form 20-F is used as a registration statement.

6220.2 The 15-month period for audited statements is extended to 18 months, and the nine month period for interim statements is extended to 12 months, for the following offerings:

a. Exercise of outstanding rights granted pro rata to all existing security holders;

b. Dividend or interest reinvestment plan; or

c. Conversion of outstanding convertible securities or exercise of outstanding transferable warrants. [Item 8 of Form 20-F]

6220.3 Special Rule for Foreign Private Issuer IPOs - Audited financial statements in initial public offerings must be no more than 12 months old at the time of filing and upon the effectiveness of the registration statement. However, this rule applies only where the registrant is not public in any jurisdiction. The registrant

may request a waiver from CF-OCA of the 12-month requirement where the registrant is able to represent adequately that compliance is not required in any other jurisdiction and it is impracticable or involves undue hardship. [Item 8 of Form 20-F]

If the 12-month audit is waived in a filed registration statement, the representation must be filed as an exhibit per Instruction 2 to Item 8.A.4. The staff will consider a request for waiver of the 12-month audit at the time of filing the initial registration statement or, if applicable, at the time of submitting an initial confidential draft when the registrant knows that a waiver will be necessary prior to effectiveness of the registration statement.
(Last updated: 12/31/2012)

6220.4 The age requirements in Item 8 of Form 20-F also apply to financial statements of:

a. Foreign businesses acquired by both foreign and domestic registrants under S-X 3-05, including filings by domestic registrants under Items 2.01 and 9.01 of Form 8-K (see Sections 2045.14 and 2045.15);

b. Foreign target businesses required in Form S-4 or Form F-4;

c. Foreign equity investees of both foreign and domestic registrants under S-X 3-09;

d. Foreign businesses that are acquired real estate operations under S-X 3-14; and

e. Financial statements of affiliates whose securities collateralize a security being registered as required by S-X 3-16.

6220.5 A foreign private issuer that has been in existence less than a year must include an audited balance sheet that is no more than nine months old. If the foreign private issuer has commenced operations, audited statements of income, stockholders' equity and cash flows for the period from the date of inception to the date of the audited balance sheet also are required.

6220.6 More Current Published Information

a. If financial information reporting revenues and income for an annual or interim period more current than otherwise required by Item 8 of Form 20-F is made available to shareholders, exchanges, or others in any jurisdiction, that information should be included in the registration statement. The more current information is not required to be reconciled to U.S. GAAP. However, a narrative explanation of differences in accounting principles should be provided, and material new reconciling items should be quantified. Differences between foreign and U.S. GAAP can be identified by cross-reference to U.S. GAAP reconciliation footnotes elsewhere in the filing. Note that the

reconciliation requirements do not apply to issuers filing audited financial statements prepared under IFRS as issued by the IASB. See Section 6300.

b. Occasionally, the interim information that is publicly distributed in the issuer's home country will be prepared using accounting standards that are different from those used in the U.S. registration statement. For example, a foreign issuer may use U.S. GAAP in its primary financial statements in filings with the SEC, but reports in a foreign GAAP in its home country. The company releases more recent earnings information in its home country in foreign GAAP. Item 8.A.5 requires that information to be included in the prospectus. In this instance, the U.S. investor has not had the benefit of knowing the reconciling items between home-country GAAP and U.S. GAAP. Therefore, the information disclosed pursuant to Item 8.A.5 would need to be supplemented with a description and quantification of differences in accounting principles. In this situation, an issuer may either (a) reconcile the Item 8.A.5 information to U.S. GAAP or (b) provide a reconciliation from U.S. GAAP to foreign GAAP (reverse reconciliation) for at least the most recent fiscal year required in the registration statement. *(Last updated: 9/30/2009)*

c. Inclusion of published information under Item 8.A.5 does not ordinarily trigger a requirement to include full interim financial statements more recent than otherwise required. For example, if complete financial statements related to the most recent quarter (but not the comparative period) are distributed in a foreign issuer's home country, that information must be included in the U.S. registration statement. Comparative prior period information is not required because the information provided is included only because of Item 8.A.5. In order to avoid confusing U.S. readers, the registrant should include disclosure explaining why the information is provided particularly when the information is placed with other financial statements and may look incomplete. *(Last updated 12/31/2009)*

d. However, if the information provided contains a reconciliation to U.S. GAAP, the staff believes that inclusion of reconciled information for the comparative prior periods generally will also be necessary to prevent the current period information from being misleading. A foreign private issuer is not ordinarily required to provide U.S. GAAP information in its home jurisdiction. Accordingly, when a foreign private issuer presents more current U.S. GAAP information, it effectively has decided to present interim financial statements, and is also required to present comparatives as required by Item 8.A.5 of Form 20-F. In these circumstances, the current and comparative interim period would need to be covered by MD&A and pro forma information would need to be updated to that date.
(Last updated 12/31/2009)

6220.7 Acquired and to be Acquired Foreign Businesses under S-X 3-05

a. Financial statements of acquired and to be acquired foreign businesses required under S-X 3-05 must comply with the age of financial statement requirements at the time the registration statement is declared effective. For a calendar year-end entity, this means that if a registration statement were to become effective prior to October 1, 20XX, financial statements for any interim period would not be required under S-X 3-05 for a foreign business.

b. However, interim financial statements for the period preceding the acquisition date may not be omitted solely on the basis that the acquisition occurred during the first nine months of the current year; consideration must be given to the requirements of Item 8.A.5. of Form 20-F. The financial statements generally need not be updated if the omitted period is less than six months, and the acquired business does not prepare quarterly financial statements under its home-country reporting requirements.

6220.8 Age of Pro Formas in Cross-border Business Combinations

NOTE: See Section 6360 for additional guidance on preparation of pro forma financial information.

a. The age of the pro forma financial information included in a registration statement is based on the age of financial statements requirement applicable to the registrant. If a foreign private issuer files a Form F-4 and the target company is a U.S. domestic registrant, the age of the pro forma information may be determined by reference to Item 8 of Form 20-F. By contrast, if a U.S. domestic registrant files a Form S-4 and the target company is a foreign private issuer, the age of the pro forma information must be determined by reference to S-X 3-12.

b. Application of the age of financial statement rules may require the foreign target company to include in a Form S-4 a period in the pro forma information that would be more current than its separate historical financial statements. However, S-X Article 11 permits the ending date of the periods included for the target company to differ from those of the registrant by up to 93 days. Registrants are permitted to use combinations of periods that involve overlaps or gaps in the information of the target company of up to 93 days, provided that the resulting annual and interim periods are of the same length required for the registrant, and there are no overlaps or gaps in the registrant's information. However, registrants are not permitted to omit an interim pro forma presentation because of different fiscal periods.

6220.9 In certain circumstances, the staff will consider special processing needs for cross-border offerings which involve special problems of coordination among several national jurisdictions. Foreign issuers should direct requests for special processing to the Division's Office of International Corporate Finance in advance of filing.

6230 Updating of Financial Statements in Delayed or Continuous Offerings

6230.1 Foreign private issuers must file a post-effective amendment to registration statements to include any financial statements required by Item 8.A of Form 20-F at the start of a delayed offering or throughout a continuous offering under Regulation C, Rule 415. [S-K 512(a)(4)] For this purpose, delayed or continuous offerings include business combination transactions registered on Form F-4, and takedowns from effective shelf registration statements. For these types of offerings, Item 8.A. of Form 20-F ordinarily requires the annual audited financial statements to be not more than 15 months old, and the unaudited interim financial statements to be not more than nine months old. Takedowns from existing shelf registration statements may not be commenced, and continuous offerings must be suspended, during periods when the financial statements are not current. This means, for example, that the financial statements must remain current throughout the entire time that an exchange offer is outstanding. It also means that the financial statements must remain current in a merger or acquisition transaction until shareholder approval has occurred. However, this provision does not apply to a registration statement for a typical firm commitment underwritten offering priced under Regulation C, Rule 430A or for listing on an exchange.

6230.2 The requirement for current financial statements includes all required financial statements, including those required under S-X 3-05, 3-09, 3-10, 3-14 and 3-16 as well as target company financial statements on a Form F-4. However, the staff may consider requests for relief in circumstances where this would result in the need to provide financial statements of other entities more current than those that would be provided by a similarly-situated domestic registrant.

6230.3 S-K 512(a)(4) does not require in a post-effective amendment the inclusion of financial statements of entities that were not required in the original effective registration statement (for example, subsequently acquired businesses). However, the "fundamental change" provisions of S-K 512(a)(1) may require such financial statements.

6230.4 F-3 eligible issuers filing on Form F-3 or F-4 may incorporate by reference reports filed or furnished to the SEC that contain the updated financial statements rather than file a post-effective amendment. [S-K 512(a)(4)]

6240 Due Date for Annual Reports on Form 20-F

(Last updated: 3/31/2009)

6240.1 General Rule:
(Last updated: 9/30/2011)

a. An annual report on Form 20-F is required to be filed within four months after the foreign private issuer's fiscal year-end.

b. If the audited financial statements for the most recently completed fiscal year have been included in a registration statement before the four month due date of the annual report on Form 20-F, the due date of the Form 20-F remains at four months. While many companies in this situation file the Form 20-F early, there is no requirement to do so.

NOTE: Registrants with fiscal years ending prior to December 15, 2011 are required to file their annual reports on Form 20-F within six months after fiscal year end. *(Last updated: 9/30/2011)*

6240.2 Special Report on Form 20-F Triggered by an Initial Registration Statement
(Last updated: 9/30/2011)

When a registration statement is declared effective or becomes effective by operation of law within 3 months after a foreign private issuer's fiscal year-end and the audited financial statements of the just recently completed year are not included, the following reporting requirements apply:

If the registrant is subject only to the Exchange Act reporting requirements of Section 15(d):	A Special Report on Form 20-F must be filed by the later of 90 days after the registration statement is declared effective or four months after fiscal year-end. A complete annual report on Form 20-F is not required until the following fiscal year. [Exchange Act Rule 15d-2]
If the registrant has registered a class of securities under Section 12:	An annual report on Form 20-F must be filed within four months after the most recent fiscal year end for which the registrant filed financial statements. [Exchange Act Rule 13a-1; Form 20-F]

6250 Changes in Fiscal Year [Exchange Act Rule 15d-10(g) & 13a-10(g)]

(Last updated: 3/31/2009)

6250.1 Transition reporting is described in Sections 1360 and 1365. Transition reports for foreign private issuers are filed on Form 20-F as follows:
(Last updated: 9/30/2011)

Transition period is:	In a transition report on Form 20-F, include:	File the transition report within:
More than 6 months	• Audited financial statements • All information required to be filed when Form 20-F is used as an annual report.	Later of four months after either the end of the transition period or the date the issuer elected to change its fiscal year-end.
6 months or less, but more than one month	• Unaudited financial statements • Information required by Items 5, 8.A.7, 13, 14, and 17 or 18 of Form 20-F. [8]	Later of 3 months after either the end of the transition period or the date the issuer elected to change its fiscal year-end.
One month or less	No separate filing is required. The one-month or less transition period must be audited and included in the next annual report on Form 20-F.	No separate filing is required.

6250.2 The staff may consider requests for a transition period of more than 12 months if a longer period is accepted by the issuer's home-country regulator. Issuers that receive an accommodation are required to provide complete unaudited financial statements with all of the applicable (i.e., Article 5 level) disclosures for both the 12-month period and the remaining portion of the transition period.

6250.3 Foreign private issuers filing a registration statement after electing to change their fiscal year end may need to provide more current audited financial statements than are required under the Exchange Act transition reporting rules in order to comply with the age of financial statement requirements in the registration statement. A foreign private issuer's most recently audited financial statements cannot exceed the age specified by Item 8 of Form 20-F (generally 15 months) at the registration statement's date of effectiveness.

[8] The next annual report on Form 20-F must include audited financial statements for this transition period.

6260 Ratio of Earnings to Fixed Charges

Instructions as to Exhibits in Form 20-F requires the presentation of a statement showing how the ratio of earnings to fixed charges was calculated if such a ratio is presented. This instruction should not be interpreted to mean that this ratio should be included in all Form 20-Fs; it merely requires that to the extent presentation of the ratio is required, the calculation of the ratio should be set forth in Exhibit 7. Requirements to present the ratio are set forth in the requirements for Securities Act registration statements (for example, Item 3 of Form F-1), not the Form 20-F itself. A Form 20-F filed as a periodic report is not required to include the ratio of earnings to fixed charges.

6270 Capitalization Table

(Last updated: 9/30/2009)

Item 3.B of Form 20-F literally requires a capitalization table prepared as of a date within 60 days of the effectiveness of a registration statement. However, Item 8 permits the most recent balance sheet (from which a capitalization table is ordinarily derived) to be as much as 9 months old. As written, the Item 3.B age requirement for the capitalization table would be considerably more stringent than the 135-day window customarily used by U.S. issuers in their registration statements. The staff will not object if a foreign private issuer presents its capitalization table as of the same date as the most recent balance sheet required in its registration statement.

6300 IFRS

(Last updated: 9/30/2008)

6310 Acceptance of IFRS as Issued by the IASB without Reconciliation to U.S. GAAP

6310.1 A foreign private issuer that files using IFRS as issued by the IASB is not required to reconcile to U.S. GAAP. [Release No. 33-8879]

6310.2 Eligibility to omit reconciliation: The accounting policy footnote must state compliance with IFRS as issued by the IASB and the auditor's report must opine on compliance with IFRS as issued by the IASB. The foreign private issuer may state, and the auditor may opine on, compliance with both IFRS as issued by the IASB and home-country accounting standards (e.g., IFRS as endorsed in the EU) if there is no difference. [Item 17c of Form 20-F]

6310.3 Foreign private issuers that comply with another basis of reporting (e.g., home-country GAAP) are not eligible to omit the U.S. GAAP reconciliation. In addition, foreign issuers that are not foreign private issuers or domestic

subsidiary issuers of foreign companies must continue to provide the U.S. GAAP reconciliation.

6320 Implementation Issues – IFRS Filers

6320.1 IFRS financial statements must be presented for all periods required to be presented.

6320.2 Reconciliation to IFRS as issued by the IASB in lieu of full compliance with IFRS as issued by the IASB is not permitted. *(Last updated: 9/30/2011)*

6320.3 [Reserved]
(Last updated: 9/30/2011)

6320.4 Certain transactions and industry-specific issues, for example, insurance contracts, extractive activities, common control mergers, reorganizations, and recapitalizations are not addressed by specific IASB standards. Consistent with IAS 1 and IAS 8, the registrant must provide full and transparent disclosure about the accounting policies selected and the effects of those policies on the IFRS financial statements.

6320.5 IFRS filers need not apply SABs that related specifically to U.S. GAAP (e.g., SAB 104). However, in selecting accounting policies under IAS 8, a registrant may apply SABs that relate to U.S. GAAP and otherwise meet the IAS 8 requirements. Note that SABs related to filing requirements and auditing continue to apply. [Release No. 33-8879]

6320.6 ***Applicability of Regulation S-X Form and Content Requirements*** - Foreign private issuers that file financial statements prepared in accordance with IFRS as issued by the IASB must comply with IASB requirements for form and content within the financial statements, rather than with the specific presentation and disclosure provisions in Articles 4, 5, 6, 7, 9, and 10 of Regulation S-X. However, foreign private issuers must comply with all other applicable S-X requirements including, but not limited to, the applicable Article 12 schedule requirements and the Article 3 requirements of financial statements of other entities. (See Release No. 33-8879, footnote 136) *(Last updated: 12/31/2012)*

6330 Interim Financial Statements Presented by IFRS Filers

6330.1 For pre-effective registration statements and post-effective amendments with annual financial statements less than nine months old, published interim information need not be reconciled to U.S. GAAP if the basis of the annual financial statements and published interim information is IFRS as issued by the IASB. Note: The annual statements must also be prepared using IFRS as issued by the IASB. [Instruction 3 to Item 8.A.5 of Form 20-F]

6330.2 For pre-effective registration statements and post-effective amendments with annual financial statements more than nine months old, reconciliation is not required for an interim period where the issuer complies with and explicitly states compliance with IAS 34. Note: The annual statements must also be prepared using IFRS as issued by the IASB. [Instruction 4 to Item 8.A.5 of Form 20-F]

6340 First-time Adopters of IFRS

6340.1 One Time Accommodation:

In a foreign private issuer's first year of reporting in IFRS, the registrant may file two years rather than three years of statements of income, changes in shareholders equity and cash flows prepared in accordance with IFRS as issued by the IASB, with appropriate related disclosure. As a reminder, IFRS 1 requires an entity's first IFRS financial statements to include at least three statements of financial position. [General Instruction G(a) to Form 20-F] *(Last updated: 12/31/2010)*

6340.2 The one-time accommodation available for first-time IFRS implementers and the guidance found in Instruction G to Form 20-F apply not only to registrants, but also to foreign businesses whose financial statements are required under S-X 3-05, 3-09, 3-10, 3-14 and 3-16.

6340.3 All first-time adopters of IFRS are required to provide certain expanded disclosures about their use of elective transitional treatments under IFRS 1, as well as meet certain presentation requirements with respect to their transitional reconciliation from previous (home-country) GAAP to IFRS under the disclosure requirements of IFRS 1, *First-time Adoption of International Financial Reporting Standards*. [Instruction 4 to Item 5 of Form 20-F]

6340.4 During the period an issuer is changing the body of accounting standards used to prepare its financial statements from previous GAAP to IFRS, a situation may arise in which the most recent annual financial statements are prepared under previous GAAP and any interim financial statements might be prepared under IFRS. Because the most recent annual and interim periods may not be comparable, financial statements in transitional registration statements for first-time adopters may be prepared under one of three options:

a. 3 years of previous GAAP annual financial statements, and previous GAAP interim statements for the current and comparable prior period, all with reconciliation to U.S. GAAP;

b. 2 years of IFRS annual financial statements and IFRS interim statements for the current and comparable prior period; or

c. 3 years of previous GAAP financial statements, including reconciliations to U.S. GAAP, IFRS interim statements for the current and comparable prior period, and U.S. GAAP condensed information for the most recent year, current interim period, and the comparable prior interim period.

[General Instruction G. (f)(2) to Form 20-F] *(Last updated: 6/30/2011)*

NOTE: Under the IFRS alternative described in b. above, the U.S. GAAP reconciliation is not required if all other conditions for eligibility have been met (see Section 6310).

6340.5 A first-time adopter that is unable to provide information that complies with one of the three options noted above should contact the Office of International Corporate Finance in the Division of Corporation Finance if it has comparable financial information based on a combination of previous GAAP, IFRS as issued by the IASB and U.S. GAAP available. [Instruction to General Instruction G.(f)(2) to Form 20-F] The first-time adopter should develop an approach specific to its facts and circumstances that provides a bridge between the annual previous GAAP financial information reconciled to U.S. GAAP and the IFRS financial information. First-time adopters should clearly set forth their proposed approach when consulting the staff. While not considered inclusive of all acceptable alternatives, the following are examples of approaches that could provide an appropriate level of information to achieve a bridge between these annual and interim periods.

a. Bridging forward to IFRS:
   - Previous GAAP annual financial statements with a U.S. GAAP reconciliation for the three most recent fiscal year ends.
   - IFRS interim financial statements (including comparative periods and cumulative year to date periods), compliant with IAS 34 and enhanced with IFRS 1 reconciliations and disclosures typically included in an annual set of IFRS first-time adoption financial statements.

b. Bridging back to U.S. GAAP:
   - Previous GAAP annual financial statements with a U.S. GAAP reconciliation for the three most recent fiscal year ends.
   - IFRS interim financial statements compliant with IAS 34 reconciled to U.S. GAAP (including comparative periods and cumulative year to date periods). *(Last updated: 6/30/2011)*

6345 First-time Adopters that Previously Used U.S. GAAP for the Primary Financial Statements in SEC Filings

(Last updated: 9/30/2009)

6345.1 Some registrants have presented financial statements in more than one GAAP prior to their first-time adoption of IFRS as issued by the IASB; for example, in home-country GAAP in their local market and in U.S. GAAP in their SEC filings. These registrants need to determine whether home-country GAAP or U.S. GAAP is their "previous GAAP" for purposes of applying IFRS 1. If they determine that U.S. GAAP is the previous GAAP, their IFRS 1 reconciliation of previous GAAP to IFRS as issued by the IASB will be U.S. GAAP. If they determine that home-country GAAP is the previous GAAP, however, the staff does not believe the IFRS 1 reconciliation of previous GAAP (home-country GAAP) to IFRS as issued by the IASB is sufficient for SEC filings that have previously only presented U.S. GAAP information. In this instance, the staff believes an additional reconciliation from U.S. GAAP to IFRS as issued by the IASB should be provided to reasonably inform U.S. investors about the changes in the basis of presentation. This reconciliation could be presented directly from U.S. GAAP to IFRS as issued by the IASB in a note to the audited financial statements, or if impracticable in an audited financial statement schedule, for the same dates and periods that the IFRS 1 reconciliation is presented. The reconciliation would be presented in a level of detail consistent with Item 17 of Form 20-F. Alternatively, the reconciliation could be presented in the notes to the audited financial statements as part of a two-step reconciliation that includes the IFRS 1 reconciliation – from U.S. GAAP to previous GAAP, and then from previous GAAP to IFRS as issued by the IASB.

6345.2 Some registrants have adopted IFRS as issued by the IASB in the past in the financial statements presented in their local market, while continuing to present U.S. GAAP in their SEC filings. These registrants would have included the IFRS 1 reconciliation from previous GAAP (home-country GAAP) to IFRS as issued by the IASB in their local market financial statements in the past, but not in the U.S. GAAP financial statements included in SEC filings. If the registrant subsequently decides to present IFRS as issued by the IASB financial statements in its SEC filings, it is not required to present the reconciliation from previous GAAP specified by IFRS 1 because it is no longer a first-time adopter subject to IFRS 1. However, since the historical SEC filings have presented only U.S. GAAP information, bridging disclosures in the form of reconciliation from U.S. GAAP to IFRS as issued by the IASB are generally necessary to inform U.S. investors about the changes in the basis of presentation. This bridging can best be presented by providing a reconciliation directly from U.S. GAAP to IFRS as issued by the IASB in a note to the audited financial statements, or if impracticable, in an audited financial statement schedule, for the comparative balance sheet date and comparative income statement periods preceding the most recent fiscal year. Generally, this reconciliation would be

presented in a level of detail consistent with Item 17 of Form 20-F and included as part of the audited financial statements.

6350 IFRS Filers - Financial Statements of Other Entities

6350.1 S-X 3-05, 3-09, 3-10, and 3-16 permit the inclusion of financial statements of foreign businesses presented in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP, regardless of significance.

6350.2 Significance testing is based on the accounting used by the issuer. This means that the amounts used in the tests for the acquiree or investee (the numerator) must be based on the same basis of accounting as that of the issuer. For example, if the issuer presents its financial statements in home-country GAAP with reconciliation to U.S. GAAP, then the amounts for the acquiree or investee in the numerator of the tests must be based on U.S. GAAP. In some cases, amounts from the acquiree's or investee's historical financial statements will need to be converted to the issuer's basis of accounting. The following table illustrates the basis of accounting on which the tests are based under typical scenarios.

Significance Testing for S-X 3-05 and 3-09

	Foreign Acquiree			**US Acquiree**
Issuer	*Home w/ Reconciliation*	*US GAAP*	*IFRS - no Reconciliation*	*US GAAP*
FPI - Home w/ US GAAP Reconciliation	US GAAP	US GAAP	US GAAP	US GAAP
FPI – US GAAP	US GAAP	US GAAP	US GAAP	US GAAP
FPI – IFRS no Reconciliation	IFRS	IFRS	IFRS	IFRS
US	US GAAP	US GAAP	US GAAP	US GAAP

6350.3 Separate Financial Statements of Other Entities: Is Reconciliation to U.S. GAAP Required?

By contrast, the basis of accounting permitted or required in the acquiree's or investee's historical financial statements is based on whether that entity meets the definition of a foreign business. A foreign business may present its financial statements using the requirements applicable to a foreign private issuer. The following table illustrates whether an acquiree or investee must reconcile its financial statements to U.S. GAAP under typical scenarios.

Separate F/S of Other Entities:
Is Reconciliation to US GAAP Required?

	Foreign Acquiree			US Acquiree
Issuer	*Home*	*US GAAP*	*IFRS / IASB*	*US GAAP*
FPI - Home w/ US GAAP Reconciliation	Yes	N/A	No	N/A
FPI - US GAAP	Yes	N/A	No	N/A
FPI – IFRS / IASB	Yes	N/A	No	N/A
US	Yes	N/A	No	N/A

6360 IFRS Filers – S-X Article 11 Pro Forma Information

6360.1 As with significance testing, S-X Article 11 pro formas are based on the accounting used by the issuer. Amounts from the acquiree's or investee's historical financial statements presented in accordance with home-country GAAP or U.S. GAAP will need to be converted to the issuer's basis of accounting. This may be true even if the acquiree's or investee's historical financial statements are not required to be reconciled to U.S. GAAP because its significance falls below the 30% level specified in Item 17 of Form 20-F. The following table illustrates the basis of accounting on which the pro formas are presented under typical scenarios.

IFRS Filers
S-X Article 11 Pro Forma Information

	Foreign Acquiree			US Acquiree
Issuer	*Home w/ Reconciliation*	*US GAAP*	*IFRS/IASB*	*US GAAP*
FPI - Home w/ US GAAP Reconciliation	Home w/ Reconciliation	Home w/ Reconciliation	Home w/ Reconciliation	Home w/ Reconciliation
FPI - US GAAP	US GAAP	US GAAP	US GAAP	US GAAP
FPI – IFRS / IASB	IFRS / IASB	IFRS / IASB	IFRS / IASB	IFRS / IASB
US	US GAAP	US GAAP	US GAAP	US GAAP

6360.2 The staff generally has not objected if an issuer, that otherwise would present its pro formas based on home-country GAAP with a reconciliation to U.S. GAAP, elects to present the pro formas directly in U.S. GAAP.

6400 REQUIREMENT FOR RECONCILIATION TO U.S. GAAP

(Last updated: 9/30/2008)

NOTE: Foreign private issuers are allowed to prepare the primary financial statements filed with the SEC in accordance with a comprehensive body of GAAP other than U.S. GAAP. To assist U.S. investors in understanding the nature of the accounting differences and their effects on financial statements, foreign issuers that do not prepare statements in accordance with IFRS as issued by the IASB (see Section 6300) are required to provide a reconciliation to U.S. GAAP.

6410 Requirement for Reconciliation

6410.1 General
(Last updated: 9/30/2011)

a. A reconciliation is required for each annual and interim period required to be included in a registration statement or annual report. [Item 17(c) of Form 20-F]

b. Form 20-F provides two levels of reconciliation to U.S. GAAP - Item 17 and Item 18. Item 18 requires the same information as Item 17 plus all of the disclosures required by U.S. GAAP and Regulation S-X.

c. Compliance with Item 18 rather than Item 17 is required for all issuer financial statements in all Securities Act registration statements, Exchange Act registration statements on Form 20-F, and annual reports on Form 20-F.

d. Item 17 is permitted for pro forma information pursuant to S-X Article 11.

e. Item 17 compliance is permitted for non-issuer financial statements such as those pursuant to S-X 3-05, 3-09, and 3-10(i), as well as non-issuer target company financial statements included in Forms S-4, F-4 and proxy statements. [Release No. 33-8959] The staff also permits Item 17 for acquired real estate operations under S-X 3-14 and S-X 8-04 for smaller reporting companies. *(Last updated: 3/31/2009)*

f. Non-issuers using Item 17 that are required to provide MD&A (e.g., target companies in Forms S-4, F-4, and proxy statements) should consider the need to provide certain additional information in the MD&A to assist the U.S. investor in understanding the financial statements. [SAB Topic 1D]

6410.2 First-time Entrants to U.S. Reporting System

a. If a foreign registrant has not previously filed financial statements with the SEC on a reconciled basis, it is only required to provide reconciliations of the financial statements and selected financial data to U.S. GAAP for the two most recently completed fiscal years and for any interim periods required in the registration statement. In each subsequent year, on a prospective basis, an additional year of the reconciliation is required. This also applies to any other required financial statements where the entity is a foreign business such as those filed pursuant to S-X 3-05, 3-09, 3-10, 3-14 and 3-16, as well as target company financial statements in Forms F-4, Forms S-4, and proxy statements. Published financial information that is included because it is more current (see Section 6220.6) is ordinarily not required to be reconciled.

b. The U.S. GAAP reconciliation (compliant with Item 17 of Form 20-F) must be included for non-reporting foreign target companies in Forms F-4, Forms S-4 and proxy statements unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. In these cases, a narrative description must be provided of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. [See Instruction 2 to Item 17 of Form S-4, Instruction to paragraphs (b)(5) and (b)(6) of Item 17 of Form F-4, Item 14 of Schedule 14A]

NOTE: While reconciliations to U.S. GAAP initially are required only for two years, the registrant's financial statements still need to be presented in the registration statement for all of the periods required by Item 8 of Form 20-F (see Section 10220.1 for EGCs). Similarly, non-EGCs must present selected financial data for five years, even though the oldest three years need not be reconciled to U.S. GAAP. (See Section 10220.2 for exception for EGCs.)

c. First-time registrants that elect to prepare the financial statements in accordance with U.S. GAAP may provide income statements and statements of cash flows for only their two most recent fiscal years. However, selected financial data still needs to be presented for five years under home-country GAAP if U.S. GAAP financial data is not available for the oldest three years, unless the registrant qualifies as an EGC (see Section 10220.2). MD&A need only discuss the two years presented in the financial statements. [Item 8 of Form 20-F]

d. Predecessor financial statements and selected financial data must be presented in the same comprehensive body of accounting as the registrant. A foreign entity that is a predecessor of a U.S. domestic company must present financial statements in U.S. GAAP and U.S. dollars. *(Last updated: 6/30/2013)*

6410.3 [Reserved]
(Last updated: 9/30/2011)

6410.4 "Backdoor" Listings by Foreign Companies

a. Foreign companies sometimes obtain a "backdoor" listing through a reverse recapitalization with a U.S. public shell. Even though substantially all of the operations are conducted outside of the U.S., the registrant would not be considered a foreign private issuer.

b. In this situation, the transaction, including financial statements of the foreign company, must be reported on a Form 8-K within four business days of the completion of the transaction. The Form 8-K that is filed must include the same information as a registration of securities on Form 10. For example, the accommodations in Form 20-F that in certain circumstances permit two years of financial statements rather than three years are not applicable. [Item 2.01 of Form 8-K and Item 5.06 of Form 8-K] Refer to Topic 12. *(Last updated: 9/30/2010)*

c. The financial statements included in the Form 8-K must be prepared using U.S. GAAP for all periods presented, including those prior to the reverse recapitalization. Financial statements prepared using IFRS as issued by the IASB or in a home-country GAAP reconciled to U.S. GAAP would not be acceptable. *(Last updated: 10/20/2014)*

6410.5 Transactions that Result in a Foreign Private Issuer Ceasing to be a Shell Company

a. A foreign private issuer may cease to be a shell company as a result of a reverse acquisition or merger. In this situation, the transaction, including financial statements of the other party to the transaction, must be reported on a Form 20-F within four business days of the completion of the transaction. The Form 20-F that is filed must include the same information as a registration of securities on Form 20-F. For example, the accommodations in Form 20-F that in certain circumstances permit two years of financial statements rather than three years are applicable. Refer to Topic 12. [Exchange Act Rules 13a-19 and 15d-19, and Instruction A(d) to Form 20-F]

b. If the foreign private issuer shell company engages in a transaction that causes it to lose its status as a foreign private issuer at the same time it ceases to be a shell company, reports filed or furnished during the remainder of the fiscal year may continue to be made using forms and requirements applicable to foreign private issuers. See Sections 6110.3 and 6120.2. *(Last updated: 10/20/2014)*

6410.6 Financial Statements of Foreign Acquired Businesses or Foreign Equity Investees in Filings by Domestic Issuers or Foreign Private Issuers

a. The reporting requirements of Form 8-K do not apply to foreign private issuers. However, foreign private issuers must comply with S-X 3-05 in registration statements.

b. If financial statements are required to be filed for foreign acquirees or foreign equity investees, these statements may be prepared on a comprehensive basis other than U.S. GAAP or IFRS as issued by the IASB. Reconciliations to U.S. GAAP must be provided when the significance of the foreign acquiree or foreign equity investee to the registrant exceeds 30%. Refer to Topic 2 for the tests of significance. [Item 17(c)(2)(v) and (vi) of Form 20-F]

When determining whether a reconciliation to U.S. GAAP is required, if the foreign equity investee is significant to the registrant at the 30% level or greater in any of the years being tested, a reconciliation is required for all periods. Whether the U.S. GAAP reconciliation is required to be audited is based upon the audit requirements applicable to the underlying financial statements of the foreign acquiree or equity investee.

For example, take a foreign equity investee that had previously been significant at a 30% level in prior periods, was significant at the 20%

level in 2005, was not significant in 2006, and is significant at the 30% level in 2007. The financial statements provided for the foreign equity investee in the registrant's 2007 filing must include a U.S. GAAP reconciliation for all years. The financial statements, including the reconciliation, must be audited for 2005 and 2007, but not for 2006.

Note that if this had been the first time the financial statements of the foreign equity investee were significant at a 30% level, the reconciliation of the financial statements could be provided only for the two most recent years.

c. The 30% significance test does not apply to non-reporting foreign target companies provided in Forms S-4, Forms F-4 and proxy statements.

d. Financial statements of acquired businesses or equity investees that meet the definition of a foreign business may be prepared under International Financial Reporting Standard for Small and Medium-sized Entities ("IFRS for SMEs"), published by the IASB in July 2009, with reconciliation to U.S. GAAP as described in b and c above. The staff would not accept financial statements prepared under IFRS for SMEs for issuers, predecessors of issuers, domestic acquired businesses, or domestic equity method investees.
(Last updated: 6/30/2010)

NOTE: The accommodation to not reconcile separate financial statements of less than 30% significant equity investees does not affect a domestic issuer's measurement of earnings or disclosures under Regulation S-X. APB Opinion 18 [ASC 323] requires equity investees to be accounted for using U.S. GAAP. Further, summarized data under S-X 4-08(g) must be presented in accordance with U.S. GAAP. [Release No. 33-7118] *(Last updated 9/30/2009)*

6410.7 If reconciliation is required, the financial statements of foreign acquirees or foreign investees need only comply with the reconciliation requirements of Item 17 of Form 20-F, rather than Item 18. Even though the significance level of an acquisition may require the presentation of three years of audited financial statements in a registration statement or other transactional filing, if the acquiree or investee's financial statements have not previously been required in a SEC filing, the U.S. GAAP reconciliation only needs to be provided for the most recent two years and any required interim period.

6410.8 If three years of audited financial statements of an acquired foreign business would be required based on the level of significance, a registrant may elect to present the acquired business' statements for only two years if they are prepared using U.S. GAAP, rather than home-country GAAP with a reconciliation. The registrant's primary financial statements must also be prepared in accordance with U.S. GAAP if post-acquisition periods are considered in determining the years presented.

6410.9 If a foreign incorporated acquiree or investee does not qualify as a foreign business and financial statements are required under S-X 3-05 or 3-09, those financial statements must be presented in conformity with U.S. GAAP, or:

- home-country GAAP reconciled to U.S. GAAP in accordance with Item 18 of Form 20-F; or

- IFRS as issued by the IASB reconciled to U.S. GAAP in accordance with Item 18 of Form 20-F. If the acquiree or investee does not qualify as a foreign business, but does meet the definition of a foreign private issuer, CF-OCA will consider requests for relief from the reconciliation requirement.

NOTE to SECTION 6410.9
For the financial statements referenced in the bullets above, the 30% test discussed in 6410.6(b) does not apply. See footnote 31 to Release No. 33-7118. (*Last updated: 12/31/2012)*

6410.10 A foreign or domestic registrant may apply SAB 80 in determining the periods for which audited financial statements of acquired foreign businesses are required in an IPO. Assuming that the businesses acquired are reporting in the U.S. for the first time, financial statements of foreign businesses required to be presented under the SAB for three years need only be reconciled to U.S. GAAP for the two most recent fiscal years. Financial statements required to be presented under the SAB for two years must be reconciled to U.S. GAAP for both years. Most recent interim period and corresponding prior year financial statements also would be reconciled to U.S. GAAP.

6410.11 If pro forma financial statements are required, they should be prepared in accordance with U.S. GAAP or reconciled to U.S. GAAP.

6410.12 Financial Statements Required by S-X 3-16

When financial statements are required pursuant to S-X 3-16, the financial statements to be provided for the affiliate are based on the financial statements the affiliate would be required to provide if it were a registrant. Typically, the financial statements of an affiliate would be prepared using the same GAAP as the registrant (which is usually the parent). In certain limited circumstances, if the affiliate as a separate registrant would not qualify as a foreign private issuer, the affiliate could file home-country GAAP financial statements reconciled to U.S. GAAP in accordance with Item 18 of Form 20-F, based upon footnote 31 to Release No. 33-7118.

6420 Selected Financial Data [Item 3A of Form 20-F]

(Last updated: 6/30/2013)

6420.1 Selected financial data should also include amounts under U.S. GAAP, if the primary financial statements are presented using home-country GAAP. Non-EGCs should provide the selected data for 5 years. See Section 10220.2 for exception for EGCs.

6420.2 A non-EGC's selected data for the earliest two years of the five-year period may be omitted if the registrant represents that the information cannot be provided without unreasonable effort or expense, and states the reasons for the omission in the filing. [Item 3.A of Form 20-F and Instruction 2 to Item 3.A] See Section 10220.2 for guidance regarding selected financial data disclosure for EGCs.

6500 CONTENT OF RECONCILIATION TO U.S. GAAP

(Last updated: 9/30/2008)

NOTE: Form 20-F provides two levels of reconciliation from a comprehensive basis of accounting other than U.S. GAAP to U.S. GAAP- Item 17 and Item 18. Item 17 requires quantification of the material differences in the principles, practices and methods of accounting. Item 18 requires satisfaction of the requirements of Item 17, as well as provision of all other information required by U.S. GAAP and Regulation S-X. *(Last updated: 9/30/2011)*

NOTE: Compliance with Item 18 rather than Item 17 is required for all issuer financial statements in all Securities Act registration statements, Exchange Act registration statements on Form 20-F, and annual reports on Form 20-F.

Item 17 is permitted for pro forma information pursuant to S-X Article 11.

Item 17 compliance is permitted for non-issuer financial statements such as those pursuant to S-X 3-05, 3-09, and 3-10(i), as well as non-issuer target company financial statements included in Forms S-4, F-4 and proxy statements. [Release No. 33-8959]

Non-issuers using Item 17 that are required to provide MD&A (e.g., target companies in Forms S-4, F-4 and proxy statements) should consider the need to provide certain additional information in the MD&A to assist the U.S. investor in understanding the financial statements. [SAB Topic 1D]
(Last updated: 9/30/2011)

6510 Item 17(c) of Form 20-F - Basic Requirements

6510.1 A **discussion of material variations** in accounting principles, practices and methods used in preparing the financial statements between home-country GAAP and U.S. GAAP

6510.2 A quantified description of **balance sheet differences** under home-country GAAP in comparison to U.S. GAAP. Most companies elect to present this information in the form of a reconciliation of shareholders' equity, but they may also provide restated balances of individual balance sheet line items, or describe, in numerical terms, how balance sheet line items would specifically change under U.S. GAAP.

NOTE: The reconciliation of shareholders' equity should be in sufficient detail to allow an investor to determine the differences between a balance sheet prepared using home-country GAAP and one prepared using U.S. GAAP.

6510.3 Common deficiencies include:

a. Recording reconciling items net of taxes.	All reconciling items should be presented gross with a separate adjustment for taxes.
b. Presenting adjustments that impact several balance sheet captions as one reconciling item.	Disclose the impact on each caption for adjustments that impact several captions, such as purchase accounting.
c. Presenting different items that impact the same caption as one adjustment.	Disclose the impact for each difference, even if it impacts the same caption.
d. Not reflecting adjustments at the subsidiary level.	Each GAAP adjustment should be made at the appropriate subsidiary level to determine the impact on items such as minority interest, taxes and the currency translation adjustment.
e. Recording adjustments for items such as property & equipment or intangible assets net of depreciation and amortization expenses.	These adjustments should be presented gross with separate disclosure of the amounts of accumulated depreciation and amortization.

NOTE: Registrants should consider preparing supplemental statements of changes in shareholders' equity using amounts determined under U.S. GAAP to confirm that the reconciliation balances and that it provides appropriate disclosure on changes in the equity accounts on a U.S. GAAP basis. Many registrants elect to include these statements, prepared using U.S. GAAP amounts, as part of their U.S. GAAP reconciliation.

6510.4 A **reconciliation of net income** from home-country GAAP to U.S. GAAP that quantifies and describes each significant difference.

6510.5 Disclosure of basic and diluted EPS calculated in accordance with U.S. GAAP, if materially different from home-country GAAP. *(Last updated: 9/30/2011)*

6510.6 A **cash flow statement** prepared under U.S. GAAP or IAS 7, or a reconciliation of a cash flow statement or statement of changes in financial position that quantifies the material differences in the statement presented as compared to U.S. GAAP. Some of the more common deficiencies in this disclosure include:

a. Failure to identify noncash investing and financing activities;

b. Presentation of items on a net rather than gross basis;

c. Inadequate discussion of the differences in the definitions of "cash" and "cash equivalents"; and

d. Differences in classification.

6510.7 Issuers are encouraged to prepare a supplemental statement of cash flows prepared in accordance with U.S. GAAP to confirm the adequacy of the disclosure of the reconciling items.

6510.8 Information required by supplemental schedule may be presented in accordance with either home-country GAAP or U.S. GAAP. A reconciliation from the home-country GAAP to U.S. GAAP is not required.

6510.9 S-X Article 11 pro forma financial statements either should be prepared on a U.S. GAAP basis or be accompanied by reconciliations to U.S. GAAP prepared in a manner consistent with Item 17. Reconciliations of pro forma information to U.S. GAAP are required even if the historical financial statements of the acquired business are not required to be reconciled. See Section 6220.8 for guidance concerning age of pro forma information. A method consistent with SFAS 52 [ASC 830] should be used to translate currencies.

6510.10 Disclosure of the accounting method used in the reconciliation to U.S. GAAP for stock-based compensation given to employees and to non-employees. Other than this information, non-issuer financial statements under Item 17 are not required to provide the disclosures set forth in SFAS 123(R) [ASC 718]. *(Last updated: 9/30/2011)*

6510.11 [Reserved]
(Last updated: 6/30/2011)

6510.12 [Reserved]
(Last updated: 10/20/2014)

6510.13 Certain GAAPs do not require the restatement of previously issued financial statements upon discovery of an error that relates to prior periods. For example, some GAAPs permit or require cumulative adjustment in the current period income statement, which would ordinarily cause comparative periods to continue to be materially misstated. That treatment would not be acceptable in SEC filings. *(Last updated: 12/31/2010)*

6520 Item 18 of Form 20-F – Basic Requirements

6520.1 Certain information is required to be disclosed under Item 18, but not Item 17. For example (list not all inclusive):

a. Reconciliations of the numerators and denominators used in computing basic and diluted EPS, and other EPS-related disclosures (SFAS 128 [ASC 260])

b. Segment information (SFAS 131 [ASC 280])

c. Fair value information (SFAS 107 [ASC 825])

d. Concentrations of credit risk (SFAS 133 [ASC 825-10-50-20])

e. Information about investment securities (SFAS 115 [ASC 320])

f. Information about off-balance sheet financial instruments (SFAS 133 [ASC 815])

g. Disclosures about stock-based compensation to employees and non-employees (SFAS123(R) [ASC 718], as appropriate)

h. Components of pensions and benefits other than pensions (SFAS 87, SFAS 106, SFAS 132(R) [ASC 715])

i. Components of tax expense and deferred tax liability/asset (SFAS 109 [ASC 740])

j. Income statement classification differences

k. Information about equity method investments (APB 18 [ASC 323] and S-X 4-08(g))

6520.2 Pervasive Impact of Differences Between Home-Country and U.S. GAAP

a. If differences between home-country and U.S. GAAP have such a pervasive impact on the financial statements that they render a normal reconciliation (as described above) confusing to investors, full or condensed financial statements prepared in accordance with U.S. GAAP may be necessary in order for the reader to fully understand the impact of the differences in accounting.

   For example: A business combination accounted for as a purchase of another company by the registrant under home-country GAAP but as a reverse acquisition under U.S. GAAP (the registrant is acquired by another company) would most easily be understood if the registrant included, in addition to a description of the differences in accounting, audited financial statements prepared under U.S. GAAP. Those financial statements would reflect the change in basis of the registrant on the acquisition date and present the financial statements of the accounting acquirer prior to the date of acquisition as the financial statements of the registrant. See Topic 12 for additional guidance related to reverse acquisitions.

b. Similarly, expanded presentation formats and disclosures may be necessary in other circumstances, such as differences between home-country and U.S. GAAP in the application of pooling versus purchase accounting, in the non-consolidation versus consolidation of an entity, or in the classification of a business as continuing operations versus discontinued operations. *(Last updated 9/30/2009)*

6530 Statements of Comprehensive Income

(Last updated: 6/30/2011)

6530.1 Statements of comprehensive income prepared using either U.S. GAAP or home-country GAAP are required under both Item 17 and Item 18. These statements may be presented in either format permitted by ASC 220. Reconciliation to U.S. GAAP is encouraged, but not required.

6530.2 ASC 220-10-45-14A requires the presentation of the changes in the accumulated balance for each of the components of other comprehensive income either on the face of the financial statements or in the footnotes. This requirement does not apply to financial statements under Item 17. *(Last updated: 9/30/2011)*

6530.3 In certain countries, equity components under home-country GAAP are included in retained earnings and are not separately tracked. Reconstruction of these amounts may not be practical. Depending on the facts and circumstances, the staff will generally not object if an issuer concludes, and discloses in its filings, that it is not practical to present the changes in the accumulated balance for each of the components of its other comprehensive income specified by ASC 220-10-45-14A.

6540 Accommodations Permitted by Form 20-F

6540.1 Cash Flow Statement

The SEC will allow without reconciliation to U.S. GAAP a foreign issuer's cash flow statement that is prepared in accordance with IAS 7, "Cash Flow Statements," as amended. [Item 17(c)(2)(iii) of Form 20-F] A reconciliation of home-country cash flow presentation to IAS 7 does not meet the requirements of the form.

6540.2 Accounting for Effects of Hyperinflation

a. A foreign private issuer that accounts in its primary financial statements for its operations in a hyperinflationary economy in accordance with IAS 21, *The Effects of Changes in Foreign Exchange Rates*, as amended, may omit quantification of any differences that would have resulted from application of the U.S. standard, SFAS 52 [ASC 830]. [Item 17(c)(2)(iv)(B) of Form 20-F]

b. IAS 21 requires that amounts in the financial statements of the hyperinflationary operation be restated for the effects of changing prices in accordance with IAS 29, *Financial Reporting in Hyperinflationary Economies*, and then translated to the reporting currency. The accommodation is only available if the issuer uses the historical cost/constant currency method of IAS 29. This accommodation relates to financial statements prepared in a stable reporting currency, not to financial statements price-level adjusted for inflation.

6540.3 [Reserved]
(Last updated: 9/30/2011)

6540.4 Effects of Proportional (Pro Rata) Consolidation

a. Foreign private issuers that use proportional consolidation under home-country GAAP for investments in joint ventures that would be equity method investees under U.S. GAAP may omit reconciling differences related to classification or display and instead provide

summarized footnote disclosure of the amounts proportionately consolidated, such as:

1. Current assets/liabilities;
2. Noncurrent assets/liabilities;
3. Net sales;
4. Gross profit;
5. Net income; and
6. Cash flow information resulting from operating, financing, and investing activities.

   [Item 17(c)(2)(vii) of Form 20-F]

b. The disclosure should allow a reader to reconstruct a U.S. GAAP balance sheet. Summarized totals from the investee financial statements (rather than the amounts proportionally consolidated by the registrant) do not satisfy this condition.

NOTE: This accommodation for proportionately consolidated joint ventures only applies if 1) the joint venture is an operating entity, and 2) its significant financial operating policies are, by contractual arrangement, jointly controlled by all parties having an equity interest in the entity.

c. Separate financial statements of a joint venture being proportionally consolidated are not required.

6600 SELECTION OF A REPORTING CURRENCY

(Last updated: 9/30/2008)

NOTE: S-X 3-20 allows a foreign private issuer to file financial statements prepared in any currency that management believes is appropriate.

6610 Currency of Measurement

6610.1 While there is free choice in the selection of the reporting currency, there is not free choice in the selection of the currency used for measurement. All operations, including those of the parent company, that do not operate in a hyperinflationary environment should be measured using the currency of the primary economic environment to measure transactions. While not specifically referring to SFAS 52 [ASC 830], S-X 3-20 is designed to be conceptually consistent with that standard. Assets and liabilities are translated at the period end exchange rate and the income statement is translated at the weighted

average annual exchange rate. The translation effects of exchange rate changes are included as a separate component of equity.

6620 Disclosures, if the U.S. Dollar is Not the Reporting Currency [S-X 3-20]

6620.1 The currency used to prepare financial statements must be displayed prominently on the face of the financial statements.

6620.2 The currency in which dividends are declared, if different from the reporting currency, must be disclosed.

6620.3 A description of material exchange restrictions or controls relating to the reporting currency, and the currency of the issuer's domicile or the currency in which the issuer will pay dividends, if different, must be provided.

6620.4 A five-year history of exchange rates setting forth rates at period end, average, highs and lows, must be disclosed. [Item 3.A of Form 20-F] The noon buying rate in New York City for cable transfers in foreign currencies as certified for customs purposes by the Federal Reserve Bank in New York can be obtained via the internet at: http://www.newyorkfed.org/markets/fxrates/historical/home.cfm.

See the Division of Corporation Finance's C&DIs for Exchange Act Forms, Question 110.01.

6620.5 Dollar equivalent or convenience translations are generally not permitted, except that a convenience translation may be presented only for the most recent fiscal year and interim period. Translation should be made at the exchange rate on the balance sheet date or most recent date practicable, if materially different. The rate used for the convenience translation should generally be the rate that the issuer would use if dividends were to be paid in U.S. dollars.

6620.6 An issuer filing a registration statement on Form F-3 that incorporates financial statements previously filed on Form 20-F does not need to amend or otherwise modify these statements to reflect a more current exchange rate in presenting the convenience translation.

6620.7 While S-X 3-20 allows foreign private issuers to prepare financial statements in the currency it believes is appropriate, it does not address financial statements of acquirees or equity investees. However, these financial statements can be prepared either in the same currency as the issuer or in the currency that normally is used for preparation of such entities' financial statements. Accordingly, a domestic issuer can prepare financial statements of an acquiree or investee in U.S. dollars. *(Last updated: 12/31/2010)*

NOTE: Amendment or other modification is not necessary even if the company has presented a convenience translation on interim data in the registration statement or by reference to Form 6-K. In this situation, the issuer should disclose in the interim data provided on the Form 6-K that different exchange rates have been used for the convenience translation.

6630 Change in Reporting Currency

6630.1 Financial information for all periods presented in the filing should be recast into the new reporting currency using a methodology consistent with SFAS 52 [ASC 830] (IAS 21 for IFRS filers). Income statements should be translated from the old reporting currency into the new reporting currency using a weighted average exchange rate for the applicable period. The balance sheet should be translated using the applicable period end exchange rate. The objective of this procedure is to present financial statements as if the issuer had always used the new reporting currency.

6630.2 If the reporting currency used in a registrant's financial statements is different from that of its predecessor, the predecessor's financial statements should be recast using the registrant's reporting currency.

6640 Reporting Currency for Domestic Registrants and Non-Foreign Private Issuers

(Last updated: 9/30/2009)

S-X 3-20 requires that a U.S.-incorporated registrant will present its financial statements in U.S. dollars. In limited instances, the staff has not objected to the use of a different reporting currency. Those instances have been limited to situations where the U.S.-incorporated registrant had little or no assets and operations in the U.S., substantially all the operations were conducted in a single functional currency other than the U.S. dollar, and the reporting currency selected was the same as the functional currency. The staff has also not objected when a foreign issuer who does not meet the definition of a foreign private issuer applies this approach in similar circumstances.

6700 PRICE-LEVEL ADJUSTED FINANCIAL STATEMENTS AND EFFECTS OF HYPERINFLATIONARY ENVIRONMENTS

(Last updated: 9/30/2008)

6710 Requirements

6710.1 An issuer in a hyperinflationary economy must either comprehensively include the effects of price-level changes in the primary statements or, alternatively, present supplemental information to quantify the effects of changing prices using the historical cost/constant currency or current cost/replacement cost approach. [S-X 3-20 and Form 20-F Item 17(c)(2)(iv)]

6710.2 The quantified effects of applying price-level accounting are not eliminated in the reconciliation to U.S. GAAP. In other words, registrants that apply price-level accounting are not required to quantify and remove the effects of inflation as part of the reconciliation to U.S. GAAP. This accommodation applies to all issuers who price-level adjust in conformity with their home-country GAAP even if the currency of the primary economic environment is not hyperinflationary as defined under U.S. GAAP. [Form 20-F Item 17(c)(2)(iv)]

Question: What is a hyperinflationary environment?

Answer: A hyperinflationary economy has cumulative inflation of approximately 100% or more over the most recent three-year period. See EITF D-55 [ASC 830] for further guidance.

NOTE: Inflation rates are multiplied in computing cumulative inflation. For example, 1.26 x 1.26 x 1.26 = 2.00. Inflation of at least 26% for three years would result in cumulative inflation of 100%.

6710.3 Issuers in a hyperinflationary economy that elect to report in accordance with U.S. GAAP can report in either the hyperinflationary currency or a stable currency.

Reporting Currency Selected	Requirement
Hyperinflationary currency	Present general price-level financial statements. See SOP 93-3 [ASC 255-10-45].
Stable currency, such as the U.S. dollar	Apply the remeasurement principles of SFAS 52 [ASC 830]. The stable currency's average annual rate should be used for purposes of the income statement. [S-X 3-20(c)]

6720 Preparation of Price-level Adjusted Financial Statements

6720.1 All price-level adjusted financial information in a foreign private issuer's registration statement should be presented in equivalent purchasing power units of the reporting currency. For each period presented, all measurements are retroactively restated to the purchasing power unit as of the date of the most recent balance sheet information in the filing.

6720.2 If a company updates a registration statement to include interim financial information, the prior annual financial information must be recast in equivalent purchasing power units. A company that incorporates by reference a prior annual report on Form 20-F need not amend the prior filing, but must file restated financial statements in the registration statement or under cover of a Form 6-K that is incorporated by reference.

6720.3 If the rate of inflation during the interim period is very low such that the effect of restatement does not materially affect apparent trends and is clearly immaterial, the staff has not insisted that prior period financial information be restated. If the information is not restated, the rate of inflation and the reason why restatement was not considered to be necessary should be disclosed.

6720.4 The cash flow statements of issuers that prepare price-level adjusted financial statements should present the effects of inflation on cash flows separately from their operating, investing and financing activities. The presentation of a "fourth" cash flow statement category, which separately captures these effects, meets this objective. Price-level adjusted cash flow statements that include the effects of inflation in the line items comprising the three major categories may make the presentation less meaningful and possibly misleading.

Example of a Potentially Misleading Presentation: The financing activities section of the cash flows statement, if price-level adjusted for inflation, may depict reductions of foreign-currency denominated debt because of the recasting of prior balance sheet amounts, even though no cash repayments may have actually occurred.

6720.5 If interim financial information more current than otherwise required by SEC rules is included in a registration statement solely to comply with Instruction 3 to Item 8.A.5 of Form 20-F, the staff encourages, but will not insist, that prior periods be restated. The staff expects companies to provide disclosure necessary to prevent the updated data from being misleading in relation to prior period financial information. For example, the registrant should provide supplemental selected financial data recast in equivalent purchasing power units, accompanied by disclosure of the rate of inflation that would be used to restate all prior financial information in equivalent purchasing power units.

6800 FOREIGN AUDITOR MATTERS

(Last updated: 6/30/2009)

6810 Qualifications and Independence

6810.1 In certain instances where the independent accountant is not licensed in the U.S. and not familiar to the staff, OCA may request information about the accountant's qualifications to audit financial statements that are filed with the SEC.

6810.2 Auditors licensed outside the U.S. must comply with all requirements of S-X 2-01, including SEC and PCAOB rules on auditor independence. S-X 2-01 permits a foreign auditor, solely for purposes of a foreign private issuer's initial registration statement, to be independent under SEC and PCAOB rules for at least the most recent audited fiscal year, provided that auditor is independent under local standards for all periods presented. The auditor must remain independent under SEC and PCAOB rules for all subsequent periods.

6810.3 The staff may question the location from which the audit report was rendered if there does not appear to be a logical relationship between that location and the location of the registrant's corporate offices, its principal operations, its principal assets, or where the audit work was principally conducted. The staff will consider all relevant factors in questioning the location from which the audit report was rendered. *(Last updated: 9/30/2011)*

6810.4 Auditors may be permitted or required by home-country regulations to render reports on the fairness or adequacy of consideration in an audit client's planned merger or non-monetary transaction. The services performed to render these reports may violate U.S. independence rules.

6810.5 Effective January 1, 2000, AICPA SEC Practice Section ("SECPS") rules established minimum requirements for the review of SEC filings by a designated "filing reviewer" within the independent accountant's U.S. firm or international organization knowledgeable about U.S. GAAP, U.S. GAAS, U.S. auditor independence and SEC reporting requirements. Although the SECPS no longer exists, the PCAOB has adopted the requirements of Appendix K, SECPS §1000.45 pursuant to PCAOB Rule 3400T, through its adoption of Interim Quality Control Standard 1000.08(n), which cross references SECPS § 1000.45. Prior to commencing review of initial registration statements, the staff may request confirmation that Appendix K was applied to the filing, as well as the name of the designated filing reviewer that the staff may contact with any questions concerning the application of those policies and procedures to the registration statement. The purpose of the procedure is to ensure that foreign auditors appropriately involve their designated filing reviewer prior to submission of registration statements. The staff will consider deferring the

review of a registration statement where the application of the firm's established policies and procedures to that registration statement cannot be confirmed.

6810.6 The Appendix K requirements also apply to annual reports.

6820 Reports

6820.1 The report of the independent accountant must comply with all requirements of S-X 2-02.

6820.2 The report of the independent accountant, except for MJDS filers in Canada, should include a statement that the audit was conducted "in accordance with the standards of the Public Company Accounting Oversight Board (United States)." The staff will not object if the report also refers to compliance with home-country GAAS. [Instruction 2 to Item 8.A.2 of Form 20-F; Release No. 33-7745]

6820.3 Reports of independent accountants issued for MJDS filers may still refer solely to Canadian GAAS when filed on MJDS forms. [Release No. 33-6902] However, if financial statements of an MJDS filer are included in a non-MJDS form, such as Rule 3-05 financial statements in a domestic registrant's Form 8-K or a foreign private issuer's Form F-3, then the audit must be conducted, at a minimum, in accordance with, and the audit report must refer to, U.S. GAAS.

6820.4 The reconciliation to U.S. GAAP must be audited. The staff recommends that the report of the independent accountant refer explicitly to the reconciliation, but the absence of that reference does not relieve the auditor of its responsibility to examine the reconciliation. The reconciliation footnote may not be labeled "unaudited." Pursuant to SEC rules and auditing standards, omission of a material item that is required to reconcile the financial statements to U.S. GAAP pursuant to Item 17 or Item 18 of Form 20-F, or any otherwise inaccurate presentation of that reconciliation, would require a clear reference in the auditor's report identifying the omission or inaccuracy. [Release No. 33-7119]

6820.5 The correction of a material misstatement in a previously filed U.S. GAAP reconciliation should be recognized in the auditor's report through the addition of an explanatory paragraph. [AS 6, paragraph 9] *(Last updated: 12/31/2010)*

6820.6 The staff expects that there would be no material difference between net income and shareholders' equity amounts reported in a reconciliation to U.S. GAAP and the corresponding amounts that would be reported if the financial statements were presented directly in U.S. GAAP. Accordingly, neither the auditor's report nor the notes to the financial statements should characterize U.S. GAAP net income or shareholders' equity amounts as "estimated" or "approximated." *(Last updated: 12/31/2010)*

6820.7 If the report includes reference to another accountant, the separate audit report of that accountant must be included. Financial statements of subsidiaries or investees of a foreign private issuer are sometimes prepared in differing GAAPs than that of the registrant. The audit report should be clear as to which auditor is taking responsibility for auditing the conversion of the GAAP of the subsidiary or investee to the GAAP of the issuer, as well as auditing the U.S. GAAP reconciliation.

6820.8 Some foreign private issuers or acquired foreign businesses are jointly audited by more than one firm. Both auditors sign the report and take full responsibility for the audit. Each auditor must comply with all requirements of S-X 2-01, including the U.S. independence requirements. In certain cases, one of the firms may be a U.S. firm.

6830 Disclosure of Change in Accountants and Disagreements

(Last updated: 9/30/2011)

Foreign private issuers are required to provide disclosures in the event of a change in their independent accountants. The disclosure requirements are contained in Item 16F of Form 20-F. The required disclosures are substantially the same as those required for domestic issuers by S-K 304. However, the disclosures and related auditor's letter must be filed as part of the annual report on Form 20-F and any registration statements, rather than in a Form 8-K. [Release No. 33-8959]

6900 [RESERVED]

(Last updated: 9/30/2010)

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TOPIC 7

RELATED PARTY MATTERS

7100 [RESERVED]

7200 EXPENSES INCURRED ON BEHALF OF REGISTRANT

(Last updated: 9/30/2008)

7210 Reflect All Costs of Doing Business

All costs of doing business, including costs incurred by parent and others, should be reflected in historical financial statements. Allocation of common expenses may be required. A registrant is not required to impute costs, if they were not incurred by its parent or others. Footnote disclosure should include management's assertion that the allocation method is reasonable and management's estimate of what the expenses would have been on a stand-alone basis, if materially different. See also Section 7400 "Components of Larger Entities" below.

7210.1 Organizational and offering costs paid for by a related party should be reflected in the financial statements of the registrant where those costs will be directly or indirectly reimbursed. [SAB Topic 5D] In the absence of an obligation or intent to reimburse directly or indirectly, the staff will not insist on inclusion of these amounts in the issuer's financial statements.

7210.2 Obligations paid by parent or principal shareholder on behalf of the registrant must be reflected in the registrant's financial statements. [SAB Topic 5T]

7220 Compensation Arrangements

7220.1 Contributed services
(Last updated: 3/31/2009)

a. Financial statements might not include compensation at fair market levels where charges were not made or were relatively low, or if amounts owed for services were forgiven and accounted for as a contribution to capital. If so, the notes to the historical financial statements should provide quantified disclosure of the significant compensation arrangements with related parties that resulted in below-market compensation expense.

b. If historical statements reflect compensation that will be materially different from the compensation expense expected after the offering or in the future, disclosure of the salary commitment should be made and pro forma data for the latest year and interim period may be necessary. In addition, consider whether additional disclosure is warranted in the MD&A discussion of liquidity.

7220.2 Other forms of compensation provided by a related party or other holder of an economic interest in the entity to an employee for services should also be reflected in the registrant's financial statements.

7300 TRANSFERS AND RECEIVABLES TO OR FROM SHAREHOLDERS [SAB TOPIC 5G]

(Last updated: 9/30/2008)

7310 Transfer of Nonmonetary Assets

7310.1 In most circumstances, transfers of nonmonetary assets for stock or other consideration of the registrant prior to an initial public offering are recorded at predecessor cost as determined in accordance with GAAP. Where the registrant gives monetary consideration for property conveyed by promoters, the excess over predecessor cost is treated as a reduction of equity (i.e., a special distribution).

7310.2 Promoters: persons founding or organizing the entity; persons who receive 10% or more of the stock of the entity in connection with its founding or organization. [S-X 1-02(s)]

NOTE: The guidance in SAB Topic 5G is not intended to modify the requirements of SFAS 141. The combination of two or more businesses should be accounted for in accordance with SFAS 141 and its interpretations and SAB Topic 2A.8.

7320 Receivables

7320.1 Receivables from affiliates which are the equivalent of unpaid subscriptions receivable or capital distributions should be reflected as a deduction from equity. [SAB Topic 4G]

7320.2 Receivables from an officer or director need not be deducted from equity if the receivable was paid in cash prior to the publication of the financial statements and the payment date is stated in a note to the financial statements. [SAB Topic 4E]

7330 Distributions to or from Major Shareholders Prior to Offering [SAB Topic 1B.3]

(Last updated: 3/31/2009)

7330.1 Refer to Topic 3 for detailed discussion of pro forma requirements.

7330.2 Distributions should be given retroactive effect in latest balance sheet or reflected in pro forma balance sheet alongside of historical balance sheet.

7330.3 If the distribution is compensation for prior services or consideration for prior conveyances, only retroactive presentation would be acceptable.

7340 Offering Proceeds

7340.1 In addition to historical EPS, if a material portion of the proceeds of an offering will be distributed to shareholders, present pro forma EPS for the latest year and interim period reflecting dilution equivalent to the number of shares whose proceeds will be used to pay dividends.

7340.2 Even if the distribution is not clearly to be paid from offering proceeds, pro forma EPS is required if the distribution exceeds current year's earnings.

7400 COMPONENTS OF LARGER ENTITIES [SAB TOPIC 1B]

(Last updated: 9/30/2008)

7410 Financial Statement Requirements

Registrants that are components of larger entities should consider SAB Topic 1B when preparing financial statements. Also, retained earnings should not be separately reported by a non-corporate entity. The residual interest should be presented as a single component, such as "parent's equity in division." *(Last updated: 1/12/2015)*

7420 Statements of Revenues and Direct Expenses

Refer to Section 2065 for a discussion of when less than full financial statements are appropriate as well as form and content requirements.

7430 Pro Forma Financial Statement Requirements

Refer to Section 3290 for guidance on pro forma financial information related to acquisitions of components of larger entities.

7500 COMPENSATION ISSUES

(Last updated: 6/30/2009)

7510 Stock Compensation

7510.1 In evaluating whether a stock issuance is in fact a compensation arrangement or only a restructuring of non-employee ownership rights prior to an offering, the staff will evaluate the circumstances of the issuance and the extent of employee participation.

7520 Valuation of Privately-Held-Company Equity Securities Issued as Compensation

7520.1 In the evaluation of the assumptions used in and the results of applying an appropriate valuation methodology to estimate the fair value of the stock, the registrant should consider the proximity of the issuance to the offering, intervening events, transfer restrictions and exercise dates, and profitability and financial condition of the company at the date of the valuation. If the estimated fair value of the stock is substantially below the IPO price, the registrant should be able to reconcile the difference between them (for example, explain the events or factors that support the difference in values). The reliability of a valuation specialist's fair value determination may be affected by the timing of the valuation (contemporaneous versus retrospective) and the objectivity of the specialist (unrelated versus related-party).

7520.2 Nominal Issuances [SAB Topic 4D]

a. Nominal issuances of shares are considered in-substance recapitalization transactions. Issuances of shares for which compensation or other expense has been appropriately recorded under APB 25 or SFAS 123/123(R) [ASC 718] ordinarily would not be considered nominal issuances since consideration received for issuance of shares may include goods or services. However, even if goods or services are received, it may still be necessary to compare the consideration received, as accounted for in the financial statements, to the fair value of the shares issued to determine whether the consideration is nominal. Also, issuances of shares in exchange for assets (for example, SAB 48 transactions) would not be considered nominal issuances, unless the fair value of the assets is nominal.

b. In an IPO, and in subsequent filings, nominal issuances of common stock and potential common stock (for example, options and warrants) should be reflected in the calculation of earnings per share for periods prior to their issuance in a manner similar to a stock split or stock

dividend for which retroactive treatment is required. [SFAS 128, paragraph 54 / ASC 260-10-55-12]

c. Nominal issuances should be limited to certain issuances to investors or promoters.

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TOPIC 8

NON-GAAP MEASURES OF FINANCIAL PERFORMANCE, LIQUIDITY, AND NET WORTH

8100 USE OF NON-GAAP FINANCIAL MEASURES

(Last updated: 9/30/2008)

8110 Applicable Guidance

(Last updated: 12/31/2009)

8110.1 Authoritative guidance regarding the use of non-GAAP financial measures can be found in:

a. Regulation G

b. S-K 10(e)

c. Exchange Act Release No. 47226, *Conditions for Use of Non-GAAP Financial Measures*

8110.2 Staff guidance regarding the use of non-GAAP financial measures can be found in the Division of Corporation Finance's Compliance and Disclosure Interpretations, *Non-GAAP Financial Measures*. The questions are grouped into the following categories:

a. Section 100 – General

b. Section 101 – Business Combination Transactions

c. Section 102 – Item 10(e) of Regulation S-K

d. Section 103 – EBIT and EBITDA

e. Section 104 – Segment Information

f. Section 105 – Item 2.02 of Form 8-K

g. Section 106 – Foreign Private Issuers

h. Section 107 – Voluntary Filers

i. Section 108 – Compensation Discussion and Analysis/Proxy Statement *(Last updated: 11/9/2016)*

8120 Definition of a Non-GAAP Financial Measure

8120.1 A non-GAAP financial measure is a numerical measure of a registrant's

historical or *future* financial performance, financial position, or cash flow that:

a. excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows of the issuer; or

b. includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable GAAP measure so calculated and presented.

8120.2 Some common examples of measures that meet the definition of non-GAAP measures include the following:

a. Funds from operations (FFO) (Non-GAAP C&DI Questions 102.01 and 102.02)

b. EBIT / EBITDA / adjusted EBITDA (Non-GAAP C&DI Questions 102.09, 103.01 and 103.02)

c. Adjusted revenues

d. Broadcast cash flow (BCF)

e. Free cash flow (FCF) (Non-GAAP C&DI Question 102.07)

f. Core earnings

g. Measures presented on a constant-currency basis (e.g., revenues, operating expenses, etc.) (Non-GAAP C&DI Question 104.06)

(Last updated: 3/31/2013)

8120.3 Measures of operating performance or statistical measures that fall outside the scope of the definition set forth above are not "non-GAAP financial measures". Additionally, "non-GAAP financial measure" excludes financial information that does not have the effect of providing numerical measures that are different from the comparable GAAP measure. Examples of measures that are not non-GAAP financial measures include:

a. Operating and statistical measures (such as unit sales, number of employees, number of subscribers)

b. Measures of profit or loss and total assets for each segment that are consistent with disclosures made in accordance with ASC Topic 280. (Non-GAAP C&DI Questions 104.01 through 104.06)

c. Disclosure of expected or contracted indebtedness

d. Disclosure of amounts of repayments that have been planned but not yet made

e. Disclosure of estimated revenues or expenses of a new product line (so long as the amounts were estimated in the same manner as would be computed under GAAP) (Non-GAAP C&DI Question 104.05)

f. Financial measures that are required to be disclosed by a system of regulation of a governmental authority or self-regulatory organization that is applicable to the registrant (such as different levels of capital required by banks or ratio of earnings to fixed charges) (Non-GAAP C&DI Question 102.12)

g. Ratios or statistical measures that are calculated using exclusively one or both of:

    1. financial measures calculated in accordance with GAAP (such as earnings per share); and
    2. operating measures or other measures that are not non-GAAP measures (such as dollar revenues per square foot for hotels, same store sales, and revenues per slot machine for casinos, assuming that sales/revenues for each measure is based on GAAP numbers).

8120.4 [Reserved]
(Last updated: 12/31/2009)

8130 General Applicability and Requirements of Regulation G and S-K 10(e)

(Last updated: 12/31/2011)

	Applicability	Requirements	Prohibitions
Reg G	Applies whenever a registrant required to file reports under Section 13(a) or 15(d) of the Exchange Act (other than a registered investment company), or a person acting on the registrant's behalf, discloses or releases publicly any material information that includes a non-GAAP financial measure. Typically, this information is furnished under Item 2.02 of Form 8-K. [9]	• A presentation of the most directly comparable GAAP measure; and • A reconciliation of the differences between the non-GAAP measure disclosed or released with the most directly comparable GAAP measure. With regard to forward-looking information, a quantitative reconciliation is only required to the extent available without unreasonable efforts. If all of the information necessary is not available without unreasonable efforts, the registrant must identify the information that is unavailable and disclose probable significance.	• Reg G prohibits any registrant (or person acting on the registrant's behalf) from making public a non-GAAP financial measure that, taken together with any information accompanying it, contains an untrue statement of material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

[9] Per Instruction 2 to Item 2.02 of Form 8-K, the requirements of S-K 10(e)(1)(i) apply to disclosures (furnished or filed) under Item 2.02 of Form 8-K.

S-K 10(e)	Applies to a registrant's ***filings*** with the SEC Ex: 10-K, 10-Q, 20-F, S-1, F-1	• Presentation, *with equal or greater prominence*, of the most directly comparable GAAP measure; • A reconciliation of the differences between the non-GAAP measure and the most directly comparable GAAP measure; • A statement disclosing the reasons why management believes the presentation of the non-GAAP measure provides useful information to investors regarding the registrant's financial condition and results of operations; and • To the extent material, a statement disclosing the additional purposes, if any, for which management uses the non-GAAP measure.	• Excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures. This prohibition does not apply to EBIT and EBITDA used as liquidity measures. • Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent, or unusual, when (1) the nature of the charge or gain is reasonably likely to recur within 2 years or (2) there was a similar charge or gain within the prior 2 years. • Presenting non-GAAP financial measures on the face of the GAAP financial statements <u>or</u> in the notes. • Presenting non-GAAP financial measures on the face of any pro forma information required to be disclosed by Article 11. • Using titles or descriptions of non-GAAP measures that are the same or confusingly similar to GAAP titles.

8140 General Application of Regulation G and S-K 10(e) to Foreign Private Issuers

	Regulation G	S-K 10(e)
Foreign Private Issuers	FPIs are exempt from Regulation G if three conditions are met: • The securities of the FPI are listed or quoted on a securities exchange or inter-dealer quotation system outside the U.S.; • The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with U.S. GAAP; and • The disclosure is made by or on behalf of the FPI outside the U.S., or is included in a written communication that is released by or on behalf of the FPI outside the U.S. Regulation G will not apply to disclosures made by or on behalf of the FPI notwithstanding the existence of one or more of the following circumstances: • Disclosure is included in a written communication released in the U.S. as well as outside the U.S., as long as the communication is released contemporaneously with or after its release outside the U.S. and is not otherwise targeted at persons located in the U.S.; • Foreign or U.S. journalists or other third parties have access to the information; • Disclosures appear on one or more of a registrant's websites, so long as the websites, taken together, are not available exclusively to, or are targeted at, persons in the U.S; or • After disclosure of the information outside the U.S., the information is included in a submission on Form 6-K.	FPIs are subject to S-K 10(e) requirements with respect to use of non-GAAP measures in *filings* on Form 20-F or 1933 Act registration statements. However, a non-GAAP measure that would otherwise be prohibited under S-K 10 (e)(1)(ii) will be permitted in a *filing* if the measure is: • *Required or expressly permitted* by the standard-setter that establishes the GAAP principles used in the registrant's primary financial statements; and • Included in the foreign private issuer's annual report or financial statements used in its home-country jurisdiction or market. The exemption from the prohibitions under S-K 10(e)(1)(ii) does not cover situations where the measure is merely not prohibited by the foreign standard setter; it only applies where the standard-setter affirmatively acts to require or permit the measure. Note that these measures are still subject to the remaining requirements of S-K 10(e). (Non-GAAP C&DI Question 106.01).

NOTE: With respect to foreign private issuers whose primary financial statements are prepared in accordance with IFRS or a home-country GAAP, references to "GAAP" in the definition of a non-GAAP financial measure refer to the principles under which those primary financial statements are prepared. However, if a foreign private issuer calculates a non-GAAP measure derived from or based on a measure calculated in accordance with U.S. GAAP, then for purposes of the application of the non-GAAP rules, GAAP for that measure would be defined as U.S. GAAP.

The reference to "generally accepted accounting principles in the United States" in the FPI exemption from Regulation G refers to U.S. GAAP regardless of the accounting principles used in the primary financial statements.
(Last updated: 12/31/2011)

8140.1 [Reserved]
(Last updated: 12/31/2009)

8140.2 [Reserved]
(Last updated: 12/31/2009)

8150 [Reserved]
(Last updated: 12/31/2009)

8160 [Reserved]
(Last updated: 12/31/2009)

8170 [Reserved]
(Last updated: 12/31/2009)

8200 RATIO OF EARNINGS TO FIXED CHARGES [S-K 503]
(Last updated: 9/30/2008)

8210 Required Disclosure
(Last updated: 6/30/2013)

If debt securities are being registered, present a ratio of earnings to fixed charges in the registration statement. If preference equity securities are being registered, present a ratio of earnings to combined fixed charges and preference security dividend requirements in the registration statement. Non-EGCs should present the ratios for each of the last five fiscal years and the latest interim period for which financial statements are presented. (See Section 10220.3 for EGCs.) Either ratio may be disclosed voluntarily in other filings, including 1934 Act forms.

8220 Definition of Fixed Charges

(Last updated: 3/31/2009)

For purposes of the ratios, fixed charges are defined as the sum of interest, whether expensed or capitalized (and from both continuing and discontinued operations), amortization of premiums, discounts and capitalized expenses related to indebtedness, amounts accrued with respect to guarantees of other parties' obligations, and the estimated interest component of rental expense.

NOTE: Fixed charges should only include amounts with respect to the guarantee of another party's obligation when it is probable that such obligation will be incurred by the registrant as opposed to using the amounts accrued for guarantees pursuant to FIN 45 [ASC 460]. However, registrants should disclose the nature of the guarantee arrangements accounted for under FIN 45 [ASC 460] and how the company has treated the guarantee in the calculation.

The staff expects the computation of the ratio of earnings to fixed charges to provide a transparent disclosure of the treatment of interest on FIN 48 [ASC 740] liabilities and other types of interest on non-third party indebtedness.

8230 Dividend Requirements

Preference security dividend requirements for purposes of the ratio are intended to represent the amount of pre-tax earnings that would be required to pay the dividends on outstanding preference securities of the registrant and other fully or proportionally consolidated entities. Preferred dividend requirements include accretion in the carrying value of redeemable preferred stock. The amount should be computed as the dividend requirement divided by (1 - income tax rate).

8240 Definition of Earnings

8240.1 For purposes of the ratio, earnings are defined as the registrant's:

a. pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, plus

b. fixed charges,

c. amortization of capitalized interest,

d. distributed income of equity investees, and

e. share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. [S-K 503]

8240.2 From this total, subtract the following:

a. interest capitalized,

b. preference security dividend requirements of consolidated subsidiaries (not preferred dividends of parent), and

c. minority interest in pre-tax income of subsidiaries that have not incurred fixed charges.

8240.3 Public utilities following SFAS 71 [ASC 980] should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction

8250 Equity in Investee's Losses

Unless the registrant is obligated directly or indirectly to service debt, dividend requirements or rental obligations of an investee, equity in investee's losses are not included in earnings calculation noted at Section 8240 above. If the registrant is so obligated, its equity in the investee's loss should be included in earnings, and fixed charges should include the investee's fixed charges that are related to the obligation.

8260 Pro Forma Effect of Refinancing

If proceeds from the sale of the debt or preferred stock being registered will be used to extinguish a portion or all of one or more specific issues of outstanding debt or preferred stock, a pro forma ratio depicting the effect of the refinancing should be presented if the change in the ratio would be ten percent or greater. The adjustments to derive the pro forma ratio should be limited to the net change in interest or dividends resulting from the refinancing. If only a portion of the proceeds will be used to retire debt or preferred stock, only a related portion of the interest or preferred dividend should be used in the pro forma adjustment. The pro forma ratio should be presented for the latest year and interim period only.

8270 Foreign Private Issuer

If the registrant is a foreign private issuer, the ratio should be computed on the basis of the primary financial statements and, if materially different, on a U.S. GAAP basis. However, if the primary financial statements are prepared in accordance with IFRS as issued by the IASB, the registrant is not required to present the ratio on a U.S. GAAP basis, regardless of the size of the difference between U.S. GAAP and IFRS as issued by IASB.

8280 Exhibit 12

Calculations demonstrating the determination of the ratios should be filed as an exhibit to the registration statement.

8300 TANGIBLE BOOK VALUE PER SHARE [S-K 506]

(Last updated: 9/30/2008)

8310 Presentation of Net Tangible Book Value per Share

In IPOs of common stock where there is substantial disparity between the public offering price and the offering price previously paid by officers, directors, promoters and affiliates (dilution), presentation of net tangible book value per share is required as part of the dilution table.

8320 Definition

There are no rules or authoritative guidelines that define tangible book value. Tangible book value per share is used generally as a conservative measure of net worth, approximating liquidation value. The staff believes generally that tangible assets should exclude any intangible asset (such as deferred costs or goodwill) that cannot be sold separately from all other assets of the business, and should exclude any other intangible asset for which recovery of book value is subject to significant uncertainty or illiquidity.

8330 Staff Practice

In some cases, the staff allows dual calculations of tangible book value. For example, some intangible assets (such as patents) may be sold separately, but the ability to recover their carrying value may be indeterminable. Also, some material deferred costs are accounted for as adjustments to the yield on specific assets or liabilities (debt costs or policy acquisition costs). The staff has allowed tangible book value per share calculations made with and without those assets, with appropriate explanation.

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TOPIC 9

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL POSITION AND RESULTS OF OPERATIONS (MD&A)

9100 MD&A OBJECTIVES

(Last updated: 9/30/2008)

9110 Overall Objectives

9110.1 MD&A is a narrative explanation of the financial statements and other statistical data that the registrant believes will enhance a readers' understanding of its financial condition, changes in financial condition and results of operation.

The objectives of MD&A are:

a. To provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management;

b. To enhance the overall financial disclosure and provide the context within which financial information should be analyzed; and

c. To provide information about the quality of, and potential variability of, a company's earnings and cash flow so that investors can ascertain the likelihood that past performance is indicative of future performance.

9110.2 MD&A should not consist of generic or boilerplate disclosure. Rather, it should reflect the facts and circumstances specific to each individual registrant. S-K 303 is a "principles-based" disclosure requirement. It is intended to provide management with flexibility to describe the financial matters impacting the registrant.

9200 GENERAL REQUIREMENTS

(Last updated: 9/30/2008)

The annual requirements with respect to MD&A are set forth in S-K 303(a). S-K 303(b) sets forth the requirements for MD&A related to interim periods, and the safe harbor provisions are set forth in S-K 303(c). See Section 10220.4 for MD&A requirements for EGCs.

Release No. 33-8350 provided some suggested ways to improve MD&A. These suggestions included adding an overview section to MD&A, presenting the most material information early in the discussion, using headers, bullets or tabular presentations to improve the overall readability and omitting information that is no longer material or necessary. It should be noted these suggestions are not part of the requirements set forth in S-K 303. *(Last updated: 6/30/2013)*

9210 Liquidity and Capital Resources [S-K 303(a)(1) and (2)]

9210.1 These represent two separate requirements of S-K 303(a). The majority of registrants combine their discussion of these two items due to the degree of overlap which exists among the requirements. A key objective of the liquidity and capital resources discussion is to provide a clear picture of the company's ability to generate cash and to meet existing known or reasonably likely future cash requirements.

9210.2 Liquidity is the ability of the registrant to generate adequate amounts of cash to meet its needs for cash. Any known trends, or any known demands, commitments, events or uncertainties that will result in or are likely to result in the registrant's liquidity increasing or decreasing in a material way should be discussed. To the extent a material deficiency is identified, the registrant should disclose the steps taken to remedy the deficiency. The discussion should also evaluate the amounts and certainties of cash flows, as well as whether there has been material variability in historical cash flows.

9210.3 The requirements of the disclosures related to capital resources include a discussion of material commitments for capital expenditures, the general purpose of any commitments and how these commitments will be funded, and material trends in the registrant's capital resources, including expected changes in the mix (equity, debt and any off-balance sheet financing arrangements) and their relative cost.

9210.4 The liquidity and capital resources discussion should address:

a. Material cash requirements;

b. Sources and uses of cash, including cash provided by/used in operations, as well as cash provided by/used in investing and financing activities; and

c. Material trends and uncertainties related to a company's flexibility in determining when and how to use the available cash flows to satisfy obligations and make other capital expenditures.

9210.5 It may be necessary for the liquidity and capital resources discussion to address debt instruments, guarantees and related covenants. Disclosure is likely to be necessary if:

a. The registrant is, or is reasonably likely to be, in breach of debt covenants or

b. Debt covenants impact the registrant's ability to obtain additional debt or equity financing.

9210.6 Improving Liquidity and Capital Resources

a. One of the most common deficiencies is when registrants simply repeat items reported in the statement of cash flows. Registrants should focus on the primary drivers of and other material factors necessary to an understanding of the registrant's cash flows and the indicative value of historical cash flows.

b. Registrants should describe cash flows from operating, investing and financing activities associated with discontinued operations separately from continuing operations if that information is not apparent from the cash flow statement. Additionally, registrants should describe how the company's liquidity is likely to be affected by the absence of cash flows (or negative cash flows) associated with discontinued operations.

9220 Results of Operations [S-K 303(a)(3)]

9220.1 The discussion that is provided with respect to the results of operations should not consist merely of numeric dollar and percentage changes measured from period to period of various line items on the income statement. The focus should be on an analysis of the factors that caused these changes to occur. In providing this analysis, registrants may find it helpful to include a discussion of key variables and financial measures management is utilizing in managing the business. These variables may be non-financial in nature or may represent industry specific metrics.

9220.2 The following disclosures are required by S-K 303(a)(3):

a. Any unusual or infrequent event or transaction or any significant economic change that materially affected the amount of reported income from continuing operations;

b. Significant components of revenues and expenses that are necessary in order to understand the results of operations (e.g., segmental information);

c. Any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations;

d. If events that are likely to cause a material change in the relationship between costs and revenues (increases in labor costs or raw materials for example), the change in the relationship should be disclosed; and

e. To the extent there is a material increase in net sales, discuss the price vs. volume mix (whether the overall increase is attributable to increases in prices or increases in the volume of goods and services being sold).

9220.3 In order to comply with the requirement to discuss significant components of revenue and expenses, registrants will often provide a discussion along segmental lines (as determined under SFAS 131 [ASC 280]). Segment analysis is usually necessary to enable a reader to understand the consolidated amounts, but it should not result in repetitive disclosure that lengthens MD&A unnecessarily, or obscures salient information. The discussion and analysis of segments may be integrated with the discussion of the consolidated amounts to avoid unnecessary duplication. The discussion and analysis should be comprehensive. All components of the registrant's results of operations, including those that may not be allocated to the segments in determining the segmental profit or loss (such as certain corporate overhead items or income taxes for example) should be discussed.

9220.4 Registrants should consider discussing and analyzing the tax implications related to material transactions, trends and other important items impacting their business as disclosed elsewhere in MD&A. A discussion of the nature and impact of significant tax rate reconciling items should also be considered. For example, discuss the tax rate reconciling item resulting from a change in assumptions related to an unrecognized tax benefit or a different final resolution related to the unrecognized benefit. Similarly, when uncertain tax positions are a critical accounting policy, MD&A should address why the assumptions were changed or why the actual resolution differed from management's assumption. *(Last updated: 9/30/2010)*

9220.5 Registrants should address the underlying reasons for changes in the price versus volume mix. For example, if sales declined because the volume of goods sold decreased by 20%, but this was offset by a 10% increase in price, the discussion in MD&A should not stop once it identifies the price and volume components. In this example, the underlying factors that contributed to the decline in volume as well as the increase in selling prices should also be discussed. In addition, discussions about changes in the price vs. volume mix should consider changes in foreign currency fluctuations.

9220.6 The results of operations may not always be prepared on a consistent basis. This will occur, for example, when there has been a change in basis in the underlying financial statements. This might occur in the following situations:

a. When there has been a material acquisition (either the acquisition of a target entity that is significant to the registrant or predecessor/successor step-up in basis) during the period;

b. When pushdown accounting has been applied; or

c. When the registrant has adopted fresh-start accounting upon its emergence from bankruptcy.

9220.7 When events such as those described in 9220.6 occur, registrants should consider whether the discussion of the results of operations and financial condition set forth in the audited financial statements included in the filing should be supplemented by a discussion based upon pro forma financial information. This supplemental discussion may be meaningful in the case of a material acquisition, but generally would not be appropriate in the case of fresh-start accounting. A determination as to whether a discussion of the audited financial statements should be supplemented by a discussion based on pro forma information should take into consideration all of the facts and circumstances surrounding the transaction, the nature of the pro forma adjustments to be made, and the overall meaningfulness of any such supplemental pro forma discussion.

9220.8 If it is determined that a supplemental discussion in MD&A based on pro forma financial information is appropriate, then the pro forma financial information may be presented in a format consistent with S-X Article 11. Other formats, such as the footnote pro forma information specified by ASC 805, may also be appropriate depending on the particular facts and circumstances. It would be inappropriate to merely combine information for the pre-and post-transaction periods without reflecting all relevant pro forma adjustments required by S-X Article 11. Pro forma financial information should only be prepared for the most recent fiscal year and interim period prior to the transaction occurring (although the staff will not object to the registrant providing a pro forma income statement for the corresponding prior interim period). If pro forma results are discussed in MD&A, they should not be discussed in isolation. Supplemental discussions based on S-X Article 11 pro forma financial information should not be presented with greater prominence than the discussion of the historical financial statements required by S-K 303. *(Last updated: 9/30/2010)*

For example, assume a material acquisition occurs on August 31, 2007, and the registrant is a calendar year-end company. In accordance with the Form 8-K requirements, pro forma financial information prepared in accordance with S-X Article 11 is prepared for the year ended December 31, 2006 and the interim period ended June 30, 2007 and filed on the Form 8-K. When preparing its MD&A for the Form 10-K for the year ended December 31, 2007, the registrant

could elect to supplement the discussion of its historical results with a discussion based on S-X Article 11 pro forma information for the year ended December 31, 2007 that gives effect to the August 31, 2007 acquisition. The pro forma December 31, 2007 information would then be compared to the pro forma information for the year ended December 31, 2006 previously filed via a Form 8-K. This discussion would be in addition to a comparison of the audited financial statements, which would reflect the acquisition occurring in mid-2007. A supplemental discussion based on pro forma financial information in more detail than revenues and costs of revenues for the year ended December 31, 2005 would not be appropriate. The comparison of results of operations and financial condition for the year ended December 31, 2005 to December 31, 2006 would be on an as reported (and audited) basis and would not reflect any impact of the acquisition. In its Form 10-K for the year ended December 31, 2008, the registrant may carry forward the discussion of the pro forma results for the year ended December 31, 2006 and 2007 as a supplement to the discussion of the audited financial statements. No adjustments would be appropriate or necessary to the year ended December 31, 2008 as the acquisition would be reflected in the audited financial statements for the entire year.

NOTE: S-X 11-02(c)(2)(i) ordinarily prohibits the disclosure of pro forma information for annual periods prior to the most recent fiscal year preceding the August 2007 acquisition (i.e., fiscal year 2005 and prior years are prohibited). This prohibition differs from the above example, in which the company is simply including previously filed pro forma information for the purpose of providing a supplemental comparison of pro forma results in the 2007 Form 10-K. The staff would not object to the presentation in the above example even if the pro forma information had not been previously filed (e.g., in an IPO situation, where the company did not have an obligation to file pro forma information related to the August 2007 acquisition; the staff would look to what the company's pro forma disclosure obligation would have been, had it filed a registration statement at that time).

In the above example, because the business combination occurred in August 2007, pro forma information for 2005 (the annual period prior to the most recent fiscal year), is not permitted. Companies may provide pro forma information related to 2005 in MD&A, provided that such information is not in more detail than revenues and cost of revenues. If a company believes that in its unique situation the presentation in a greater level of detail is necessary to understand the implications of the transaction, the company is encouraged to discuss the issue with the staff prior to filing. *(Last updated: 3/31/2012)*

9220.9 Disclosure should be provided to explain how the pro forma presentation was derived, why management believes the presentation to be useful, and any potential risks associated with using such a presentation (the potential that such results might not necessarily be indicative of future results for example,

depending on how the information has been prepared, and the period that it covers). Typically, the presentation of complete pro forma financial information (reflecting the adjustments) in MD&A will be necessary in order to facilitate an understanding of the basis of the information being discussed. (In the circumstances described in the example in Section 9220.8, this presentation would include both 2006 and 2007.) However, there may be situations where the pro forma adjustments are limited in number and easily understood so that narrative disclosure of the adjustments alone will be sufficient.

9220.10 MD&A should fully explain the results of operations. For example, MD&A should not merely state that the increase in revenues and costs of revenues is due to a significant acquisition. Rather, the contribution of the recent acquisition to total revenues should be quantified to the extent possible, and any increase or decrease in the underlying revenues of the pre-existing business should then be addressed

9220.11 There are two assessments that management must make where a trend, demand, commitment, event or uncertainty is known:

a. Is the known trend, demand, commitment event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

b. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.

Note that "reasonably likely" is a lower threshold than "more likely than not" but a higher threshold than "remote". The concept of "reasonably likely" is used in the context of disclosure for MD&A purposes and is not intended to mirror the tests in SFAS 5 [ASC 450] established to determine when accrual is necessary, or when disclosure in the footnotes to the financial statements is required.

9230 Off-balance Sheet Arrangements [S-K 303(a)(4)]

9230.1 Off-balance sheet arrangements are any transaction, agreement or other contractual arrangement to which an entity not consolidated with the registrant is a party, where the registrant has:

a. Any obligation under a guarantee contract that has any of the characteristics set forth in paragraph 3 of FIN 45 [ASC 460-10-15-4];

b. A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to the entity for the asset;

c. Any obligation (including contingent obligations) under a contract that would be accounted for as a derivative instrument, except that it meets the scope exception in paragraph 11(a) (being both indexed to the company's own stock and classified in stockholder's equity) of SFAS 133 [ASC 815-10-15-74];

d. Any obligation (including contingent obligations), arising out of a variable interest entity as defined in FIN 46(R) [ASC 810-10-15] where the entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with the registrant, and such activities are material.

Note that equity-linked instruments (such as warrants, convertible debt or convertible preferred stock) where the criteria set forth in EITF 00-19 [ASC 815] are met and therefore classification of either the warrant or the conversion option within stockholder's equity is appropriate (meaning that the instrument is eligible for the scope exception in SFAS 133 [ASC 815-10-15-74]) meet the definition of an off-balance sheet arrangement as defined in (c) above, and should be assessed for materiality to determine whether disclosure is required. We would expect the assessment of materiality to include an analysis of the potential dilutive effect of such instruments, as well as an analysis of the likelihood that the scope exception will no longer be available with respect to the instrument (loss of the scope exception could occur as the result of modification to the terms of the instrument, or the issuance of new instruments that can be converted into an unlimited number of shares, thereby tainting other previously issued instruments), which would result in the instrument being treated as a derivative, brought on to the balance sheet at fair value, and marked to market at every period end. The disclosure requirements of this section are set forth in more detail below, but in this situation, the disclosure to be provided could include a discussion of why the registrant chose to issue that type of equity-linked instrument, the potential dilutive effect if the instrument were to be converted, and, depending on the likelihood of the registrant continuing to be able to meet the scope exception, the impact of a change in classification upon the registrant's financial statements.

With respect to (d) above, in this context a variable interest refers to an investment in an unconsolidated entity that would meet the FIN 46(R) [ASC 810-10-15] definition of a variable interest because the investment absorbs expected losses and residual returns that occur in the unconsolidated entity. However, the entity in which the interest is held does not need to meet the FIN 46(R) [ASC 810-10-15] definition of a variable interest entity in order to qualify as an off-balance sheet arrangement requiring disclosure.

9230.2 For the registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors, disclosure should be provided that addresses:

a. The nature and business purpose of the off-balance sheet arrangement;

b. The importance to the registrant of the off-balance sheet arrangement to their liquidity, capital resources, market risk support, credit risk support or other benefits;

c. The amounts of revenues, expenses and cash flows of the registrant arising from such arrangements; the nature and amounts of any retained interests, securities issued and other indebtedness incurred in connection with such arrangements; the nature and amounts of other obligations or liabilities of the registrant that are or are reasonably likely to become material and the triggering events that could cause them to arise;

d. Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination or material reduction in availability to the registrant of the off-balance sheet arrangements that provide material benefits, and the course of action that they have taken or propose to take in such circumstances.

These requirements are intended to elicit disclosure about why the registrant engages in the off-balance sheet arrangement, the magnitude and importance of the arrangement and the circumstances that would cause the registrant to recognize material liabilities or losses related to the arrangement.

9230.3 In December 2007, the Division of Corporation Finance sent an illustrative letter to certain public companies identifying a number of disclosure issues they may wish to consider in preparing Management's Discussion and Analysis for their upcoming annual reports on Form 10-K or 20-F. The full letter is available at: http://www.sec.gov/divisions/corpfin/guidance/cfoffbalanceltr1207.htm.

9240 Tabular Disclosure of Contractual Arrangements [S-K 303(a)(5)]

	Payments due by period				
Contractual Obligations	*Total*	*Less than 1 year*	*1-3 yrs*	*3-5 yrs*	*More than 5 yrs*
Long-Term Debt Obligations					
Capital (Finance) Leases					
Operating Lease Obligations					
Purchase Obligations					
Other Long-Term Liabilities					
Total					

9240.1 Overview

As an aid to understanding other liquidity and capital resources disclosures in MD&A, the contractual obligations tabular disclosure should be prepared with the goal of presenting a meaningful snapshot of cash requirements arising from contractual payment obligations. Registrants are encouraged to develop a presentation method that is clear, understandable and appropriately reflects the categories of obligations that are meaningful in light of its capital structure and business. Registrants should highlight any changes in presentation that are made, so that investors are able to use the information to make comparisons from period to period. *(Last updated: 9/30/2010)*

9240.2 Presentation

The table should be in substantially the format shown above. Disaggregating the specific categories shown above is appropriate, particularly if the categories used are specific to the underlying business. Therefore, the captions may be changed, and the number of line items expanded, as long as it is clear what is included within each line item. However, to the extent that the registrant has obligations that fall within the above categories, they should be reflected in the table.

9240.3 Purchase obligations

Purchase obligations are defined as agreements to purchase goods and services that are enforceable and legally binding, that specify all significant terms, including the quantities to be purchased, price provisions and the approximate timing of the transactions. Additional guidance has not been issued by the staff with respect to what should be included within this category. However, registrants should undertake reasonable effort and expense to assess and

aggregate outstanding purchase obligations. Disclosure should accompany the table to clarify how the purchase obligations amount has been calculated.

9240.4 [Reserved]
(Last updated 12/31/2010)

9240.5 [Reserved]

9240.6 Other considerations

a. A registrant should evaluate whether or not it can reasonably estimate the amount and/or timing of payments it will be obligated to make under interest rate swap agreements to determine whether it can provide meaningful information in the table for these agreements. In some cases, market interest rates may have moved such that a registrant is in a position of receiving cash rather than paying cash under an interest rate swap; cash receipts under interest rate swaps should not be included in the table. If the swap is structured in such a way as to be a fixed rate loan, then the registrant should provide the information.

b. Bank certificates of deposits are contractual payment obligations on the part of the bank. Therefore, principal and interest payments should be included in the table.

c. The information disclosed in the table in respect of long-term debt obligations, capital (finance) leases and operating lease obligations should be consistent with the disclosures provided in the financial statements.

d. [Reserved]
(Last updated: 12/31/2010)

e. [Reserved]
(Last updated: 12/31/2010)

9240.7 Footnotes

The table of contractual obligations may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the registrant's specified contractual obligations. The footnote disclosure permits management to apply its judgment in determining what items should be included or excluded from the table. If management's judgment results in items being excluded from the table, accompanying footnotes should describe the nature of items excluded and why they are excluded. Management should also consider disclosing the prior year actual spending or budgeted

amounts in cases where those purchase orders are not otherwise tracked by the registrant. Disclosure of the dollar amount up to which employees are authorized to make purchases could also be disclosed to help clarify the significance of amounts that may not be tracked by the registrant.

9240.8 Smaller reporting companies are NOT required to provide a tabular disclosure of contractual arrangements.

9250 Interim Period Requirements [S-K 303(b)]

9250.1 In preparing the interim discussion, the registrant may presume that the reader has access to the discussion and analysis required by S-K 303(a) for the preceding fiscal year. The focus should therefore be on material changes in financial condition and results of operations. If disclosure in earlier reports does not adequately foreshadow subsequent events or if new information is available that impacts a known trend, demand, commitment, event or uncertainty, additional disclosure is likely to be necessary in the interim period.

9250.2 Seasonal aspects of the business which have had a material effect upon the financial condition or results of operations should be disclosed.

9250.3 There may also be circumstances where information was not material in the context of the annual results of operations but is material in the context of the interim results, and therefore that information should be discussed.

9250.4 The tabular disclosure of contractual obligations is only required annually, and is not required on an interim basis. If there are material changes to information contained in the table, they may be discussed in the narrative during the interim period.

9260 Safe Harbor Provisions [S-K 303(c)]

The safe harbor provisions are intended to protect forward-looking statements against certain private legal actions alleging material misstatements or omissions. Statutory safe harbors are available for the disclosures required with respect to off-balance sheet arrangements and aggregate contractual obligations, as all information required by S-K 303(a)(4) and (5) (excluding statements of historical fact) are considered to fall within the definition of forward-looking.

9270 SAB Topic 11M (SAB 74)

(Last updated: 6/30/2013)

9270.1 SAB Topic 11M provides disclosure guidance for registrants regarding recently issued accounting standards that have not yet been adopted. The SAB highlights the types of disclosures that should be considered by registrants in MD&A and in the financial statements. It is generally not necessary to provide

duplicative disclosure in the MD&A and financial statements, nor is it necessary to provide disclosure for accounting standards that will not apply to a registrant's financial statements. Registrants should exercise judgment consistent with the SAB in determining the nature, extent, and location of the disclosure.

9270.2 EGCs should also follow Section 10230.3.

9300 [RESERVED]

9400 FOREIGN PRIVATE ISSUERS [ITEM 5 OF FORM 20-F]

(Last updated: 9/30/2008)

9410 Foreign Private Issuers [Item 5 of Form 20-F]

9410.1 The requirements for MD&A are set forth in Item 5 of Form 20-F, under Operating and Financial Review and Prospects (sometimes referred to as the OFR). This Item calls for the same disclosure as S-K 303, so the overall objectives of MD&A are consistent with those set forth above.

9410.2 The requirements of Item 5 of Form 20-F are as follows:

a. Operating results – Item 5.A.
b. Liquidity and capital resources – Item 5.B.
c. Research and development, patents and licenses, etc. – Item 5.C.
d. Trend information – Item 5.D.
e. Off-balance sheet arrangements – Item 5.E.
f. Tabular disclosure of contractual obligations – Item 5.F.
g. Safe harbor – Item 5.G.

9410.3 The discussion should focus on the primary financial statements in the document. References to the reconciliation to U.S. GAAP and a discussion of differences between home-country GAAP and U.S. GAAP should be provided to the extent they are necessary for an understanding of the financial statements as a whole. [Instruction 2 to Item 5 of Form 20-F]

9410.4 Issuers that file financial statements under IFRS as issued by the IASB without a reconciliation to U.S. GAAP are not required to address U.S. GAAP in their MD&A. Where Item 5 refers to a specific FASB pronouncement, the issuer

should provide disclosure that satisfies the objective of the disclosure requirement. [Release No. 33-8879]

9410.5 The instructions to Item 5 of Form 20-F specifically refer to the SEC's 1989 interpretive release on MD&A disclosure. [Release No. 33-6835] The SEC's 2003 interpretive release on MD&A [Release No. 33-8350] indicates that it applies to Form 20-F filers as well.

9410.6 The requirement under Item 5.C. of Form 20-F is the only one that does not have a direct correlation to the requirements in S-K 303. For research and development (R&D), disclosure should be provided in Form 20-F of the R&D policies over the last three years, as well as the amount spent during each of the last three years on R&D (where material). R&D disclosure requirements are set forth in S-K 101 for domestic registrants.

9500 CRITICAL ACCOUNTING ESTIMATES

(Last updated: 12/31/2009)

9510 Goodwill Impairment

9510.1 Registrants should provide disclosure about critical accounting estimates pursuant to the guidance in Release 33-8350. Disclosure is appropriate when:

a. The nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and

b. The impact of the estimates and assumptions on financial condition or operating performance is material.

9510.2 Estimates related to goodwill impairment testing are commonly considered critical by registrants. As a result, the staff has developed guidance regarding these disclosures with the objective of ensuring that investors are provided with information that allows for an assessment of the probability of a future material impairment charge. Registrants should consider providing the disclosures outlined in Section 9510.3 in order to comply with the requirements of S-K 303(a)(3)(ii), which requires a description of a known uncertainty. Additional guidance appears in Section V of Release 33-8350, which states that under the existing MD&A disclosure requirements, a company should address material implications of uncertainties associated with the methods, assumptions and estimates underlying the company's critical accounting measurements.

9510.3 Registrants should consider providing the following disclosures for each reporting unit that is at risk of failing step one of the impairment test (defined in ASC Topic 350):

a. The percentage by which fair value exceeded carrying value as of the date of the most recent test;

b. The amount of goodwill allocated to the reporting unit;

c. A description of the methods and key assumptions used and how the key assumptions were determined;

d. A discussion of the degree of uncertainty associated with the key assumptions. The discussion regarding uncertainty should provide specifics to the extent possible (e.g., the valuation model assumes recovery from a business downturn within a defined period of time); and

e. A description of potential events and/or changes in circumstances that could reasonably be expected to negatively affect the key assumptions.

NOTE: A reporting unit may be at risk of failing step one of the impairment test if it had a fair value that is not substantially in excess of carrying value as of the date of the last impairment test. Whether or not the fair value was "substantially" in excess of carrying value is a judgment based on the facts and circumstances including, but not limited to, the level of uncertainty associated with the methods and assumptions used for impairment testing.

9510.4 A registrant need not provide these disclosures if the registrant asserts and discloses that material goodwill does not exist at reporting units that are at risk of failing step one or that no reporting units are at risk. Registrants should consider disclosing the supporting rationale if material goodwill is allocated to a reporting unit that is at risk, but disclosure is deemed unnecessary.

9520 Share-based Compensation in IPOs

(Last updated: 2/6/2014)

9520.1 Estimates used to determine share-based compensation are often considered critical by companies going public. In particular, estimating the fair value of the underlying shares can be highly complex and subjective because the shares are not publicly traded. The staff will consider if a company performing these estimates is providing the following critical accounting estimate disclosures in its IPO prospectus:

a. The methods that management used to determine the fair value of the company's shares and the nature of the material assumptions involved. For example, companies using the income approach should disclose that this method involves estimating future cash flows and discounting those cash flows at an appropriate rate.

b. The extent to which the estimates are considered highly complex and subjective.

c. The estimates will not be necessary to determine the fair value of new awards once the underlying shares begin trading.

Companies may cross-reference to the extent that this, or other material information relevant to share-based compensation, is provided elsewhere in the prospectus.

9520.2 The staff may issue comments asking companies to explain the reasons for valuations that appear unusual (e.g., unusually steep increases in the fair value of the underlying shares leading up to the IPO). These comments are intended to elicit analyses that the staff can review to assist it in confirming the appropriate accounting for the share-based compensation, not for the purpose of requesting changes to disclosure in the MD&A or elsewhere in the prospectus.

9520.3 The staff will also consider other MD&A requirements related to share-based compensation, including known trends or uncertainties including, but not limited to, the expected impact on operating results and taxes.

9600 RELATED PARTY TRANSACTIONS

(Last updated: 9/30/2008)

9610 Related Party Transactions [FR 61]

9610.1 In January 2002, an SEC Statement was issued which addressed several aspects of MD&A, including disclosures related to the effects of transactions with related and certain other parties. As discussed in SFAS 57 [ASC 850-10-50-5], transactions involving related parties should not be presumed to be carried out on an arm's-length basis, as the requisite conditions of a competitive market may not exist. Accordingly, where material, the disclosure requirements of S-K 404 with respect to certain relationships and transactions with related parties should be supplemented by additional discussion within MD&A.

9610.2 Disclosure of the following may be necessary, where related party transactions are material:

a. The business purpose of the arrangement;
b. Identification of the related parties transacting business with the registrant;
c. How transaction prices were determined by the parties;
d. If disclosures represent that transactions have been evaluated for fairness, a description of how the evaluation was made; and
e. Any ongoing contractual or other commitment as a result of the arrangement.

9610.3 Consideration should also be given to whether disclosure is necessary about parties that fall outside of the definition of "related parties" set forth in SFAS 57 [ASC-MG], but with whom the registrant has a relationship that enables the parties to negotiate terms of material transactions that may not be available for other, more clearly independent, parties on an arm's-length basis. An example of this type of entity might be a company established and operated by former management of the registrant.

Disclosure should be provided when an investor might not be able to understand the registrant's reported results of operations without a clear explanation of these arrangements and relationships.

9700 FAIR VALUE MEASUREMENTS

(Last updated: 9/30/2008)

In March and September 2008, the Division of Corporation Finance sent illustrative letters to certain public companies that reported significant amounts of asset-backed securities, loans carried at fair value or the lower of cost or market, and derivative assets and liabilities in their recent 10-K filings. The letters highlight disclosure matters relating to SFAS 157 [ASC 820], and suggest disclosures that companies may consider in preparing their MD&A. The full letters are available at:
http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0308.htm and
http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0908.htm.

9800 OTHER ITEMS

(Last updated: 9/30/2008)

9810 S-X 3-05 and 3-09

MD&A is not required for financial statements filed to comply with S-X 3-05 and 3-09. However, MD&A of companies being acquired may be required in registration and proxy statements under the Form requirements (for example, Items 15-17 of Form S-4 and F-4 and Item 14 of Schedule 14A).

9820 S-X 3-10 and 3-16

9820.1 S-X 3-10 (c), (d), (e), and (f) allows for the presentation of condensed consolidating financial information when certain criteria are met, rather than the separate financial statements of each issuer or guarantor of a registered security. There is no requirement for the results of operations as presented in the condensed consolidating financial information to be discussed. S-X 3-10(i)(9) and (10) require disclosure in the footnotes to the financial statements with respect to any parent liquidity issues. If there are material restrictions on the parent's ability to obtain funds from its subsidiaries, or if the information presented in the condensed consolidating financial information indicates that trends for the guarantor subsidiaries are materially different than that of the consolidated entity, this should be discussed in the liquidity section of MD&A.

9820.2 If separate financial statements of an issuer or guarantor are filed pursuant to S-X 3-10(a), then MD&A is required.

9820.3 A separate MD&A is not required for financial statements provided to comply with S-X 3-16.

9830 Registration and Proxy Statements

9830.1 Registration and proxy statements that include annual financial statements that have been retroactively revised to report discontinued operations occurring after the year-end balance sheet date should include a revised MD&A based on the revised financial statements. MD&A should describe the events or circumstances that led to the discontinued operation, the material terms of that termination, and the impact on the issuer's operating results and business. For example, the registrant should discuss the results of operations from continuing operations, and related trends based on the restated financial statements. In addition, the registrant should discuss any contingent obligations, financial commitments, or continuing relationship with the discontinued operation, and any impact on the company's liquidity and capital resources. Management should also describe the likely effect the discontinued operation will have on the registrant's continuing business and financial health. This discussion may be

included in the registration or proxy statement or in a Form 8-K that includes the restated annual financial statements incorporated by reference.

9830.2 Similarly, registration and proxy statements that include annual financial statements that have been retroactively revised to reflect revised segment reporting, with the revision taking place after the year-end balance sheet date, should include a revised MD&A based on the revised segmental footnote disclosure. MD&A should address the change in segmental presentation, and explain why the chief operating decision maker has changed how they make decisions about the allocation of resources or the assessment of performance. The registrant should discuss the results of operations on a segmental basis and related trends based on the revised segmental disclosures included in the restated financial statements.

9830.3 Registration and proxy statements that include annual financial statements that have been retroactively revised to reflect the application of a different accounting principle in accordance with SFAS 154 [ASC 250] should also include a revised MD&A if the changes are material to the previously reported results of operations.

9900 ADDITIONAL GUIDANCE

(Last updated: 12/31/2010)

9910 Additional Guidance Provided in Respect of MD&A Includes:

- Concept Release on MD&A (No. 33-6711) issued in 1987
- Interpretive Release (No. 33-6835) issued in 1989, portions of which were codified into FRC 501
- Cautionary Advice about Critical Accounting Policies issued in 2001 (FR 60)
- SEC Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations (No. 33-8056) issued in 2002 (FR 61)
- Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortune 500 Companies issued in 2003
- Final Rule: Disclosure about Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations (No. 33-8182) issued in 2003. Available at: http://www.sec.gov/rules/final/33-8182.htm
- SEC Interpretive Release on MD&A (No. 33-8350) issued in 2003 (FR 72). Available at: http://www.sec.gov/rules/interp/33-8350.htm

- Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 on Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers issued in 2005. Available at: http://www.sec.gov/news/studies/soxoffbalancerpt.pdf
- Sample Letter Sent to Public Companies That Have Identified Investments in Structured Investment Vehicles, Conduits or Collateralized Debt Obligations (Off-balance Sheet Entities) issued in December 2007. Available at: http://www.sec.gov/divisions/corpfin/guidance/cfoffbalanceltr1207.htm
- Sample Letter Sent to Public Companies on MD&A Disclosure Regarding the Application of SFAS 157 (Fair Value Measurements) [ASC 820] issued in March 2008. Available at: http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0308.htm
- Sample Letter Sent to Public Companies on MD&A Disclosure Regarding the Application of SFAS 157 (Fair Value Measurements) [ASC 820] issued in September 2008. Available at: http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0908.htm
- Sample Letter Sent to Public Companies Asking for Information Related to Repurchase Agreements, Securities Lending Transactions, or Other Transactions Involving the Transfer of Financial Assets issued in March 2010. Available at: http://www.sec.gov/divisions/corpfin/guidance/cforepurchase0310.htm
- SEC Interpretive Release on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis (No. 33-9144) issued in September 2010 (FR 83). Available at: http://sec.gov/rules/interp/2010/33-9144.pdf
- Sample Letter Sent to Public Companies on Accounting and Disclosure Issues Related to Potential Risks and Costs Associated with Mortgage and Foreclosure-Related Activities or Exposures issued in October 2010. Available at: http://www.sec.gov/divisions/corpfin/guidance/cfoforeclosure1010.htm

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TOPIC 10

EMERGING GROWTH COMPANIES

(Last updated: 6/30/2013)

Title I of the JOBS Act, which was effective as of April 5, 2012, created a new category of issuers called "emerging growth companies, or EGCs" whose financial reporting and disclosure requirements in certain areas differ from other categories of issuers. The Fixing America's Surface Transportation (FAST) Act, enacted on December 4, 2015, amended certain of the requirements that apply to EGCs.

Until the Commission amends the form requirements, Regulation S-X, and Regulation S-K to be consistent with the disclosure provisions for EGCs as set forth in Title I of the JOBS Act (as amended by the FAST Act), an EGC may comply with the disclosure provisions therein in its registration statements, periodic reports, and proxy statements, even if doing so would be inconsistent with existing rules and regulations. The disclosure provisions in Title I supersede, in relevant part, existing rules and regulations. On January 13, 2016, the Commission adopted interim final rules that revised Form S-1 and Form F-1 for certain provisions of the FAST Act.

Refer to the Division of Corporation Finance's FAST Act guidance at http://www.sec.gov/divisions/corpfin/guidance/fast-act-interps.htm and revised JOBS Act guidance at http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.

10100 ELIGIBILITY

10110 Eligibility as an EGC

10110.1 An issuer is an EGC if it meets all of the following criteria:

- It had total annual gross revenues of less than $1 billion during its most recently completed fiscal year. See Section 10110.2.
- It has either (1) not yet had or (2) had after December 8, 2011, its first sale of common equity securities pursuant to an effective registration statement under the Securities Act of 1933. See Section 10110.3.
- It has not met any of the disqualifying provisions. See Section 10110.4.

10110.2 *Revenue Test*: The phrase "total annual gross revenues" means total revenues as presented on the income statement under U.S. GAAP (or IFRS as issued by the IASB, if used as the basis of reporting by a foreign private issuer). The term "most recently completed fiscal year" is the most recent annual period completed, regardless of whether the financial statements for the period are presented in the registration statement.

- Foreign private issuers

  If the financial statements of a foreign private issuer are presented in a currency other than U.S. dollars, total annual gross revenues should be calculated in U.S. dollars using the exchange rate as of the last day of the most recently completed fiscal year.

- Banks and similar financial institutions

  A bank must include all gross revenues from traditional banking activities. Banking activity revenues include interest on loans and investments, dividends on investments, fees from loan origination, fees from trust and investment services, commissions, brokerage fees, mortgage servicing revenues, and any other fees or income from banking or related services. Revenues do not include gains and losses on dispositions of investment portfolio securities (although it may include gains on trading account activity if that is a regular part of the institution's activities).

- Predecessor

  If the financial statements for the most recently completed fiscal year are those of the predecessor of the issuer, the predecessor's revenues should be used when determining if the issuer meets the definition of an EGC.

10110.3 *First sale of common equity securities:* This phrase is not limited to a company's initial primary offering of common equity securities for cash. It could also include registered offerings of common equity pursuant to an exchange offer, merger, employee benefit plan on a Form S-8, and selling shareholder's secondary offering on resale registration statements.

10110.4 Disqualifying Provisions

An issuer retains its status as an EGC until the earliest of:

a. The last day of the fiscal year in which its total annual gross revenues are $1 billion or more. For example, a calendar year-end company whose total annual gross revenues exceed $1 billion on October 31, 2013 would cease to be an EGC on December 31, 2013.

b. The last day of the fiscal year following the fifth anniversary of the date of the first sale of common equity securities of the issuer under an effective Securities Act registration statement as an EGC.

   - This date is determined by looking to the fiscal year during which the fifth anniversary occurs. The last day of this fiscal year will be the first

day that the issuer is a non-EGC, provided no other disqualifying provisions have been triggered at an earlier date.

c. The date on which it has issued more than $1 billion in non-convertible debt in the previous three years.

- "Non-convertible debt" means any non-convertible security that constitutes indebtedness, whether issued in a registered offering or not. Bank debt generally does not constitute a debt security.

- For purposes of assessing the amount of non-convertible debt securities issued as of any date, an issuer should look at the immediately preceding rolling three-year period. An issuer does not look at non-convertible debt issued in relation to fiscal or calendar years.

- All non-convertible debt securities issued over the prior three-year period, whether outstanding or not, are required to be counted against the $1 billion debt limit. A company does not have to count debt securities issued in an A/B exchange offer. These debt securities are identical to (other than the fact that they are not restricted securities) and replace those issued in the non-public offering and the staff views the A/B exchange offer as, in effect, the completion of the capital-raising transaction.

d. The date on which it becomes a large accelerated filer. Note: the determination of whether a company is a large accelerated filer is made on the last day of the company's fiscal year. See Section 1340.2.

10110.5 **Losing Eligibility Prior to Effectiveness** – If a company was an EGC at the time it submitted a draft registration statement or publicly filed a registration statement, but ceases to qualify as an EGC while undergoing the confidential review of its draft registration statement or the review of its publicly filed registration statement – for example, since the initial submission or filing date, a fiscal year has been completed with revenues over $1 billion – the company will continue to be treated as an EGC for the purposes of disclosure requirement accommodations in its initial registration statement until the earlier of:

(a) The date on which the issuer consummates its initial public offering, or

(b) The end of the one-year period beginning on the date the company ceased to be an EGC. *(Last updated 3/17/2016)*

10110.6 **Losing Eligibility Between Initial Filing Date and Effectiveness** – Securities Act Rule 401(a) provides that the "form and content of a registration statement and prospectus shall conform to the applicable rules and forms as in effect on

the initial filing date of such registration statement and prospectus." Accordingly, the ability to use in a registration statement the scaled disclosure provisions applicable to EGCs depends on whether the company qualifies as an EGC at the initial public filing date of the registration statement. If a company qualifies as an EGC on the initial date that it publicly files a registration statement, the scaled disclosure provisions related to EGCs would continue to apply through effectiveness of the registration statement even if the issuer loses its EGC status during the registration process.

10110.7 **Losing Eligibility After First Sale –** If an issuer loses its EGC status after it has conducted its first sale of common equity securities pursuant to an effective registration statement as an EGC, it cannot regain EGC status.

10110.8 **Effect of Prior Exchange Act Reporting Obligation that No Longer Exists -** If an issuer would otherwise qualify as an EGC but for the fact that its initial public offering of common equity securities occurred on or before December 8, 2011, and such issuer was once an Exchange Act reporting company but is not currently required to file Exchange Act reports, then the staff would not object if such issuer takes advantage of all of the benefits of EGC status for its next registered offering and thereafter, until it triggers one of the disqualifying provisions. This position is not available to an issuer that has had the registration of a class of its securities revoked pursuant to Exchange Act Section 12(j).

Based on the particular facts and circumstances, the staff may question EGC status of an issuer if it appears that the issuer ceased to be a reporting company for the purpose of conducting a registered offering as an EGC. Issuers with questions relating to taking advantage of the benefits of EGC status after ceasing to be an Exchange Act reporting company should contact the Division's Office of the Chief Counsel.

10110.9 **Effect of Predecessor Ineligibility on Successor -** If an issuer completes a transaction through which it becomes the successor to its predecessor's Exchange Act registration and reporting obligations and the predecessor is not eligible to be an EGC because its first sale of common equity securities occurred on or before December 8, 2011, then similarly the issuer (successor) is not eligible to be an EGC.

10120 Other Eligibility Issues

10120.1 **Transactions Related to a Subsidiary of the Registrant -** A parent may: (1) spin-off a wholly-owned subsidiary, (2) register an offer and sale of the wholly-owned subsidiary's common stock for an initial public offering, or (3) transfer a business into a newly-formed subsidiary for purposes of an initial public offering of that subsidiary's common stock. In these circumstances, the analysis to determine whether an issuer is an EGC focuses on whether the subsidiary,

and not the parent, meets the requirements of an EGC. See also Section 10120.3.

10120.2 **Assessing Eligibility Subsequent to a Merger Transaction** - Eligibility as an EGC will vary subsequent to a merger transaction.

Example:

Example 1: Company A acquires Company B for cash or stock, in a forward acquisition. Company A is both the legal acquirer and the accounting acquirer.

Example 2: Company C undertakes a reverse merger with Company D, an operating company. Company D is presented as the predecessor in the post-transaction financial statements.

In each example, the companies' fiscal year is the calendar year; the transactions occur on September 30, 2012; and Section 10110.9 on succession does not apply.

The evaluation of Company's A's and Company's C's eligibility as an EGC post-transaction, should be considered as follows. See also Section 10120.3.

	Example 1: Forward Acquisition	**Example 2: Reverse Merger**
$1B annual revenues test	Look to Company A's revenues, which will include Company B's revenues from Oct. 1, 2012.	Look to Company D's revenues, which will include Company C's revenues from Oct. 1, 2012.
Five-year anniversary test	Look to Company A's date of first sale.	Look to Company C's date of first sale.
$1B issued debt during previous three years test	Look to Company A's debt issuances, which will include Company B's debt issuances from Oct., 1, 2012.	Look to Company D's debt issuances, which will include Company C's debt issuances from Oct. 1, 2012.
Large accelerated filer test	At Dec. 31, 2012, look to Company A's market value at June 30, 2012. At Dec. 31, 2013, look to Company A's market value (which will include Company B's) at June 30, 2013.	At Dec. 31, 2012, look to Company C's market value at June 30, 2012. At Dec. 31, 2013, look to Company C's market value (which will include Company D's) at June 30, 2013.

NOTE:

The above table should be considered in conjunction with Section 10110.9.

For example, assume a shell company files its initial public offering of common equity securities on or before December 8, 2011 and thus, is not an EGC. Two years later, it undertakes a reverse merger with another company that qualifies as an EGC. Post-transaction, notwithstanding the above table, the registrant is not an EGC and may not take advantage of any scaled disclosure provisions.

10120.3 **Disallowing Emerging Growth Company Status -** Based on the particular facts and circumstances, the staff may question EGC status of a company if it appears the company is engaging in a transaction for the purpose of converting a non-EGC into an EGC, or for the purpose of obtaining the benefits of EGC status indirectly when it is not entitled to do so directly.

10200 SCALED DISCLOSURE PROVISIONS

10210 General

10210.1 An EGC is not required to apply all scaled disclosures; it may choose to follow some scaled disclosures, but not others. However there is one exception related to accounting standards, which is discussed in Section 10230.1b.

10220 Financial Reporting Accommodations

10220.1 **Number of Years of Registrant Financial Statements to be Presented**

a. Initial Public Offering of Common Equity Securities

An EGC is not required to present more than two years of audited financial statements in a Securities Act registration statement for an initial public offering of its common equity securities.

Foreign private issuers that file using IFRS as issued by the IASB may need a third balance sheet in certain circumstances. See Section 10320.

b. Initial Public Offering of Debt Securities

An EGC must present three years of audited financial statements in its initial public offering of debt securities, unless Section 10220.1c applies.

c. Securities Act Registration Statements Filed Subsequent to the Initial Public Offering of Common Equity Securities

An EGC is not required, in subsequent filings, to include audited financial statements for any periods prior to the earliest audited period presented in connection with its initial public offering of common equity securities.

d. Exchange Act Registration Statements

EGC Exchange Act registration statements require the presentation of three years of financial statements unless the company qualifies as a smaller reporting company.

e. Annual Report on Form 10-K or 20-F

For an EGC that is not a smaller reporting company, three years of audited financial statements are required to be included in its Form 10-K or Form 20-F.

f. Omission of Financial Information for Historical Periods

An EGC conducting an initial public offering of its debt or equity securities is permitted to omit financial information for historical periods in its Form S-1 or Form F-1 if the following conditions are met:

- such omitted financial information relates to a historical period that the EGC reasonably believes will not be required to be included in the filing at the time of the offering; and

- prior to distributing any preliminary prospectus to potential investors, the EGC amends the registration statement so that it contains all financial information required at the time of the contemplated offering.

Interim financial information relates to both the interim period and to any longer period (either interim or annual) into which it has been or will be included. As such, interim financial information that relates to a period that will be required to be included in the registration statement at the time of the contemplated offering may not be omitted.

For example, consider a calendar year-end EGC that submits or files a registration statement in December 2015 and reasonably expects to commence its offering in April 2016 when annual financial statements for 2015 and 2014 will be required. This issuer may omit its 2013 annual financial statements from the December filing. However, the issuer may not omit its nine-month 2014 and 2015 interim financial statements because those statements include financial information that relates to annual financial statements that will be required at the time of the offering in April 2016. *(Last updated 3/17/2016)*

10220.2 **Selected Financial Data**

In the initial registration statement under the Securities Act or the Exchange Act and in subsequent filings, an EGC is not required to present selected financial data in accordance with Item 301 of Regulation S-K for any period prior to the earliest audited period presented in that initial registration statement.

A company that has lost EGC status does not need to present, in subsequently filed registration statements and periodic reports, selected financial data for periods prior to the earliest audited period presented in its initial Securities Act or Exchange Act registration statement.

10220.3 **Ratio of Earnings to Fixed Charges**

Item 503(d) of Regulation S-K requires, for each of the last five fiscal years and latest interim period for which financial statements are presented in the registration statement, issuers to present a ratio of earnings to fixed charges if they are registering debt securities and a ratio of earnings to combined fixed charges and preference security dividends if they are registering preference securities. An EGC may present in a registration statement its ratio for the same number of years for which it provides selected financial data disclosures.

A company that has lost EGC status does not need to present, in subsequently filed registration statements and periodic reports, a ratio of earnings to fixed charges for periods prior to the earliest audited period presented in its initial Securities Act or Exchange Act registration statement.

10220.4 **Management Discussion and Analysis**

(Last updated 3/17/2016)

An EGC may limit its MD&A discussion to cover the periods presented in the financial statements included in its registration statements filed or submitted for its initial public offering.

10220.5 **Financial Statements of Entities Other than the Registrant and Pro Forma Financial Information**

(Last updated: 11/9/2016)

a. If the significance tests result in a requirement to present three years of financial statements for entities other than the registrant, such as acquired businesses under Rule 3-05, acquired real estate operations under Rule 3-14 or equity method investees under Rule 3-09, an operating company EGC may present two years of financial statements for these other entities in the registration statement for its initial public offering of common equity securities.

b. If an operating company EGC voluntarily presents a third year of its financial statements in its initial public offering of common equity securities, it may limit the financial statements of these other entities to two years instead of three in that registration statement.

c. An EGC is permitted to omit financial statements of these other entities, as required by Article 3 of Regulation S-X from the registration statement for its initial public offering on Form S-1 or Form F-1 if the issuer reasonably believes those financial statements will not be required at the time of the offering. This situation could occur when an issuer updates its registration statement to include current annual financial statements prior to distributing any preliminary prospectus and, after that update, the acquired business has been part of the issuer's financial statements for a sufficient amount of time to obviate the need for separate financial statements. See Section 2030.4.

   Similarly, an EGC is also permitted to omit pro forma financial information required by Article 11 of Regulation S-X from the registration statement for its initial public offering on Form S-1 or Form F-1 if the issuer reasonably believes that information will not be required at the time of the offering. Interim pro forma information that will become part of a longer period required to be included at the time of offering may not be omitted.

d. An EGC may be required to file a Form 8-K pursuant to Items 2.01 and 9.01 for the acquisition of a significant business. If the significance tests result in a requirement to present three years of financial statements, an operating company EGC may present two years of financial statements for the acquired business in its Form 8-K during the period subsequent to the EGC's initial public offering of common equity securities, but prior to the earlier of the filing or the filing deadline of its first Form 10-K.

   For example, assume a non-SRC operating company that qualifies as an EGC presents two years of its financial statements in the registration statement for its initial public offering of common equity securities. Two years later, it acquires a company that also qualifies as a non-SRC EGC. Assume that post-transaction, based on the application of Section 10120.2, the post-merger company is an EGC. Post-transaction, the Form 8-K must present three years of the accounting acquirer's financial statements, even though the post-merger company is an EGC. The reason is that the Form 8-K is not: (1) a registration statement for an initial public offering of common equity securities or (2) filed subsequent to the EGC's registration statement for an initial public offering of common equity securities, but prior to the earlier of the filing or the filing deadline of its first Form 10-K. However, because the post-merger company is an EGC, it may take advantage of scaled disclosure provisions other than those related to the number of years to present in a filing.

10220.6 **Financial Statements of a Target Company in Form S-4**

The staff will not object if an operating company EGC presents two years of the target's financial statements and interims in a Form S-4 that constitutes an EGC's initial public offering of common equity securities or in a Form S-4 filed

subsequent to the EGC's initial public offering of common equity securities but prior to the earlier of the filing or the filing deadline of its first Form 10-K.

See related discussion in Section 2200.1 to 2200.5 for the periods for which target financial statements need to be presented in a Form S-4 and Sections 2200.6 and 2200.7 for when target financial statements need to be audited in an S-4.

10220.7 **Financial Statements of a Target Company in a Proxy Statement**
(Last updated: 11/9/2016)

To the extent that target financial statements are required in a proxy statement (see Section 1140.3), the staff will not object if two years of the target's annual financial statements and interim financial statements are presented in a proxy statement filed after the legal acquirer's initial public offering of common equity securities but prior to the filing or the filing deadline of the legal acquirer's first Form 10-K only if:

- The legal acquirer is an EGC that is not a shell company, or
- The legal acquirer is a shell company EGC (such as a SPAC EGC) and the target would be an EGC if it were conducting an initial public offering of common equity securities.

10230 Accounting Standards Transition Period Accommodation

10230.1 An EGC may elect to defer compliance with *new or revised* financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to comply with such standards, if such standards apply to companies that are not issuers. The term *new or revised* financial accounting standards refers to any update issued by the FASB to its Accounting Standards Codification after April 5, 2012, the date of the enactment of the JOBS Act. See Section 10300 for companies filing under IFRS as issued by the IASB.

a. An EGC must make such choice at the time the company is first required to file a registration statement, periodic report, or other report and must notify the Commission of such choice.

b. An issuer must comply with the transition provisions for all new or revised accounting standards in the same manner. In other words, it may not apply some new and revised financial accounting standards at the same date a non-EGC is required to comply, but defer the adoption of other standards.

c. An EGC may choose not to take advantage of the "extended transition period" exemptions for EGCs and instead comply with the requirements that

apply to an issuer that is not an EGC. Any decision to forego the extended transition period for complying with new or revised accounting standards is irrevocable.

d. If an EGC chooses to take advantage of the extended transition period, the company can later decide otherwise (i.e., "opt in" by complying with the financial accounting standard effective dates applicable to non-EGCs), so long as it complies with the requirements in Sections 107(b)(2) and (3) of the JOBS Act, which state that an EGC may not select some standards to comply with and not others, and must continue to comply with such standards to the same extent as a non-EGC is required to comply for as long as the company remains an EGC. This decision should be disclosed in the first periodic report or registration statement following the company's decision and is irrevocable.

e. An EGC that has elected to take advantage of the extended transition period provision may early adopt a new or revised financial accounting standard if permitted by the standard, without being deemed to have "opted in" for purposes of subsequent new or revised financial accounting standards.

10230.2 Nonpublic entities are specifically excluded from the scope of certain financial accounting standards. The provisions regarding the extended transition periods available to EGCs do not exempt EGCs from compliance with accounting standards applicable to public entities. Rather, EGCs, like non-EGCs, must evaluate the scope of each financial accounting standard.

10230.3 SAB Topic 11M provides disclosure guidance with respect to recently issued accounting standards that will be adopted by the registrant in a future period. SAB Topic 11M specifies that one of the disclosures that should generally be considered by a registrant is the effective date of such standards. For each recently issued accounting standard that will apply to its financial statements, an EGC that chooses to take advantage of the extended transition periods should disclose the date on which adoption is required for non-EGCs and the date on which the EGC will adopt the recently issued accounting standard, assuming it remains an EGC as of such date.

10240 Internal Control Over Financial Reporting [SOX 404] Accommodation

10240.1 Section 103 of the JOBS Act provides that an EGC is not required to comply with the requirement to provide an auditor's report on ICFR under Section 404(b) of the Sarbanes-Oxley Act for as long as it qualifies as an EGC.

10240.2 An EGC is <u>not</u> exempt from the requirement to perform management's assessment of internal control over financial reporting (SOX 404(a) and the

disclosure requirement of Item 308(a) of Regulation S-K). For EGCs that are newly public companies, see Section 4310.6.

10300 FOREIGN PRIVATE ISSUERS

10310 General

10310.1 A foreign private issuer that qualifies as an EGC may comply with the scaled disclosure provisions available to EGCs to the extent relevant to the form requirements for foreign private issuers.

10310.2 A foreign private issuer that qualifies as an EGC and reconciles its home country GAAP financial statements to U.S. GAAP may take advantage of the extended transition period discussed in Section 10230 for complying with new or revised financial accounting standards in its U.S. GAAP reconciliation.

10310.3 EGCs that are foreign private issuers may not report under *IFRS for Small and Medium-sized Entities* or a separate set of local GAAP standards for nonpublic entities.

10320 Number of Years of Registrant Financial Statements to be Presented under IFRS

10320.1 **First Time Adoption of IFRS as Issued by the IASB -** Paragraphs 6 and 21 of IFRS 1, *First-time Adoption of International Financial Reporting Standards,* require a first-time adopter of IFRS to present an opening IFRS statement of financial position at the date of transition to IFRS. In order for a first-time adopter to assert that its financial statements are prepared in accordance with IFRS as issued by the IASB, it must include three statements of financial position, even if the first-time adopter is an EGC.

10320.2 **Retrospective Changes and Reclassifications under IFRS as Issued by the IASB -** A foreign private issuer that is not a first-time adopter of IFRS is required by paragraph 10(f) of IAS 1, *Presentation of Financial Statements*, to provide three statements of financial position when it applies an accounting policy retrospectively, makes a retrospective restatement, or reclassifies items in its financial statements. In order to assert that its financial statements are prepared in compliance with IFRS as issued by the IASB, a foreign private issuer must include three statements of financial position, even if it is an EGC.

10330 Multi-Jurisdictional Disclosure System (“MJDS”)

10330.1 A Canadian issuer filing under MJDS may qualify as an EGC. While the disclosure requirements for the Canadian issuer would continue to be established under its home country standards in accordance with the MJDS,

other provisions of Title I, such as the deferral of compliance with Section 404(b) of the Sarbanes-Oxley Act, would be available to an MJDS filer that qualifies as an EGC.

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TOPIC 11

REPORTING ISSUES RELATED TO ADOPTION OF NEW ACCOUNTING STANDARDS

(Last updated: 11/9/2016)

11100 NEW REVENUE STANDARD (FASB ASC TOPIC 606)

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers* (Topic 606). In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): *Deferral of the Effective Date*.

Under ASU No. 2015-14, public entities[10] must apply ASU No. 2014-09 to annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period. Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. For example, a calendar year-end company may adopt ASU No. 2014-09 for annual and interim periods beginning on January 1, 2017 or 2018.

All other entities, including EGCs that have appropriately elected to defer compliance with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to apply such standards, must apply ASU No. 2014-09 to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Earlier application is permitted as of an annual reporting period beginning after December 15, 2016, including interim reporting periods within that reporting period. For example, a calendar year-end non-public business entity may adopt the ASU for annual periods beginning on January 1, 2017, 2018, or 2019, and for interim periods at the same time or one year later than annual adoption.

The IASB also issued IFRS 15, *Revenue from Contracts with Customers*, in May 2014. For calendar year-end companies, the effective date is the same as under U.S. GAAP except earlier application was permitted upon the standard's issuance in May 2014.

[10] Includes (1) public business entities as defined in the Accounting Standards Codification Master Glossary, (2) not-for-profit entities that have issued, or is a conduit bond obligor for, securities that are traded, listed, or quoted on an exchange or an over-the-counter market, and (3) employee benefit plans that file or furnish financial statements to the SEC.

Companies may transition to ASU No. 2014-09 and IFRS 15 (collectively, the "new revenue standard") using one of two methods:

- Retrospectively to each prior period presented, subject to the election of certain practical expedients ("full retrospective method"). A calendar year-end company that adopts the new revenue standard using this method must begin recording revenue using the new standard on January 1, 2018. In its 2018 annual report, the company would revise its 2016 and 2017 financial statements and record the cumulative effect of the change recognized in opening retained earnings as of January 1, 2016.

- Retrospectively with the cumulative effect of initially applying the new revenue standard recognized at the date of adoption ("modified retrospective method"). A calendar year-end company that adopts the new revenue standard using this method must begin recording revenue using the new standard on January 1, 2018. At that time, the company must record the cumulative effect of the change recognized in opening retained earnings and financial statements for 2016 and 2017 would remain unchanged. The standard also sets forth additional disclosures required by companies that adopt the new standard using this method.

11110 Registrant Financial Information

11110.1 Selected Financial Data

Question
A registrant elects to adopt the new revenue standard using the full retrospective approach. Must it apply the new revenue standard when reporting selected financial data (S-K Item 301) for periods prior to those presented in its retroactively-adjusted financial statements?

Answer
No, but registrants must provide the information required by Instruction 2 to S-K Item 301 regarding comparability of the data presented.

11110.2 Supplementary Quarterly Financial Data

Question
A calendar year-end EGC that has elected to follow accounting transition applicable to non-issuers elects to adopt ASU 2014-09 for annual periods beginning on January 1, 2019 and for interim periods within annual beginning on January 1, 2020. Must the company reflect adoption of the new revenue standard in the supplementary quarterly financial data (S-K Item 302(a)) contained in its 2019 annual report?

Answer
No. The EGC need not accelerate application of the standard to interim periods for the sole purpose of reporting supplementary quarterly financial data.

11110.3 **Ratio of Earnings to Fixed Charges**

Question
A registrant elects to adopt the new revenue standard using the full retrospective approach. Must it apply the new revenue standard when reporting earnings to fixed charges for periods prior to those presented in its retroactively-adjusted financial statements?

Answer
No.

11120 Financial Statements of Other Entities and Significance

11120.1 **Question**
Will a registrant that adopts the new revenue standard using the full retrospective method be required to recompute the significance of equity method investees under Rules 3-09 and 4-08(g) of Regulation S-X?

Answer:
No. See Section 2410.8.

11120.2 **Question**
A registrant adopts the new revenue standard as of a different date and/or under a different transition method than the other entity. For example, a calendar year-end registrant adopts the new revenue standard on January 1, 2018, but its equity-method investee adopts it on January 1, 2017. Must the registrant conform the other entity's transition dates and methods to its own for purposes of performing the significance tests under Regulation S-X to determine whether financial statements (or financial information) of the other entity need to be included with the financial statements of the registrant?

Answer
No. The registrant need not conform the transition dates and methods for significance testing under Regulation S-X.

11120.3 **Question**
A registrant adopts the new revenue standard as of a different date and/or under a different transition method than a significant acquired business. Must the registrant conform the other entity's transition dates and methods to its own in its Article 11 pro forma financial information?

Answer
Yes.

11120.4 **Question**
A registrant adopts the new revenue standard on January 1, 2018, using the full retrospective method. In September 2018, it makes a significant acquisition and later files a Form 8-K that includes, among other disclosures, pro forma financial information for the year ended December 31, 2017 and the six months ending June 30, 2018. Must the 2017 pro forma information reflect the full retrospective adoption of the new revenue standard?

Answer
No. The registrant does not need to apply the new revenue standard to pro forma financial information for periods prior to adoption. If the registrant believes the effect of the new standard on 2017's historical financial information will be material, it should consider making appropriate disclosure to that effect in the notes to the pro forma financial information. *(Last updated: 11/9/2016)*

11200 NEW LEASING STANDARD (FASB ASC TOPIC 842)

(Last updated: 11/9/2016)

In February 2016, the FASB issued ASU No. 2016-02, *Leases* (Topic 842). Public entities must apply the ASU to annual reporting periods beginning after December 15, 2018, including interim reporting periods within that reporting period. Earlier application is permitted.

All other entities, including EGCs that have appropriately elected to defer compliance with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to apply such standards, must apply ASU No. 2016-02 to annual reporting periods beginning after December 15, 2019, and interim reporting periods within annual reporting periods beginning after December 15, 2020. Earlier application is permitted.

The IASB also issued IFRS 16, *Leases*, in February 2016. For most companies, the effective date will be the same as under U.S. GAAP.

Companies will transition to ASU No. 2016-02 using a modified retrospective approach where they will recognize and measure all leases within the scope of the standard that exist as of the beginning of the earliest comparative period presented. The entity will adjust equity at the beginning of the earliest comparative period presented as if the standard had always been applied, subject to certain practical expedients and other transition relief prescribed by the standard.

11210 Registrant Financial Information

11210.1 Date of Initial Application

Question
A calendar year-end registrant adopts the new leasing standard on January 1, 2019, with an initial application date of January 1, 2017. In May 2019, the registrant files its first quarter 10-Q, which reflects the adoption of the new standard. The next month, the registrant files a registration statement on Form S-3 that includes financial statements for the years ending December 31, 2018, 2017, and 2016, as well as the quarters ending March 31, 2019 and 2018.

Item 11(b)(ii) of Form S-3 requires retrospective revision of the pre-event audited financial statements that were incorporated by reference in the Form S-3 to reflect a subsequent change in accounting principle. Does the reissuance of the registrant's financial statements change the date of initial application to January 1, 2016 because it is the beginning of the earliest comparative period presented?

Answer
No. The reissuance of the financial statements in Form S-3 accelerates the provision of the retroactively restated financial statements for the years ended December 31, 2018 and 2017, but it does not change the date of initial application.

11300 NEW DISCLOSURES ABOUT SHORT-DURATION CONTRACTS FOR INSURANCE ENTITIES (FASB ASC TOPIC 944)

(Last updated: 11/9/2016)

In May 2015, the FASB issued ASU No. 2015-09, *Disclosures about Short-Duration Contracts* (the ASU). The ASU applies to all insurance entities that issue short-duration contracts as defined in Topic 944, Financial Services – Insurance, and requires additional disclosures including incurred and paid claims development information by accident year.

Public business entities must apply the ASU to annual reporting periods beginning after December 15, 2015, and interim reporting periods within annual periods beginning after December 15, 2016.

All other entities, including EGCs that have elected to defer compliance with new or revised financial accounting standards until a company that is not an issuer (as defined under Section 2(a) of the Sarbanes-Oxley Act of 2002) is required to apply such standards, must apply the ASU to annual reporting

periods beginning after December 15, 2016, and interim reporting periods within annual periods beginning after December 15, 2017.

Companies will transition to the ASU retrospectively by providing comparative disclosures for each period presented, except for those requirements that apply only to the current period. Early application is permitted.

11310 Registrant Financial Information

11310.1 **Question**

A registrant adopts the ASU for the fiscal year ended December 31, 2016. The new guidance requires the presentation in the notes to the financial statements of disaggregated claims development tables, at a minimum for each reportable segment, depicting, in part, re-estimates of claims by accident year for up to ten years. Securities Act Industry Guide 6 and Exchange Act Industry Guide 4 (collectively, "Industry Guide 6") identify a consolidated ten-year loss reserve development table to be provided by Property and Casualty insurers in either the Business or MD&A section. Must the registrant continue to present the Industry Guide 6 table in its filings?

Answer

No. A registrant must provide the claims development tables required by the ASU. It does not have to separately provide the ten-year loss reserve development table identified in Industry Guide 6, but may opt to do so.

TOPIC 12

REVERSE ACQUISITIONS AND REVERSE RECAPITALIZATIONS

12100 GENERAL

(Last updated: 9/30/2008)

The acquisition of a private operating company by a non-operating public shell corporation typically results in the owners and management of the private company having actual or effective voting and operating control of the combined company. The staff considers a public shell reverse acquisition to be a capital transaction in substance, rather than a business combination. That is, the transaction is a reverse recapitalization, equivalent to the issuance of stock by the private company for the net monetary assets of the shell corporation accompanied by a recapitalization. The accounting is similar to that resulting from a reverse acquisition, except that no goodwill or other intangible assets should be recorded.

12200 REPORTING ISSUES

(Last updated: 9/30/2008)

12210 General

12210.1 SEC rules do not directly address a registrant's financial reporting obligations in the event that it acquires another entity in a transaction accounted for as either a reverse acquisition or reverse recapitalization. For accounting purposes, the legal acquiree is treated as the continuing reporting entity that acquired the registrant (the legal acquirer). Reports filed by the registrant after a reverse acquisition or reverse recapitalization should parallel the financial reporting required under GAAP—as if the accounting acquirer were the legal successor to the registrant's reporting obligation as of the date of the acquisition. The level of significance is irrelevant as the accounting acquirer is considered to be the registrant's predecessor.

12210.2 Registrants should assure that:

a. filings with the SEC result in timely continuous reporting, with no lapse in periodic reports filed, and

b. no audited period exceeds 12 months.

12220 Form 8-K

12220.1 Reverse Recapitalization with a Shell Company

a. A shell company is a registrant (other than an asset-backed issuer) that has no or nominal operations and either has:

   1. no or nominal assets,
   2. assets consisting solely of cash and cash equivalents, or
   3. assets consisting of any amount of cash and cash equivalents and nominal other assets.

b. For transactions between a shell company and a private operating company whereby the registrant ceases to be a shell company, a Form 8-K that includes Items 2.01, 5.01, 5.06 and 9.01 must be filed no later than four business days after the consummation of the acquisition. The Form 8-K must include for the private operating company all content required by a Form 10 initial registration statement. The financial statement periods required in the Form 8-K are based on the earlier of the filing date of the 8-K or the due date of the 8-K reporting the transaction. *(Last updated: 3/31/2009)*

   As noted in Section 5230.1, the staff looks to the accounting acquirer's eligibility as a SRC at the time of the reverse acquisition for purposes of the disclosures to be provided in the Form 8-K. Accordingly, if the accounting acquirer meets the definition of a smaller reporting company, the age of its financial statements required to be included in the Form 8-K is determined by applying S-X 8-08. An accounting acquirer not meeting the definition of a smaller reporting company, however, should comply with the updating requirements of S-X 3-12. *(Last updated: 3/31/2012)*

c. In certain circumstances, the due date or filing date of the Form 8-K, whichever is earlier, occurs after the end of the private company's most recently completed annual or quarterly period, but before financial statements for that annual or quarterly period would be required to be presented in a Form 10. In these circumstances the financial statements of the private operating company required by Items 2.01(f) and 9.01 of Form 8-K may not include the private company's most recently completed annual or quarterly period.

   The registrant, however, remains subject to Exchange Act Rules 13a-1 and 13a-13, or 15d-1 and 15d-13, requiring annual and quarterly reports, respectively. The registrant must file its applicable annual and quarterly reports. Additionally, the registrant must file an amended

Form 8-K with the financial statements of the private operating company's most recently completed annual or quarterly period prior to the date of the reverse recapitalization, as applicable, within the number of days applicable based on the shell company's filing status (60, 75, and 90 days for annual periods and 40, 40, and 45 days for interim periods for large accelerated, accelerated, and non-accelerated filers, respectively) after the private operating company's period end. *(Last updated: 12/31/2011)*

For example, assume a non-accelerated shell and private operating company both have a calendar year end and the reverse recapitalization takes place on February 1, 20X2. Within four business days of the transaction, the audited financial statements of the private operating company for the year ended December 20X0 and the unaudited financial statements for the interim period ended September 30, 20X1 and comparable prior period would be filed on Form 8-K, in addition to the other information required by Items 2.01, 5.01, 5.06, and 9.01, as described above. The registrant would file its annual report on Form 10-K for the year ended December 31, 20X1 within 90 days after December 31, 20X1. In addition, the registrant would file the same information that would be required in a Form 10-K of the private operating company in an amended Form 8-K by the same Form 10-K due date – 90 days after December 31, 20X1.
(Last updated: 3/31/2011)

d. There is no 71 day extension of time available to file the content for the private operating company, the pro forma information, or other required information.

e. For transactions between a shell company that is a foreign private issuer and a private operating company whereby the registrant ceases to be a shell company, a Form 20-F should be filed no later than four business days after the consummation of the acquisition that includes all of the information for the private operating company that Form 20-F requires for registration of securities. Foreign private issuers that elect to report on domestic issuer forms should file the required information on a Form 8-K and not Form 20-F.

f. Rule 13a-1 applies to a foreign private issuer shell company that ceases to be a shell company upon consummating a transaction with a private operating company. In certain circumstances where the due date or filing date, whichever is earlier, of the Form 20-F reporting the transaction is within three months after year end, the financial statements of the private operating company required by Rule 13a-19 may not include the most recent full fiscal year. In these cases, the surviving entity shall file the information that would be required to be

included in an annual report for the private operating company for the most recent fiscal year. The surviving entity shall file the required information on a Form 20-F within the time period required.

g. There is no Exchange Act Rule 12b-25 extension of the time available to file a reverse acquisition with a shell company reported on Form 20-F.

h. If the legal acquirer/registrant previously filed the required information, such as in a proxy statement or Form S-4/F-4, the registrant may identify in the Form 8-K or 20-F the previous filing in which all the disclosures are included, instead of repeating the disclosures in the 8-K or 20-F.

NOTE: If a public shell that is a smaller reporting company enters into a reverse acquisition with a public or non-public operating company, refer to Topic 5, Smaller Reporting Companies, for a discussion of smaller reporting company eligibility requirements.

12220.2 Reverse Acquisition with a domestic registrant that is not a shell company *(Last updated: 6/30/2012)*

a. Report the acquisition in an Item 2.01 Form 8-K no later than 4 business days after the consummation of the reverse acquisition. If the accounting acquirer's financial statements are not included in that Form 8-K, the registrant should so indicate in the Form 8-K and state when the required financial statements will be filed. That Form 8-K also should include disclosures under Item 4.01 about any intended change in independent accountants, under Item 5.01 about any change in control of the registrant, and under Item 5.03 about any changes in fiscal year end from that used by the registrant prior to the acquisition, as applicable. Most typically, registrants adopt the fiscal year and auditor of the accounting acquirer, but that is not required.

b. Financial statements of the accounting acquirer (the legal acquiree) and S-X Article 11 pro forma financial information giving effect to the reverse acquisition should be filed in an Item 9.01 Form 8-K when available, but no later than 71 calendar days after the date that the initial Form 8-K reporting the transactions **must** be filed (that is, the date which is 4 business days after the transaction is consummated plus 71 calendar days). If the required financial statements and pro forma financial information are not available to be provided with the initial Form 8-K, they must be filed by amendment to that form. After consummation, the accounting acquirer's financial statements become the financial statements of the registrant under U.S. GAAP. The Form

8-K should include the following with respect to the accounting acquirer:

1. Audited financial statements for the three most recently completed fiscal years; or two years, if the registrant is a smaller reporting company; and

2. Unaudited interim financial statements for any interim period and the comparable prior year period.

NOTE: See Section 10120.2 to determine whether the registrant qualifies as an EGC for purposes of filing its Form 8-K subsequent to the merger transaction.

See Section 10220.5 regarding financial statement requirements in a Form 8-K when the transaction involves an EGC operating company. *(Last updated: 6/30/2013)*

c. S-X 3-06 that permits the filing of financial statements of an acquired business for nine to twelve months to satisfy one year would not apply to the financial statements of the accounting acquirer/legal acquiree in a reverse acquisition. The financial statements of the accounting acquirer are deemed to be predecessor financial statements, which should be filed for the periods required by S-X 3-01 through 3-04.

d. Even though an issuer complies with Exchange Act requirements following a reverse acquisition, Securities Act form provisions may require it to provide more current audited financial statements and MD&A of the accounting acquirer/legal acquiree in a Securities Act registration statement. In other words, the requirement to file audited financial statements and MD&A of the accounting acquirer/legal acquiree may be accelerated when a Securities Act registration statement is filed. *(Last updated: 12/31/2011)*

12230 Change in Accountants

(Last updated: 6/30/2009)

12230.1 Unless the same accountant reported on the most recent financial statements of both the registrant and the accounting acquirer, a reverse acquisition always results in a change in accountants. A Form 8-K filed in connection with a reverse acquisition should provide the disclosures required by S-K 304 under Item 4.01 of Form 8-K for the change in independent accountants, treating the accountant that no longer will be associated with the registrant's financial statements as the predecessor accountant.

12230.2 The disclosures required by S-K 304 with respect to any changes in the accounting acquirer's auditor which occurred within 24 months prior to, or in any period subsequent to, the date of the accounting acquirer's financial statements must be provided in the first filing containing the accounting acquirer's financial statements.

12230.3 In a reverse recapitalization with a shell company, any change in accountants during the two most recent fiscal years and interim period for the accounting acquirer must be reported in the Form 8-K, as it is required by Item 14 of Form 10. Any change must be reported even if a successor accountant reaudits all of the periods of the financial statements contained in the Form 8-K.

12240 Change in Fiscal Year

12240.1 A Form 8-K filed in connection with a reverse acquisition should disclose under Item 5.03 of the Form 8-K any intended change in fiscal year from the fiscal year end used by the registrant prior to the acquisition.

12240.2 A change in fiscal year end cannot result in the lapse in reporting any periods of financial statements for either the registrant or the operating company whose financial statements become those of the registrant after consummation of the acquisition.

12240.3 For example, assume a reverse acquisition between 2 public reporting companies occurs on July 15. The legal acquirer has a July 31 year-end and the accounting acquirer has a December 31 year-end. The legal acquirer changed its year end to December 31 in conjunction with a reverse acquisition. The accounting acquirer should still file a Form 10-Q for the quarter ended June 30 even if it were technically eligible to file a Form 15 to cease its reporting prior to the due date of the Form 10-Q. Otherwise, there would be a lapse in periodic reporting for the accounting acquirer for the three and six months ended June 30. It is not sufficient to file a Form 8-K that includes these financial statements and related information.

The legal acquirer would continue to file all periodic reports as they become due for periods ending prior to the consummation of the merger. If the merger is consummated after the latest Balance Sheet date but prior to the due date of the latest periodic report, a subsequent events footnote to the financial statements should describe the reverse merger.

12240.4 Transition Reports
(Last updated: 6/30/2011)

If the registrant adopts the fiscal year of the accounting acquirer (operating company):	**If the registrant continues the fiscal year of the legal acquirer (registrant):**
• If the accounting acquirer is a public reporting company, file periodic reports for periods ending prior to the consummation of the acquisition as they become due in the ordinary course of business. Starting with the periodic report for the quarter in which the acquisition was consummated, file reports based on the fiscal year of the accounting acquirer. Those financial statements would depict the operating results of the accounting acquirer, including the acquisition of the registrant (legal acquirer) from the date of consummation. This report should also include financial statements of the accounting acquirer for any subsequent interim periods that were not included in its S-X 3-05 financial statements previously filed on Form 8-K or 20-F, to avoid any lapses in reporting. • If the accounting acquirer is a private operating company, file a Form 8-K or 20-F if the original Form 8-K or 20-F filed for the reverse acquisition did not include audited financial statements of the accounting acquirer for the latest fiscal year end or quarter that already passed. The surviving entity should file the required information on an amended Form 8-K or 20-F within the time period specified in the appropriate annual or quarterly report form from the accounting acquirer's fiscal year or quarter end. • For example, a legal acquirer has an 8/31 year end and the accounting acquirer has a 10/31 year end. The acquisition took place on 11/10/X5. The 8-K included	• File periodic reports for periods ending prior to the consummation of the acquisition as they become due in the ordinary course of business. • If the accounting acquirer also is a public company, it should file all reports due for periods ending prior to the acquisition to avoid any lapses in reporting, despite its ability to file a Form 15. • File a transition report on Form 10-K, 10-Q or 20-F containing the audited financial statements of the accounting acquirer for the necessary transition period (generally, from the end of the accounting acquirer's most recently completed fiscal year to the next following date corresponding with the end of a fiscal year of the legal acquirer). For example, a legal acquirer has a 7/31 FYE and an accounting acquirer has a 12/31 FYE. A seven month transition period would result and need to be filed on Form 10-K. • The transition report on Form 10-K is due no later than 90 days (45 days for transitional report on Form 10-Q) after the consummation of the acquisition for non-accelerated filers; and no later than 75 days for accelerated filers and 60 days for large accelerated filers (40 days for transitional report on Form 10-Q). The Form 10-Q for the combined entity should be filed within the required time period after the end of the quarter during which the acquisition was consummated (45 days for non-accelerated filers and 40 days for accelerated filers).

financial statements of the accounting acquirer for the three years ended 10/31/X4 and interim period ended 7/31/X5. A Form 8-K or 20-F for the year ended 10/31/X5 should be filed to include the financial statements of the accounting acquirer for the year ended 10/31/X5, to avoid a lapse in reporting. • This would apply to both a shell reverse acquisition and a reverse acquisition between two companies that have a business. If the accounting acquirer is also a public company, it should file **all** reports due for periods ending prior to the acquisition to avoid any lapses in reporting, despite its ability to file a Form 15.	• The transition report on Form 20-F for a transition period more than six months is due no later than six months after the consummation of the acquisition. The transition report on Form 20-F for periods of six months or less (but more than one month) is due no later than three months after consummation of the acquisition. • For both bullet points above, no transition report is required if the transition period is one month or less.

12250 Auditor Issues

(Last updated: 6/30/2009)

12250.1 Reverse Recapitalization with a Public Shell Company

a. In a reverse recapitalization by a non-public company (accounting acquirer) with a public shell company, the financial statements of the accounting acquirer filed in the 8-K or 20-F must be audited by a public accounting firm registered with the PCAOB.

b. The auditor of the accounting acquirer would need to be independent under PCAOB/SEC independence rules for all years required to be in the filing because the Form 8-K must contain Form 10 content, and Form 10 requires financial statements meeting the requirements of Regulation S-X. For Form 20-F, the auditor of an accounting acquirer that is a foreign private issuer must comply with SEC/PCAOB independence rules at least for the latest fiscal year as long as the auditor is independent in accordance with home-country standards for earlier periods. [S-X 2-01(f)(5)(iii)]

12250.2 Reverse Acquisition with a Registrant that is Not a Shell Company

a. Reverse acquisitions involving two operating companies in which the accounting acquirer is a non-public company may result in PCAOB/SEC auditor issues once the acquisition is consummated and the financial statements of the non-public company become those of the registrant.

b. The auditor of the S-X 3-05 or S-X 8-04 financial statements of an accounting acquirer/legal acquiree that is a non-public company need not be registered with the PCAOB because the pre-consummation financial statements are not those of an issuer on the date of the filing. A nonregistered accountant could reissue its opinion on the pre-acquisition financial statements of the accounting acquirer after consummation of the acquisition. A nonregistered accountant could also audit a restatement of the accounting acquirer's financial statements for periods ended prior to the consummation of the acquisition up until the date that the first periodic report is filed that contains post-merger financial statements. Once the post-acquisition financial statements are filed, a nonregistered accountant could not perform the work on the restatement of or retrospective application of a change in accounting principle in the pre-acquisition financial statements or otherwise update or dual date its report on those financial statements because those financial statements become the registrant's financial statements on the date the post-acquisition financial statements are filed. *(Last updated: 12/31/2011)*

c. After consummation of the acquisition, a PCAOB registered auditor must audit or review the post-acquisition financial statements of the registrant because the non-public company's financial statements become the issuer's financial statements.

d. Normally, auditors of S-X 3-05 financial statements of non-public companies need not comply with the independence standards of the PCAOB or SEC as long as the auditors comply with the AICPA independence standards. However, after consummation of a reverse acquisition between two operating companies, the auditor of the registrant's financial statements (previously those of the accounting acquirer) must be independent in accordance with PCAOB/SEC independence rules for all periods presented because the non-public company's financial statements become the issuer's financial statements. This may require a reaudit of prior period financial statements of the accounting acquirer. A registrant should consult with OCA in advance of the reverse acquisition if it believes there may be an independence issue between the auditor and the accounting acquirer under PCAOB/SEC rules.

For example: A public company that is not a shell merged with a private operating company on November 1, 20X1. Both companies have a December 31 year-end. The Form 8-K filed by the registrant included audited financial statements for the three years ended December 31, 20X0 and unaudited interim financial statements for the nine months ended September 30, 20X1 for the non-public operating company. The financial statements could be and were audited by a nonregistered accountant. The December 31, 20X1 Form 10-K would reflect the financial statements of the accounting acquirer for the three years ended December 31, 20X1, for which the auditor(s) must be independent under PCAOB/SEC rules for all years. A PCAOB registered accountant would need to audit the year ended December 31, 20X1 and future years and review any interim financial statements filed on Form 10-Q beginning in 20X2.

12260 Registration and Proxy Statements for Mergers, Acquisitions and Similar Transactions

For purposes of applying the Item 14/Schedule 14A and Form S-4/F-4 financial statement requirements to a reverse acquisition transaction, follow the legal form of the transaction. For example, the accounting acquirer/legal target is the "target" for purposes of applying these rules, and Part C of Form S-4 or F-4 should be followed for the target company. This is due to the fact that the merger has not been consummated yet, so the additional disclosures required for an issuer do not yet apply to the legal target.

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TOPIC 13

EFFECTS OF SUBSEQUENT EVENTS ON FINANCIAL STATEMENTS REQUIRED IN FILINGS

13100 GENERAL

(Last updated: 9/30/2009)

Certain events that occur after the end of a fiscal year will require retrospective revision of that year's financial statements (the "pre-event financial statements") if they are reissued after financial statements covering the period during which the event occurred have been filed. Such events include reporting a discontinued operation, a change in reportable segments, or a change in accounting principle for which retrospective application is either required or elected.

13110.1 Reissuance of the pre-event financial statements is required if those financial statements are required to be included or incorporated by reference into a registration or proxy statement (with the exception of Form S-8 as noted below) along with financial statements covering the period during which the event occurred (the "post-event" financial statements).

13110.2 In the case of a registration statement on Form S-3, Item 11(b)(ii) of that form would specifically require retrospective revision of the pre-event audited financial statements that were incorporated by reference to reflect a subsequent change in accounting principle (or consistent with staff practice, discontinued operations and changes in segment presentation) if the Form S-3 also incorporates by reference post-event interim financial statements. If post-event financial statements have not been filed, the registrant would not revise the pre-event financial statements in connection with the Form S-3, however, pro forma financial statements in accordance with Article 11 of Regulation S-X may, in certain circumstances, be required. In contrast, a prospectus supplement used to update a delayed or continuous offering registered on Form S-3 (e.g., a shelf takedown) is not subject to the Item 11(b)(ii) updating requirements. Rather, registrants must update the prospectus in accordance with S-K 512(a) with respect to any fundamental change. It is the responsibility of management to determine what constitutes a fundamental change.

13110.3 If the pre-event financial statements are not reissued in connection with any filing under the Securities Act or Exchange Act, annual information does not need to be retrospectively revised until that information is included in the registrant's next Annual Report on Form 10-K.

13110.4 Retrospectively revised quarterly information is required in Form 10-Qs filed with post-event financial statements.

13110.5 For the information of investors, once post-event financial statements have been filed with the SEC, a registrant may elect (if reissuance is not required) to file under cover of Form 8-K (Item 8.01) audited retrospectively revised financial statements for the pre-event periods.

NOTE to SECTION 13100:

The requirement to revise financial statements for Form S-3 and the exception for Form S-8 noted below are derived from the Division of Corporation Finance's Compliance and Disclosure Interpretations August 14, 2009, Securities Act Forms Q126.40:

After its Form 10-K is filed, a registrant has a change in accounting principles (or changes in segment presentation or discontinued operations), which will cause the financial presentation in its subsequent Form 10-Qs to differ from that in the Form 10-K. In this situation, Item 11(b)(ii) of Form S-3 would require the annual audited financial statements filed in the Form 10-K to be restated to reflect the change in accounting principles (or changes in segment presentation or discontinued operations). Would General Instruction G.2 of Form S-8, which requires that "material changes in the registrant's affairs" be disclosed in the registration statement, also require such restatement?

Not necessarily. Form S-8 does not contain express language similar to Item 11(b)(ii) of Form S-3, requiring the restatement of financial statements to reflect specified events. The fact that financial statements eventually will be retroactively restated does not necessarily mean that there are "material changes in the registrant's affairs," thereby requiring the financial statements to be restated for inclusion, or incorporation by reference, in a Form S-8. In other words, financial statements for which Item 11(b)(ii) of Form S-3 would require restatement may not necessarily need to be restated for incorporation by reference in a Form S-8. The registrant is responsible for determining if there has been a material change and, if so, the related information that is required to be disclosed in a Form S-8. Correspondingly, it is the auditor's responsibility to determine if it will issue a consent to use of its report in a Form S-8 if there has been a change in the financial statements in a subsequent Form 10-Q where the financial statements in the Form 10-K have not been retroactively restated.

13110.6 Form 10-K/A ordinarily should not be used to file retrospectively revised financial statements that reflect a subsequent change in accounting principle, discontinued operations or change in segment presentation. However, the staff will not object if a registrant, in a Form 10-K/A filed to correct a material error, also reflects the retrospective effects of accounting changes (or consistent with staff practice, discontinued operations and changes in segment presentation) that have been reflected in filings with the SEC subsequent to the original Form 10-K. If the Form 10-K/A is incorporated by reference into a registration statement, then the correction of the error and the accounting change would be *required* to be presented in the Form 10-K/A. In these circumstances, the financial statements in the Form 10-K/A should clearly distinguish the effects of the material error from those of any subsequent accounting change.
(Last updated: 9/30/2010)

13200 DISCONTINUED OPERATIONS

(Last updated: 9/30/2008)

13210.1 If financial statements as of a date on or after the date a component of the registrant has been disposed of or classified as held for sale are required in a registration or proxy statement, retrospective reclassification of all prior periods to report the results of that component in discontinued operations in accordance with SFAS 144 [ASC 205-20] is required. This guidance is applicable even where the filing incorporates by reference annual audited financial statements issued prior to the classification of the component in discontinued operations. The auditor's consent to incorporation of those financial statements in a registration or proxy statement is deemed a reissuance that requires consideration of the effects of subsequent events. Moreover, the financial statements prepared by management and included in the filing are required to comply with U.S. GAAP at the date of effectiveness or mailing, necessitating retrospective reclassification pursuant to SFAS 144 [ASC 205-20].

13210.2 Predecessor financial statements are required to be retrospectively reclassified to reflect the impact of a successor's discontinued operations. Registrants should contact the staff if unusual facts and circumstances may prohibit the company's ability to reclassify predecessor fiscal periods.
(Last updated: 3/31/2010)

13300 CHANGES IN SEGMENTS

(Last updated: 3/31/2009)

13310.1 If management changes the structure of its internal organization in a manner that causes the composition of its reportable segments to change, the corresponding information for prior periods should be retrospectively revised if practicable in accordance with SFAS 131 [ASC 280]. If annual financial statements are required in a registration or proxy statement that includes subsequent periods managed on the basis of the new organization structure, the annual audited financial statements should include a revised segment footnote that reflects the new reportable segments. The registrant's Description of Business and MD&A should be similarly revised. The revised annual financial statements and related disclosures may be included in the registration or proxy statement or in a Form 8-K incorporated by reference.

13400 CHANGE IN THE REPORTING ENTITY OR A BUSINESS COMBINATION ACCOUNTED FOR IN A MANNER SIMILAR TO A POOLING OF INTERESTS

(Last updated: 3/31/2010)

13410.1 SFAS 154 [ASC 250] requires that a change in the reporting entity or the consummation of a transaction accounted for in a manner similar to a pooling of interests, i.e., a reorganization of entities under common control, be retrospectively applied to the financial statements of all prior periods when the financial statements are issued for a period that includes the date the change in reporting entity or the transaction occurred.

13410.2 If a change in the reporting entity or a reorganization occurs for a currently reporting registrant after a year-end balance sheet date but before that year-end Form 10-K is filed, the financial statements in the Form 10-K should not be retrospectively revised to reflect the change in reporting entity or the reorganization. However, the issuer may elect to provide supplemental audited combined financial statements of the entities to be reorganized. Unusual situations can be discussed with CF-OCA.

13410.3 In an initial registration statement, if a change in the reporting entity or a reorganization will occur at or after effectiveness of the registration statement but no later than closing of the IPO, the staff will consider requests to present consolidated or combined financial statements as the primary financial statements of the registrant in lieu of the separate financial statements of the registrant and of the entities to be reorganized based on the particular facts and circumstances.

13500 STOCK SPLITS

(Last updated: 9/30/2008)

Stock splits also require retrospective presentation. Ordinarily, the staff would not require retrospective revision of previously filed financial statements that are incorporated by reference into a registration or proxy statement for reasons solely attributable to a stock split. Instead, the registration or proxy statement may include selected financial data which includes relevant per share information for all periods, with the stock split prominently disclosed.

13600 MEASUREMENT PERIOD ADJUSTMENTS

(Last updated: 9/30/2009)

13610 Financial Statement Requirements in Registration Statements Pursuant to Retrospective Adjustments to Provisional Amounts in a Business Combination

If a registrant determines it must make a material retrospective adjustment to provisional amounts it previously reflected in its financial statements pursuant to the requirements of paragraph 51 of SFAS 141R [ASC 805-10-25] and this adjustment has not yet been reflected in any historical financial statements, the registrant should provide or incorporate by reference revised financial statements reflecting the retrospective adjustment if the adjustment is material. If this retrospective adjustment has been reflected in subsequent interim historical financial statements, but the acquisition occurred in the preceding fiscal year and the adjustments are not reflected in the annual financial statements, the registrant should provide revised audited financial statements for the year of acquisition reflecting the adjustments. The revised financial statements are generally filed via Form 8-K.

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TOPIC 14

TENDER OFFERS

14100 REGULATORY SCHEMES

(Last updated: 9/30/2008)

14110.1 Tender offers may be made by either the issuer of the securities or by a third party. The essence of the tender offer is that the offeror, or bidder, can go directly to security holders of the target company with an offer to buy their shares. The term "tender offer" has never been defined in any statutory provision or rule. Instead, courts and the staff of the SEC generally consider a number of factors to determine whether a particular acquisition program constitutes a tender offer.

14110.2 In a tender offer, the offeror may offer cash, securities, or a combination of cash and securities. If the consideration consists wholly of or partly of registered securities, the offeror generally will have to register them under the Securities Act unless an exemption from registration is available. The information required to be sent to the security holders of the target varies based on the type of consideration offered and other factors.

14110.3 The Division selectively reviews tender offer materials. The following summarizes the regulatory process for tender offers:

a. Cash tender offer – a tender offer by either the issuer of the subject securities or by a third party where the offer consideration is cash only. The bidder commences the offer by sending tender material to security holders, including a request that they tender their shares. On the same day, the bidder files this material publicly with the SEC, along with a tender offer schedule that contains additional information. The offer must remain open for at least 20 business days, and then the bidder can purchase the tendered shares if all conditions to the offer have been satisfied or waived. Unlike in most stock tender offers, the SEC staff does not have the opportunity to review cash tender offer materials until after the tender offer has begun. If the staff decides to review the filed material, the staff gives comments to the bidder during the tender offer period and the bidder addresses the comments appropriately. For example, the bidder may need to send additional information to the security holders of the target and the offer may have to be extended in order for the security holders to have time to consider the information.

b. Exchange offer (stock tender offer) – a tender offer by the issuer of the subject securities or by a third party, where the offer consideration is

wholly or partially securities. The bidder files a Securities Act registration statement containing a prospectus covering the securities it is offering to security holders of the target in exchange for their shares. The prospectus also contains the information about the exchange offer required by the tender offer rules. This is a public document. The bidder may send the preliminary prospectus to security holders of the target, but it usually does not do so because it cannot request tenders or buy any shares until the registration statement is declared effective (but see discussion of early commencement exchange offers below). The Division selectively reviews tender offer materials. Unless the exchange offer commences early, the staff gives comments to the bidder before the tender offer commences. Commencement of an offer occurs when the bidder publishes, sends or gives to security holder the means by which to tender into the offer, such as by filing a letter of transmittal. After these comments are resolved, the bidder requests that the staff declare the registration statement effective. Once the registration statement is effective, the tender offer may commence, the bidder sends the combined final prospectus/tender offer document to security holders and requests that they tender their shares. The bidder also may commence the offer before effectiveness of the registration statement under specified circumstances ("early commencement"). If this early commencement option for an exchange offer is chosen, then on the day the offer begins, bidder files with the SEC the registration statement containing the prospectus and the same tender offer materials that would be filed for a cash tender offer. For both kinds of exchange offers, the offer must remain open for at least 20 business days from commencement and the registration statement must be effective before the bidder can purchase any shares.

14110.4 Bidders in a tender offer may also communicate about the transaction before or after a registration statement is filed and effective, provided such written communications are filed with the SEC and contain an appropriate legend urging investors to read the relevant documents filed or to be filed with the SEC.

14200 DOCUMENTS FILED

(Last updated: 9/30/2008)

14210.1 The primary 1934 Act document used to file tender offers is Schedule TO. EDGAR tags to Schedule TO are TO-I, Tender Offer/Issuer; TO-T, Tender Offer/Third Party; and TO-C, Tender Offer/Communications. Schedule TO-I must be filed when an issuer that has a class of equity securities registered pursuant to Section 12 of the Exchange Act is offering to buy back any class of its own equity securities (including debt that is convertible into equity securities). Schedule TO-T must be filed when a third party is offering to buy

equity securities that are registered pursuant to Section 12 of the Exchange Act (including Section 12 registered debt that is convertible into equity securities) in a transaction that would result in the third party owning greater than 5% of the class of securities subject to the offer if the offer is fully subscribed. Schedule TO-C must be filed for written communications about the transaction before the offer commences.

14210.2 A tender offer may be a "going private" transaction, in which case Schedule 13E-3 must be filed as well. To be subject to Rule 13e-3, a going private transaction must involve a purchase of an equity security, a tender offer or specified kind of solicitation by an issuer or an affiliate. It must also be intended to or reasonably likely to cause a class of equity securities registered under the Exchange Act to: 1) become eligible for termination of registration under Rule 12g-4 or Rule 12h-6 or suspension under Rule 12h-3; or 2) be de-listed from a securities exchange or inter-dealer quotation system. Rule 13e-3 covers single transactions, as well as a series of transactions, where the elements of the rule are met. A party engaged in a going private transaction must file and disseminate to security holders the information specified in Schedule 13E-3. This Schedule requires detailed information addressing whether the filing person believes the transaction is fair to unaffiliated security holders and why. Schedule 13E-3 can be combined with Schedule TO, in which case the Rule 13e-3 box on the cover page to Schedule TO must be checked.

14300 CASH OFFER FINANCIAL STATEMENT REQUIREMENTS

(Last updated: 9/30/2008)

14310 Financial Statement Requirements of Schedule TO

NOTE: If the tender offer consideration includes registered securities, the financial statement requirements of Forms S-4 or F-4 should be followed.

14310.1 Instructions to Item 10 of Schedule TO provide the following:

a. If material, the financial information required by Item 1010(a) and (b) of Regulation M-A for the issuer in an issuer tender offer and for the offeror in a third-party tender offer must be filed. See Section 14400.

b. Other guidance included in Instructions to Item 10:

1. Financial statements must be provided when the offeror's financial condition is material to a security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of

the tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.

2. Financial statements are not considered material when:

   i) the consideration offered consists solely of cash;

   ii) the offer is not subject to any financing condition; and either:

   iii) the offeror is a public reporting company under Section 13(a) or 15(d) of the 1934 Act that files reports electronically on EDGAR, or

   iv) the offer is for all outstanding securities of the subject class.

3. The filer may incorporate by reference financial statements contained in any document filed with the SEC, solely for the purposes of this schedule, if:

   i) the financial statements substantially meet the requirements of this item;

   ii) an express statement is made that the financial statements are incorporated by reference;

   iii) the information incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and

   iv) if the information incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained.

   Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

4. If the offeror in a third-party tender offer is a natural person, and that person's financial information is material, the net worth of the offeror must be disclosed. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, the nature and approximate amount of the individual's net worth that consists of illiquid assets and the magnitude of any guarantees or contingencies that may

negatively affect the natural person's net worth must be disclosed.

5. Pro forma financial information is required in a negotiated third-party cash tender offer when securities are intended to be offered to remaining target security holders in a subsequent merger (two-tier transaction) and the acquisition of the target company is significant to the offeror. The offeror must disclose the financial information specified in Item 3(f) and Item 5 of Form S-4 in the schedule filed with the SEC, but may furnish only the summary financial information specified in Item 3(d), (e) and (f) of Form S-4 in the disclosure document sent to security holders. When pro forma financial information is required, then the bidder's historical financial statements for all periods stipulated in Item 1010(a) are required as well.

6. The materials sent to security holders may contain the summarized financial information specified by Item 1010(c) instead of the financial information required by Item 1010(a) and (b). In that case, the full financial information required by Item 1010(a) and (b) must be incorporated by reference or disclosed in the Schedule TO. If summarized financial information is sent to security holders, instructions on how more complete financial information can be obtained must be disclosed. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 below.

   Note: When financial information is considered material and the offeror elects to incorporate that information by reference, the disclosure materials disseminated to security holders must nonetheless contain at least summarized financial information specified by Item 1010(c). In addition, when that summarized financial information is disseminated to security holders instead of full financial information required by Item 1010(a) and (b), the full financial information must be provided in the Schedule TO or incorporated by reference. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H7.

7. If the offeror is a non-reporting company, the financial statements required need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. A statement to that effect and the reasons for their unavailability must be disclosed.

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F must be provided, unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP or IFRS as issued by the IASB, a narrative description of all material variations in accounting principles, practices and methods used in preparing those financial statements from U.S. GAAP must be presented.

   Note: If a bidder's financial statements prepared on a basis other than U.S. GAAP or IFRS as issued by the IASB are not required to be filed in conjunction with an all-cash tender offer based on Reg. M-A, but the bidder includes its financial statements anyway (for example, in order to comply with a foreign jurisdiction's rules and regulations), a U.S. GAAP reconciliation is required unless it is not available. If a U.S. GAAP reconciliation is not provided in this circumstance, the following disclosures should be provided:

   i) The headnote to those financial statements should explain why the bidder's financial statements are included, that they are not required to be filed under the SEC's rules, and that they don't include all the disclosures that would be required under the SEC's rules, such as a U.S. GAAP reconciliation.

   ii) Narrative description of the GAAP differences that normally would be required under Instruction 3 to Item 8.A.5 of Form 20-F is encouraged but not required.

   This guidance is included in the Division of Corporation Finance’s July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H10.

14310.2 A manually signed copy of the accountant's report is not required to be filed with the SEC in connection with a Schedule TO. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H11. *(Last updated: 6/30/2009)*

14310.3 Previously issued historical financial statements of the issuer (in an issuer tender offer) or of the bidder (in a third-party tender offer) to be included in a Schedule TO (because they are considered material under 14310.1 (b.1) and 14310.1 (b.2) above) are not required to be recast to reflect a subsequent discontinued operation or a subsequent organizational change causing a change to its reportable segments. This is because previously issued financial statements are not considered to be "reissued" merely by disclosure included in a Schedule TO. However, sufficient information about the subsequent discontinued operation or change in reportable segments must be provided in the Schedule TO so that security holders are informed of those changes and their impact on the reported financial statements. The effect of the discontinued operation should be reflected through pro forma financial information prepared in accordance with S-X Article 11. Segment information under both the old basis and the new basis of segmentation should be presented, to the extent practicable, for all periods for which an income statement has been filed in the Schedule TO.

14310.4 During the tender offer period, an issuer's periodic report on Form 10-K or Form 10-Q may become due and be filed in the normal course. There is no *per se* requirement to amend the Schedule TO to update information previously disclosed based on current information derived from the newly filed Form 10-K or 10-Q. However, management must evaluate whether the newly filed Form 10-K or 10-Q contains a "material change in information" previously disseminated to security holders. If that newly filed periodic report contains a material change in information, such as, for example, a significant change in the company's business or a material event, the registrant should file an amendment to the Schedule TO in order to summarize the nature of the material change and/or incorporate the newly filed Form 10-K or 10-Q. Because the SEC generally has required that at least five business days remain in the offer period after disseminating information about a material change, the registrant may need to extend the offer period to allow security holders time to receive and consider the new information. If the newly filed periodic report does not contain a material change in information, the registrant may nevertheless choose to file an amendment to the Schedule TO.

14320 Financial Statement Requirements of Schedule 13E-3

14320.1 The financial information required by Item 1010(a) and (b) of Regulation M-A for the issuer of the subject class of securities must be filed. See Section 14400.

14320.2 Instructions to Item 13 provide the following:

a. The disclosure materials sent to security holders may contain the summarized financial information required by Item 1010(c) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) must be disclosed directly or incorporated by reference in the Schedule 13E-3. If summarized financial information is sent to security holders, instructions on how more complete financial information can be obtained must be disclosed. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, the summarized financial information must be accompanied by a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F.

b. If the financial statements required are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F must be provided.

c. The filer may incorporate by reference financial statements contained in any document filed with the SEC, solely for the purposes of this schedule, if:

    1. the financial statements substantially meet the requirements of this Item;
    2. an express statement is made that the financial statements are incorporated by reference;
    3. the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and
    4. if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained.

    Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

    Issuers that incorporate financial statements by reference must disseminate to security holders the summarized financial information required by Item 1010(c).

14400 ITEM 1010 OF REGULATION M-A: FINANCIAL STATEMENTS

(Last updated: 9/30/2008)

14410 Financial Information – Item 1010(a)

14410.1 Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under Sections 13 and 15(d) of the 1934 Act;

a. For a bidder that is not subject to the periodic reporting requirements of the Exchange Act, audited financial statements for its most recently completed fiscal year must be included in a Schedule TO if the mailing date is beyond 90 days after the end of the fiscal year. If the proposed mailing date falls within 90 days after the end of the fiscal year, that Schedule need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year unless the financial statements for the most recently completed fiscal year are available. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H8.

b. For a bidder that is a foreign private issuer, the audited year-end financial statements must be included in a Schedule TO if the mailing date is beyond four months after the end of the fiscal year, unless the financial statements for the most recently completed fiscal year are available.

14410.2 Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of comprehensive income, and statements of cash flows required to be included in the company's most recent quarterly report filed under the 1934 Act.

For a bidder that is a foreign private issuer, quarterly or other interim financial statements need not be included in a Schedule TO unless it has filed such information in a report on Form 6-K or made it publicly available in its home jurisdiction. This also applies to a foreign private issuer filing a Schedule 13E-3. If the foreign private issuer prepares its financial statements on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, the quarterly or other interim financial information should include disclosures consistent with the guidance in Instruction 3 to Item 8.A.5 of Form 20-F. See the Division of Corporation Finance's July 2001 Interim Supplement to Publicly Available Telephone Interpretations, Section H9.
(Last updated: 9/30/2012)

14410.3 Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S-K, for the two most recent fiscal years and the interim periods provided under Section 14410.2 (this requirement applies even when the entity does not have registered debt securities and also applies to entities that are smaller reporting companies); and

14410.4 Book value per share as of the date of the most recent balance sheet presented.

14420 Pro Forma Information – Item 1010(b)

14420.1 If material, pro forma information must be filed disclosing the effect of the transaction on:

a. The company's balance sheet as of the date of the most recent balance sheet presented under Section 14410.

b. The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under Section 14410.2; and

c. The company's book value per share as of the date of the most recent balance sheet presented under Section 14410.

14430 Summary Information – Item 1010(c)

14430.1 A fair and adequate summary of the information specified in Sections 14410 and 14420 must be filed for the same periods specified. A fair and adequate summary includes:

a. The summarized financial information specified in S-X 1-02(bb)(1);

b. Income per common share from continuing operations (basic and diluted, if applicable);

c. Net income per common share (basic and diluted, if applicable);

d. Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S-K (this requirement applies even when the entity does not have registered debt securities and also applies to entities that are smaller reporting companies);

e. Book value per share as of the date of the most recent balance sheet; and

f. If material, pro forma data for the summarized financial information specified in Section 14430.1(a) through (e) disclosing the effect of the transaction.

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TOPIC 15

EMPLOYEE STOCK BENEFIT PLANS

15100 FILING REQUIREMENTS OF FORM S-8 AND FORM 11-K

(Last updated: 9/30/2008)

15110 Employee Benefit Plan a Separate Registrant

Where an employee benefit plan (Plan) registers Plan interests as separate securities from the issuer's securities offered under the Plan, the Plan incurs a separate reporting obligation under §15(d) of the Exchange Act. This obligation requires the Plan to file an annual report on Form 11-K. Late or incomplete filings on Form 11-K by the Plan do not adversely affect the issuer's ability to use Form S-3 or rely on Rule 144 because the Plan is a separate issuer.

15120 Financial Statement Requirements

15120.1 The financial statement requirements in Form 11-K are specified by the Form and S-X Article 6A, which follow generally the form and procedures as in Topic 1, Section 1110.

15120.2 In addition, consider ERISA requirements:

Plans Subject to ERISA	Plans Not Subject to ERISA
a. May file the financial information prepared in accordance with ERISA requirements in lieu of the financial statements required by S-X Article 6A. b. To the extent required by ERISA, such financial statements shall be audited. However, the "limited scope exemption" contained in Section 103(a)3(C) of ERISA shall not be available. [Paragraph 4 of Form 11-K Required Information] c. If the financial statements filed with ERISA do not require an opinion of the independent accountant, no opinion is required for Form 11-K.	Must provide the schedules required by S-X 6A-05.

15120.3 Audit Requirement

Audit reports on financial statements of the Plan included in a Form 11-K must be issued by a firm registered with the PCAOB.

15120.4 Registrations on Form S-8, for a New Plan

a. Any registrant that is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act is eligible to use Form S-8 provided:

    1. Registrant is current in reporting obligations with respect to all reports and other materials required to be filed during the preceding 12 months, or such shorter time as registrant was required to report under the Exchange Act [General Instruction A.1], and

    2. Registrant is not a shell company and has not been a shell company for the previous 60 calendar days; and if it has been a shell company at any time previously, has filed current Form 10 information at least 60 calendar days previously reflecting its status as an entity that is *not* a shell company. [General Instruction A.1] A business combination shell company may use Form S-8 immediately after it ceases to be a shell company and files Form 10 information reflecting its status as an entity that is not a shell company. [General Instruction A.1(a)(7)] *(Last updated: 6/30/2013)*

b. Form S-8 is effective upon filing [Regulation C, Rule 462] and incorporates by reference filings made under Sections 13, 14 and 15(d) of the Exchange Act. Other than a resale prospectus permitted by General Instruction C, no prospectus is filed in Form S-8. Instead, prospectus delivery is accomplished by delivery of the documents specified in Rule 428. There is no separate requirement for financial statements required by Regulation S-X.

c. Registrant information is updated by the filing of Exchange Act reports, which are incorporated by reference. Any material changes in the registrant's affairs required to be disclosed in the registration statement, but not required to be included in a specific Exchange Act report, are reported on Form 8-K pursuant to Item 8.01 of that form. [General Instruction G.2]

    1. Form S-8 is not subject to the same financial statement updating requirements as other registration statements. For example, the sponsor's financial statements incorporated by reference into Form S-8 need not comply with the 45-day year-end rule. See Section 1220.3.

d. Form S-8 requires the following for both the sponsor (the registrant) and the Plan.

1. For the registrant, which must be current in its reporting obligations, incorporate by reference [Item 3 of Form S-8]:

   i) The registrant's most recent annual report under the Exchange Act (or the registrant's filing under cover of Form 10) or the most recent Rule 424(b) prospectus filed under the Securities Act (if that prospectus contains the registrant's financial statements for the most recent fiscal year),

   ii) All other reports filed by the registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the most recent annual report, Form 10, or prospectus in 15120.4(d)(1)(i) above, and

   iii) All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act prior to the filing of a post-effective amendment indicating that all securities offered have been sold or deregistering all securities then remaining unsold.

2. For the Plan, if interests in the Plan are being registered [General Instruction A.2]:

   i) Incorporate the Plan's latest annual report filed pursuant to Section 15(d) (Form 11-K), or

   ii) If the Plan has not previously been subject to the reporting requirements of Section 15(d), file an annual report for the Plan's latest fiscal year, in the form required under Section 15(d) (Form 11-K) at the same time the Form S-8 is filed.

      - If the plan has not yet completed its first fiscal year, file an annual report for a period ending not more than 90 days prior to the filing of the registration statement at the same time the Form S-8 registration statement is filed.

      - If the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an employee plan annual report at the same time the Form S-8

registration statement is filed shall not apply. For this purpose (General Instruction A.2), a plan is considered "not to have been in existence for 90 days" if it is either a new plan or for the first time is offering employer securities as an investment option for employee contributions.

iii) If financial statements of the plan are required to be filed, they should be prepared in accordance with S-X Article 6A and for the periods specified in S-X 3-01 and 3-02. However, if employer securities are added as an investment option to an existing plan that previously had not been required to report to the SEC and a "new plan" is deemed to have come into existence for purposes of General Instruction A.2., such financial statements need only be presented from the date that the new plan is deemed to have come into existence.

15200 EXCHANGE ACT AGE OF FINANCIAL STATEMENTS REQUIREMENTS

(Last updated: 9/30/2008)

15210 General Requirement

Form 11-K is required to be filed within 90 days after the end of the fiscal year of the Plan, except for plans subject to ERISA [General Instruction A to Form 11-K]. If the issuer of the securities offered by the Plan files annual reports on Form 10-K, the Plan may file its financial statements in the issuer's Form 10-K. [Rule 15d-21 of the Exchange Act] If this procedure is followed, the Plan's financial statements (as required by Form 11-K) should be filed within 120 days after the end of the Plan's fiscal year (either as a part of the Form 10-K, or as an amendment to the Form 10-K). However, if the Plan's fiscal year ends within 62 days prior to the end of the fiscal year of the issuer, such information may be filed as a part of the issuer's next annual report.

15220 Plans Subject to ERISA

Form 11-K for a plan subject to ERISA is due within 180 days after the Plan's fiscal year end [General Instruction A to Form 11-K]. If the Plan subject to ERISA elects the option permitted by Rule 15d-21 (see 15210 above), the financial statements required by Form 11-K should be filed within 180 days after the Plan's fiscal year end.

15230 Form 8-K Requirements

Filing the Form 11-K satisfies the Section 15(d) reporting requirements of the plan. Rule 15d-21 provides that separate other reports need not be filed pursuant to Section 15(d) with respect to any plan that elects to rely on the Rule 15d-21 reporting option. See Section 15210. The Division does not object when plans filing Form 11-K do not file any other Exchange Act reports. Accordingly, plans are not subject to any Form 8-K reporting requirements, including Item 4.01 regarding changes in the plan's certifying accountant.

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TOPIC 16

MULTIJURISDICTIONAL DISCLOSURE SYSTEM

16000 GENERAL

(Last updated: 6/30/2013)

Effective July 1, 1991, the SEC adopted a multijurisdictional disclosure system ("MJDS") for Canadian issuers. The MJDS adopted by the SEC allows eligible Canadian issuers to register securities under the Securities Act and to register securities and report under the Exchange Act by use of documents prepared largely in accordance with Canadian requirements.

NOTE: In 2008, the SEC adopted revisions to Form 20-F and related rules and forms. The revisions can be found in Foreign Issuer Reporting Enhancements, (Release No. 33-8959) at http://www.sec.gov/rules/final/2008/33-8959.pdf. Most of these revisions do not apply to Form 40-F and do not change the requirements for issuers under MJDS. However, an MJDS filer is required to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter under the new rules. See Section 6110.2.

A Canadian issuer filing under the Multi-Jurisdictional Disclosure System ("MJDS") may qualify as an EGC. While the disclosure requirements for the Canadian issuer would continue to be established under its home country standards in accordance with the MJDS, other provisions of Title I, such as the deferral of compliance with Section 404(b) of the Sarbanes-Oxley Act, would be available to an MJDS filer that qualifies as an EGC. See Topic 10.

16100 MJDS OFFERINGS – ELIGIBILITY REQUIREMENTS

(Last updated: 9/30/2008)

16110 Rights Offer

16110.1 To encourage Canadian issuers to extend rights offers to their U.S. shareholders (rather than cash them out in order to avoid U.S. registration), MJDS Form F-7 is available for Securities Act registration in connection with such offers. Form F-7 acts as a wraparound for the relevant Canadian offering documents. No reconciliation to U.S. GAAP is required for financial statements included under cover of that Form.

16110.2 To be eligible, an issuer must:

a. be incorporated or organized in Canada and be a foreign private issuer;

b. have been reporting for the preceding 36 months to Canadian securities regulatory authorities;

c. have been listed for the preceding 12 months on the Montreal or Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange[11]; and

d. be currently in compliance with its reporting and listing obligations.

In addition:

e. the rights may not be transferable other than in accordance with Regulation S, and

f. the rights must be granted to U.S. holders on terms no less favorable than those extended to any other holder of the same class of securities.

16120 Exchange Offers

16120.1 To encourage Canadian offerors to extend exchange offers for Canadian target companies to U.S. shareholders, MJDS Forms F-8 and F-80 are available in specified circumstances to register the securities to be issued by the offeror. In the case of an exchange offer, those Forms consist primarily of the relevant Canadian offering documents. No reconciliation to U.S. GAAP is required for financial statements included under cover of those Forms.

16120.2 To be eligible to use Form F-8 or F-80, the offeror in an exchange offer must:

a. be incorporated or organized in Canada and be a foreign private issuer;

b. have been reporting for the preceding 36 months to Canadian securities regulatory authorities;

c. have been listed for the preceding 12 months on the Montreal or Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange;

d. be currently in compliance with its reporting and listing obligations; and

e. have a public float (an aggregate market value held by non-affiliates) of at least (CN) $75 million, unless the issuer is making an exchange offer for its own securities.

[11] The Vancouver Stock Exchange is now called the TSX Venture Exchange.

In addition:

f. the issuer of the securities that are the subject of the exchange offer must be incorporated or organized in Canada and be a foreign private issuer;

g. less than 25% (in the case of Form F-8) or 40% (in the case of Form F-80) of the securities that are the subject of the exchange offer are held by U.S. holders;

h. the securities must be offered to U.S. holders on terms no less favorable than those offered to any other holder of the same class of securities; and

i. derivative securities may not be registered on Form F-8 or F-80 except:

    1. warrants, options and rights, if they and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either, and

    2. convertible securities, if they are convertible into only securities of the registrant, its parent or an affiliate of either.

16130 Business Combinations

16130.1 Registration of securities is allowed on MJDS Forms F-8 and F-80 in connection with Canadian statutory amalgamations, mergers, arrangements and other reorganizations requiring the vote of shareholders of the participating companies ("business combinations"). In the case of a business combination, those Forms consist of primarily the information prepared for distribution under Canadian proxy requirements. No reconciliation to U.S. GAAP is required for financial statements included under cover of those forms.

16130.2 Registration in connection with a business combination is allowed on those forms if:

a. each participant is organized or incorporated in Canada and is a foreign private issuer;

b. the predecessor participants have been reporting for the preceding 36 months to Canadian securities regulatory authorities;

c. the predecessor participants have been listed for the preceding 12 months on the Montreal or Toronto exchange or the Senior Board of the Vancouver Stock Exchange;

d. each predecessor participant has a public float of (CN) $75 million;

e. U.S. holders would hold less than 25% (in the case of Form F-8) or 40% (in the case of Form F-80) of the class of securities being registered by the successor upon completion of the business combination; and

f. the securities must be offered to U.S. holders on terms no less favorable than those offered to any other holder of the same class of securities.

16140 Offerings of Investment Grade Non-Convertible Debt or Preferred Securities

16140.1 Offerings by issuers of investment grade debt and preferred stock may be registered under the Securities Act on Form F-9. The debt or preferred stock must be rated investment grade (typically, the four highest ratings) by a nationally recognized statistical rating organization or by a securities rating organization recognized by Canadian securities regulators as an "Approved Rating Organization" in order to qualify. Securities registered on the Form must either be non-convertible or convertible only after one year from the date of issuance. Like the other MJDS forms, Form F-9 is primarily a wraparound form for the Canadian disclosure documents. No reconciliation of financial statements to U.S. GAAP is required.

16140.2 To be eligible, an issuer must:

a. be incorporated or organized in Canada and be a foreign private issuer or a crown corporation;

b. have been reporting for the preceding 12 months to Canadian securities regulatory authorities;

c. be currently in compliance with its reporting obligations; and

d. have a public float of at least $75 million, unless the securities being registered are not convertible.

16150 Offerings of Other Securities

16150.1 Securities Act registration of other securities, including equity securities, is permitted on Form F-10. The content of a Form F-10 includes the Canadian disclosure documents plus certain additional disclosures specified by SEC rules. See Section 16500. Inclusion of financial statements is specified by Canadian rules, but reconciliation of those included financial statements to U.S. GAAP, following Item 18 of Form 20-F, is required. However, the staff has not objected to Item 17 reconciliation of non-issuer financial statements where Form 20-F permits Item 17 reconciliation, such as those for acquired businesses and equity method investees.

16150.2 To be eligible, an issuer must:

a. be incorporated or organized in Canada and be a foreign private issuer or a crown corporation;

b. have been reporting for the preceding 12 months to Canadian securities regulatory authorities;

c. be currently in compliance with its reporting obligations; and

d. have a public float of at least $75 million.

16150.3 In addition, derivative securities may not be registered on Form F-10 except:

a. warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either, or

b. convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

16150.4 The registration of securities by eligible issuers in connection with exchange offers is specifically accommodated in Forms F-9 and F-10, and registration in connection with business combinations is accommodated in Form F-10.

16200 REGISTRATION AND PERIODIC REPORTING UNDER THE EXCHANGE ACT

(Last updated: 9/30/2008)

16210 Forms 40-F and 6-K

16210.1 These forms are available for use by certain Canadian issuers to register securities under Section 12(b) or 12(g) or report under Section 15(d) of the Exchange Act. Information to be filed on Form 40-F includes the issuer's annual information form and audited annual financial statements with accompanying management's discussion and analysis, all as prepared in accordance with Canadian requirements. For example, the number of periods for which financial statements are required for Canadian issuers that file on Form 40-F is based on the Canadian requirements. The Canadian requirements ordinarily require two years of audited annual financial statements in annual reports, unlike Form 20-F that requires most other foreign private issuers to file three years of audited annual financial statements [refer to Section 6210.1]. Reconciliation as specified in Item 17 of Form 20-F is required in connection with any Form 40-F filed unless the obligation to file arises because of registration on Form F-7, F-8, F-9, or F-80 or the Form 40-F is filed with respect to securities that could have been registered under the Securities Act on

Form F-9. Form 6-K information is that which the issuer has made public in its home jurisdiction, filed with a stock exchange where its securities are traded, or distributed to its shareholders. *(Last updated: 3/31/2012)*

16210.2 Canadian issuers that list securities on a U.S. stock exchange or whose securities are authorized for quotation on NASDAQ or that exceed the Section 12(g) threshold of equity securities held of record by U.S. residents are eligible to use Forms 40-F and 6-K to satisfy such registration or continuous reporting obligations under the Exchange Act if:

a. the issuer is eligible to use Form F-10, or

b. the issuer is eligible to use F-9 and the securities to which the reporting obligation relates were registered or could have been registered on Form F-9.

16210.3 Canadian issuers that otherwise would incur an obligation to report under Section 15(d) by registering securities on Form F-7, F-8, or F-80 are exempt therefrom if the issuer is exempt from the obligations of Section 12(g) by virtue of Rule 12g3-2(b). Rule 12g3-2(b) contemplates the submission of home jurisdiction disclosure documents to the SEC by the issuer. Reporting obligations otherwise arising under Section 15(d) solely as a result of an issuer having filed a registration statement on Form F-7, F-8, F-9, F-10, or F-80 may be satisfied by filing on Forms 40-F and 6-K.

16210.4 The exemption from reporting provided by Rule 12g3-2(b) encompasses a Canadian issuer that has in the past eighteen months registered securities under the Securities Act on Form F-7, F-8, F-9, F-10 or F-80.

16300 TENDER OFFERS

(Last updated: 9/30/2008)

To encourage such offers to be made to U.S. investors, tender offers that are primarily Canadian in character are able to comply with the provisions of the Williams Act by complying with applicable Canadian tender regulations. Schedules 13E-4F (issuer tender offer), 14D-1F (third-party or affiliate tender offer), and 14D-9F (recommendation by an issuer, or director or officer of the issuer with respect to a tender offer filed on Schedule 14D-1F) may be used in connection with offers made in both jurisdictions for a class of securities of a Canadian issuer.

16310 Eligibility Requirements

16310.1 Offers must be extended to all holders of the class of securities in the United States and Canada upon terms and conditions no less favorable than those offered to any other holder of the same class of securities.

16310.2 The transaction must be covered by and not be exempt from substantive provisions of Canadian law governing the terms and conditions of the offer.

16310.3 U.S. holders must hold less than 40 percent of the subject securities.

16320 U.S. Ownership Ceiling

16320.1 The percentage ceiling on U.S. ownership for cash and exchange offers made pursuant to the MJDS is calculated by reference to securities held by persons with U.S. addresses in the records of the issuer and other specified records. U.S. affiliates of the Canadian company are not excluded from the calculation of the U.S. ownership ceiling.

16320.2 The date used for calculating U.S. ownership is the end of the subject company's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the subject company's preceding quarter. In addition, the date of the initial bid, in the case of competing bids, will be used for determining MJDS eligibility for all subsequent competing bids. Subsequent competing bids are permitted to look back to the initial commencement date, so long as the initial offer was eligible to use the MJDS, regardless of whether the initial offer took advantage of the MJDS.

16320.3 Third-party bidders, whether solicited or unsolicited, are permitted to rely upon a conclusive presumption that less than the threshold percentage of securities is held by U.S. holders and that the target is a foreign private issuer, absent published trading volume data, disclosure in public filings or actual knowledge to the contrary.

16400 CANADIAN REGULATION

(Last updated: 9/30/2008)

A condition to the use of MJDS to effect cross-border tender and exchange offers is that the offer be subject to a Canadian regulatory scheme governing the conduct of tender offers. Consequently, transactions that are not subject to Canadian tender offer regulation, such as offers for non-convertible debt securities and non-convertible, non-voting preferred stock, would not be eligible for the MJDS. Also, offers exempted from Canadian tender offer regulation likewise would not qualify.

16500 SARBANES-OXLEY

(Last updated: 6/30/2013)

As noted above, MJDS allows eligible Canadian issuers to comply with the U.S. securities laws by use of documents prepared largely in accordance with Canadian requirements. However, various SEC rules adopted as a result of the Sarbanes-Oxley Act require MJDS issuers to provide disclosures in their Exchange Act reports beyond those that may be required in Canada. The additional disclosure requirements, which are similar to those required for other domestic and foreign private issuers, are found in General Instruction B(6) through B(12) of Form 40-F. The principal additional disclosures include:

- Section 302 and 906 certifications
- Disclosure controls and procedures
- Internal control over financial reporting and, for non-EGC accelerated filers and large accelerated filers, the related auditor attestation (effective for fiscal years ending after July 15, 2006)
- Audit committee financial experts
- Officer code of ethics
- Auditor fees and services
- Off-balance sheet arrangements
- Tabular disclosure of contractual obligations

In addition, filings of MJDS issuers are subject to staff review under the Sarbanes-Oxley Act like any other registrant.

16600 AUDITOR INDEPENDENCE

(Last updated: 3/31/2010)

Auditors of MJDS issuers must comply with all SEC and PCAOB rules on auditor independence. General Instruction C (1) to Form 40-F permits a foreign auditor, solely for purposes of an MJDS issuer's initial registration statement, to be independent under SEC and PCAOB rules for at least the most recent audited fiscal year, provided that auditor is independent under local standards for all periods presented. The auditor must remain independent under SEC and PCAOB rules for all subsequent periods.

* * * * *

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(Last updated: 11/9/2016)

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